

# Tobacco Settlement Revenue Oversight Committee

## 2008 INTERIM REPORT



**New Mexico State Legislature**  
*Legislative Council Service*  
*411 State Capitol*  
*Santa Fe, New Mexico*

**December 2008**  
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## SUMMARY

The Tobacco Settlement Revenue Oversight Committee (TSROC) was created in statute as a joint interim legislative committee. The committee monitors the use of revenues received as a result of the Master Settlement Agreement (MSA) signed by the attorneys general of 46 states with the four largest tobacco companies in the United States — Brown & Williamson, Lorillard, Philip Morris and R.J. Reynolds. The agreement was signed on November 23, 1998. The committee meets during the interims "to receive and review evaluations of programs" that receive appropriations of the tobacco settlement revenues. Each year, the committee takes testimony regarding the performance results of funded programs and prepares recommendations for future funding. Those funding recommendations are provided to the Legislative Finance Committee on or before December 15 of each year.

The committee makes recommendations as necessary for changes in legislation regarding use of the tobacco settlement revenue. It is critical that the State of New Mexico aggressively pursue its enforcement efforts as required under the MSA. The interim committee works closely with representatives of the New Mexico Attorney General's Office to ensure state compliance.

The Tobacco Settlement Permanent Fund consists "of money distributed to the state pursuant to the Master Settlement Agreement entered into between tobacco product manufacturers and various states, including New Mexico". The Tobacco Settlement Program Fund consists "of distributions made to the fund from the tobacco settlement permanent fund". Each year, 50% of the revenues are retained in the Tobacco Settlement Permanent Fund and the remaining 50% is placed in the program fund, from which it is appropriated primarily to the Department of Health, the Human Services Department and the University of New Mexico Health Sciences Center. The funds are used for health care; tobacco use cessation and prevention programs; breast and cervical cancer screening and treatment programs; diabetes prevention and control programs; HIV/AIDS services; research into the prevention and treatment of tobacco-related diseases, most particularly lung diseases; research in genomics, biocomputing and environmental health; and Medicaid. Several programs funded each year by appropriations to the Health Sciences Center serve pediatric oncology and trauma patients; the telehealth program; rural health centers; the poison and information center; and the Los Pasos program.

Between fiscal years 1999 and 2008, the state received more than \$365 million in actual payments as a result of the MSA. Another \$44.9 million is projected for receipt in April 2009 for fiscal year 2009. In the December 2008 General Fund Consensus Revenue Estimate, the projected value of the Tobacco Settlement Permanent Fund for the beginning of fiscal year 2010 was reported at \$131.2 million; however, continued poor performance in the stock market could result in substantially lower balances in the fund.

Approximately \$44.9 million in tobacco revenue is projected for fiscal year 2010, providing half of that amount for distribution to the Tobacco Settlement Program Fund for subsequent appropriation by the legislature. At the time the TSROC formulated its funding recommendations, there was concern that appropriations might be severely affected by stock market conditions.

After meeting three times to receive testimony from agencies and programs currently receiving appropriations, the committee adopted funding recommendations for fiscal year 2010.

Although the Centers for Disease Control and Prevention (CDC) recommends that nearly \$23.4 million be expended in New Mexico for the Tobacco Use Prevention and Control (TUPAC) program, it is the committee's goal to continue funding the prevention programs at incrementally higher levels until New Mexico can attain the recommended CDC level. The FY09 appropriation is \$9.115 million for tobacco prevention and cessation programs; the committee recommends \$9.365 million for FY10, or a \$250,000 increase.

The TSROC recommendations demonstrate sensitivity to the projected general fund deficit, while preserving the continued success of all the programs supported with tobacco revenues. No increases are recommended for most of the programs; however, the committee strongly recommends an increase of \$135,000 to the Indian Affairs Department to expand TUPAC programs on the reservations and pueblos, particularly focusing on tobacco prevention and cessation among youth.

Due to an increase in the cost of digital mammography for each procedure, fewer breast cancer screenings can be done for women and men. The committee recommends a \$150,000 increase in the appropriation for the breast and cervical cancer screening program.

One new prevention program is recommended at the Department of Health (DOH) — a cardiovascular disease prevention program, which would be funded with \$200,000. Smokers are at very high risk for cardiovascular disease — a leading cause of death in New Mexico.

To continue the research on early detection of lung cancer in veterans, the committee recommends that nearly one-half of the projected tobacco revenue increase, \$730,000, be used to offset more than one-half of the current general fund appropriation funded in FY09. It has been reported that the cohort already established for this program may play a vital role in attracting a federally funded research program for lung cancer research in military personnel.

Additionally, the committee adopted two pieces of legislation: 1) making it unlawful to smoke in a motor vehicle in which a minor is present; and 2) amending the Cigarette Enforcement Act and the Tobacco Escrow Fund Act to clarify definitions and support enforcement efforts by the Taxation and Revenue Department and the attorney general. (The sponsor of the first legislative proposal has withdrawn the bill for introduction in another year.)

Because tobacco revenues are tied closely to enforcement efforts, the TSROC unanimously recommended that regular operating budgets sufficiently address the costs of enforcement initiatives required under the tobacco laws of New Mexico and related agreements.

## ARTICLE 19

### Tobacco Settlement Revenue Oversight Committee

Section

2-19-1 Tobacco settlement revenue oversight committee created; membership; duties.

#### **2-19-1. Tobacco settlement revenue oversight committee created; membership; duties.**

A. There is created a joint interim legislative committee that shall be known as the "tobacco settlement revenue oversight committee".

B. The tobacco settlement revenue oversight committee shall be composed of six members. Three members of the house of representatives shall be appointed by the speaker of the house of representatives and three members of the senate shall be appointed by the committees' committee of the senate or, if the senate appointments are made in the interim, those members shall be appointed by the president pro tempore of the senate after consultation with and agreement of a majority of the members of the committees' committee. Members shall be appointed from each house so as to give the two major political parties in each house the same proportionate representation on the tobacco settlement revenue oversight committee as prevails in each house.

C. The tobacco settlement revenue oversight committee shall:

(1) monitor the use of tobacco settlement revenue and meet on a regular basis to receive and review evaluations of programs receiving funding from tobacco settlement revenues;

(2) prepare recommendations, based on its program evaluation process, of program funding levels for the next fiscal year. The recommendations shall be made available to the New Mexico legislative council and the legislative finance committee on or before December 15 preceding each session; and

(3) make recommendations as necessary for changes in legislation regarding use of the tobacco settlement revenue.

D. The staff for the tobacco settlement revenue oversight committee shall be provided by the legislative council service.

**History:** Laws 2000 (2nd S.S.), ch. 9, § 4.

**TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE (TSROC)**  
**FY 2009 AND 2010 RECOMMENDATIONS**

(thousands of dollars; recurring unless noted)

<b>AGENCY AND PROGRAM</b>	<b>2009 TSROC Recs</b>	<b>2009 TSROC Approps</b>	<b>2010 TSROC Recs</b>	<b>2010 Proposed Inc (DEC)</b>
<b>Department of Health</b>				
Tobacco cessation and prevention programs	9,950.0	9,115.0	9,365.0	250.0
Diabetes prevention and control program	1,000.0	1,000.0	1,000.0	
HIV/AIDS services	470.0	470.0	470.0	
Breast & cervical cancer <i>screening</i> program	200.0	200.0	350.0	150.0
Cardiovascular disease prevention program - NEW			200.0	200.0
<b>Total Department of Health</b>	<b>\$11,620.0</b>	<b>\$10,785.0</b>	<b>\$11,385.0</b>	<b>\$600.0</b>
<b>Human Services Department</b>				
Breast & cervical cancer <i>treatment</i> program	1,500.0	1,500.0	1,500.0	
Medicaid expansion	1,380.0	2,800.0	2,800.0	
<b>Total Human Services Department</b>	<b>\$2,880.0</b>	<b>\$4,300.0</b>	<b>\$4,300.0</b>	<b>\$0.0</b>
<b>University of New Mexico</b>				
Innovations in preventing and treating tobacco-related diseases				
Genomics core facilities	162.5	162.5	162.5	
Epidemiology	374.8	374.8	374.8	
Enhanced tobacco-related research	180.0	180.0	180.0	
Clinical research and trials	329.1	329.1	329.1	
Biocomputing	453.6	453.6	453.6	
Subtotal UNM tobacco-related diseases	\$1,500.0	\$1,500.0	\$1,500.0	\$0.0
<b>Other programs</b>				
Area health education center	50.0	50.0	50.0	
Center for telehealth (formerly telemedicine)	150.0	150.0	150.0	
Los Pasos program	50.0	50.0	50.0	
Pediatric oncology	400.0	400.0	400.0	
Poison & information center	450.0	450.0	450.0	
Specialty education in pediatrics	400.0	400.0	400.0	
Specialty education in trauma	400.0	400.0	400.0	
Subtotal UNM other programs	\$1,900.0	\$1,900.0	\$1,900.0	\$0.0
Contract with Lovelace Respiratory Research Institute				
Lung and tobacco-related diseases	1,000.0	1,000.0	1,000.0	
Funding retained by UNM (Instruction & General)		1,000.0	1,000.0	
Subtotal UNM/LRRI/I & G	1,000.0	2,000.0	2,000.0	
<b>Total University of New Mexico</b>	<b>\$4,400.0</b>	<b>\$5,400.0</b>	<b>\$5,400.0</b>	<b>\$0.0</b>
<b>Indian Affairs Department</b>				
Tobacco cessation and prevention programs	700.0	500.0	635.0	135.0
<b>Total Indian Affairs Department</b>	<b>\$700.0</b>	<b>\$500.0</b>	<b>\$635.0</b>	<b>\$135.0</b>
<b>Veterans' Services Department</b>				
Early detection of lung cancer in veterans	1,300.0	0.0 <sup>(a)</sup>	730.0	730.0
Total Veterans' Services Department	<b>\$1,300.0</b>	<b>\$0.0</b>	<b>\$730.0</b>	<b>\$730.0</b>
<b>GRAND TOTAL - Programs</b>	<b>\$20,900.0</b>	<b>\$20,985.0</b>	<b>\$22,450.0</b>	<b>\$1,465.0</b>

**Notes:**

(a) General Fund approps. to VSD: FY08 \$350.0; FY08-09 \$1,300.0.

**TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**  
**FISCAL YEAR 2010 RECOMMENDATIONS**  
(dollars in thousands)

***Introduction:***

*Revenues under the Master Settlement Agreement (MSA) can potentially fall below estimates, if New Mexico does not adequately enforce the model legislation enacted as a result of the MSA; therefore, the committee recommends that sufficient funding be provided through the operational budgets for enforcement efforts.*

*Fifty percent of the estimated FY10 tobacco revenues equals \$22.45 million or \$1.465 million above the current-year estimate. This fifty percent is available for appropriation from the Tobacco Settlement Program Fund. Although, the Centers for Disease Control (CDC) recommends that nearly \$23.4 million be expended in New Mexico for tobacco use prevention and control (TUPAC), the committee makes several recommendations for funding both prevention and treatment programs, research on the early detection of lung cancer and various other health care treatment and prevention programs, as well as Medicaid.*

*It is the committee's goal to continue funding the prevention programs at incrementally higher levels until New Mexico reaches the recommended CDC level. The increases recommended this year are \$250.0 for the TUPAC program at the Department of Health and an additional \$135.0 to expand the TUPAC program at the Indian Affairs Department, which serves the Native American populations on the reservations and at the pueblos.*

**1. INCREASE FUNDING FOR THE TOBACCO USE PREVENTION AND CONTROL PROGRAM (TUPAC), DEPARTMENT OF HEALTH (DOH)**

**Current Funding — \$9,115.0**

**FY 2010 Recommended Funding — \$9,365.0**

The committee recommends continuing to build a comprehensive tobacco cessation and prevention program that will continue to reduce the number of tobacco users, thereby reducing tobacco-related disease, treatment and the escalating costs for associated health care. The CDC recommends spending a minimum of \$23.4 million on programs in New Mexico to reduce tobacco use significantly.

DOH contracts with more than 72 TUPAC providers across the state to implement the goals of the program. The funding allows for, among other things, a 1-800-HELP line for cessation services and an increase in targeted school districts and youth activities and tobacco cessation coverage in health plans. Contractors under this program fall into several categories:

- **Community Programs**

Local community programs reduce tobacco use through changes in the social environment and through community partnerships. The programs combine prevention, education and cessation efforts to mobilize communities to combat tobacco use and exposure. In addition to community health planning, the programs recruit youth into tobacco use prevention coalitions, train youth as advocates for their peers, provide media literacy and merchant education and counter tobacco marketing activities.

- **Cessation Programs**

These programs focus on increasing the access and availability of counseling and treatment to stop smoking, which range from the simplest quitting techniques to the most intensive. They are based upon proven intervention models. The programs include cessation interventions in schools, communities and health facilities; education on how to deliver cessation services; training for people who will lead cessation groups; and media messages on quitting.

- **School-Based Youth and Parent Programs**

These funds are awarded to school districts or allied organizations that provide programs ranging from age-specific classroom curricula to teacher training, special school projects, media literacy training, peer education programs and cessation programs for staff, parents and students. The programs are intended to prevent youth initiation of tobacco use, educate youth about the dangers of tobacco use, teach life skills and refusal skills and provide an opportunity for youth who already smoke or use spit tobacco to quit.

- **Media Campaigns**

These funds are awarded to provide public awareness and education campaigns that send and reinforce powerful tobacco-free messages to promote cessation and prevention of tobacco use and educate about risks associated with secondhand smoke. Activities include newspaper articles featuring youth tobacco prevention; anti-tobacco banners and billboards; media literacy training; counter advertising for TV, radio, billboard and print media; and a 1-800-4-CANCER help line.

- **Partnerships with Disparate Populations**

These funds are awarded to assist various communities that are disproportionately affected by tobacco use, including Native Americans, Hispanics, women, rural populations and low-income individuals. Partnerships with these groups are aimed at increasing prevention and reducing tobacco use. Activities include facilitating focus groups and organizing and implementing forums to educate and inform.

- **Surveillance and Evaluation**

These funds are used to monitor the behaviors, attitudes and outcomes related to tobacco use and to track the progress of program elements and performance indicators. Efforts include developing a common reporting format for all TUPAC programs, providing evaluation training, conducting youth and adult tobacco surveys and identifying, collecting and analyzing evaluation information and data.

- **SMART Moves and the New Mexico Alliance of Boys' and Girls' Clubs**

SMART Moves is a national prevention program that aims to provide young people with the knowledge, skills, sense of self-worth and peer support they need to avoid alcohol, tobacco and other drugs. The program promotes involvement in other drug-related avoidance programs. Based on best practices from prevention specialists, the SMART Moves curriculum has been implemented successfully in the New Mexico Alliance of Boys' and Girls' Clubs and has shown significant positive results during the past three years.

## **2. CONTINUE FUNDING THE DIABETES PREVENTION AND CONTROL PROGRAM, DOH**

**Current Funding — \$1,000.0**

**FY 2010 Recommended Funding — \$1,000.0**

These funds provide public education and media exposure on diabetes and support for rural clinics, including supplies, equipment and lab tests. They also provide diabetes education on children's health as well as activity and nutrition programs in elementary schools.

## **3. CONTINUE FUNDING HIV/AIDS SERVICES, DOH**

**Current Funding — \$470.0**

**FY 2010 Recommended Funding — \$470.0**

These funds provide chronic-care AIDS treatment services that help people with AIDS to lead longer, fuller and more productive lives. The care includes practical, psychosocial and clinical services. The funds are also used to contract with community-based organizations to implement statewide HIV prevention and education programs.

## **4. INCREASE FUNDING FOR THE BREAST AND CERVICAL CANCER SCREENING PROGRAM, DOH**

**Current Funding — \$200.0**

**FY 2010 Recommended Funding — \$350.0**

The purpose of these funds is to provide breast and cervical cancer *screening* for women. The DOH has an extensive outreach program that includes advertising the program through billboards, flyers, bus signs, radio, newspapers and large community activities. There is a toll-free number to call.

*Due to an increase in the cost of digital mammography for each procedure, fewer breast screenings can be done for women and men with the current funding level. An additional \$150.0 is recommended for FY2010 to offset the reduction in screenings, which will result without an increase in funding.*

**5. CREATE A NEW PROGRAM — CARDIOVASCULAR DISEASE PREVENTION**

**Current Funding — NEW PROGRAM**  
**FY2010 Recommended Funding — \$200.0**

*A new program is being recommended to provide public and professional education on the prevention and control of cardiovascular diseases, which include coronary heart disease, heart failure, stroke and high blood pressure. Smokers are at very high risk for cardiovascular disease – a leading cause of death in New Mexico. The funds would be used by communities and organizations to provide interventions to reduce the risks and delay the onset of cardiovascular diseases.*

*As reported by the New Mexico Department of Health and the American Heart Association, New Mexico's Hispanic women have a 40 percent higher rate of dying from a stroke than the national rate. More than 150,300 New Mexicans (1 in 11 adults) have diabetes; people with diabetes are two to four times more likely to develop cardiovascular disease due to a variety of risk factors.*

**6. CONTINUE FUNDING THE BREAST AND CERVICAL CANCER TREATMENT PROGRAM, HUMAN SERVICES DEPARTMENT (HSD)**

**Current Funding — \$1,500.0**  
**FY 2010 Recommended Funding — \$1,500.0**

These funds provide *treatment* for women with breast or cervical cancer who are eligible for Medicaid. New Mexico receives an enhanced federal match (4:1) for this program. Women in the program receive full Medicaid coverage through fee-for-service (FFS). Since the program began in July 2002, the number of recipients enrolled has grown from 158 to 400 with paid claims.

