

**LEGISLATIVE EDUCATION STUDY COMMITTEE  
BILL ANALYSIS**

**Bill Number:** CS/CS/SB 113 and CS/SB 392

**51st Legislature, 1st Session, 2013**

**Tracking Number:** .193573.4

**Short Title:** Tobacco Fund for CYFD Programs and Lottery Tuition Fund Distributions

**Sponsor(s):** Senators John Arthur Smith and Michael S. Sanchez

**Analyst:** Travis Dulany

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**SENATE FINANCE COMMITTEE SUBSTITUTE FOR  
SENATE FINANCE COMMITTEE SUBSTITUTE FOR SENATE BILL 113  
AND  
SENATE EDUCATION COMMITTEE SUBSTITUTE FOR SENATE BILL 392**

**Bill Summary:**

CS/CS/SB 113 and CS/SB 392 amend law to require that:

- 25 percent of the total amount of money distributed to the Tobacco Settlement Permanent Fund be distributed to the Lottery Tuition Fund beginning in FY 14; and
- 25 percent of the total amount of money distributed to the Tobacco Settlement Permanent Fund be distributed for appropriation for direct early childhood care and education services provided by the Children, Youth and Families Department (CYFD) in FY 14 through FY 18.

**Fiscal Impact:**

\$9.75 million is appropriated from the Tobacco Settlement Permanent Fund to CYFD for direct services provided by early childhood care and education programs, including:

- \$2.0 million for reimbursement of licensed child-care providers that CYFD has determined meet one of the top three levels of a tiered quality rating and improvement system that includes educational components;
- \$5.75 million for Pre-Kindergarten (Pre-K); and
- \$2.0 million for home-visiting programs.

Any unexpended or unencumbered balance remaining at the end of FY 14 shall revert to the Tobacco Settlement Program Fund.

**Fiscal Issues:**

According to the State Investment Council (SIC) bill analysis:

- the 50/50 percent split between the Tobacco Settlement Permanent Fund and the Tobacco Settlement Program Fund (see “Background,” below) has not occurred for the past several years;

- \$167.8 million, or 100 percent, of tobacco settlement revenue has been appropriated to health and anti-tobacco programs in FY 09, FY 10, FY 11, and FY 12;
- \$40.0 million per year is the average amount of the overall settlement proceeds received by New Mexico and has fluctuated between \$38.0 million and \$49.0 million over the last five years;
- \$158.1 million is currently available in the Tobacco Settlement Permanent Fund;
- in 2012, the asset mix of the Tobacco Settlement Permanent Fund was restructured by the SIC, removing a high cash component that existed in previous years; and
- the current allocation is composed of 60 percent equity, 30 percent bonds, and 10 percent absolute return strategies.

According to the Fiscal Impact Report (FIR) from the Legislative Finance Committee (LFC):

- this bill would continue the legislative practice of diverting tobacco settlement funds from long-term investment in the Tobacco Settlement Permanent Fund in order to expend the funds on current program needs;
- absent CS/CS/SB 113 and CS/SB 392, 50 percent of the anticipated \$39.5 million revenue from settlement payments in FY 14 would remain in the Tobacco Settlement Permanent Fund for investment;
- the bill would divert approximately \$10.0 million to CYFD and the Lottery Tuition Fund, each.

**Substantive Issues:**

***Direct Early Childhood Care and Education Services Provided by the Children, Youth and Families Department***

According to the CYFD analysis for the original bill, the appropriations would enable the department to:

- increase child-care subsidy reimbursements; and significantly increase the number of four-year olds in the New Mexico Pre-K Program, targeting children in Early Childhood Investment Zones where children are most at risk for school failure; and
- double the number of children and their families who could benefit from the New Mexico Home Visiting Program.

According to the Department of Finance and Administration (DFA):

- currently approximately one-third of the 1,035 licensed child-care providers are operating at “quality levels” of Star 3, 4, and 5 and would be eligible for the reimbursement;
- the increased reimbursement rates for higher quality ratings could serve as an incentive to improve the quality of services for the approximately 690 providers with lower quality ratings; the additional \$5.75 million for Pre-K services would provide services to approximately 1,500 to 1,700 children; and
- the additional funding for home-visiting services would serve approximately 500-600 additional families each year.

## ***New Mexico Legislative Lottery Scholarship Solvency***

According to the FIR for a related bill:

- in FY 12, the Lottery Tuition Fund paid \$58.2 million in scholarships; and
- under current circumstances, LFC and the Higher Education Department estimate an additional \$5.0 million to \$16.0 million in revenues will be needed in FY 14 to continue to make 100 percent tuition scholarship awards.

According to the New Mexico Lottery Authority (NMLA), despite “record returns” over the last five years, New Mexico Lottery revenues have not been sufficient to cover the rising expenditures for student awards. Projections provided by DFA indicate that, under current circumstances, the Lottery Tuition Fund may be insolvent as early as FY 14.

During the 2011 interim, the Legislative Education Study Committee heard testimony from NMLA staff regarding the status of the scholarship. Alluding to the prior four years, NMLA staff noted that ticket sales had been down, or flat, for a variety of reasons, including:

- the economic recession and prolonged recovery;
- loss of retailers that went out of business; and
- increasing food and gas prices.

Despite these setbacks, NMLA staff emphasized that net revenues for the scholarship program have increased both in dollars and percentage due to strict fiscal discipline and severe cost-cutting. NMLA staff explained that steps were taken to stabilize sales, including a new branding campaign, acquisition of 60 new stores, and the launch of a social media strategy to reach younger players. With these measures taken, based on its FY 12 budget, NMLA anticipated flat gross and net revenues over the next several years, with a sales forecast of \$136.4 million and a revenue forecast of \$41.0 million.

