Tobacco Settlement Revenue Oversight Committee

2009
INTERIM REPORT

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

December 2009
www.legis.state.nm.us

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AND

PROPOSED LEGISLATION

SUMMARY

The Tobacco Settlement Revenue Oversight Committee 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 revenues. Each year, the committee takes testimony regarding the performance results of programs funded 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 interim committee works closely with representatives of the New Mexico Attorney General's Office to ensure state compliance with the MSA. The attorney general is currently in arbitration with tobacco manufacturers over the state's enforcement efforts. If the state is found not to have diligently enforced its tobacco statutes in 2003, it is possible that New Mexico could be forced to pay back its entire allocable share of tobacco settlement revenue for that year ($34 million). Tobacco manufacturers have also initiated challenges to the state's enforcement efforts in all subsequent years, making the state's total potential liability, according to the Attorney General's Office, close to $263 million.

The Tobacco Settlement Permanent Fund (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 (Program Fund) consists "of distributions made to the fund from the tobacco settlement permanent fund". Each year, 50 percent of the revenues are retained in the Permanent Fund and the remaining 50 percent 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. In 2009, Senate Bill 79 amended the law to provide for an additional 50 percent distribution to the Program Fund for appropriations in fiscal years 2009 and 2010.

The FY 2009 ending market value of the Permanent Fund as reported by the State Investment Council was $120.9 million. Approximately $44.56 million in new revenue is projected for FY 2011, affording 50 percent of that amount or $22.28 million for distribution to the Program Fund. On the date that the committee made its recommendations, there was an estimated $3.325 million balance in the Program Fund, bringing the total amount for appropriation by the legislature to $25.605 million. The committee's recommendations were based on this total; however, the cash balance was appropriated during the First Special Session of the Forty-Ninth Legislature to the Human Services Department for Medicaid, leaving an estimated $22.28 million for recurring appropriations in FY 2011.

After meeting four times to receive testimony from agencies and programs currently receiving appropriations, the committee adopted funding recommendations for FY 2011. The committee recommends continuing funding at FY 2010 funding levels in FY 2011, with the exception of certain programs it considers in need of increased funding.

The committee recommends an increase of $400,000 for the breast and cervical cancer *screening* program. The additional money will enable the Department of Health to increase the percentage of eligible women served from 18 percent to 25 percent. An additional $300,000 is recommended for the breast and cervical cancer *treatment* program to allow the Human Services Department to treat the new cancer cases that will be discovered with the increased screening.

The committee recommends restoring the University of New Mexico's appropriation for research in genomics, biocomputing and environmental health to the FY 2009 level of $1.5 million. The program's tobacco settlement investments are highly leveraged with federal dollars. In 2009, when the university's appropriation was decreased by $150,000, it resulted in the loss of approximately 200 jobs. The committee also recommends increasing the appropriation for emphysema and lung cancer research conducted under the University of New Mexico's contract with Lovelace Respiratory Research Institute by $350,000. The institute estimates that the increase in appropriation will result in approximately $3 million to $3.5 million in new funding and support approximately 60 full-time employees.

The committee recommends an increase of $100,000 for the tobacco prevention and cessation program for Native Americans. Native Americans make up less than one-tenth of New Mexico's population, yet nearly one-fifth of current smokers in New Mexico are Native Americans. The smoking rate among American Indian youth is higher than for any other race in the state. The committee believes that supporting the smoking prevention and cessation program targeted to this population is critical.

The committee did not endorse any specific legislation, but did express its opposition to the diversion of tobacco settlement revenue to offset general fund appropriations until such time as the results of the current arbitration with tobacco manufacturers are made known and New Mexico's share of financial liability, if any, is established. The committee recommends that the legislature instead examine other options for increasing state revenue during this time of economic crisis, such as increases in the state cigarette tax and the tobacco products tax, which the committee fully endorses.