**7. CONTINUE FUNDING MEDICAID ELIGIBILITY, HSD**

**Current Funding — \$2,800.0 —**  
**FY 2010 Recommended Funding — \$2,800.0**

These funds provide Medicaid to eligible persons in New Mexico. The FY 2010 funding recommendation is identical to the current year funding level. *The committee is sensitive to the projected General Fund deficit for FY2010; therefore, it recommends maintaining the same level of support for Medicaid from the Tobacco Settlement Program Fund.*

**8. CONTINUE FUNDING FOR INNOVATIONS IN PREVENTION AND TREATMENT OF TOBACCO-RELATED DISEASES, UNIVERSITY OF NEW MEXICO HEALTH SCIENCES CENTER (UNMHSC)**

**Current Funding — \$1,500.0**  
**FY 2010 Recommended Funding — \$1,500.0**

These funds would be used for existing health care research programs by the UNMHSC to translate research findings into effective clinical care programs, to disseminate scholarly work and to recruit and hire scientists and support personnel. The research funds would be spent as follows:

Genomics core facilities	\$ 162.5
Epidemiology	374.8
Enhanced tobacco-related research	180.0
Clinical research and trials	329.1
Biocomputing	<u>453.6</u>
	\$1,500.0

**9. CONTINUE FUNDING FOR OTHER PROGRAMS ADMINISTERED BY UNM**

**Total Current Funding — \$1,900.0**  
**Total FY 2009 Recommended Funding — \$1,900.0**

• **Area Health Education Centers — \$50.0**

The purpose of these funds is to increase the number of health care professionals practicing in rural and underserved areas and to expand clinical training in those areas for medical, nursing, public health, pharmacy, physician assistants and allied health students, as well as for primary care physicians. Additionally, the funds are intended to increase the health profession applicant pool from underrepresented ethnic minorities and from shortage areas. Finally, the funds would support and provide continuing education programs in order to retain health professionals in the underserved areas.

• **Center for Telehealth — \$150.0**

The purpose of these funds is to improve the quality of and access to health care systems in rural New Mexico by using advanced technology to extend the resources of the UNMHSC to remote areas of the state. The funds are used to increase the number of clinical services, educational programs and administrative activities delivered to remote sites. Funds are used for physician salaries, supplies and travel. The center collaborates with the federal government and the University of Hawaii.

• **Los Pasos Program — \$50.0**

The purpose of these funds is to support salaries of doctors who provide comprehensive health services to families and to children up to age three who have been exposed in utero to alcohol and other drugs. The goals include the prevention of negative consequences of parental use of alcohol, tobacco and other drugs, as well as training support and technical assistance to agencies and community programs in northern and central New Mexico.

• **Pediatric Oncology — \$400.0**

The purpose of these funds is to support salaries of doctors who provide statewide quality care, treatment, monitoring and support for children and families facing childhood cancer. The program has initiated a three-year pediatric oncology curriculum for residents, and it advances the treatment of childhood cancer through the pursuit of clinical and basic research at local and national levels.

- **Poison and Information Center — \$450.0**

The purpose of these funds is to reduce the morbidity and mortality associated with poisoning and to encourage proper use of medications. The center provides a statewide poison prevention program, educates the public, offers first-aid information, distributes materials and provides treatment information to health professionals. The funds support 24-hour statewide expert assistance for poisoning emergencies. The center has an active research program, provides education and training to health care professionals and collaborates with local, state and federal agencies.

- **Specialty Education in Pediatrics — \$400.0**

The purpose of these funds is to pay the salaries of physicians serving on the pediatrics faculty at the UNM School of Medicine. Faculty members treat children as well as educate medical students, residents and community providers. They conduct research to advance pediatric health care across the state. The funds will also be used for related materials, services and travel to assist the educational program.

- **Specialty Education in Trauma — \$400.0**

The purpose of these funds is to pay the salaries of physicians serving on the UNM School of Medicine faculty. Faculty members educate medical students in trauma, critical care and emergency care and staff the Level I Trauma Center at the UNM Hospital emergency room.

## **10. CONTINUE FUNDING EMPHYSEMA AND LUNG CANCER RESEARCH**

**Current Funding — \$1,000.0**

**FY 2010 Recommended Funding — \$1,000.0**

These funds would continue UNM's contract with Lovelace Respiratory Research Institute (LRRI) for its research in emphysema and lung cancer detection and treatment. LRRI is "leading the world" in lung cancer research. The research also includes a cohort study on women at risk for lung cancer and emphysema.

## **11. INCREASE FUNDING TOBACCO CESSATION AND PREVENTION PROGRAMS, INDIAN AFFAIRS DEPARTMENT (IAD)**

**Current Funding — \$500.0**

**FY 2010 Recommended Funding — \$635.0**

The committee is recommending increased funding for tobacco cessation and prevention programs that affect Native American communities throughout the state, with a program

evaluation to mirror that which was developed and implemented by the DOH. Mini-grants were awarded to the tribes and additional contracts were awarded for development of tobacco cessation programs targeting Native American communities. Some funding has been used for a Tobacco Cessation and Prevention Youth Planning Seminar. Future funding will be used to support tribal prevention efforts, tribal capacity building and the development of more culturally appropriate tobacco cessation programs.

## **12. EARLY DETECTION OF LUNG CANCER, VETERANS' SERVICES DEPARTMENT (VSD)**

**(Current Funding is through the General Fund, not the Tobacco Settlement Program Fund — \$350.0 in FY08; \$1,300.0 in FY08-FY09)  
FY 2010 Recommended Funding — \$730.0**

The Committee recommends funding from the Tobacco Settlement Program Fund to continue this private public-partnership. The VSD transferred current General Fund appropriations to New Mexico Tech, which has partnered with BioModa, Inc. to conduct a program for early detection of lung cancer in veterans using the company's patented inexpensive noninvasive cytological technology developed in New Mexico for detecting the presence of cancerous cells in human sputum. Funding supports the main objective to screen veterans for lung cancer, to identify participants with early stage lung cancer and to reduce deaths due to lung cancer. The ultimate goal for this program is to have it successfully expanded both nationally and globally.

## **13. ENFORCEMENT FUNDING FOR THE ATTORNEY GENERAL'S OFFICE (AGO) AND THE TAXATION AND REVENUE DEPARTMENT**

The committee unanimously supports the award of sufficient funding for the operating budgets of agencies charged with enforcing the provisions of the master settlement agreement and New Mexico's tobacco laws. Failure to adequately enforce these provisions and laws places the state's receipt of tobacco revenues in jeopardy.

**LEGISLATION**

**ENDORSED BY THE COMMITTEE**

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SENATE BILL

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

FOR THE TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

AN ACT

RELATING TO MOTOR VEHICLES; PROHIBITING SMOKING IN A MOTOR  
VEHICLE IN WHICH A MINOR IS PRESENT; AMENDING SECTIONS OF THE  
DEE JOHNSON CLEAN INDOOR AIR ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 24-16-3 NMSA 1978 (being Laws 1985,  
Chapter 85, Section 3, as amended) is amended to read:

"24-16-3. DEFINITIONS.--As used in the Dee Johnson Clean  
Indoor Air Act:

A. "bar" means an establishment that is devoted to  
the selling or serving of alcoholic beverages for consumption  
by patrons on the premises and in which the serving of food is  
only incidental to the consumption of those beverages,  
including taverns, nightclubs, cocktail lounges and cabarets;

B. "cigar bar" means an establishment that:

underscoring material = new  
~~[bracketed material] = delete~~

1 (1) is a bar as defined in Subsection A of  
2 this section; and

3 (2) is engaged in the business of selling  
4 cigars for consumption by patrons on the premises and generates  
5 ten percent or more of its total annual gross revenue or at  
6 least ten thousand dollars (\$10,000) in annual sales from the  
7 sale of cigars, not including any sales from vending machines.  
8 A cigar bar that fails to generate at least ten percent of its  
9 total annual sales from the sale of cigars in the calendar year  
10 after December 31, 2006, not including sales from vending  
11 machines, shall not be defined as a cigar bar and shall not  
12 thereafter be known as such regardless of sales figures. A  
13 cigar bar shall agree to provide adequate information to  
14 demonstrate to the state's satisfaction compliance with this  
15 definition;

16 C. "department" means the department of health;

17 D. "designated outdoor smoking area" means an area  
18 where smoking may be permitted, designated by an employer or  
19 manager, outside an indoor workplace or indoor public place;  
20 provided that the following conditions are maintained:

21 (1) smoking shall not be permitted near any  
22 building entrance, including a door, window or ventilation  
23 system of any facility where smoking is prohibited under the  
24 provisions of the Dee Johnson Clean Indoor Air Act, so as to  
25 prevent secondhand smoke from entering the indoor workplace or

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1 indoor public place; and

2 (2) employees or members of the general public  
3 are not required to walk through the smoking area to gain  
4 entrance to the indoor workplace or indoor public place;

5 E. "employer" means an individual, a partnership, a  
6 corporation or the state or a political subdivision of the  
7 state that employs the services of one or more individuals;

8 F. "enclosed" means any interior space  
9 predominantly or totally bounded on all sides and above by  
10 physical barriers, regardless of whether such barriers consist  
11 of or include uncovered openings, screened or otherwise  
12 partially covered openings or open or closed windows;

13 G. "indoor public place" means the enclosed area  
14 within any governmental or nongovernmental place to which the  
15 public is invited or in which the public is permitted  
16 regardless of whether work or public business, meetings or  
17 hearings occur at any given time;

18 H. "indoor workplace" means any enclosed place  
19 where one or more persons engage in work, including lobbies,  
20 reception areas, offices, conference and meeting rooms,  
21 employee cafeterias and lunchrooms, break rooms and employee  
22 lounges, classrooms, auditoriums, hallways, stairways, waiting  
23 areas, elevators and restrooms and includes all indoor  
24 workplaces and enclosed parts regardless of whether work occurs  
25 at any given time;

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underscored material = new  
[bracketed material] = delete

1           I. "minor" means an individual who has not reached  
2 eighteen years of age;

3           ~~[F.]~~ J. "private club" means an organization,  
4 whether incorporated or not, that is the owner, lessee or  
5 occupant of a building or portion thereof used exclusively for  
6 the organization's purposes at all times, that is operated  
7 solely for recreational, fraternal, social, patriotic,  
8 political, benevolent or athletic purposes, but not for  
9 pecuniary gain, and that only sells alcoholic beverages  
10 incidental to its operation. The organization shall have  
11 bylaws or a constitution to govern its activities and shall  
12 have been granted an exemption as a club under the provisions  
13 of Section 501 of the Internal Revenue Code of 1986, as  
14 amended;

15           ~~[J.]~~ K. "restaurant" means a coffee shop,  
16 cafeteria, private or public school cafeteria or eating  
17 establishment and any other eating establishment that gives or  
18 offers for sale food to the public, patrons or employees,  
19 including kitchens and catering facilities in which food is  
20 prepared on the premises for serving elsewhere or a bar area  
21 within or attached to the premises;

22           ~~[K.]~~ L. "retail tobacco store" means a retail store  
23 used primarily for the sale of tobacco products and accessories  
24 and in which the sale of other products is merely incidental,  
25 including smoke shops, cigar shops or hookah lounges, and does

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1 not include establishments that offer for sale alcoholic  
2 beverages for consumption by patrons on the premises;

3 [~~L~~] M. "secondhand smoke" means smoke emitted from  
4 lighted, smoldering or burning tobacco when the smoker is not  
5 inhaling, smoke emitted at the mouthpiece during puff drawing  
6 and smoke exhaled by the smoker;

7 [~~M~~] N. "smokefree area" means any building or  
8 other enclosed space where smoking is prohibited;

9 [~~N~~] O. "smoking" means inhaling, exhaling,  
10 burning, carrying or holding any lighted tobacco product,  
11 including all types of cigarettes, cigars and pipes and any  
12 other lighted tobacco product; and

13 [~~O~~] P. "smoking-permitted area" means any building  
14 or other enclosed space where smoking may be permitted;  
15 provided that secondhand smoke does not infiltrate any area  
16 where smoking is prohibited pursuant to the Dee Johnson Clean  
17 Indoor Air Act."

18 Section 2. Section 24-16-4 NMSA 1978 (being Laws 1985,  
19 Chapter 85, Section 4, as amended) is amended to read:

20 "24-16-4. SMOKING PROHIBITED.--

21 A. It is unlawful for a person to smoke in any:

22 (1) indoor workplace; [~~or~~]

23 (2) indoor public place;

24 (3) motor vehicle in which a minor is present;

25 or [~~in~~]

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1                   (4) buses, taxicabs or other means of public  
2 transit not specifically exempted pursuant to the Dee Johnson  
3 Clean Indoor Air Act.

4                   B. No part of the state capitol or capitol north  
5 shall be designated as a smoking-permitted area."

6                   Section 3. Section 24-16-12 NMSA 1978 (being Laws 2007,  
7 Chapter 20, Section 4) is amended to read:

8                   "24-16-12. SMOKING-PERMITTED AREAS.--Notwithstanding any  
9 other provision of the Dee Johnson Clean Indoor Air Act,  
10 smoking-permitted areas include the following:

11                   A. a private residence, except during hours of  
12 business operation while it is being used commercially to  
13 provide child care, adult care or health care or any  
14 combination of those activities;

15                   B. a retail tobacco store;

16                   C. a cigar bar;

17                   D. the facilities of a tobacco manufacturing  
18 company licensed by the United States to manufacture tobacco  
19 products that are operated by the company in its own name and  
20 that are used exclusively by the company in its business of  
21 manufacturing, marketing or distributing its tobacco products;  
22 provided that smoke does not infiltrate other indoor workplaces  
23 or other indoor public places where smoking is otherwise  
24 prohibited under the Dee Johnson Clean Indoor Air Act;

25                   E. a state-licensed gaming facility, casino or

1 bingo parlor;

2 F. an indoor workplace to the extent that tobacco  
3 smoking is an integral part of a smoking cessation program that  
4 is approved by the department or of medical or scientific  
5 research that is conducted in the indoor workplace and in which  
6 each room of the indoor workplace in which tobacco smoking is  
7 permitted complies with signage requirements;

8 G. designated outdoor smoking areas;

9 H. private clubs;

10 I. a limousine under private hire in which no minor  
11 is present;

12 J. hotel and motel rooms that are rented to guests  
13 and are designated as smoking-permitted rooms; provided that  
14 not more than twenty-five percent of rooms rented to guests in  
15 a hotel or motel may be so designated;

16 K. enclosed areas within restaurants, bars, hotel  
17 and motel conference or meeting rooms while these places are  
18 being used for private functions; provided that none of these  
19 areas are open to the general public while the private  
20 functions are occurring and provided that smoke does not  
21 infiltrate other indoor workplaces or indoor public places  
22 where smoking is otherwise prohibited under the Dee Johnson  
23 Clean Indoor Air Act;

24 L. a site that is being used in connection with the  
25 practice of cultural or ceremonial activities by Native

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1 Americans and that is in accordance with the federal American  
2 Indian Religious Freedom Act, 42 U.S.C. 1996 and 1996a;

3 M. a business of a sole proprietor or a business  
4 with fewer than two employees that is not commonly accessible  
5 to the public; provided that:

6 (1) the business is not a restaurant or bar;

7 (2) the employer or manager of such business  
8 shall provide a smoke-free work environment for each employee  
9 requesting a smoke-free work environment; and

10 (3) cigarette smoke does not infiltrate other  
11 smoke-free work environments as provided for in the Dee Johnson  
12 Clean Indoor Air Act; and

13 N. a theatrical stage or a motion picture or  
14 television production set when it is necessary for performers  
15 to smoke as part of the production."