## ***Tobacco Settlement Permanent Fund***

According to the SIC bill analysis:

- when originally established, and despite its lack of constitutional protection and official status as a reserve fund, the Tobacco Settlement Permanent Fund was envisioned to eventually be a permanent endowment fund for the state, similar to the Land Grant Permanent and Severance Tax Permanent funds;
- based on the current asset allocation, the SIC expects annual long-term returns, on average, of 6.28 percent for the Tobacco Settlement Permanent Fund; and
- due to its reserve status, the Tobacco Settlement Permanent Fund is invested in a manner similar to the Land Grant Permanent Fund, but is unable to be invested as a mirror image because many private market investments made in the Land Grant Permanent Fund have multi-year investment horizons, which is unsuitable for the Tobacco Settlement Permanent Fund due to its potential use as a reserve fund.

## **Background:**

### ***Tobacco Settlement Permanent Fund***

In 1998, the four largest US tobacco companies and the attorneys general of 46 states entered into the Tobacco Master Settlement Agreement (MSA). In the MSA, the tobacco companies agreed to limit advertising and marketing and to make payments to the states in perpetuity commensurate with the products sold in each state to reimburse the state for the healthcare costs that resulted from the sale of tobacco products. In exchange, the states agreed to enact model legislation or a similar qualifying statute that would allow the states to charge an escrow payment from tobacco companies in the future.

In 2000, legislation was enacted in New Mexico to establish the Tobacco Settlement Permanent Fund, which placed 50 percent of the state's tobacco settlement payments into a permanent trust fund and 50 percent to the Tobacco Settlement Program Fund. Funds from the Tobacco Settlement Program Fund are spent on a variety of health-related programs appropriated through the state's annual budget process. Legislation enacted in 2004 diverted all settlement payments for a four-year period into the state's General Fund; but in FY 07, New Mexico resumed its original distribution of 50 percent to the Tobacco Settlement Permanent Fund and 50 percent to the Tobacco Settlement Program Fund.

In 2011, legislation was enacted, *Additional Tobacco Fund Distribution*, to provide that, for FY 12 and FY 13, 100 percent of the tobacco settlement payments into the Tobacco Settlement Permanent Fund be distributed to the Tobacco Settlement Program Fund for appropriations to state agencies and higher education institutions.

Also in 2011, legislation was enacted, *Tobacco Fund Investment Practices*, to change the standard for investment for the Tobacco Settlement Permanent Fund to be "in accordance with limitations in Article 12, Section 7 of the Constitution of New Mexico." This change requires that the permanent fund be invested with the same statutory limitations that currently exist on the investment of the land grant permanent funds under the *Uniform Prudent Investor Act*.

In 2012, legislation was enacted to appropriate, in FY 13, \$1.0 million from the Tobacco Settlement Permanent Fund to the University of New Mexico Health Sciences Center for lung cancer research under the Speaker Ben Lujan Cancer Research Project. Additional appropriations from the Tobacco Settlement Permanent Fund were also made to fund various state agencies for health and research programs.

In October 2012, the LFC gave a presentation to the Tobacco Settlement Revenue Oversight Committee and stated that:

- MSA revenue increased in FY 12 to \$39.3 million from \$38.6 million in FY 11; and
- while MSA revenue of \$39.0 million is projected for FY 13 and \$39.5 million for FY 14, the forecast is subject to uncertainty.

### ***Legislative Lottery Scholarship***

During the 2012 regular legislative session, the Legislature passed a joint memorial, *Study Lottery Tuition Fund Solvency*, which requested HED to convene a task force to study the solvency of the Legislative Lottery Scholarship program. However, no action was taken to convene the task force.

Created by legislation enacted in 1996, the Legislative Lottery Scholarship is a renewable, full-tuition award granted to qualifying students beginning in their second semester at a public postsecondary institution in New Mexico. The scholarship covers the cost of tuition only. Students are responsible for additional educational expenses such as student fees, course materials, and housing.

To qualify for the scholarship a student must:

- be a New Mexico resident;
- have graduated from a New Mexico public or accredited private high school or have obtained a New Mexico GED;
- enroll full-time (in at least 12 credit hours) at an eligible New Mexico public college or university, in the first regular semester immediately following high school graduation; and
- attain and maintain a cumulative GPA of at least 2.5.

State law also provides for specific accommodations with regard to:

- students with disabilities;
- students whose parents are in the military; and
- individuals who either immediately enlist in, or have recently departed from, the US Armed Forces.

### **Committee Referrals:**

SEC/SFC/HCPAC/HJC

### **Related Bills:**

SB 68 *CYFD Childhood Home Visiting Program*  
SB 225 *Early Childhood Teacher Retention Project* (Identical to HB 193)  
SB 365aa *Home Visiting Accountability Act* (Identical to HB 333)  
CS/SB 392 *Lottery Tuition Fund Distributions*  
SB 405 *Home Visiting Accountability Act*  
SB 451 *Lottery Scholarship Requirements & Debt*  
CS/SB 613 *Lottery Scholarship Requirements*  
SJR 3aa *Land Grant Fund Balance & Distribution, CA*  
CS/HB 27 *Expand Lottery Scholarship Eligibility*  
HB 28 *Lottery Scholarships at Tribal Colleges*  
HB 193 *Early Childhood Teacher Retention Project* (Identical to SB 225)  
\*CS/HB 309 *Lottery Scholarship Program Solvency*  
HB 332 *Education for Deaf & Hard-of-Hearing Students*  
HB 333 *Home Visiting Accountability Act* (Identical to SB 365aa)  
HB 586 *Lottery Scholarship Requirements*  
HJM 19 *J. Paul Taylor Early Childhood Task Force*