

LFC Requestor: Self Assigned

2024 LEGISLATIVE SESSION
AGENCY BILL ANALYSIS

Section I: General

Chamber: Senate

Category: Bill

Number: 0116

Type: Introduced

Date (of THIS analysis): 01/26/2024

Sponsor(s): Martin Hickey

Short Title: Tobacco Fund Is Not a Reserve Fund

Reviewing Agency: Agency 665 - Department of Health

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Section II: Fiscal Impact

APPROPRIATION (dollars in thousands)

Appropriation Contained		Recurring or Nonrecurring	Fund Affected
FY 24	FY 25		
\$0	\$0	n/a	n/a

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY 24	FY 25	FY 26		
\$0	\$0	\$0	n/a	n/a

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY 24	FY 25	FY 26	3 Year Total Cost	Recurring or Non-recurring	Fund Affected
Total	\$0	\$0	\$0	\$0	n/a	n/a

Section III: Relationship to other legislation

Duplicates: None

Conflicts with: None

Companion to: SB0072

Relates to: SB0072

Duplicates/Relates to an Appropriation in the General Appropriation Act: None

Section IV: Narrative

1. BILL SUMMARY

a. Synopsis

Senate Bill (SB0116) provides that the tobacco settlement permanent fund is not a reserve fund of the state.

Is this an amendment or substitution? Yes No

Is there an emergency clause? Yes No

b. Significant Issues

Since its inception in 1998, the Master Settlement Agreement payments from tobacco manufacturers were to be distributed 50% into the Tobacco Settlement Permanent Fund and 50% into the Tobacco Settlement Program Fund. SB0116 would require that FY25 distributions to the Tobacco Settlement Permanent Fund be distributed to the Tobacco Settlement Program Fund.

The Tobacco Settlement Permanent Fund was established for long-term support of the Tobacco Settlement Program Fund in New Mexico (NM), which funds many programs throughout state government. As tobacco use rates decrease in NM, Master Settlement Agreement payments and tobacco tax revenues decrease. The Tobacco Industry has also been aggressive in litigating with states receiving Master Settlement Agreement payments, including NM, to lower and/or retrieve payments to those states. The understanding has always been that the Master Settlement Agreement payments from participating tobacco manufacturers could decrease or could eventually end altogether. Some variability and a sustained decrease have been expected year to year with ongoing litigation, developments at the federal level, and gains states have seen in cessation outcomes, however, over the past several years, NM programs receiving tobacco funds have experienced severe and unexpected decreases in payments resulting in major disruptions to funding vital services.

The Nicotine Use Prevention and Cessation program (NUPAC) has experienced significant disruption to youth prevention services due to the unreliability of the master settlement agreement payments. Other New Mexico Department of Health (NMDOH) program activities that have received appropriations from Tobacco Settlement Funding in previous fiscal years include support for breast and cervical cancer screening services since FY10 and for diabetes prevention and control services since FY05. Funding for these have historically been included in the New Mexico General Appropriations Act, but neither is included in HB0176. NMDOH uses these funds (1) to deliver high-quality, age-appropriate, accepted standard of care breast and cervical cancer screening and diagnostic services at no cost to low income, uninsured women in New Mexico at contracted clinics

across the state, and (2) through the delivery of evidence-based chronic disease and diabetes self-management programs, which support New Mexicans to more effectively manage chronic conditions that require daily self-management. Almost 50,000 New Mexicans are eligible to enroll in the NMDOH program to receive free breast and cervical cancer screening services with funding from the CDC, although federal funding is limited and can serve only approximately one out of every eight women in need; Tobacco Settlement Funds increase the number of individuals who can receive these life-saving services. The self-management programs, which are offered statewide, in English and Spanish and in a variety of formats, lead to significant improvements in quality of life and overall health, including improved medication adherence and symptom management, better communication with healthcare providers, a better quality of life, fewer sick days and lowered healthcare costs. In addition, continuing education for healthcare professionals is provided to enhance their knowledge around issues relevant to enhanced management of diabetes and other related chronic diseases.