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HOUSE BILL

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

FOR THE TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

AN ACT

RELATING TO TOBACCO; AMENDING THE CIGARETTE ENFORCEMENT ACT;  
AMENDING THE TOBACCO ESCROW FUND ACT; REQUIRING ADDITIONAL  
DOCUMENTATION PRIOR TO DELIVERY SALES OF CIGARETTES; REQUIRING  
CERTAIN TOBACCO PRODUCTS MANUFACTURERS AND IMPORTERS TO POST  
BONDS; GRANTING ADDITIONAL POWERS TO THE ATTORNEY GENERAL;  
IMPOSING JOINT AND SEVERAL LIABILITY ON CERTAIN TOBACCO  
PRODUCTS MANUFACTURERS AND IMPORTERS; IMPOSING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 6-4-12 NMSA 1978 (being Laws 1999,  
Chapter 208, Section 1) is amended to read:

"6-4-12. DEFINITIONS.--As used in [~~this act~~] Sections  
6-4-12 and 6-4-13 NMSA 1978:

A. "adjusted for inflation" means increased in  
accordance with the formula for inflation adjustment set forth

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1 in Exhibit C to the master settlement agreement;

2 B. "affiliate" means a person who directly or  
3 indirectly owns or controls, is owned or controlled by, or is  
4 under common ownership or control with, another person. Solely  
5 for purposes of this definition, the terms "owns", "is owned"  
6 and "ownership" mean ownership of an equity interest, or the  
7 equivalent thereof, of ten percent or more, and the term  
8 "person" means an individual, partnership, committee,  
9 association, corporation or any other organization or group of  
10 persons;

11 C. "allocable share" means Allocable Share as that  
12 term is defined in the master settlement agreement;

13 D. "cigarette" means any product that contains  
14 nicotine, is intended to be burned or heated under ordinary  
15 conditions of use, and consists of or contains:

16 (1) any roll of tobacco wrapped in paper or in  
17 any substance not containing tobacco; or

18 (2) tobacco, in any form, that is functional  
19 in the product, which, because of its appearance, the type of  
20 tobacco used in the filler, or its packaging and labeling, is  
21 likely to be offered to, or purchased by, consumers as a  
22 cigarette; or

23 (3) any roll of tobacco wrapped in any  
24 substance containing tobacco which, because of its appearance,  
25 the type of tobacco used in the filler, or its packaging and

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1 labeling, is likely to be offered to, or purchased by,  
2 consumers as a cigarette described in [~~clause (1) of this~~  
3 ~~definition~~] Paragraph (1) of this subsection. The term  
4 "cigarette" includes "roll-your-own" (i.e., any tobacco which,  
5 because of its appearance, type, packaging, or labeling is  
6 suitable for use and likely to be offered to, or purchased by,  
7 consumers as tobacco for making cigarettes). For purposes of  
8 this definition of "cigarette", 0.09 ounces of "roll-your-own"  
9 tobacco shall constitute one individual "cigarette";

10 E. "master settlement agreement" means the  
11 settlement agreement (and related documents) entered into on  
12 November 23, 1998 by the state and leading United States  
13 tobacco product manufacturers;

14 F. "qualified escrow fund" means an escrow  
15 arrangement with a federally or state chartered financial  
16 institution having no affiliation with any tobacco product  
17 manufacturer and having assets of at least one billion dollars  
18 (\$1,000,000,000) where such arrangement requires that such  
19 financial institution hold the escrowed funds' principal for  
20 the benefit of releasing parties and prohibits the tobacco  
21 product manufacturer placing the funds into escrow from using,  
22 accessing or directing the use of the funds' principal except  
23 as consistent with Subsection B of Section [~~2 of this act~~]  
24 6-4-13 NMSA 1978;

25 G. "released claims" means Released Claims as that  
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underscoring material = new  
~~[bracketed material] = delete~~

1 term is defined in the master settlement agreement;

2 H. "releasing parties" means Releasing Parties as  
3 that term is defined in the master settlement agreement;

4 I. "tobacco product manufacturer" means an entity  
5 that after the date of enactment of this act directly (and not  
6 exclusively through any affiliate):

7 (1) manufactures cigarettes anywhere that such  
8 manufacturer intends to be sold in the United States, including  
9 cigarettes intended to be sold in the United States through an  
10 importer (except where such importer is an original  
11 participating manufacturer (as that term is defined in the  
12 master settlement agreement) that will be responsible for the  
13 payments under the master settlement agreement with respect to  
14 such cigarettes as a result of the provisions of subsection  
15 II(mm) of the master settlement agreement and that pays the  
16 taxes specified in subsection II(z) of the master settlement  
17 agreement, and provided that the manufacturer of such  
18 cigarettes does not market or advertise such cigarettes in the  
19 United States);

20 (2) is the first purchaser anywhere for resale  
21 in the United States of cigarettes manufactured anywhere that  
22 the manufacturer does not intend to be sold in the United  
23 States; or

24 (3) becomes a successor of an entity described  
25 in Paragraph (1) or (2) of this subsection.

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underscored material = new  
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1           The term "tobacco product manufacturer" shall not include  
2 an affiliate of a tobacco product manufacturer unless such  
3 affiliate itself falls within Paragraph (1), (2) or (3) of this  
4 subsection; and

5           J. "units sold" means the number of individual  
6 cigarettes sold in the state by the applicable tobacco product  
7 manufacturer (whether directly or through a distributor,  
8 retailer or similar intermediary or intermediaries) during the  
9 year in question, as measured by excise taxes collected [~~by the~~  
10 ~~state on packs (or "roll-your-own" tobacco containers) bearing~~  
11 ~~the excise tax stamp of the state~~], ounces of "roll-your-own"  
12 tobacco sold and sales of products bearing tax-exempt stamps on  
13 packs or "roll-your-own" tobacco containers. The secretary of  
14 taxation and revenue shall promulgate such [~~regulations~~] rules  
15 as are necessary to ascertain the amount of state excise tax  
16 paid on the cigarettes of such tobacco product manufacturer for  
17 each year."

18           Section 2. Section 6-4-14 NMSA 1978 (being Laws 2003,  
19 Chapter 114, Section 1) is amended to read:

20           "6-4-14. SHORT TITLE.--~~[This act]~~ Sections 6-4-14 through  
21 6-4-24 NMSA 1978 may be cited as the "Tobacco Escrow Fund  
22 Act"."

23           Section 3. Section 6-4-17 NMSA 1978 (being Laws 2003,  
24 Chapter 114, Section 4) is amended to read:

25           "6-4-17. CERTIFICATION BY TOBACCO PRODUCT MANUFACTURER.--

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underscored material = new  
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1           A. No later than April 30 of each year, a tobacco  
2 product manufacturer whose cigarettes are sold in this state,  
3 whether directly or through a distributor, retailer or similar  
4 intermediary, shall execute and deliver to the attorney  
5 general, in the manner and on the form prescribed by the  
6 attorney general requesting such information as the attorney  
7 general deems reasonably necessary to make the determination  
8 required by Section 6-4-18 NMSA 1978, a certification pursuant  
9 to this section. The certification shall:

10                         (1) be made under penalty of perjury;

11                         (2) state that as of the date of the  
12 certification, the tobacco product manufacturer is either a  
13 participating or a nonparticipating manufacturer; and

14                         (3) include the information required pursuant  
15 to [~~Subsections~~] Subsection B or C of this section.

16           B. In its certification, a participating  
17 manufacturer shall include a complete list of its brand  
18 families.

19           C. In its certification, a nonparticipating  
20 manufacturer shall:

21                         (1) certify that it is registered to do  
22 business in the state or has appointed an agent for service of  
23 process and has provided written notice to the attorney general  
24 in accordance with Section [~~7 of the Tobacco Escrow Fund Act~~]  
25 6-4-20 NMSA 1978;

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1                   (2) certify that it is in full compliance with  
2 Section 6-4-13 NMSA 1978, the Tobacco Escrow Fund Act and any  
3 rules promulgated pursuant to that act, including all annual  
4 payments as may be required by the attorney general;

5                   (3) certify that it has established and  
6 maintains a qualified escrow fund governed by a qualified  
7 escrow agreement that has been reviewed and approved by the  
8 attorney general and provide:

9                   (a) the name, address and telephone  
10 number of the financial institution where the fund is  
11 established;

12                   (b) the account number of the fund and  
13 the subaccount number for the state;

14                   (c) the amounts placed in the fund for  
15 cigarettes sold in the state during the preceding calendar  
16 year, including the date and amount of each deposit and any  
17 other evidence or verification of the amounts as the attorney  
18 general deems necessary; and

19                   (d) the amount and date of each  
20 withdrawal or transfer of funds made at any time from the fund  
21 or from any other qualified escrow fund into which the  
22 nonparticipating manufacturer has made escrow payments pursuant  
23 to Section 6-4-13 NMSA 1978; and

24                   (4) include a complete list of its brand  
25 families and:

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1 (a) separately list the number of units  
2 sold in the state for each brand family during the preceding  
3 calendar year, indicating any brand family sold in the state  
4 during the preceding calendar year that is no longer being sold  
5 as of the date of certification; and

6 (b) indicate all of its brand families  
7 that have been sold in the state at any time during the current  
8 calendar year, identifying by name and address any other  
9 manufacturer of [~~such~~] the brand families in the preceding or  
10 current calendar year.

11 D. In its certification, a nonparticipating  
12 manufacturer located outside of the United States shall also:

13 (1) certify that it has provided a  
14 declaration, on a form prescribed by the attorney general, from  
15 each of its importers into the United States of any of its  
16 brand families to be sold in New Mexico that the importer  
17 accepts joint and several liability with the nonparticipating  
18 manufacturer for all escrow deposits due in accordance with  
19 Section 6-4-13 NMSA 1978, for all penalties assessed in  
20 accordance with Section 6-4-13 NMSA 1978 and for payment of all  
21 costs and attorney fees imposed in accordance with the Tobacco  
22 Escrow Fund Act or Section 6-4-13 NMSA 1978; and

23 (2) certify that it has appointed a resident  
24 agent for service of process in New Mexico in accordance with  
25 Section 6-4-20 NMSA 1978.

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1           ~~[D-]~~ E. A tobacco product manufacturer may not  
2 include a brand family in its certification unless:

3                   (1) in the case of a participating  
4 manufacturer, the participating manufacturer affirms that the  
5 brand family is to be deemed its cigarettes for purposes of  
6 calculating its payments under the master settlement agreement  
7 for the relevant year in the volume and shares determined  
8 pursuant to the master settlement agreement; or

9                   (2) in the case of a nonparticipating  
10 manufacturer, the nonparticipating manufacturer affirms that  
11 the brand family is to be deemed its cigarettes for purposes of  
12 Section 6-4-13 NMSA 1978.

13           ~~[E-]~~ F. A tobacco product manufacturer shall update  
14 the list of its brand families thirty days prior to any  
15 addition to or modification of its brand families by executing  
16 and delivering a supplemental certification to the attorney  
17 general.

18           ~~[F-]~~ G. A tobacco product manufacturer shall  
19 maintain all invoices and documentation of sales and other  
20 information relied upon for its certification to the attorney  
21 general for a period of five years, unless otherwise required  
22 by law to maintain them for a greater period of time.

23           ~~[G-]~~ H. Nothing in this section shall limit or  
24 otherwise affect the state's right to maintain that a brand  
25 family constitutes cigarettes of a different tobacco product

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[bracketed material] = delete

1 manufacturer for purposes of calculating payments under the  
2 master settlement agreement or for purposes of Section 6-4-13  
3 NMSA 1978."

4 Section 4. Section 6-4-18 NMSA 1978 (being Laws 2003,  
5 Chapter 114, Section 5) is amended to read:

6 "6-4-18. DIRECTORY OF TOBACCO PRODUCT MANUFACTURERS AND  
7 CIGARETTE BRANDS.--

8 A. The attorney general shall develop, maintain and  
9 publish on its web site a directory listing all tobacco product  
10 manufacturers that have provided current, accurate and complete  
11 certifications as required by the Tobacco Escrow Fund Act and  
12 all brand families that are listed in those certifications.  
13 The attorney general shall not include or retain in the  
14 directory a [~~nonparticipating manufacturer~~] name or brand  
15 family if:

16 (1) the participating manufacturer fails to  
17 provide the required certification or to make a payment  
18 calculated by an independent auditor to be due from it under  
19 the master settlement agreement except to the extent that it is  
20 disputing such payment;

21 [~~(1)~~] (2) the nonparticipating manufacturer  
22 fails to provide the required certification or the attorney  
23 general determines that its certification is not in compliance  
24 with Section [~~4 of the Tobacco Escrow Fund Act~~] 6-4-17 NMSA  
25 1978; or

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1                    [~~(2)~~] (3) the attorney general concludes that:

2                    (a) all escrow payments required by  
3 Section 6-4-13 NMSA 1978 for any period for any brand family,  
4 whether or not listed by the nonparticipating manufacturer,  
5 have not been fully paid into a qualified escrow fund governed  
6 by a qualified escrow agreement that has been approved by the  
7 attorney general; [~~or~~]

8                    (b) [~~all~~] any outstanding final  
9 judgments, including interest thereon, for violations of  
10 Section 6-4-13 NMSA 1978 have not been fully satisfied for the  
11 brand family or the nonparticipating manufacturer;

12                    (c) for a nonparticipating manufacturer  
13 or a tobacco product manufacturer that became a participating  
14 manufacturer after the master settlement agreement in New  
15 Mexico or in any other state, or any of its principals, the  
16 nonparticipating manufacturer or tobacco product manufacturer  
17 fails to provide reasonable assurance that it will comply with  
18 the requirements of the Tobacco Escrow Fund Act; or

19                    (d) the manufacturer has knowingly  
20 failed to disclose any material information required or  
21 knowingly made any material false statement in the  
22 certification of any supporting information or documentation  
23 provided.

24                    B. As used in this section, "reasonable assurances"  
25 means information and documentation establishing to the

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1 satisfaction of the attorney general that a failure to pay in  
2 New Mexico or elsewhere was the result of a good faith dispute  
3 over the payment obligation.

4 [B-] C. The attorney general shall update the  
5 directory as necessary by adding or removing a tobacco product  
6 manufacturer or a brand family to keep the directory in  
7 conformity with the requirements of the Tobacco Escrow Fund  
8 Act.

9 [G-] D. A distributor shall provide a current  
10 electronic mail address to the attorney general for the purpose  
11 of receiving notifications as may be required pursuant to the  
12 Tobacco Escrow Fund Act."

13 Section 5. A new section of the Tobacco Escrow Fund Act,  
14 Section 6-4-18.1 NMSA 1978, is enacted to read:

15 "6-4-18.1. [NEW MATERIAL] BOND REQUIREMENTS FOR NEWLY  
16 QUALIFIED AND ELEVATED RISK NONPARTICIPATING MANUFACTURERS.--

17 A. The attorney general may require a  
18 nonparticipating manufacturer to post a bond for the first  
19 three years of the manufacturer's listing in the directory or  
20 for a longer period if the manufacturer has been determined to  
21 pose an elevated risk for noncompliance with the Tobacco Escrow  
22 Fund Act. The attorney general may consult with other states  
23 to determine the viability of a potential nonparticipating  
24 manufacturer and may impose additional requirements to protect  
25 state interests.

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underscoring material = new  
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1           B. Notwithstanding any other provision of law, if a  
2 nonparticipating manufacturer is to be listed in the directory,  
3 and if the attorney general reasonably determines that a  
4 nonparticipating manufacturer who has filed a certification  
5 pursuant to Section 6-4-17 NMSA 1978 poses an elevated risk for  
6 noncompliance with the Tobacco Escrow Fund Act, the  
7 nonparticipating manufacturer and any of its brand families  
8 shall not be included in the directory until the  
9 nonparticipating manufacturer, or its United States importer  
10 that undertakes joint and several liability for the  
11 manufacturer's performance in accordance with Section 6-4-20  
12 NMSA 1978, has posted bond in accordance with this section.

13           C. The bond shall be posted by a corporate surety  
14 located within the United States in an amount equal to the  
15 greater of fifty thousand dollars (\$50,000) or the amount of  
16 escrow the manufacturer, in either its current or predecessor  
17 form, was required to deposit as a result of its previous  
18 calendar year sales in New Mexico. The bond shall be written  
19 in favor of the state of New Mexico and shall be conditioned on  
20 the performance by the nonparticipating manufacturer or its  
21 United States importer that undertakes joint and several  
22 liability for the manufacturer's performance in accordance with  
23 all of its obligations under the Tobacco Escrow Fund Act or  
24 Section 6-4-13 NMSA 1978 during the year in which the  
25 certification is filed and the next succeeding calendar year.

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1           D. A nonparticipating manufacturer may be deemed to  
2 pose an elevated risk for noncompliance with this section or  
3 Section 6-4-13 NMSA 1978 if:

4           (1) the nonparticipating manufacturer or any  
5 of its affiliates has underpaid an escrow obligation within the  
6 past three calendar years, unless:

7           (a) the manufacturer did not make  
8 underpayment knowingly or recklessly and the manufacturer  
9 promptly cured the underpayment within one hundred eighty days  
10 of notice; or

11           (b) the underpayment or lack of payment  
12 is the subject of a good faith dispute as documented to the  
13 satisfaction of the attorney general and the underpayment is  
14 cured within one hundred eighty days of entry of a final order  
15 establishing the amount of the required escrow payment;

16           (2) any state has removed the manufacturer or  
17 its brands or brand families or an affiliate or any of the  
18 affiliate's brands or brand families from the state's tobacco  
19 directory for noncompliance with the state law at any time  
20 within the past three calendar years; or

21           (3) any state has litigation pending against,  
22 or an unsatisfied judgment against, the manufacturer or any of  
23 its affiliates for escrow or for penalties, costs or attorney  
24 fees related to noncompliance with the state escrow laws.

25           E. As used in this section, "newly qualified

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underscored material = new  
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1 nonparticipating manufacturer" means a nonparticipating  
2 manufacturer that has not previously been listed in the  
3 directory."