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 2010 AND 2011 RECOMMENDATIONS
(thousands of dollars; recurring unless noted)

AGENCY AND PROGRAM	2010 TSROC Recs	2010 Program Approns	2011 TSROC Recs	2011 Proposed Increase	
Department of Health					
Tobacco cessation and prevention programs	9,365.0	9,115.0	9,115.0		
Diabetes prevention and control program	1,000.0	1,200.0	1,200.0		
HIV/AIDS services	470.0	470.0	470.0		
Breast & cervical cancer *screening*program	350.0	200.0	600.0	400.0	
Cardiovascular disease prevention program - NEW	200.0	0.0			
Total Department of Health	**$11,385.0**	**$10,985.0**	**$11,385.0**	**$400.0**	
Human Services Department					
Breast & cervical cancer *treatment*program	1,500.0		1,800.0		
Medicaid expansion	2,800.0		6,340.0		
Combined breast & cervical cancer *treatment* and Medicaid		5,985.0(a)			
Total Human Services Department	**$4,300.0**	**$5,985.0**	**$8,140.0**	**$2,155.0**	(c)
University of New Mexico					
Innovations in preventing and treating tobacco-related diseases					
Genomics core facilities	162.5				
Epidemiology	374.8				
Enhanced tobacco-related research	180.0				
Clinical research and trials	329.1				
Biocomputing	453.6				
Research in genomics, biocomputing & envir. Health		1,350.0(b)	1,500.0	150.0	
Subtotal UNM tobacco-related diseases	$1,500.0	$1,350.0	$1,500.0	$150.0	
Other programs					
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	
Contracts and I&G					
Lung & tobacco-related disease research (LRRI contract)	1,000.0	900.0	1,250.0	350.0	
Funding retained by UNM (Instruction & General)	1,000.0	930.0	930.0		
Subtotal UNM/LRRI/I & G	2,000.0	1,830.0	2,180.0	350.0	
Total University of New Mexico	**$5,400.0**	**$5,080.0**	**$5,580.0**	**$500.0**	
Indian Affairs Department					
Tobacco cessation and prevention programs	635.0	400.0	500.0	100.0	
Total Indian Affairs Department	**$635.0**	**$400.0**	**$500.0**	**$100.0**	
Veterans' Services Department					
Early detection of lung cancer in veterans	730.0	0.0	0.0		
Total Veterans' Services Department	**$730.0**	**$0.0**	**$0.0**	**$0.0**	
GRAND TOTAL - Programs	**$22,450.0**	**$22,450.0**	**$25,605.0**	**$3,155.0**	

Notes:
(a) HB2 consolidated breast and cervical cancer treatment and Medicaid appropriations.
(b) HB2 consolidated the appropriations with a new title.
(c) TSROC recommends that $300.0 of the increase to HSD be allocated to the breast & cervical cancer *treatment* program.

TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE
FISCAL YEAR 2011 RECOMMENDATIONS
(Dollars in thousands unless otherwise noted)

Introductory Note:

The FY 2009 ending market value of the Tobacco Settlement *Permanent* Fund as reported by the State Investment Council was $120.9 million. Approximately $44.56 million in new revenue is projected for FY 2011, affording 50 percent of that amount, or $22.28 million, for distribution to the Tobacco Settlement *Program* Fund. On the date that the committee made its recommendations, there was an estimated $3.325 million of cash balances in the program fund, bringing the total amount for appropriation by the legislature to $25.605 million. The committee's recommendations were based on this total; however, the fund's cash balances were appropriated during the First Special Session of the Forty-Ninth Legislature to the Human Services Department (HSD) for Medicaid, leaving an estimated $22.28 million for recurring appropriations in FY 2011.

It is the committee's goal to continue funding FY 2010 levels in FY 2011, with the exception of certain programs it considers in need of increased funding. Those programs, in order of priority, are breast and cervical cancer screening (Department of Health (DOH)), breast and cervical cancer treatment (HSD), research in genomics, biocomputing and environmental health (University of New Mexico (UNM)), emphysema and lung cancer research (UNM contract with Lovelace Respiratory Research Institute) and tobacco cessation and prevention for Native Americans (Indian Affairs Department (IAD)).

The attorney general is currently in arbitration with tobacco manufacturers over the state's enforcement efforts under the Master Settlement Agreement (MSA). It is possible that New Mexico could be forced to pay back its entire 2003 allocable share of tobacco settlement revenue ($34 million). Tobacco manufacturers have also initiated challenges to the state's enforcement efforts in all subsequent years, making the state's total potential liability close to $263 million. Until the results of the arbitration are made known, and New Mexico's share of financial liability, if any, is established, the committee opposes the diversion of tobacco settlement revenue to offset general fund appropriations. The committee recommends that the legislature examine other options for increasing state revenue, such as increases in the state cigarette tax and the tobacco products tax, which the committee fully endorses.