Sustained funding for comprehensive tobacco control programs is vital to continuing efforts that reduce vaping rates in youth, reduce sales of tobacco products to youth, and decrease youth susceptibility to tobacco use. Disruptions and underfunding of prevention programming seriously threatens to undermine strategies aimed at youth at precisely the time New Mexico is seeing a dramatic increase in youth vaping. Youth prevention requires consistent, well funding support for evidence-based strategies.

NM's comprehensive tobacco prevention and cessation programs have achieved significant reductions in tobacco use among both adults and youth. Evidence shows that for many successful state tobacco control programs, drastic reductions in funding have taken their toll. In such cases, reductions in youth smoking have stalled and sales of tobacco to youth and youth susceptibility to nicotine use have risen. Even more alarming is how quickly progress can be slowed or reversed.

2. PERFORMANCE IMPLICATIONS

- Does this bill impact the current delivery of NMDOH services or operations?
 Yes No
- Is this proposal related to the NMDOH Strategic Plan? Yes No
 - Goal 1:** We expand equitable access to services for all New Mexicans
 - Goal 2:** We ensure safety in New Mexico healthcare environments
 - Goal 3:** We improve health status for all New Mexicans
 - Goal 4:** We support each other by promoting an environment of mutual respect, trust, open communication, and needed resources for staff to serve New Mexicans and to grow and reach their professional goals

Program Objective: Work with health system and surveillance partners to monitor health status to identify community problems

Decrease diseases of despair (suicide & drug and alcohol related deaths), decrease mortality rates and thereby reduce SHIP priorities by 5%

1. Performance Measure: Percent of adolescents who smoke
2. Performance Measure: Percent of adults who smoke

3. FISCAL IMPLICATIONS

- If there is an appropriation, is it included in the Executive Budget Request?

Yes No N/A

- If there is an appropriation, is it included in the LFC Budget Request?

Yes No N/A

- Does this bill have a fiscal impact on NMDOH? Yes No

4. ADMINISTRATIVE IMPLICATIONS

Will this bill have an administrative impact on NMDOH? Yes No

5. DUPLICATION, CONFLICT, COMPANIONSHIP OR RELATIONSHIP

SB0116 relates to:

SB0072 which would propose to increase the rate of tobacco products tax on e-cigarettes; including nicotine, regardless of source, in the definition of “tobacco product” in the tobacco products tax act; distributing revenue from tax to a new nicotine use prevention and control fund.

SB0116 relates to HB0176, the General Appropriation Act of 2024:

HB0176 would appropriate five million four hundred thirty-five thousand two hundred dollars (\$5,435,200) from the tobacco settlement program fund for smoking cessation and prevention programs.

6. TECHNICAL ISSUES

Are there technical issues with the bill? Yes No

7. LEGAL/REGULATORY ISSUES (OTHER SUBSTANTIVE ISSUES)

- Will administrative rules need to be updated or new rules written? Yes No
- Have there been changes in federal/state/local laws and regulations that make this legislation necessary (or unnecessary)? Yes No
- Does this bill conflict with federal grant requirements or associated regulations?
 Yes No
- Are there any legal problems or conflicts with existing laws, regulations, policies, or programs? Yes No
None

8. DISPARITIES ISSUES

Although cigarette smoking has declined to about 16% among New Mexico adults, the percentage of those who currently smoke is still significantly higher among New Mexico populations that experience higher health disparities:

- 27.1% Adults who are unemployed or unable to work
- 23.2% Adults with a household income <\$15,000
- 21.4% Adults with less than a high school education
- 20.9% Lesbian/Gay/Bisexual adults
- 18.8% People that live in rural areas

(<https://www.cdc.gov/brfss/brfssprevalence/index.html>).

Tobacco product use is started and established primarily during adolescence. While the percentage of New Mexico high school students who smoked cigarettes in the last month has declined to 4.3%, this success has been offset by a significantly large increase in e-cigarettes. Among New Mexico high school female youth, 29.4% have used an e-cigarette in prior

month, and 21.4% of high school male youth have used an e-cigarette in the prior month. (<https://nccd.cdc.gov/Youthonline/App/Results.aspx?LID=NM>).