4 Section 6. Section 6-4-20 NMSA 1978 (being Laws 2003,  
5 Chapter 114, Section 7) is amended to read:

6 "6-4-20. AGENT FOR SERVICE OF PROCESS.--

7 A. A nonparticipating manufacturer not registered  
8 to do business in the state shall, as a condition precedent to  
9 having its name or its brand families listed and retained in  
10 the directory, appoint and continually engage without  
11 interruption a registered agent in this state for service of  
12 process on whom all process and any action or proceeding  
13 arising out of the enforcement of the Tobacco Escrow Fund Act  
14 or Section 6-4-13 NMSA 1978 may be served. The  
15 nonparticipating manufacturer shall provide to the attorney  
16 general the name, address and telephone number of its agent for  
17 service of process and shall provide any other information  
18 relating to its agent as may be requested by the attorney  
19 general.

20 B. A nonparticipating manufacturer located outside  
21 of the United States shall, as an additional condition  
22 precedent to having its brand families listed or retained in  
23 the directory, cause each of its importers of any of its brand  
24 families to be sold in New Mexico to appoint, and continually  
25 engage without interruption, the services of an agent in the

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[bracketed material] = delete

1 state in accordance with the provisions of this section. All  
2 obligations of a nonparticipating manufacturer imposed by this  
3 section with respect to appointment of its agent shall also  
4 apply to the importers with respect to appointment of their  
5 agents.

6           ~~[B-]~~ C. A nonparticipating manufacturer shall  
7 provide written notice to the attorney general thirty calendar  
8 days prior to the termination of the authority of an agent  
9 appointed pursuant to ~~[Subsection]~~ Subsections A and B of this  
10 section. No less than five calendar days prior to the  
11 termination of an existing agent appointment, a  
12 nonparticipating manufacturer shall provide to the attorney  
13 general the name, address and telephone number of its newly  
14 appointed agent for service of process and shall provide any  
15 other information relating to the new appointment as may be  
16 requested by the attorney general. In the event an agent  
17 terminates an agency appointment, the nonparticipating  
18 manufacturer shall notify the attorney general of the  
19 termination within five calendar days and shall include proof  
20 to the satisfaction of the attorney general of the appointment  
21 of a new agent.

22           ~~[G-]~~ D. A nonparticipating manufacturer whose  
23 products are sold in this state without appointing or  
24 designating an agent as required by this section shall be  
25 deemed to have appointed the secretary of state as agent and

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underscored material = new  
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1 may be proceeded against in the courts of this state by service  
2 of process upon the secretary of state; provided that the  
3 appointment of the secretary of state as agent shall not  
4 satisfy any other requirement of the Tobacco Escrow Fund Act."

5 Section 7. A new section of the Tobacco Escrow Fund Act,  
6 Section 6-4-20.1 NMSA 1978, is enacted to read:

7 "6-4-20.1. [NEW MATERIAL] JOINT AND SEVERAL LIABILITY.--  
8 For each nonparticipating manufacturer located outside the  
9 United States, each importer into the United States of the  
10 nonparticipating manufacturer's brand families that are sold in  
11 New Mexico shall bear joint and several liability with the  
12 nonparticipating manufacturer for deposit of all escrow amounts  
13 due under Section 6-4-13 NMSA 1978, payment of all penalties  
14 imposed in accordance with Section 6-4-13 NMSA 1978 and payment  
15 of all costs and attorney fees imposed in accordance with the  
16 Tobacco Escrow Fund Act."

17 Section 8. Section 6-4-22 NMSA 1978 (being Laws 2003,  
18 Chapter 114, Section 9) is amended to read:

19 "6-4-22. PENALTIES AND OTHER REMEDIES.--

20 A. It is unlawful for a person to:

21 (1) affix a tax stamp or otherwise pay the tax  
22 due on a package or other container of cigarettes of a tobacco  
23 product manufacturer or a brand family that is not included in  
24 the directory; or

25 (2) sell, offer for sale or possess for sale

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1 cigarettes of a tobacco product manufacturer or a brand family  
2 that is not included in the directory.

3 B. The secretary may revoke or suspend the  
4 registration or license of a person licensed or registered  
5 pursuant to Section ~~[7-12-9]~~ 7-12-9.1 or 7-12A-7 NMSA 1978 that  
6 violates Subsection A of this section.

7 C. Each stamp affixed, payment of tobacco tax,  
8 offer to sell, possession for sale or sale of cigarettes in  
9 violation of Subsection A of this section constitutes a  
10 separate violation. For each violation, the secretary may  
11 impose a civil penalty in an amount not to exceed the greater  
12 of five thousand dollars (\$5,000) or five hundred percent of  
13 the retail value of the cigarettes sold, offered for sale or  
14 possessed for sale.

15 D. Cigarettes that have been sold, offered for sale  
16 or possessed for sale in this state in violation of Subsection  
17 A of this section are contraband, are subject to seizure and  
18 forfeiture and shall be destroyed.

19 E. It is unlawful for a person to sell, distribute,  
20 acquire, hold, own, possess, transport, import or cause to be  
21 imported cigarettes that the person knows or should know are  
22 intended for distribution or sale in violation of Subsection A  
23 of this section. A person who violates this subsection is  
24 guilty of a misdemeanor and shall be sentenced in accordance  
25 with Section 31-19-1 NMSA 1978.

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1           F. A tobacco product manufacturer, stamping agent  
2 or importer of cigarettes, or any officer, employee or agent of  
3 any such entity, who knowingly makes any materially false  
4 statement in any record required by the Tobacco Escrow Fund Act  
5 or Section 6-4-13 NMSA 1978 to be filed with the attorney  
6 general is guilty of a fourth degree felony and upon conviction  
7 shall be sentenced pursuant to the provisions of Section  
8 31-15-18 NMSA 1978. Each document filed containing one or more  
9 false statements constitutes a separate offense.

10           G. A violation of this section constitutes an  
11 unfair and deceptive trade practice pursuant to the Unfair  
12 Practices Act.

13           ~~[F.]~~ H. The attorney general or the department may  
14 seek an injunction to compel compliance with or to restrain a  
15 threatened or actual violation of Subsection A of this section.  
16 In any action brought pursuant to this subsection, the state  
17 shall be entitled to recover the costs of investigation, costs  
18 of the action and reasonable attorney fees, if the state  
19 prevails.

20           I. The attorney general may issue a civil  
21 investigative demand based on reasonable belief that any person  
22 may be in possession, custody or control of an original or copy  
23 of any book, record, report, memorandum, paper, communication,  
24 tabulation, map, chart, photograph, mechanical transcription or  
25 other document or recording relevant to the subject matter of

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1 an investigation of a probable violation of the Tobacco Escrow  
2 Fund Act. The attorney general may, prior to the institution  
3 of a civil proceeding, execute in writing and cause to be  
4 served upon the person a civil investigative demand requiring  
5 the person to produce documentary material and permit the  
6 inspection and copying of the material. The demand of the  
7 attorney general shall not be a matter of public record and  
8 shall not be published except by order of the court."

9 Section 9. A new Section 6-4-24.1 NMSA 1978 is enacted to  
10 read:

11 "6-4-24.1. [NEW MATERIAL] ATTORNEY GENERAL AUTHORITY--  
12 AUDIT AND INVESTIGATION.--The attorney general or the attorney  
13 general's authorized representative may:

14 A. conduct audits and investigations of:

15 (1) a nonparticipating tobacco product  
16 manufacturer and its importers;

17 (2) a tobacco product manufacturer as defined  
18 in Section 6-4-12 NMSA 1978 that became a participating  
19 manufacturer after the master settlement agreement execution  
20 date, as defined at section II(aa) of the master settlement  
21 agreement, and its importers;

22 (3) exclusive distributors, retail dealers,  
23 stamping agents and wholesale dealers; and

24 (4) persons or entities engaged in delivery  
25 sales; and

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1           B. upon reasonable belief that a violation of the  
2 Tobacco Escrow Fund Act or Section 6-4-13 NMSA 1978 has  
3 occurred or is reasonably likely to occur, issue subpoenas,  
4 compel the attendance of witnesses, administer oaths, certify  
5 to official acts, take depositions within and without the state  
6 as now provided by law and compel the production of pertinent  
7 books, payrolls, accounts, papers, records, documents and  
8 testimony relevant to an investigation. If a person refuses,  
9 without good cause, to be examined or to answer a legal and  
10 pertinent question or to produce a document or other evidence  
11 when ordered to do so by the attorney general or the attorney  
12 general's authorized representative, the attorney general or  
13 the attorney general's authorized representative may apply to  
14 the judge of the district court of the jurisdiction where the  
15 person is in attendance or located, upon affidavit, for an  
16 order returnable in no less than two nor more than five days  
17 directing the person to show cause why the person should not be  
18 examined, answer a legal or pertinent question or produce a  
19 document, record or other evidence. Upon a hearing for an  
20 order to show cause, if the court determines that the person,  
21 without good cause, has refused to be examined or to answer  
22 legal or pertinent questions or to produce a document, record  
23 or other evidence, the court may order compliance with the  
24 subpoena and assess all costs and reasonable attorney fees  
25 against the person. If the motion for an order is granted and

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1 the person thereafter fails to comply with the order, the court  
2 may make such orders as are provided for in the rules of the  
3 supreme court of New Mexico. Subpoenas shall be served and  
4 witness fees and mileage paid as allowed in civil cases in the  
5 circuit courts of the state."

6 Section 10. A new Section 6-4-24.2 NMSA 1978 is enacted  
7 to read:

8 "6-4-24.2. [NEW MATERIAL] PRESUMPTION.--In any action  
9 under Section 6-4-13 NMSA 1978, reports of numbers of  
10 cigarettes stamped submitted pursuant to Subsection A of  
11 Section 6-4-21 NMSA 1978 shall be admissible evidence and shall  
12 be presumed to state accurately the number of cigarettes  
13 stamped during the time period by the stamping agent that  
14 submitted the report, absent a contrary showing by the  
15 nonparticipating manufacturer or importer. Nothing in this  
16 section shall be construed as limiting or otherwise affecting  
17 the state's right to maintain that such reports are incorrect  
18 or do not accurately reflect a nonparticipating manufacturer's  
19 sales in the state during the time period in question, and the  
20 presumption shall not apply in the event that the state does so  
21 maintain."

22 Section 11. Section 57-2A-4 NMSA 1978 (being Laws 2000,  
23 Chapter 77, Section 4) is amended to read:

24 "57-2A-4. DOCUMENTATION.--

25 A. On the first business day of each month, each

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1 person licensed or registered to affix a state tax stamp to  
2 cigarettes pursuant to Section [~~7-12-9~~] 7-12-9.1 NMSA 1978  
3 shall file with the department for all cigarettes imported into  
4 the United States to which the person has affixed a tax stamp  
5 in the preceding month:

6 [~~A-~~] (1) copies of:

7 [~~(1)~~] (a) the permit issued pursuant to  
8 26 USCA 5713 to the person importing the cigarettes into the  
9 United States allowing the person to import the cigarettes; and

10 [~~(2)~~] (b) the customs form containing,  
11 with respect to the cigarettes, the internal revenue tax  
12 information required by the federal bureau of alcohol, tobacco,  
13 firearms and explosives;

14 [~~B-~~] (2) a statement signed under penalty of  
15 perjury by the person affixing the state tax stamp identifying  
16 the brand and brand styles of all the cigarettes, the quantity  
17 of each brand style, the supplier of the cigarettes and the  
18 person to whom the cigarettes were conveyed for resale and a  
19 separate statement by that person under penalty of perjury,  
20 which is not confidential or exempt from public disclosure,  
21 identifying only the brands and the brand styles of the  
22 cigarettes; and

23 [~~C-~~] (3) a statement signed under penalty of  
24 perjury by an officer of the manufacturer or importer of the  
25 cigarettes certifying that the manufacturer or importer has

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1 complied with the package health warning and ingredient  
2 reporting requirements of 15 USCA Sections 1333 and 1335a with  
3 respect to the cigarettes, including a statement indicating  
4 whether the manufacturer is or is not a participating  
5 manufacturer within the meaning of that federal law.

6 B. Prior to making a delivery sale or mailing,  
7 shipping or otherwise delivering cigarettes in connection with  
8 a delivery sale, each person shall file with the department and  
9 with the attorney general a statement setting forth the  
10 person's name, trade name and the address of the person's  
11 principal place of business and any other place of business.

12 C. Not later than the tenth day of each month, each  
13 person who has made a delivery sale or mailed, shipped or  
14 otherwise delivered cigarettes in connection with a delivery  
15 sale during the previous calendar month shall file with the  
16 department and with the attorney general a report in the format  
17 prescribed by the attorney general, which may include an  
18 electronic format, that provides for each delivery sale:

19 (1) the name and address of the consumer to  
20 whom the delivery sale was made;

21 (2) the brand or brands of cigarettes that  
22 were sold in the delivery sale; and

23 (3) the quantity of cigarettes that were sold  
24 in the delivery sale.

25 D. Any person who satisfies the requirements of

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1 Section 376 of Title 15 of the United States Code shall be  
2 deemed to satisfy the requirements of this section.

3 E. For purposes of any penalty that may be imposed  
4 for a violation of Subsection B or C of this section, a failure  
5 to file a particular statement or report with both the  
6 department and the attorney general shall constitute a single  
7 violation."

8 Section 12. Section 57-2A-10 NMSA 1978 (being Laws 2000,  
9 Chapter 77, Section 10) is amended to read:

10 "57-2A-10. GENERAL PROVISIONS.--

11 A. The Cigarette Enforcement Act shall be enforced  
12 by the department and the attorney general; provided that, at  
13 the request of the department, the state police and all local  
14 police authorities shall enforce the provisions of the  
15 Cigarette Enforcement Act.

16 B. For the purpose of enforcing the Cigarette  
17 Enforcement Act, the department or the attorney general may  
18 request information from any state or local agency, and may  
19 share information with, and request information from, any  
20 federal agency and any agency of any other state or any local  
21 agency thereof.

22 C. In addition to any other remedy provided by law,  
23 including enforcement as provided in Subsection A of this  
24 section, any person may bring an action for appropriate  
25 injunctive or other equitable relief for a violation of the

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1 Cigarette Enforcement Act; actual damages, if any, sustained by  
2 reason of the violation; and, as determined by the court,  
3 interest on the damages from the date of the complaint, taxable  
4 costs and reasonable ~~[attorney's]~~ attorney fees. If the trier  
5 of fact finds that the violation is flagrant, it may increase  
6 recovery to an amount not in excess of three times the actual  
7 damages sustained by reason of the violation."

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# **2008 INTERIM WORK PLAN**

**2008 APPROVED  
WORK PLAN AND MEETING SCHEDULE  
for the  
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

The tobacco settlement revenue oversight committee was created pursuant to Section 2-19-1 NMSA 1978. The committee members are:

**Members**

Rep. Gail Chasey, co-chair

Sen. Mary Jane M. Garcia, co-chair

Sen. Howie C. Morales

Rep. Danice Picraux

Sen. John C. Ryan

Rep. Gloria C. Vaughn

**Advisory Members**

Sen. Rod Adair

Rep. Ray Begaye

Sen. Joseph J. Carraro

Sen. Dede Feldman

Sen. John T.L. Grubestic

Sen. Linda M. Lopez

Sen. James G. Taylor

Rep. Teresa A. Zanetti

**Work Plan**

Section 6-4-9 NMSA 1978, as amended, provides that in each fiscal year, an annual distribution shall be made from the tobacco settlement permanent fund to the tobacco settlement program fund of an amount equal to 50 percent of the total amount of money distributed to the tobacco settlement permanent fund in each fiscal year until that amount is less than an amount equal to 4.7 percent of the average of the year-end market values of the fund for the immediately preceding five calendar years.

The tobacco settlement revenue oversight committee will continue its oversight duties for the programs that receive funding through the tobacco settlement program fund. The committee will receive testimony regarding the balances in and projected revenues for both the tobacco settlement program fund and the tobacco settlement permanent fund.

During the 2008 interim, the tobacco settlement revenue oversight committee proposes to:

(1) monitor the status of the revenue and reserves for the tobacco settlement permanent fund and the use of tobacco settlement program funds through committee oversight and evaluation of those programs recommended by the committee and funded by the legislature; review the enforcement requirements under the master settlement agreement; compare recommended funding levels by the centers for disease control and prevention with those funded in New Mexico; and examine the implications of appropriating tobacco settlement revenue a year in advance of its receipt;

(2) meet, hear testimony regarding tobacco settlement-related issues and prepare recommendations of program funding levels for fiscal year 2010, based on the committee's program evaluation process; and

(3) make recommendations as necessary for changes in legislation relating to and regarding use of the tobacco settlement revenue.