The committee recognizes the difficult budgetary situation currently facing the state, but at the same time it recognizes the important work being performed by the programs receiving tobacco settlement funds. Short-changing such programs can have significant impacts on the state, both in the long term and short term. Programs receiving tobacco settlement money are often able to leverage many more federal and private foundation dollars, thereby creating more jobs and improving the local economy. The appropriations are also used to help curtail tobacco use, saving the state millions of dollars in tobacco-related health care costs.

1. CONTINUE FUNDING FOR THE TOBACCO USE PREVENTION AND CONTROL PROGRAM (TUPAC), DOH

Current Funding — $9,115.0
FY 2011 Recommended Funding — $9,115.0

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

TUPAC contracts with more than 74 contractors across the state to implement the four goals of the program: preventing initiation of tobacco use, helping youth and adults quit using tobacco, eliminating exposure to secondhand smoke and identifying and eliminating tobacco-related disparities. Contractors under this program fall into several categories:

A. 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 prevent tobacco use, provide local cessation services and eliminate exposure to secondhand smoke. In addition to community health planning, the programs recruit youth into tobacco use prevention coalitions, train youth as advocates and peer educators, provide media literacy and merchant education and provide local cessation services.

B. Cessation Programs

These programs focus on increasing the access and availability of counseling and treatment to stop smoking. All cessation services are based upon proven intervention models. The programs include cessation interventions in schools, communities and health facilities; training for health care providers; training for cessation group facilitators; provision of stop smoking medications; and media messages on quitting. Tobacco cessation services are also offered through 1-800 QUIT NOW, a free tobacco cessation help line offering phone counseling, personalized quit plans and free nicotine replacement therapy (gum, patches and lozenges) to registered callers.

C. 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 cessation opportunities for youth who already use tobacco.

D. 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 prevent tobacco use and educate about risks associated with secondhand smoke. Activities include tobacco prevention media campaigns for TV, radio, internet, billboard and print media; youth-led tobacco prevention media activities; anti-tobacco banners and billboards; media literacy training; and promotion of 1-800 QUIT NOW, the free tobacco cessation help line.

E. Partnerships with Populations Experiencing Tobacco-Related Disparities

These funds are awarded to assist various communities that are disproportionately affected by tobacco use, including people with disabilities, Native Americans, Hispanics, rural populations and low-income individuals. Partnerships with groups experiencing tobacco-related disparities are aimed at providing effective prevention activities, providing culturally relevant and accessible cessation services and reducing tobacco use. Activities include ensuring that services and messages are effectively reaching groups experiencing disparities; partnering with groups in message and service design and delivery; and organizing and implementing forums to educate and inform.

F. 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 use surveys and identifying, collecting and analyzing evaluation information and data.

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

Current Funding — $1,200.0
FY 2011 Recommended Funding — $1,200.0

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

3. CONTINUE FUNDING HIV/AIDS SERVICES, DOH

Current Funding — $470.0
FY 2011 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 2011 Recommended Funding — $600.0

The purpose of these funds is to provide breast and cervical cancer *screening* for eligible low-income women statewide. The DOH has an extensive outreach program that includes advertising the program through billboards, flyers, bus signs, radio, newspapers and large community activities. The DOH is currently able to screen only 18 percent of the women eligible to participate in its screening program. The committee recommends an additional $400.0 for FY 2011 to enable the DOH to screen a total of 25 percent of eligible women.

5. INCREASE FUNDING FOR THE BREAST AND CERVICAL CANCER TREATMENT PROGRAM, HSD

Current Funding for Breast and Cervical Cancer (BCC) Treatment and Medicaid Combined — $5,985.0
FY 2010 Recommended Funding for BCC Treatment Only — $1,500.0
FY 2011 Recommended Funding for BCC Treatment Only — $1,800.0

The purpose of these funds is to provide *treatment* for women diagnosed with breast or cervical cancer who are eligible for Medicaid under the breast and cervical cancer category of eligibility. New Mexico receives an enhanced federal match (nearly 4:1) for this program. Women in the program receive full Medicaid coverage through the fee-for-service program. Since the BCC program started July 1, 2002, a total of 900 women have been enrolled in the program. In FY 2009, the BCC program paid claims for over 400 women. The committee recommends an additional $300.0 over its FY 2010 recommended appropriation to enable the HSD to treat the cancer cases that will be discovered from increased screening under the DOH screening program.