In New Mexico, disparities exist among youth who use nicotine products. One in four high school youth currently report that they have used e-cigarettes in the past month (25.3%). This number increases to 32.0% among LGB youth and 28.6% of Hispanic youth. The percent of youth who use nicotine products are higher in Southeast New Mexico in comparison to other regions of New Mexico. Among New Mexico high school students who have been bullied due to housing status, 56.9% have used e-cigarettes or other electronic nicotine vapor products. Among New Mexico high school students with a disability, 48.8% of students have used e-cigarettes or other electronic nicotine vapor products. (<https://nccd.cdc.gov/Youthonline/App/Results.aspx?LID=NM>).

National, state, and local program activities have been shown to reduce and prevent youth tobacco product use when implemented together, including, but not limited to state programs that work to counter tobacco product ads, increase awareness of the harms of smoking among adolescents, and provide resources that encourage tobacco-free places and lifestyles (https://www.cdc.gov/tobacco/data_statistics/fact_sheets/youth_data/tobacco_use/index.htm).

The Center for Disease Control (CDC) recommends that state and community interventions promote tobacco use cessation, prevent tobacco use initiation, eliminate secondhand smoke exposure, and identify and eliminate tobacco-related disparities. Achieving equity by reducing tobacco-related disparities is a key goal for comprehensive tobacco control programs. Programs can achieve this goal through surveillance, partnerships (including funding) with disparate population groups and organizations that serve these groups, strategic plans that address disparities, and culturally competent technical assistance and training (<https://www.cdc.gov/tobacco/stateandcommunity/guides/pdfs/2014/statecomm-fact-sheet.pdf>).

9. HEALTH IMPACT(S)

Smoking cigarettes harms nearly every organ of the body and continues to be the leading cause of preventable death in the U.S, causing about 90% of deaths from lung cancer and about 80% of deaths from chronic obstructive pulmonary disease (COPD). Smokers are 2 to 4 times more likely to have coronary heart disease and stroke. Exposure to second-hand smoke can cause serious health effects including sudden infant death syndrome (SIDS), heart attacks, asthma attacks, and lung cancer (<https://www.cdc.gov/brfss/brfssprevalence/index.html>).

E-cigarettes and other nicotine electronic vaping products contain toxic chemicals similar to commercial tobacco cigarettes. The aerosols (informally known as vapors) from e-cigarettes and other nicotine electronic vaping products also contain harmful substances such as nicotine, heavy metals (like lead), volatile organic compounds, and cancer-causing agents. Nicotine is a very addictive substance that is toxic to developing fetuses and harmful to adolescent brain development. The health effects of nicotine from e-cigarettes in youth include but are not limited to increased depression and/or anxiety, asthma, decreased immunity, and poor impulse control (<https://www.cdc.gov/brfss/brfssprevalence/index.html>).

Today, there is a much smaller gap between men and women of all ages that use tobacco products than in the past, with women having an increasing burden of smoking-related disease and death. In New Mexico, the number of deaths due to lung cancer has surpassed the number of deaths due to breast cancer. After age 50, women who smoke have a lower bone density than women who never smoked. Women who smoke have an increased risk for hip

fracture compared to never smokers. Cigarette smoking also causes skin wrinkling that could make smokers appear prematurely older

(<https://www.lung.org/quit-smoking/smoking-facts/impact-of-tobacco-use/women-and-tobacco-use>).

Tobacco control programs play a crucial role in the prevention of many chronic conditions such as cancer, heart disease, and respiratory illness. Comprehensive tobacco prevention and cessation programs prevent kids from starting to smoke, help adult smokers quit, educate the public on how reduce tobacco use, and address health disparities. The 2020 Surgeon General's Report on Tobacco Cessation noted that state tobacco control programs reduce smoking prevalence, increase quit attempts, and increase smoking cessation

(<https://assets.tobaccofreekids.org/factsheets/0045.pdf>).

10. ALTERNATIVES

None

11. WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

If SB0116 is not enacted, the tobacco settlement permanent fund will remain a reserve fund of the state.

12. AMENDMENTS

None