## 2008 APPROVED MEETING SCHEDULE

<u>Date</u>	<u>Location</u>
June 12	Santa Fe
August 14	Santa Fe
November 6	Santa Fe

# **COMMITTEE AGENDAS**

Revised: June 11, 2008

**TENTATIVE AGENDA  
for the  
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**June 12, 2008  
Room 311, State Capitol  
Santa Fe, New Mexico**

**Thursday, June 12**

9:30 a.m.     **Call to Order**  
—Senator Mary Jane M. Garcia, Co-Chair

**Introduction of New Staff**

**Interim Legislative Committee Protocols**  
—Raúl Burciaga, Legislative Council Service (LCS)  
—John Yaeger, LCS

10:00 a.m.     **Update on Tobacco-Related Funds, Programs, Taxes and Legislation**  
—Nathan Bush, New Mexico Government Relations Director, American C~~Sm~~ Society

**2008 Committee-Sponsored and Related Legislation, FY09 Funding Levels  
and Historical Information**  
—Roxanne Knight, LCS Staff

**Review, Discussion and Adoption of Interim Work Plan and Agenda Items**

**Public Comment**

**Adjournment**

Revised: August 13, 2008

**TENTATIVE AGENDA  
for the  
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**August 14, 2008  
Room 317, State Capitol  
Santa Fe, New Mexico**

**Thursday, August 14**

- 9:00 a.m.     **Call to Order and Approval of June 2008 Minutes**  
—Senator Mary Jane M. Garcia and Representative Gail Chasey, Co-Chairs
- 9:15 a.m.     **Native American Programs — Oso Vista Ranch**  
—Margaret Merrill, Executive Director
- 9:30 a.m.     **Native American Programs — Southwest Tribal Tobacco Coalition**  
—Natalie Thomas, Healthy Heart Coordinator, Laguna Community Health  
Representative Program
- 10:00 a.m.    **Tobacco Master Settlement Agreement (MSA) Primer, Update and Proposed  
Legislation**  
—David Thomson, Deputy Attorney General  
—Revenue, Litigation, Legislation and Enforcement Updates
- 12:00 noon    **Working Lunch**
- Staff Reports**
- 1:00 p.m.     **Tobacco Use Prevention and Control (TUPAC) Program Evaluation and  
Request for Proposals (RFP) Process Report**  
—David Vigil, Bureau Chief, Chronic Disease Prevention and Control,  
Department of Health (DOH)  
—Larry Elmore, Program Manager, TUPAC Program, DOH
- DOH — Update on Cigar Bar Licenses**  
—Kathy Kunkel, Chief General Counsel, DOH
- Diabetes Program Evaluation and RFP Process Report**  
—Judith Gabriele, Program Manager, DOH
- HIV/AIDS Program Evaluation and RFP Process Report**  
—Daryl Smith, Infectious Disease Bureau Chief, DOH
- Public Comment**  
**Preliminary Committee Discussion of FY10 Program Funding Levels and  
Any Proposed Legislation**

Revised: November 5, 2008

**TENTATIVE AGENDA  
for the  
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**November 6, 2008  
Room 311, State Capitol  
Santa Fe, New Mexico**

**Thursday, November 6**

- 9:00 a.m.      **Call to Order and Approval of August Minutes**  
—Senator Mary Jane M. Garcia and Representative Gail Chasey, Co-Chairs
- Tobacco Settlement Permanent and Program Funds — Estimates and Balances**  
—Norton Francis, Chief Economist, Legislative Finance Committee
- 9:30 a.m.      **University of New Mexico (UNM) Health Sciences Center Performance Report**  
—Paul Roth, M.D., Executive Vice President for Health Sciences, Dean, School of Medicine, UNM  
—Richard S. Larson, M.D., Ph.D., Vice President for HSC Translational Research, Professor of Pathology
- Breast and Cervical Cancer Program (invited)**  
—Larry Heyeck, Deputy Director, Medical Assistance Division (MAD), Human Services Department (HSD)  
—Virginia Alcon, Staff Manager, MAD, HSD  
—Julie Weinberg, MAD, HSD
- 10:45 a.m.     **Lovelace Respiratory Research Institute (LRRI) Performance Report**  
—Dr. Robert Rubin, President and CEO, LRRI
- 11:15 a.m.     **BioModa Update on Its Research**  
—John Cousins, President  
—John Garcia, Secretary, Veterans' Services Department  
—Dr. Dan Lopez, President, New Mexico Tech  
—Richard Cervantes, Associate Vice President for Research and Economic Development, New Mexico Tech  
—Dr. Srinivas Mukkamala, Senior Research Scientist, New Mexico Tech  
—David Manzano, Director of Governmental Affairs, New Mexico Tech

**Approval of August 14, 2008 Minutes**

**Working Lunch**

- 12:30 p.m. **Tobacco Use Prevention and Control (TUPAC) Program Update**  
—Alvin H. Warren, Secretary, Indian Affairs Department
- 1:30 p.m. **Healthy New Mexico Task Force — Update**  
—David Vigil, Bureau Chief, Chronic Disease Prevention and Control,  
Department of Health
- 1:40 p.m. **Cardiovascular Disease Prevention Program — Funding Request**  
—Julia Valdez, New Mexico Director of Government Affairs, American Heart  
Association
- 1:50 p.m. **Breast and Cervical Cancer Early Detection Program — Funding Request**  
—Nathan Bush, Government Relations Director, American Cancer Society
- 2:00 p.m. **Public Comment**
- Review and Adoption of Legislation**
- Funding Requests and Recommendations**
- Adjournment**

# **COMMITTEE MINUTES**

**MINUTES  
of the  
FIRST MEETING  
of the  
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**June 12, 2008  
Santa Fe**

**Present**

Sen. Mary Jane M. Garcia, Co-Chair  
Sen. Howie C. Morales  
Rep. Danice Picraux  
Sen. John C. Ryan  
Rep. Gloria C. Vaughn

**Absent**

Rep. Gail Chasey, Co-Chair

**Advisory Members**

Rep. Ray Begaye  
Sen. Joseph J. Carraro  
Sen. Dede Feldman  
Sen. John T.L. Grubestic  
Sen. Linda M. Lopez  
Rep. Teresa A. Zanetti

Sen. Rod Adair  
Sen. James G. Taylor

**Staff**

Roxanne Knight  
Michael Hely

**Thursday, June 12**

At 9:45 a.m., Senator Garcia called the meeting to order with a special subcommittee of voting and advisory members, including the co-chair, Representative Vaughn, Representative Begaye, Senator Feldman, Senator Grubestic and Representative Zanetti.

Senator Garcia introduced lead staff member Roxanne Knight and Michael Hely, staff attorney with the Legislative Council Service (LCS). Senator Garcia invited other members of the audience to introduce themselves, including Aaron Choneska, Tom Bunting and Alicia Santos, law student interns for the LCS.

**Interim Legislative Committee Protocols**

Raúl Burciaga and John Yaeger, assistant directors of the LCS, advised the committee of the interim committee protocols, including those relating to the establishment of a quorum for conducting committee business and for a subcommittee. A quorum, they explained, is achieved when 50 percent plus one of the committee's voting membership is present. In the case of the Tobacco Settlement Revenue Oversight Committee (TSROC), the number needed for a quorum is **four** members. Once established, a quorum is presumed to exist until the question of whether a quorum exists is raised by a voting member or a roll call vote is taken. A committee can act by taking voice votes or by consensus — usually on non-controversial issues — even when a

quorum is lacking. In those cases, the minutes will generally reflect that a motion was approved "without objection" or "with Senator or Representative \_\_\_ objecting".

In the absence of a quorum, in order to convene a meeting and out of consideration for those present, including legislators, the people testifying and the public, the rules allow a subcommittee to be formed. Subcommittees may be formed under the following circumstances:

1. all the members in attendance (voting, advisory and one-time attendees) equal the number required for a quorum (e.g., on the TSROC, when four legislators are present, including both voting and advisory members, then a subcommittee may be convened); or

2. the chair or vice chair is present along with one member from each of the chambers and each of the parties. For example, five members must be present: (co-) chair or vice chair, a house Democrat, a house Republican, a senate Democrat and a senate Republican. If the chair and vice chair are both present, the vice chair counts as a member of one of the houses/parties.

The New Mexico Legislative Council authorizes the speaker and senate president pro tempore to adjust the membership of the committees as necessary in consultation with the respective minority leaders. Staff can call leaders to temporarily appoint a member before the meeting gets started to facilitate the committee's business. The authorization would be for the purpose of establishing a quorum or in final meetings when votes are needed to adopt legislation. It is possible an advisory member might be changed to a voting member for this purpose. Also, it is possible that an interim committee could meet as a subcommittee throughout the summer.

Mr. Burciaga and Mr. Yaeger noted the following:

*Voting.* Only *voting* members may vote; advisory members may not vote without *prior* delegation by the speaker or president pro tempore. At roll call, only the names of voting members will be called.

*Blocking Provision.* This provision does *not* apply to the TSROC, but states that no action may be taken if a majority from *either* house opposes it. In order to ascertain the number needed to overcome this provision, each committee's numbers have to be examined (e.g., on the Legislative Education Study Committee, the number is six house members and four senate members).

The question was raised whether advisory members can be appointed as voting members when voting members are going to be absent. The speaker or president pro tempore may do so **prior to** the meeting, with some restrictions. For instance, this should not be done in a way such that the minority party has the vote "stacked" against it. When it appears that "stacking" is taking place, the party prejudiced by stacking (usually the minority party) can simply get up and leave, thereby destroying the quorum.

When LCS staff call members to remind them of an upcoming meeting, they will let members know that their attendance is needed for a quorum. It is not necessary that the chair or co-chair announce that a quorum has been achieved; staff merely note it in the minutes. Some actions for which a quorum is needed include roll call voting, approving minutes and starting a meeting.

It is not necessary that minutes be approved at any particular meeting; the committee can wait until the next meeting to approve the minutes when a quorum is present. As the LCS does not post minutes until they have been approved, staff tend to push for speedy approval of minutes. Unapproved minutes may be included in the final report, but they will be marked "unapproved".

The question was raised whether the web site posting only approved minutes is a new practice; it was suggested that this be revisited. It was noted that the committee trusts the staff to take accurate minutes, and the public should have them available.

### **Update on Tobacco-Related Funds, Programs, Taxes and Legislation**

Nathan Bush, New Mexico government relations director for the American Cancer Society, and a representative from New Mexicans Concerned about Tobacco (NMCAT) gave an update of the most recent statistics relating to tobacco use and prevention. During a question and answer period, the following was noted.

- Mr. Bush did not know what percent of tobacco funds is taken out for administrative purposes before the distributions are made to the state, but said he would look into it.
- He informed the committee that the State Investment Council (SIC) is the administrator of the Tobacco Settlement Permanent Fund. The federal government is not directly involved in administering those funds.
- Master Settlement Agreement (MSA) payments are made by between 30 to 40 tobacco companies that meet with the National Association of Attorneys General. Checks are cut to the state treasury, which then transmits the money to the SIC (in April of each year). The SIC holds the money until June 30 of each year and then sends funds to the Department of Finance and Administration (DFA), which then sends the money to agencies for the period of April to June 30. This takes care of expenses already incurred by the state.
- Mr. Bush testified that half of the MSA funds received each year are disbursed from the Tobacco Settlement Permanent Fund to the Tobacco Settlement Program Fund.
- In terms of the effectiveness of dollars spent on tobacco use prevention programs, Mr. Bush testified that science indicates that adequate funding for smoking cessation/anti-smoking programs leads to a decrease in smoking. The Department of Health needs to produce the latest numbers.

- Mr. Bush testified that the exact turnaround time between infusion of MSA funds to programs and the decrease in smoking is not known, but the Department of Health's "Quit Line" (1-800-Quit Line [*sic*]) data are positive.
- Mr. Bush noted that MSA money is in fact going where it is supposed to go: New Mexico ranks fifteenth (fourth-highest) among states with tobacco control programs. The number keeps increasing and this is "paying off".
- It was noted that the manner in which the media depicts smoking is important and that there should be a rating system for movies according to the presence and degree of smoking behavior in a film. Smokers are re-appearing in movies, although there had been an overall reduction in the use of tobacco in films for quite some time.

Concern was expressed that the state is investing in films that might contain smokers and tobacco use. It was suggested that perhaps the New Mexico Film Commission should be requested to appear before the committee to discuss engaging filmmakers on this subject, since parts of the Indiana Jones film were filmed in New Mexico and it has smoking in it.

- The observation was made that although the Centers for Disease Control and Prevention (CDC) now recommend that New Mexico invest \$23.4 million into tobacco use prevention and control (TUPAC) programs, it is difficult to ascertain how this will be achieved when there were problems getting \$9 million for smoking cessation programs in FY09.

Mr. Bush testified that New Mexico has fallen to thirty-first in the nation in the amount of cigarette taxes it charges. He recommended that New Mexico increase its tobacco tax. He reported that research shows a corresponding decrease in smoking for every increase in cigarette taxes. According to Mr. Bush, research shows that with every 10 percent increase in cigarette price, there is a 79 percent decrease in youth who use tobacco. Mr. Bush further testified that, for every pack of cigarettes sold, the state pays \$14.00 in hidden costs, such as health and social costs to treat smoking-related illnesses.

Some key data presented include:

- 11 states have cigarette tax rates of \$2.00 or more per pack of cigarettes;
- 26 states have cigarette tax rates of \$1.00 per pack or more;
- 44 states, Washington, D.C., and Puerto Rico have increased their cigarette tax rates 80 times since 2002;
- New York has the highest rate of tax at \$2.75 per pack;
- *New Mexico's cigarette tax is \$0.91 per pack; and*

- annual cigarette tax revenue totals approximately \$60 million in New Mexico, or more than triple the revenue realized annually prior to the \$0.70 per pack tax increase of 2003.

A quorum was achieved by 10:45 a.m. and duly noted by committee staff.

A question was asked about internet sales and whether people will simply purchase tobacco on the internet if cigarettes are heavily taxed in stores. Mr. Bush indicated that he has seen model legislation to decrease the effect of internet sales available on the market. Mr. Bush did not know whether internet sales could be tracked as to their effects.

There was discussion regarding the Dee Johnson Clean Indoor Air Act (DJCIA), which went into effect on June 15, 2007; however, it does not apply to sovereign Native American tribes. NMCAT meets with law enforcement about how this legislation is being enforced. To date, there are no lawsuits known to have been filed. Mr. Bush reported that anecdotal evidence suggests that businesses have had an increase in customers due to the more pleasant environments. There were questions regarding cigar bars, which are exempt, including for use of cigarettes, from the DJCIA if they are compliant with rules. These rules seek to prevent businesses from suddenly switching their status to "cigar bars" to evade the DJCIA. It was suggested that perhaps cigar bars have been given an unfair advantage and should not be allowed this exemption. Private functions, including "smokers" (e.g., cigar parties), are allowed if they are in an isolated area where the public is not allowed. Any tobacco may be consumed in private.

The New Mexico Municipal League is working with local entities to enact stricter, more specific legislation regarding tobacco use in public. Twenty communities have such stricter laws, including, as of June 2008, Albuquerque.

Mr. Bush discussed NMCAT's concern with products obviously targeted at children, including tobacco with fruit flavors.

A question was raised about whether legislation might be passed to prohibit smoking in vehicles with children in them. Mr. Bush stated that some states have bans on this activity, which are generally only enforced if the driver is stopped pursuant to another offense. It was noted that the Department of Health is running ads discouraging this practice.

Partnerships in addressing tobacco use were noted between the rodeo community and the Department of Health, whereby no free samples of smokeless tobacco or sponsorships are allowed by the rodeo community. It was suggested that NMCAT partner with the New Mexico Activities Association.

There was a suggestion that perhaps stricter use of capital outlay money may be employed to prevent smoking at facilities that use capital outlay funds. Discussion ensued about the fact that the DJCIA already prohibits smoking in public buildings.

It was noted that the Navajo Nation has legislation to prohibit all tobacco use in public places. The Navajo Nation and the Southwest Tribal Tobacco Coalition have programs to teach the difference between the sacred use of tobacco and mass-produced tobacco products. It was noted that the Taos casino is the only one that is 100 percent smoke-free among those on Indian nations, pueblos and reservations.

### **2008 Committee-Sponsored and Related Legislation, FY09 Funding Levels and Historical Information**

*Update on tobacco-related funds, programs, taxes and legislation.* Ms. Knight gave an update on tobacco-related funds, programs, taxes and legislation, 2008 committee-sponsored and related legislation, FY09 funding levels and historical information, which was also distributed as a handout. Ms. Knight discussed a bill draft adopted last year by the TSROC that clarified the authority of the Taxation and Revenue Department (TRD) to seize cigarettes as contraband; however, it was not introduced because the attorney general and the TRD arrived at an administrative solution.

Ms. Knight referred to her handout, which highlighted the differences between money received and appropriated. She noted that Project ECHO at the University of New Mexico Health Sciences Center gets money through the recurring operating budgets of the health sciences center and the Department of Health, even though it did not receive tobacco funding.

There was discussion of the appropriation of MSA funds. Original legislation established two funds, the Tobacco Settlement Permanent Fund and the Tobacco Settlement Program Fund. Tobacco revenues come to the Attorney General's Office, which deposits the payments with the state treasurer. One hundred percent is transferred to the "permanent fund" at the SIC. Fifty percent of that distribution is transferred to the "program fund" for allocation to the various agencies, whose appropriations are made in the general appropriation act. For fiscal years 2003-2006, 100 percent of the distributions to the "permanent fund" were transferred to the general fund. In fiscal year 2007, the 50/50 split was restored, and funds are no longer diverted to the general fund.