6. INCREASE MEDICAID FUNDING, HSD

Current Funding for BCC Treatment and Medicaid Combined — $5,985.0
FY 2010 Recommended Funding for Medicaid Only — $2,800.0
FY 2011 Recommended Funding for Medicaid Only — $6,340.0

The purpose of these funds is to provide Medicaid to eligible persons in New Mexico. The committee recommends appropriating the money remaining in the program fund after all other program appropriations are computed to the HSD for Medicaid. On the day that the committee made its recommendations, the remaining balance was estimated at $6.34 million.

7. INCREASE FUNDING FOR RESEARCH IN GENOMICS, BIOCOMPUTING AND ENVIRONMENTAL HEALTH, UNIVERSITY OF NEW MEXICO HEALTH SCIENCES CENTER (UNMHSC)

Current Funding — $1,350.0
FY 2011 Recommended Funding — $1,500.0

These funds would be used by the UNMHSC to conduct cutting-edge research on lung and tobacco-related illnesses, to translate research findings into effective clinical care programs, to disseminate scholarly work and to recruit and hire scientists and support personnel. In FY 2010, the appropriation was decreased by $150.0. This reduction resulted in a loss of six direct personnel UNM jobs, 72 non-state-funded UNM jobs and 122 indirect jobs in the local economy. The impact was so extreme because tobacco settlement investments are highly leveraged with federal dollars through extramural grants. The initial investment of tobacco settlement funds is a necessary step in obtaining federal dollar leveraging. The committee recommends returning the university's appropriation for innovations in prevention and treatment of tobacco-related diseases to the FY 2009 level of $1.5 million.

8. CONTINUE FUNDING FOR OTHER PROGRAMS ADMINISTERED BY UNM

Total Current Funding — $1,900.0
Total FY 2011 Recommended Funding — $1,900.0

A. 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 assistant 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.

B. 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.

C. 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.

D. 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.

E. Poison and Drug 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.

F. 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.

G. 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.

9. INCREASE FUNDING FOR EMPHYSEMA AND LUNG CANCER RESEARCH

Current Funding — $900.0
FY 2011 Recommended Funding — $1,250.0

These funds would continue UNM's contract with Lovelace Respiratory Research Institute for its research in emphysema and lung cancer detection and treatment. Lovelace is presently in the process of developing over 130 new drugs from commercial sources, many of which are directed at mitigating the health effects of tobacco products. The work built on the back of the Lovelace program brings a leveraged figure of over 15 to 1 in revenue to the state. The committee recommends an increase of $350.0. The increase will result in approximately $3 million to $3.5 million in new funding and support approximately 60 full-time employees.

10. CONTINUE FUNDING FOR INSTRUCTION AND GENERAL PURPOSES (UNMHSC)

Current Funding — $930.0
FY 2011 Recommended Funding — $930.0

The purpose of these funds is to pay for salaries at UNMHSC, which provides quality clinical services and trains doctors in New Mexico.

11. INCREASE FUNDING TOBACCO CESSATION AND PREVENTION PROGRAMS, IAD

Current Funding — $400.0
FY 2011 Recommended Funding — $500.0

The committee is recommending an increase of $100.0 for the IAD tobacco cessation and prevention program. The program promotes cessation and prevention of commercial tobacco abuse in Native American communities, with special emphasis on Native American youth, and promotes cultural awareness of the Native American traditional and ceremonial use of tobacco as a means to strengthen cultural identity and resistance to commercial tobacco. Mini-grants are awarded to the tribes and additional contracts are awarded for development of tobacco cessation programs targeting Native American communities. Some funding has been used for a tobacco cessation and prevention youth forum.

Native Americans make up less than one-tenth (9.4 percent) of New Mexico's population; yet, nearly one-fifth (18 percent) of current smokers in New Mexico are Native Americans. The smoking rate among Native American youth (31 percent) is higher than for any other ethnic group in the state. The committee believes that supporting the smoking prevention and cessation program targeted to the Native American population is critical.

LEGISLATION ENDORSED BY THE COMMITTEE

The committee did not endorse any specific legislation, but did express its opposition to the diversion of tobacco settlement revenue to offset general fund appropriations until such time as the results of the current arbitration with tobacco manufacturers are made known and New Mexico's share of financial liability, if any, is established. The committee recommends that the legislature instead examine other options for increasing state revenue during this time of economic crisis, such as increases in the state cigarette tax and the tobacco products tax, which the committee fully endorses.