Questions will come up as a result of the master settlement enforcement litigation (MSEL), in which many states, including New Mexico, are currently defendants. New Mexico may have to use critical information on how this money was spent in order to defend itself in the MSEL. Ms. Knight noted her belief that, in 2003, most of the MSA funds went to the Human Services Department to fund Medicaid. This was after the Medicaid Reform Committee met. Although the distribution went into the general fund, the recommendations of the TSROC were funded in the state agencies via the general fund.

As for New Mexico's potential exposure to liability, the attorney general's staff will present to the committee on that subject at a later date.

Enforcement is an important aspect of the MSA. In the August meeting, the attorney general will discuss with the TSROC a likely need to increase funding for additional enforcement efforts, particularly with regard to internet sales.

The question was raised whether the TSROC would be dissolved, which would require legislation. Last year, when Senator Garcia and Representative Picraux presented to the Legislative Finance Committee (LFC), the LFC raised this question of dissolution. The LFC suggested that the TSROC be added as a subcommittee under the LFC; yet, it was noted, the TSROC is a statutory committee. Concerns were expressed over the future of the TSROC's support for the distribution of MSA funds to tobacco-related programs if such a committee restructuring were to occur.

A question was raised as to when the last audit of the Tobacco Settlement Permanent Fund was made. An audit is performed yearly by the SIC, and results are available on SIC's web site (see [http://www.sic.state.nm.us/PDF%20files/FY07\\_SIC\\_Audit\\_Report.pdf](http://www.sic.state.nm.us/PDF%20files/FY07_SIC_Audit_Report.pdf)). There was a \$14.9 million return on the SIC investment of MSA funds in fiscal year 2007. The market value of the Tobacco Settlement Permanent Fund on June 30, 2007 was \$116.7 million. The fiscal year 2008 audit will not be completed until the fall of 2008.

It was noted that programs receiving contracts through the Indian Affairs Department (IAD) for tobacco settlement program fund appropriations have had to respond to requests for proposals each fiscal year, rather than for multi-year awards. Ms. Knight noted that "special appropriations" are not typically considered "recurring" appropriations; however, in the case of the IAD, the appropriations are in the section of the general appropriation act that is considered typically to contain regular, recurring appropriations. She indicated that she would contact the IAD to confirm if it is now treating its appropriation as recurring, making it possible to issue multi-year contracts and improve the continuity of programming.

It was suggested that, as the Department of Health is reportedly getting great results from prevention efforts, the department should present to the TSROC in August 2008 regarding the net savings to the state.

When discussing whether New Mexico is appropriately spending tobacco money, it was noted that more health savings can be achieved when more funding is put into prevention and cessation programs, thus reducing the costs for treating tobacco-caused illnesses. Mr. Bush indicated that NMCAT is likely to resist further changes to the distributions that might decrease the dollars directed toward prevention and cessation efforts.

The committee adopted its work plan for submission to the New Mexico Legislative Council for final approval.

### **Public Comment and Adjournment**

There being no public comment or further business, the committee adjourned at approximately 11:30 a.m.

**APPROVED MINUTES  
of the  
SECOND MEETING  
of the  
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**August 14, 2008  
Room 317, State Capitol  
Santa Fe**

**Present**

Rep. Gail Chasey, Co-Chair  
Sen. Mary Jane M. Garcia, Co-Chair  
Rep. Danice Picraux  
Sen. John C. Ryan  
Rep. Gloria C. Vaughn

**Absent**

Sen. Howie C. Morales

**Advisory Members**

Sen. Rod Adair  
Rep. Ray Begaye  
Sen. Joseph J. Carraro  
Sen. Dede Feldman  
Sen. Linda M. Lopez  
Rep. Teresa A. Zanetti

Sen. John T.L. Grubestic  
Sen. James G. Taylor

**Staff**

Roxanne Knight, Legislative Council Service (LCS)  
Michael Hely, LCS  
Larry Matlock, LCS

**Thursday, August 14**

**Call to Order and Approval of June 2008 Minutes**

At 9:23 a.m., Representative Chasey called the meeting to order as a subcommittee until a quorum was obtained. Once a quorum was obtained, Senator Garcia moved to approve the minutes. Representative Vaughn seconded the motion, which passed without opposition.

**Interim Native American Programs — Oso Vista Ranch**

Margaret Merrill, executive director of Oso Vista Ranch, gave the committee a one-page handout as well as a sheet containing six snapshots from the Oso Vista Ranch Project. The snapshots show a hogan as well as anti-smoking banners made by the program participants.

She explained that she left teaching to work on a book on the topic of "Living Purposefully". Ms. Merrill thanked Representative Begaye for seeing the project's potential and supporting it.

Oso Vista Ranch is a public charity; it is a 501(c)(3) organization that provides culturally based tobacco cessation and prevention programs for youth in the Ramah area. The cafeteria director, Howard Atakai, is also a medicine man who has been teaching in the school and the dormitory. He agreed to help with the curriculum, which is based on the Navajo Mountain Smoke Ceremony and the Children's Song and embodies the basic principles of living, including respect for one's self, family and community, having healthy and resilient values and supporting a balanced life.

The program operates from Oso Vista Ranch and features a traditional hogan, built nine blocks high by Navajo builders, complete with blessings and protection. The program was started in response to local conditions, where the average wage is \$7.00 per hour. Oso Vista's program exemplifies the best practices outlined by Spiro Manson at the Health Science Center at the University of Colorado in Denver, providing culturally sensitive health-based approaches that integrate American Indian cultural values into treatment to better interface with the Indian population.

The goals of this approach include increasing one's ability to resist substance abuse by increasing cultural identity, increasing personal and financial empowerment and creating a greater connection for youth with their family, clan and community.

The project has been approved for a ValueOptions grant, which will allow the hiring of a financial literacy counselor who is currently receiving training from a Native American junior achievement project in Albuquerque. The plan is for the counselor to work with youth in the schools on budgeting and helping older children to create businesses and enterprises. Mr. Merrill noted that Navajos need this extra financial literacy to help them resist the aggressive marketing tactics, such as those used at local car dealerships, that exploit the Navajos through the use of "step-up contracts". Because of these tactics, the elderly have asked Ms. Merrill to do something to help to protect them as consumers. The model that has been used to develop a culturally sensitive curriculum can be applied to solving other problems, especially substance abuse and mental health issues. "It's not just to reduce the use [of substances]; the focus is to empower people."

She thanked Representative Begaye again for his support and visits to the project. She thanked Cherie Watson, an original board member, who helped establish the corporation and get grants to support it. Representative Begaye explained that because the project is on private land, it is not possible for a tribe or other government to shut it down. He reported that tobacco use and prevention funds are very helpful to this program, particularly because it is not receiving any tribal funds.

Representative Picraux asked if a follow-up plan had been created to track the "before and after" success over several years. Ms. Merrill agreed that a long-term longitudinal study would be a good idea, and she reported that tools are being developed to measure the program's successes.

Representative Chasey suggested that professor Natalie Martin at the University of New Mexico (UNM) School of Law might be a resource for the project because she is helping to develop financial literacy units for middle school students. "There might be more attention on the subject of financial literacy, now that there's a mortgage crisis." Representative Chasey commented that when the Tobacco Settlement Revenue Oversight Committee (TSROC) first started, the members wanted to put some focus on early childhood programs as an initiative because that approach was far cheaper than the costs for prisons and drug addictions. She highlighted Ms. Merrill's plans for using the Tobacco Use Prevention and Control (TUPAC) measures to demonstrate the effectiveness of the program.

Senator Garcia expressed her concern with predatory loan programs. In response to the senator's questions, Ms. Merrill reported that 250 children are served through the school, which has dorms for 50 children. Ms. Merrill responded that tobacco prevention is a spin-off problem of the many problems related to alcohol and other drugs. The program does not provide mental health services, but it does use traditional healing.

### **Native American Programs — Southwest Tribal Tobacco Coalition**

Natalie Thomas, healthy heart coordinator for the Laguna Community Health Representative Program, and co-founder of the Southwest Tribal Tobacco Coalition, which works with the Pueblo of Laguna, noted that although she is Indian, she is not an expert on all tribes. There are issues and differences between commercial tobacco use and ceremonial use. Also, she detailed some of the barriers to eliminating tobacco use in Native American communities. Natural tobacco is considered sacred and is part of many Native American communities.

Ms. Thomas explained that smoking statistics become unreliable when they make no distinction between ceremonial tobacco use and tobacco addiction. The effectiveness of anti-smoking campaigns becomes almost impossible to measure by "zero tolerance" standards because Native Americans that have succeeded in quitting commercial tobacco will still admit to smoking it for ceremonial purposes.

Another conflict with anti-smoking campaigns in Native American cultures comes from the fact that many tribes make money by selling commercial cigarettes at a discount. Although there are economic development benefits to selling tobacco, it undercuts the tribe's financial position when making calls for the cessation of tobacco use.

Gender is another factor because most of the health care is conducted by women, while the leaders of ceremonies are men. Many of the ceremonies are conducted using commercial tobacco. Getting men to accept the necessity of smoking cessation and passing that message on to other men when the proponents are women is a severe challenge. Just getting a discussion on the topic can be a victory for a health coordinator.

Ms. Thomas explained that "fish are never asked to describe the water in which they live". This is relevant, she noted, because many tobacco-cessation programs neglect to consider

the cultural environment in which they must succeed. Because of her tribal culture, Ms. Thomas is able to convey the challenges to tobacco education in tribal communities.

She explained that funding for programs must also fit the cultural needs of the community. Some of the reasons listed in her handout for the lack of success include:

- confusion on accessing funds and unfamiliarity with the request for proposals (RFP) process;
- limited funds and a scope of work (SOW) that does not fit the community;
- time wasted trying to fulfill a SOW that does not fit; and
- time and funds run out before the actual issues are addressed, resulting in a Band-Aid approach.

Solutions to these challenges must include an understanding of the cultural needs of a tribe, as well as the physical needs. Her handout lists the "sustained change solution", which is "Nothing about us without us!". The changes to the programs will require input from the tribes. She suggested that the Southwest Tribal Tobacco Coalition could be used as a "strength asset" within the tribal communities because it has access, which the state bureaucracy lacks. Tribal liaisons and technical assistance, especially with tribal accounting systems, would be very helpful in applying for funds.

Ms. Thomas criticized the methods of data collection, which include telephone surveys in areas where many lack telephones. She discussed the disparity created by the Dee Johnson Clean Indoor Air Act. The act does not affect casinos operated by Native American tribes, which means that workers are exposed to secondhand smoke in their work environment. She suggested that future programs focus on eliminating the use of commercial tobacco. These programs need to take a holistic approach, taking into account the role tobacco plays in the tribes' ceremonies, while trying to reduce or eliminate the deadly impacts of commercial tobacco addiction.

Representative Vaughn asked if "smoke eaters" could be installed in the casinos. Ms. Thomas responded that some of the casinos already have ventilation systems, but they do not properly clean the air. She noted that Navajo Nation President Joe Shirley recently vetoed one bill, which would have banned smoking in casinos, because the ban would hurt revenue.

Representative Begaye expressed concern that the executive agencies need to be more helpful and sensitive to Native Americans in the RFP process. He complimented Indian Affairs Department Secretary Alvin Warren for working with the tribes on the RFP process.

Representative Begaye moved to write a letter to President Shirley with a copy of it sent to Speaker Morgan of the Navajo Nation Council asking President Shirley to reconsider his veto. The letter should contain information recommending the installation of appropriate ventilation systems in casinos, as well as publicizing the fact that the Navajo Nation Council supports a ban on smoking in public places.

Representative Chasey suggested sending the letter to members of the Navajo Nation Council to urge an override of the veto, with a copy to the president. Representative Begaye suggested adding her amendment to his motion. Senator Ryan noted that it might give the appearance of interfering with tribal sovereignty. Representative Chasey said that the letter could mention the data, explaining that business revenue will increase once those businesses become "smoke-free", and mention the importance of health and economic impacts. The motion passed with no opposition, and staff was directed to prepare the letters.

Ms. Thomas noted that the votes of 59 members of the 88-member council are required for a veto override and concluded her presentation.

### **Tobacco Master Settlement Agreement (MSA) Primer, Update and Proposed Legislation**

David Thomson, deputy attorney general, attended the hearing with his paralegal, Claudia Ravanelli, and provided handouts, which are in the meeting file.

Mr. Thomson explained that some states have joined the settlement against the tobacco companies and some states have not, hoping to win more money with a separate suit. Texas was not part of the settlement and is not obligated by it, which creates a problem for New Mexico, a neighboring state. Of the nonparticipating manufacturers, there are two categories. The nonparticipating manufacturers are required to pay into an escrow account. Noncompliance may give them a price advantage in the market. While the participating manufacturers are supposed to make payments, the state is required to make sure the nonparticipating manufacturers follow the law. When disputes about payment arise, they are subject to binding arbitration. It is easier to stop the distributors and transporters than it is to stop the manufacturers. One example of compliance involves Federal Express, which has agreed not to transport large quantities of cigarettes nationally.

There is a consequence for each state being responsible for diligently enforcing its statute. If only five states are found not to be diligently enforcing their statutes, they become responsible for an equal share of the adjustment. This means that if New Mexico is found to be one of the five states not diligently enforcing its statute, it could be responsible for part of a billion-dollar adjustment, far more than the sum distributed to New Mexico. Whether or not New Mexico is diligently enforcing its statute is a matter that belongs in state court, not in the hands of a federal arbitrator in Ohio. This sets up the possibility of battles between the states, which was not part of the original idea.

Mr. Thomson described the compliance process for monitoring distributors. He cited several cases in which companies were noncompliant. After studying the invoices, the state sends letters explaining that the companies are releasing contraband products. Most of them stop, but there is very little chance for success if the manufacturer is located outside the country, such as in India.

He suggested a system in which the distributor reports submitted to the Taxation and Revenue Department (TRD) could be copied and reviewed, making sure those manufacturers are in good standing. With 40 licensed distributors making 480 returns annually, a new process

would provide for better scrutiny. The benefits would include electronic filing with the TRD, which would make it easier to distribute the reports and send them electronically versus through a manual process.

It was noted that the tobacco companies "won" in the sense that the tobacco payments/revenues are tied to domestic sales, not international sales, which have been increasing. The domestic sales have remained stable or decreased. Mr. Thomson stated that New Mexico does a great job of putting tobacco revenues back into tobacco use prevention and health care.

The biggest concerns of the attorney general include trafficking of noncompliant tobacco products and compliance with the federal Jenkins Act. Representative Zanetti inquired if the tribes are exempt. Mr. Thomson responded that the attorney general can prosecute those entities distributing across state lines, but tribal sovereignty poses issues with enforcement. The attorney general is more interested in prosecuting distributors and manufacturers than individuals.

Mr. Thomson noted that nonparticipating manufacturer sales in New Mexico are small relative to a state like New York, which sells more in a week than New Mexico does in a year. He noted that diligent enforcement does not have anything to do with the Dee Johnson Clean Indoor Air Act, which is a separate enforcement issue.

The attorney general's "wish list" would include funding for another staff position, either in the Attorney General's Office (AGO) or the TRD, for the purpose of conducting the audits. Mr. Thomson explained that the attorney general would prefer to have this position in the AGO rather than in the TRD.

Mr. Thomson briefly reviewed the AGO preliminary legislative proposals for changes in Chapters 6, 7, 30 and 57 NMSA 1978 during the 2009 regular session. He said that draft bills would be delivered after the review of the TRD. The attorney general would like to expand the definition of cigarettes and insert a subsection creating a penalty for making false statements in reports. The attorney general would also like legislation to address foreign trade zone sales and internet sales, as well as closing some of the loopholes in enforcement. (It was noted that Virginia has a model internet sales act, which may be helpful to New Mexico.) Another problem is that when the attorney general sues and wins, the attorney general has a hard time collecting the settlement, so other changes may be proposed.

Before concluding his presentation, Mr. Thomson said that New Mexico does a much better job than other states of putting the tobacco settlement money into fighting tobacco use.

Senator Feldman asked about New Mexico's chances for being included in the "Feared Five". Mr. Thomson replied that the state had done well by passing the complementary legislation, but does not have a definition of "diligent enforcement". He would argue in the state's defense that New Mexico does not have a real effect on market share because New Mexican's consumption of tobacco is a "drop in the bucket" compared to nationwide sales of tobacco.

### **Staff Reports and Working Lunch**

Ms. Knight, researcher for the LCS and lead staff member for the TSROC, explained that there might be FY08 unexpended balances of \$700,000 remaining in the Tobacco Settlement Program Fund on July 1, 2009. Whether those funds would be available for appropriation in FY09 remains uncertain at this time. Further discussion on the availability of revenues will take place in the November meeting.

A letter from Lisa Strout, director of the New Mexico Film Office, was included in the legislators' packets. This letter was in response to suggestions by the committee that films planning to reflect excessive use of tobacco be restricted in their ability to acquire loans from state dollars. Ms. Strout's letter noted that the tobacco settlement funds are not the same funds used by the State Investment Council for loans to film production companies. Her letter expressed concern that such a policy would be in violation of the first and fourteenth amendments to the U.S. Constitution.

Representative Chasey said that an active TUPAC program might approach Ms. Strout and ask her to consider including a one-page handout with the packets mailed out to film companies wanting to shoot in New Mexico. The purpose of the handout would be to discourage the reflection of tobacco use in films.

### **TUPAC Program Evaluation and RFP Progress Report**

David Vigil, bureau chief for the Department of Health's (DOH) Chronic Disease Prevention and Control Division, was joined by Larry Elmore, program manager for TUPAC programs in the DOH. The handouts are in the meeting file.

As presented, per capita cigarette sales decreased by 44 percent from FY01 to FY07. The percentage of adults using tobacco declined by three percentage points from 2001 to 2007, which means there are 41,100 fewer adult smokers and 840 fewer current pregnant smokers.

Mr. Elmore reported that the projected economic savings include \$339 million in future health costs, of which \$135.6 million is projected to be savings in future Medicaid costs and \$16.2 million is projected to be saved from fewer heart attacks and strokes over the next five years.

Similar to national patterns, youth smoking in New Mexico was almost unchanged from 25 percent in 2001 to 24.2 percent in 2007, even though 146,403 young people received adult-led tobacco prevention education. Advertising to youth remains a major concern for prevention programs.

The best way to reduce heart attacks is through the implementation of clean indoor air laws. Thanks to the passage of the Dee Johnson Clean Indoor Air Act, the number of New Mexicans protected in workplaces, restaurants and bars has risen to 92 percent in 2007, a substantial increase from 39 percent in 2003. Fewer high school students have been exposed to secondhand smoke, with more smoke-free homes up from 78 percent in 2003 to 83 percent in 2006. Three out of four New Mexicans prohibit smoking in their vehicles.

New Mexico is starting to reach about four percent of New Mexicans with the Quitline program. Free nicotine replacement therapy is available to New Mexicans all year round. The amount of money spent by the DOH per quitter in 2006 for counseling only was \$802. The estimated lifetime savings per quitter is \$51,000 for women and \$37,200 for men.

Mr. Elmore said that low income is the biggest predictor of tobacco use.

He explained that the DOH is constantly adapting strategies and efforts to meet the moving targets for smoking cessation, and he thanked the legislators for increasing the Quitline budget to serve larger numbers of New Mexicans. Hours and days of operation have also increased, and free nicotine replacement therapy is offered.

Three new RFPs have been released, which will eventually allow the DOH to serve more people for less money. The RFPs incorporate updated best practices and double the application time for community proposals. RFPs were adjusted for the tribes to reflect their language requirements. The RFPs will focus on addictive use of commercial tobacco and will not include traditional, sacred or ceremonial tobacco use.

In response to Representative Begaye's questions, Mr. Elmore noted that the Department of Finance and Administration (DFA) requires that every contract invoice be reviewed monthly, which presents a challenge for community contractors and tribal entities with fewer financial resources. Tribal communities have an especially difficult time getting an invoice through the system.

One problem is the boilerplate contract language, which says that if anything is developed with the funds, it will belong to the state. Tribal entities that develop programs that incorporate spiritual practices cannot yield control of those practices to the state for fear that the state will be taking control of part of their culture, a possibility that was of special concern to Representative Begaye.

Because the Dee Johnson Clean Indoor Air Act does not have the force of law on reservations, there will be a growing disparity of smoking rates among youth on reservations. Price increases on tobacco from increased sales tax will have no effect on reservations, mainly because the products are not taxed.

Representative Chasey noted that the figures are great, showing that the idea of saving half of the tobacco settlement revenue and spending half has been a success.

Senator Lopez was encouraged by the TUPAC program, but she asked the DOH to work more with young people to determine if they have started smoking again after a few years and to make sure the gains made remain permanent. The senator underscored the need to focus on prevention. Mr. Elmore responded that tracking during the first six months is done because there is difficulty tracking down youth after a 12-month period. Senator Lopez asked Mr. Elmore to ensure that the TUPAC program is involved with the Albuquerque Indian Center. He responded that TUPAC is already involved with the center.

Senator Feldman asked if the number of fewer pregnant smokers reflected actual, on-site pregnant smokers, or if those figures were formula-based and projected using the state's population. Mr. Elmore answered that these figures were projections. There was extensive discussion among Representative Chasey and other members about the presentation of data and the need to ensure that formula-driven projections are not overstating success in the TUPAC program. Senator Feldman noted that the smoke cessation insurance coverage under Medicaid was implemented by rule. The discussion concluded with Mr. Elmore and committee members and staff planning to consult on the data to use in the committee's final recommendations to the Legislative Finance Committee.

### **DOH — Update on Cigar Bar Licenses**

Kathy Kunkel, chief general counsel for the DOH, was joined by Daniel Taylor, who administers the cigar bar program. They gave the committee a copy of the rules governing certification of cigar bars, Title 7, Chapter 37, Part 2. The handout is in the meeting file.

Ms. Kunkel reported that the DOH was directed to create rules to implement an exemption to the Dee Johnson Clean Indoor Air Act to allow cigar bars to operate. Not long after the rules were implemented on May 30, 2008, applications for certification were received. When it became apparent that the DOH would be charged with the certification process for cigar bars, the DOH decided that asking TUPAC to certify was a conflict of interest; thus, the certification process was relocated in the Administration Services Division (ASD).

Mr. Taylor said that of the four applications received, three are in review and one is about to be approved. In the calendar year of 2007, bars that want to allow cigarette smoking inside must generate at least 10 percent of their gross sales from cigars and not from vending machines. Senator Ryan noted that the rules mirror the statute very closely. Senator Feldman noted that this rules out any possibility for new cigar bars. She asked about a cigar bar that opened in Albuquerque. Ms. Kunkel explained that the supposedly empty establishment was open for five days in 2007 and sold \$279 of cigars, which met the threshold question of sales because that amount was 95 percent of its gross annual sales for 2007, far more than the 10 percent required by the rule. The sales were proved to the DOH with invoices and receipts, meaning that the establishment will be issued a license.

Senator Feldman pointed out that as the only certified cigar bar in Albuquerque, the establishment will be able to attract all of the smokers who cannot smoke elsewhere in the city. Mr. Taylor pointed out that for 2008, the cigar bar will have to prove \$10,000 worth of cigar sales in order to remain in business. He said that the City of Albuquerque had enacted a new ordinance several months ago that mirrors this same language for the definition of a cigar bar. One upcoming problem may be the fact that the definitions of a business, an establishment and a liquor license establishment are all different.

Senator Ryan said that he had never intended to support a statute that allowed the establishment of one cigar bar with no opportunity for others to be certified because of the rules promulgated by the DOH. Ms. Kunkel agreed that the rule prevents anyone from creating a new cigar bar because the threshold look-back is in the past tense, while the definition of a cigar bar

is in the present tense. Senator Ryan said the statute should have gone further than requiring 10 percent of sales by requiring ventilation to make it less of a health risk.

Representative Vaughn asked about private clubs, like the Elks or the Veterans of Foreign Wars lounges. Nathan Bush responded that, as federally qualified nonprofit organizations with a letter from the Internal Revenue Service, these clubs are allowed to let their patrons smoke cigars and cigarettes inside their establishments.

### **Diabetes Program Evaluation and RFP Process Report**

Judith Gabriele, program manager for the DOH, gave the committee two handouts, one containing her presentation, the other a spreadsheet listing contractors, a description of services provided and amounts of money spent, as well as a two-sided quarter-sheet flyer.

According to Ms. Gabriele, 150,300 New Mexicans have diabetes, which is one out of every 11 New Mexicans. Some risk factors, like diet, are controllable, whereas, age, family history and ethnicity are not controllable risk factors. The prevalence of the disease here is increasing with trends for being overweight and obese on the rise. Other drivers for increasing diabetes prevalence in New Mexico include the state's growing and aging population, less physical activity, more empty calories and obesity.

According to long-term mortality rates, Native Americans suffer more from diabetes, followed by Hispanics. Although the rate of prevalence is similar to the national average, New Mexico's death rates are higher. Of the slightly more than \$2 million spent by the DOH, about half comes from tobacco program funds; 23 percent from the Centers for Disease Control and Prevention (CDC); and 28 percent from the general fund.

Since 2001, the majority of the funds are used for professional service contracts. Personnel costs, which are the second highest expense, fund a nurse, two health educators and half of a clerk position.

The meter and strip program has provided over 8,000 people with testing and monitoring. Although federally qualified health centers can distribute the meters and strips, the distribution is still just a stop-gap measure until more permanent solutions can be achieved.

From fiscal years 2001 to 2008, 500 providers have been trained, which is a large part of the DOH's work to prevent or treat diabetes. From FY01 to FY08, more than 103,000 elementary students have been funded for participation in a physical activity and nutrition program called CATCH. Although 14,000 elementary students were served in FY08, fewer children than usual are currently being served because of decreased funding at the Public Education Department. Cooking classes, taking place over four sessions, have been provided to more than 800 people. This program, adapted for New Mexico, is free for the participants and helps them to shop, prepare and plan for healthier meals.

Depression and diabetes are linked because depressed people have more difficulty managing their illness. Depression may play a causal role in the development of diabetes.

Online offerings allow rural providers to get continuing education without traveling. Also, DVDs are available as resources to help with diabetes treatment. More than 1,350 New Mexico children have gone to bicycle camp, and 135 of those children received diabetes education and brought their families for family fitness events.

In order to evaluate the programs, 250 surveys were randomly collected over four days. One hundred percent gave favorable reports, and some said they would share the message with their families.

One small but important project was the testing of a meter and strip one-piece unit, which was supposed to be more cost-effective. Although it was intended for transients and migrant farmers, it did not work well because the unit was easily lost.

Billboards were funded reading, "Stay Healthy: Diabetes is not our tradition!". The billboards are important because having healthy lifestyles can delay diabetes. Controlling weight through a healthy diet and physical activity are all parts of the CATCH program.

Ms. Gabriele stated that the DOH will need to expand strategies in the future to reach more individuals of every population group in New Mexico. Integrating diabetes programs with anti-tobacco programs might be productive because diabetes is much more dangerous to those who smoke tobacco.

Underserved populations, like the uninsured or those that do not speak English as their first language, need more attention and more access to diabetes prevention programs.

There is limited data to show savings generated by the program, but it is known that hospital stays for diabetic patients are more costly and longer than other types of stays. Diabetic patients are more likely to begin their care in an emergency room, and they are more likely to involve uninsured persons. One disturbing statistic is that diabetes-related amputations are twice as high among the uninsured as among the insured. The uninsured or underinsured are less likely to receive care until the disease is out of control, resulting in a hospital stay or emergency room visit.

Poverty, economics, insurance status and access all have a huge impact on health care.

Representative Begaye asked about the RFP process for this program. David Vigil explained that the RFP process begins during the legislative session. Contracts are negotiated by June 30 and arrive at the DFA by July 1. "We move quickly to negotiate those contracts", reported Mr. Vigil. Representative Begaye noted that the current system is risky for those that have to depend on it, not knowing if they will receive a full amount of the award year after year. Representative Begaye also asked if the programs utilize tribal liaisons. Mr. Vigil responded that they do.

Senator Feldman inquired about the methodology used to estimate a \$2 billion cost savings for New Mexico from this program. Ms. Gabriele responded that the number includes

hospitalizations, dialysis, amputations, lost productivity, blindness and medical care and that it was extrapolated from data provided by the American Diabetes Association for the entire United States. Senator Feldman noted that the prevalence is the same in New Mexico as it is nationally and asked why the death rate is higher in this state. Ms. Gabriele answered that the problem is access to health care. "Thirty percent of those who have it [diabetes] don't even know it, so they don't control it." Also, the rural nature of the state and the shortage of providers and certified diabetes educators lead to the increase in mortality.

(Representative Picraux accepted the acting chair position after the departure of both co-chairs.)

### **HIV/AIDS Program Evaluation and RFP Process Report**

Daryl Smith, chief of the Infectious Disease Bureau for the DOH, gave his presentation with a review of his handout, "HIV/AIDS & Harm Reduction Programs" (see the meeting file). He explained that all revenues in FY08 totaled nearly \$6 million for HIV/AIDS programs in New Mexico. Of the \$470,000 appropriated from the tobacco revenues, the harm-reduction program is funded with \$160,000 and HIV programs are funded with \$310,000.

The HIV service providers are located in all five regions of the state, receiving appropriations of \$65,000 for four regions and \$50,000 for the fifth region. The greatest concern for HIV/AIDS prevention involves the age group of 20-29 years, making up 23 percent of the reported people living with the disease in New Mexico.

The intravenous drug use program is of primary importance in the harm reduction program. In FY09, 10 professional services contracts were approved, including syringe exchange and narcan education training. The money spent to reduce HIV/AIDS is finally having an effect. Rio Arriba County no longer has the number-one highest death rate due to opioid use, although it is still in the top 10 nationwide. Since 1998, nine million syringes have been exchanged, and there has been a 97 percent return rate statewide on this exchange program. There are approximately 60 sites statewide, not including mobile outreach, that offer syringe exchanges to more than 17,000 people who have enrolled in the program since 1998. Drop boxes are being used for dirty syringes.

CDC data show an 80 percent decrease in new infections among intravenous drug users, with New Mexico being a leader in harm reduction. In calendar year 2007, only six percent of New Mexicans with HIV/AIDS reported intravenous drug use as their primary source of risk, while many other states had rates as high as 25-30 percent.

Syringes cost \$.09 each, with some individuals using three per day, for a total cost of \$100 per person per year. This compares to treatment costs ranging from \$15,000 to \$60,000 annually per patient. Hepatitis C treatment and services are \$30,000 annually per patient.

Health information has been distributed on the subject of hepatitis A, B and C and auricular acupuncture has also been helpful and is being expanded.

There has been a 960 percent increase in the people trained in overdose prevention in a six-month period, primarily because of a nurse who is now doing the training. Since 2001, there have been more the 400 "saves" attributed to the use of Naxalone and rescue breathing.

Representative Begaye asked what percentage of those with HIV/AIDS were men having sex with men. Mr. Smith explained that the number had decreased slightly from 59 percent, and it was explained that the risk factor of female to female is extremely low.

Senator Lopez asked about those with the disease that have moved to New Mexico. Mr. Smith said that the number was over 1,000.

### **Public Comment**

Nathan Bush, government relations director for the American Cancer Society, distributed two handouts (see the meeting file) requesting the committee's support for continued funding for the breast and cervical cancer early detection program at the DOH and increased funding for the TUPAC programs at the DOH and the Indian Affairs Department. Mr. Bush noted the \$23.4 million annual investment recommended by the CDC for TUPAC.

### **Preliminary Committee Discussion of FY10 Program Funding Levels and Proposed Legislation**

Ms. Knight distributed a handout and explained that the amount of money available is expected to be \$22.4 million, up from \$21 million, which means there will be surpluses if the money is not spent during the 2009 regular legislative session. Representative Begaye recommended spending the same amount this year, except for an extra \$200,000 for programs targeting Native Americans.

Drawing the committee's attention to footnote C in the handout, Ms. Knight explained that the legislature had awarded more than \$21 million in House Bill 2 for FY09; \$350,000 in general funds to the Veterans' Services Department (VSD) in FY08 for early detection of lung cancer; and another \$1.3 million (nonrecurring) for expenditures by the VSD in FY08-FY09. Senator Feldman asked if this was the Biomoda, Inc., research project, and Ms. Knight responded that it was, noting that the handout reflected zero for the VSD because it was not funded from tobacco settlement revenues. Senator Feldman suggested funding the program out of the surplus in the hope that it would become recurring.

Ms. Knight pointed out that the funding recommendations are scheduled for the November meeting. While referring to previous appropriations to the University of New Mexico Health Sciences Center (UNMHSC), Representative Picraux asked if the money appropriated for research had instead been spent on salaries. Senator Feldman agreed that there was some confusion about the appropriation and she asked for staff to review the funding history. She expressed the need for recurring revenue to fund the research. The matter in question was referencing the Lovelace Respiratory Research Institute, previously awarded a subgrant through UNMHSC.

Representative Picraux noticed that the breast and cervical cancer programs are recommended to remain at their current levels and asked if they could absorb any more funding. Mr. Bush said, "I proposed \$200,000 because I thought there was no more money, but they can absorb more.". Representative Picraux indicated her support for additional appropriations to support this program.

Ms. Knight encouraged the committee members and relevant parties to make their drafting requests in time for presentation at the next meeting.

Julia Valdez of the American Heart Association requested funds for a cardiovascular disease prevention program. Representative Picraux, acting chair, invited her to present at the committee's November meeting.

There being no further business before the committee, Senator Feldman moved to adjourn. Representative Vaughn seconded the motion, which passed with no objection at 4:08 p.m.

**UNAPPROVED MINUTES**  
**of the**  
**THIRD MEETING**  
**of the**  
**TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**November 6, 2008**  
**Room 311, State Capitol**  
**Santa Fe**

**Present**

Rep. Gail Chasey, Co-Chair  
Sen. Mary Jane M. Garcia, Co-Chair  
Rep. Danice Picraux  
Sen. John C. Ryan

**Absent**

Sen. Howie C. Morales  
Rep. Gloria C. Vaughn

**Advisory Members**

Rep. Ray Begaye  
Sen. Joseph J. Carraro  
Sen. Dede Feldman  
Sen. Linda M. Lopez

Sen. Rod Adair  
Sen. John T.L. Grubestic  
Sen. James G. Taylor  
Rep. Teresa A. Zanetti

**Staff**

Roxanne Knight, Legislative Council Service (LCS)  
Michael Hely, LCS  
Larry Matlock, LCS

**Thursday, November 6**

**Call to Order and Approval of August 2008 Minutes**

At 9:25 a.m., Representative Chasey called the meeting to order as a subcommittee until a quorum was obtained. When a quorum was reached, Senator Garcia moved to adopt the minutes from the committee's August meeting. The motion passed with no objection.

**Tobacco Settlement Permanent and Program Funds — Estimates and Balances**

Norton Francis, principal economist for the Legislative Finance Committee, gave a very brief presentation. His two handouts are in the meeting file. He explained that there are three components to the payments:

1. the base payment, established by the litigation;
2. the inflation adjustment factor; and
3. the volume adjustment factor.

Mr. Francis noted that the inflation and volume adjustments tend to cancel each other out.

Payments from the Tobacco Master Settlement Agreement (MSA) are made to New Mexico each April. The payment is deposited into the Tobacco Settlement Permanent Fund,

from which half of the payment is distributed to the Tobacco Settlement Program Fund, which can be appropriated by the legislature for health-related expenditures. Starting in FY 2006, the participating manufacturers began withholding payments because of the loss of market share to non-participating manufacturers (NPMs). The states are required under the MSA to enact legislation and provide diligent enforcement of the laws governing the sale of tobacco products so that the participating manufacturers do not lose market share to NPMs. The amount withheld was lower in FY 2008, but that amount could very easily increase.

Although New Mexico has enacted the model statutes and has been enforcing them, there is a risk that if a national arbitration panel finds that the enforcement has been insufficient because of illegal sales and questionable practices, possibly involving tribal tobacco, the state could see the withholding amount increase so much that the entire payment might be withheld.

This possibility seems unlikely if the case were tried in New Mexico, but now that the decision will likely be made by a national arbitration panel, despite the efforts of Attorney General Gary King, an extra year will be required to pay off the withholding. New Mexico will probably have to litigate before a three-member arbitration panel each year, which would involve extreme risk.

Mr. Norton explained the risk inherent in a system where appropriations are made before the payment comes in. The system is risky because it could put the budget into deficit if the actual payment is lower than projected and appropriated.

Ms. Knight explained that the Department of Finance and Administration would still have the power to modify the allocations downward to prevent a deficit. There was considerable discussion about a previous fiscal year, in which tobacco settlement money was swept into the general fund to cover a deficit in the Medicaid program.

The amount of additional funding projected for the next fiscal year is \$1.465 million above the FY 2009 projected revenues. A projected balance of \$700,000 remains from the previous fiscal year.

### **University of New Mexico (UNM) Health Sciences Center (HSC) Performance Report**

Dr. Paul Roth, executive vice president for health sciences and dean of the UNM School of Medicine, was joined at the presenters' table by Dr. Richard S. Larson, professor of pathology and vice president for HSC translational research.

Dr. Roth provided a general overview from a handout, which is in the meeting file. He explained that in 1994, UNM consolidated all of its health programs and facilities into a single, separate unit, the UNM Health Sciences Center. The HSC contains three colleges, those of medicine, nursing and pharmacy, and includes the main UNM hospital and four others. He announced that he had just returned from a visit to San Antonio, where the UNM medical school received the Spancer Foreman award for the HSC's 430 programs in more than 100 towns and villages throughout the state, which is unheard of nationally. The handout contains a map showing the locations of the programs.

Dr. Roth presented the programs on which UNM has spent \$1.9 million of tobacco settlement money during the past year. Details and dollar amounts are in the handout. The programs are:

- area health education centers;
- Los Pasos;
- the New Mexico Poison and Drug Information Center;
- the pediatric oncology program;
- Center for Telemedicine;
- specialty education in pediatrics; and
- specialty education in trauma.

Dr. Larson presented the results of UNM's search for matching dollars. He reported that because of leveraging, UNM brings in 23 outside dollars for each state dollar invested in research to prevent and treat tobacco-related diseases. The program is charged with conducting cutting-edge research and formulating the results into effective clinical care programs, and disseminating the information nationally and internationally, which helps UNM recruit and hire the intellectual capital needed to continue its work. The program provides pilot or start-up funds to researchers.

Three years ago, the medical research program was reorganized away from the traditional academic approach of biochemistry and cellular biology toward a disease approach, which focuses on genomics, bioinformatics, epidemiology and environmental health, laboratory science and clinical research and trials to advance identification of disease and treatment options. The current commitment is to study the 12 types of cancers associated with tobacco use.

He mentioned that a drug is being studied that is in the third phase of approval by the U.S. Food and Drug Administration (FDA) and that will help with smoking cessation. One side effect of the drug seems to be weight loss, which might be useful since most smokers who quit tend to gain weight.

### **Breast and Cervical Cancer Program**

Julie Weinberg, deputy director of the Medicaid Assistance Division (MAD) of the Human Services Department, and Virginia Alcon, staff manager for MAD, gave the committee two handouts, which are in the meeting file.

Ms. Weinberg outlined the program, which is administered by Medicaid. For women to qualify, they must be uninsured or have medical insurance that does not cover breast or cervical cancer already identified as a pre-existing condition. A Department of Health (DOH) provider screens the applicant to ensure that she is a United States citizen whose income is under 250 percent of the federal poverty level.

Applicants are certified for a 12-month period, after which they must recertify. If they are over the age of 65, Medicare covers the cost of treatment instead of Medicaid. Costs have been going up as the program has grown, which is good because more patients are being

reached. In 2008, there were more than 400 recipients enrolled, with paid claims costing \$8.76 million compared to \$1.8 million in 2001, when 158 women were served.

### **Lovelace Respiratory Research Institute (LRRI) Performance Report**

Dr. Robert Rubin, president and chief executive officer of the LRRI, and Yohannes Tesfaigzi, senior scientist for the LRRI, explained that the point of the program is to develop a clinical trial cohort for smokers in New Mexico. After eight years, the company remains the only not-for-profit entity dedicated to the eradication of respiratory disease. Dr. Tesfaigzi estimates that half of the disease treated by the LRRI is smoking-related.

More than 450,000 New Mexicans are past and present tobacco product users.

The original purpose of the Tobacco Settlement Program Fund was to develop diagnostics and treatments for lung diseases such as emphysema, lung cancer and asthma and to create technology-related jobs at the same time. More than 300 jobs have been created in the program's history.

The program will continue its work on genotyping by expanding the cohort to include more males. Members of the cohort are completely genotyped, a process that costs \$100,000 each. The cohort is composed of 3,000 people; 75 percent of them are women. The genotyping will allow the LRRI to identify the genetic markers predisposing a person to the development of lung cancer.

Now that these individuals have been identified in the cohort, Dr. Rubin would like to offer them smoking cessation programs, which is one of the reasons for an increased funding request for FY 2010.

Dr. Tesfaigz reported that the high number of Hispanic people in the cohort, approximately 19 percent, makes it unique nationally. Through the LRRI's research, it has been determined that Hispanic smokers are less susceptible to developing emphysema compared to non-Hispanic whites. Another interesting result of the research is that the inhalation of wood smoke by a person who smokes tobacco increases the risk of developing a smoking-related disease by 70 percent. Nutrition is also a factor because smokers who take vitamins A and E and eat a lot of vegetables have a lower risk of having the biomarkers for developing lung cancer. Those smokers who do not have antioxidants in their food have an 80 percent increased risk for developing lung cancer.

Dr. Rubin stressed the fact that collaboration with other organizations is essential because of the extremely high cost of genotyping. "We can't afford competition, so all of our work is public." The program shares its information with Harvard, Johns Hopkins and the Denver Jewish Hospital.

Dr. Rubin asked the committee members to consider a \$500,000 funding increase to help support increasing the size of the cohort.

## **BioModa Update on Its Research**

Dr. Dan Lopez, president of New Mexico Tech (NM-Tech), and John Garcia, secretary of the Veterans' Service Department (VSD), were joined by John Cousins, president of BioModa, for this presentation. Dr. Srinivas Mukkamala, senior research scientist for NM-Tech, and David Manzano, director of governmental affairs for NM-Tech, were also present, as well as Alan Martinez of the VSD.

BioModa has patented an assay process that can quickly evaluate sputum for evidence of lung cancer. Dr. Lopez and Secretary Garcia propose requiring sputum samples from every veteran returning from overseas deployment to monitor them for exposure to possible carcinogens, including tobacco and depleted uranium.

BioModa's patented assay process allows for a diagnosis of cancer to take place very quickly compared to conventional methods.

Dr. Lopez stressed the importance of how easy it will be for the public to see the benefits from the proposed program, which is unlike other more complex research efforts. Dr. Lopez explained that NM-Tech would be modeling the data derived from studying the samples.

Mr. Cousins said that the United States Army has \$20 million allocated for lung cancer research. He hopes that his company's process can be a model program for the entire country. Its initial main objective is to screen veterans, a high-risk group. Lung cancer, because of the dynamics of its growth, spreads quickly, with a survival rate of only 15 percent. If the cancer is detected in stage one, the survivability rates increase to over 60 percent.

A pilot study has been designed and submitted to the FDA. Revisions were made, and now the pilot study is almost ready for patient safety review, after which patients will be screened. The search for world-class principal investigators in multiple disciplines has begun. For a cost of \$75 per patient per year, screening can be provided. By screening 250 to 500 patients, Mr. Cousins estimates that between one percent and five percent of the cohort will be diagnosed with cancer. Of the total, five or 10 will have the disease and can begin immediate treatment.

Dr. Mukkamala highlighted the speed of the tests, with results in 32 hours versus the genetics, DNA and other methods for diagnosing lung disease. The pilot study will begin with New Mexico and, hopefully, expand nationally and globally, with one million people screened by 2010. If it works for veterans, it can be expanded to workers in nuclear and other high-risk fields.

NM Tech is taking the information generated by BioModa and computerizing it. The noninvasive potentials for this technology are vast.

Mr. Cousins expects the study to cost \$9 million over a seven-year period, or \$1.3 million per year.

Representative Begaye moved that the committee endorse a letter in support of BioModa. Senator Carraro suggested that the letter be very short, with a maximum of two pages, and that it be sent to the governor and the congressional delegation. Secretary Garcia added that the letter should go to the United States Department of Veterans Affairs. Representative Chasey added that Dr. Lopez should draft the letter.

### **Indian Affairs Department (IAD) Tobacco Use Prevention and Control (TUPAC) Program Update**

Alvin Warren, Secretary of Indian Affairs, was accompanied by several members of his staff, including Mark Holyan, policy analyst, and Lillian Brooks, administrative services director. His handout is in the meeting file.

In FY 2008, \$500,000 was appropriated to the IAD for the TUPAC program. The money was used to promote cessation and prevention of commercial tobacco abuse in Native American communities with a special emphasis on youth, as well as to promote cultural awareness of the traditional and ceremonial use of tobacco as a means to strengthen cultural identity and resistance to commercial tobacco abuse.

He identified the four primary goals of the TUPAC program:

- to prevent tobacco-use initiation among youth;
- to promote quitting;
- to eliminate exposure to second-hand smoke; and
- to identify and eliminate tobacco-related health disparities among the population groups.

Comprehensive tobacco control programs must have a system of surveillance and evaluation that can monitor and document intervention outcomes in the target populations to inform program and policy direction and ensure accountability to those with fiscal oversight. Statewide surveillance monitors the achievement of the four primary goals of TUPAC, and IAD's contracts with TUPAC programs require and specify performance measures for reaching the goals.

Secretary Warren noted that approximately \$51,000 of the allocation reverted to the general fund. The Jicarilla Apache Tribe did not spend any of the \$15,000 it was allocated because it could not enter into a contract in time. The Pueblo of Jemez could not qualify because it did not utilize performance standards. Representative Begaye expressed concern about the reversions.

### **Healthy New Mexico Task Force — Update**

David Vigil, bureau chief for the Chronic Disease Prevention and Control Program, DOH, gave the committee a single-page handout with the task force's operational plan and time line on one side and language from 2008 Senate Bill 129, as amended (Chapter 86), on the other. Mr. Vigil had been invited to present the update, although the program is not monitored by the Tobacco Settlement Revenue Oversight Committee.

New Mexico First was hired as the contractor to hold meetings in two locations, Albuquerque and Las Cruces. The Risk Management Division of the General Services Department has been participating. Per the requirements of Chapter 86, the New Mexico Health Policy Coalition and other partners, including the New Mexico Healthcare Takes On Diabetes, have also been participating. A general background document is being prepared for any organization expressing interest.

Participants will be invited to the town hall meetings to be held in April 2009. A comprehensive town hall report will be published in June 2009 and presented to the Legislative Health and Human Services Committee in July.

### **Cardiovascular Disease Prevention Program — Funding Request**

Julia Valdez, director of government affairs for the American Heart Association, gave the committee three handouts. One of them lists the major causes of death in the state and another shows a funding request of \$200,000. The money is to be spent for public and professional education on the prevention and control of heart disease and stroke to be used by communities and organizations to provide interventions to reduce the risks and delay the onset of cardiovascular disease.

Ms. Valdez noted that 50 percent of people having a heart attack do not call 911. Seventy-five percent of calls made to 911 to report a heart attack are made by a friend or family member. Representative Begaye mentioned that he had heard of other departments with similar programs. Ms. Valdez explained that this program would coordinate their activities.

Jennifer Whitman answered a question from Senator Carraro, saying that long-term disability resulting from strokes represents the highest percentage of the cost. Although systems are in place to identify and treat strokes quickly, nothing can be done if the stroke victims do not call 911 or seek immediate treatment.

### **Breast and Cervical Cancer Early Detection Program — FUNDING Request**

Nathan Bush, government relations director for the American Cancer Society, gave the committee a two-page handout requesting an appropriation of \$9,365,000 for the TUPAC program. An additional \$635,000 is requested for tobacco control programs serving tribal populations throughout the state.

Mr. Bush requested an additional \$200,000 for the DOH's Breast and Cervical Cancer Early Detection Program. Mr. Bush spoke of one difficulty in the administration of the DOH's screening program: if a woman is screened and found to have cancer and it is later discovered that no federal money paid for the screening, then she is not eligible. For this reason, administrators have been very creative in finding ways to get at least one dollar of federal money to pay for these particular screens. A more permanent solution would be to include language stating, "Women are considered screened and able to qualify if their treatment services are provided by CDC Title 15 funds."

Representative Chasey suggested getting a financial impact report ready.

Senator Feldman moved that the committee send a letter to the Medicaid administrator, asking him to include the suggested language in Medicaid regulations and to advise the committee if a statutory change is necessary if that is not feasible. Her motion passed with no objections. Subsequently, it was decided by the committee that this matter should be addressed by the interim Legislative Health and Human Services Committee in December.

### **Public Comment**

The chair asked if any member of the public wanted to address the committee. None came forth.

### **Review and Adoption of Legislation**

Dave Thomson, chief of staff for Attorney General King, presented the attorney general's legislative requests for tobacco enforcement. Three areas need to be addressed, including 10 changes to Chapter 6 of the NMSA 1978, taxing "little cigars" the same as cigarettes and new laws and regulations for internet sales of tobacco.

The changes to Chapter 6 NMSA 1978 would include new reporting requirements that could be used to track down NPMs, most of which are foreign. Another change would allow the attorney general the authority to go after an importer. "If I can get someone in New York or California that imports this product and make them liable for the cost to the state, that's success," he noted.

An enforcement provision would allow the attorney general to remove a participating manufacturer from the directory after due process, which would make that manufacturer's products contraband in the state. Civil penalties for inaccurate reports would encourage manufacturers to report honestly.

The bill, with a file number of 202.174440.2SA, was adopted by the committee without opposition. Representative Chasey indicated that she would introduce the bill for the committee.

Mr. Hely presented a bill with a file number of 202.174007.2 that would prohibit smoking in a motor vehicle in which a minor is present. Mr. Hely explained that the bill would amend the Dee Johnson Clean Indoor Air Act. Senator Garcia moved for adoption. The bill was approved without objection.

### **Funding Requests and Recommendations**

A spreadsheet was distributed to the members. Representative Chasey explained that each year, the committee tries to increase the dollar amounts to meet Centers for Disease Control recommendations. She said the amount appropriated this year would be \$22.45 million, or \$1.465 million higher than the appropriation for FY 2009.

The committee reviewed each appropriation for the current fiscal year and adopted new recommendations for FY 2010, including increases in the DOH's and the IAD's TUPAC programs and the breast and cervical cancer screening program. Funding was recommended for

a new cardiovascular disease prevention program and for the early detection of lung cancer in veterans. Senator Garcia moved for the committee to endorse the appropriation of \$730,000 for the VSD. There being no objection, the motion passed.

Senator Feldman thanked Senator Carraro for his service and thanked staff members for their hard work. The committee adjourned at 4:05 p.m.