2009 INTERIM WORK PLAN

2009 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. Dede Feldman
Rep. Danice Picraux
Sen. John C. Ryan
Rep. Gloria C. Vaughn

Advisory Members

Sen. Rod Adair
Sen. Sue Wilson Beffort
Rep. Ray Begaye
Rep. Karen E. Giannini
Sen. Linda M. Lopez
Sen. Mary Kay Papen

Work Plan

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 2009 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 (MSA); 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 2011, based on the committee's program evaluation process;

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

(4) review the impact of the amendment to the law regarding distribution to the tobacco settlement program fund and the tobacco settlement permanent fund to address the budget solvency issues for fiscal years 2009 and 2010.

MEETING SCHEDULE

Date	Location
June 16	Santa Fe
July 29	Santa Fe
August 28	Albuquerque
September 24-25	Santa Fe

COMMITTEE AGENDAS

Revised: June 12, 2009

TENTATIVE AGENDA
for the
FIRST MEETING
of the
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

June 16, 2009
Room 311, State Capitol
Santa Fe, New Mexico

Tuesday, June 16

10:00 a.m. **Call to Order**

Introduction of New Staff

Interim Legislative Committee Protocols
—Paula Tackett, Director, Legislative Council Service (LCS)

Overview of Master Settlement Agreement, Litigation Update and Implementation of New Legislation — Office of the Attorney General
—Claudia Ravanelli, Special Project Coordinator
—Nan Erdman, Assistant Attorney General

11:30 a.m **Update on Tobacco-Related Issues Nationwide**
—Nathan Bush, Vice President of Government Relations, American Cancer Society
—Traci Cadigan, New Mexico Government Relations Director, American Cancer Society

12:00 noon **2009 Committee-Sponsored and -Related Legislation, Fiscal Year 2010 Funding Levels and Changes in Distributions to Address Budget Solvency Issues**
—Sandy Mitchell, Staff Attorney, LCS

Review, Discussion and Adoption of Interim Work Plan and Meeting Schedule

Public Comment

Adjournment

Revised: July 27, 2009

TENTATIVE AGENDA
for the
SECOND MEETING
of the
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

July 29, 2009
Room 311, State Capitol
Santa Fe, New Mexico

Wednesday, July 29

10:00 a.m. **Call to Order**

Diabetes Program Evaluation and RFP Process Report
—Judith Gabriele, Program Manager, Department of Health (DOH)

HIV/AIDS Program Evaluation and RFP Process Report
—Robert Horwitz, Deputy Director, Public Health Division, DOH
—Diane Tapia, Program Manager, HIV/AIDS Treatment Program, DOH
—Dominick Zurlo, Program Manager, Harm Reduction Program, DOH

Tobacco Use Prevention and Control (TUPAC) Program Evaluation
—Larry Elmore, Program Manager, TUPAC Program, DOH

TUPAC Program Update
—Alvin H. Warren, Secretary, Indian Affairs Department

12:30 p.m. **Lunch**

1:30 p.m. **Biomoda Update on Its Research**
—John Garcia, Secretary, Veterans' Services Department
—John Cousins, President, Biomoda, Inc.

Federal Tobacco Legislation Update
—Nathan Bush, Vice President of Government Relations, American Cancer Society

Public Comment

Adjournment

Revised: August 27, 2009

TENTATIVE AGENDA
for the
THIRD MEETING
of the
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

August 28, 2009
University of New Mexico
Domenici Center for Health Sciences Education
Room 3010
Albuquerque

Friday, August 28

10:00 a.m. **Call to Order**

Welcoming Remarks
—Richard S. Larson, M.D., Ph.D., Vice President for Translational Research, University of New Mexico (UNM)

10:05 a.m. **Federal Tobacco Legislation Update**
—Nathan Bush, Vice President of Government Relations, American Cancer Society

10:45 a.m. **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 Translational Research, UNM

12:15 p.m. **Lunch**

12:45 p.m. **Lovelace Respiratory Research Institute (LRRI) Performance Report**
—Robert W. Rubin, Ph.D., President and Chief Executive Officer, LRRI

1:30 p.m. **Breast and Cervical Cancer Program**
—Julie Weinberg, Deputy Director, Medical Assistance Division (MAD), Human Services Department (HSD)
—Virginia Alcon, Staff Manager, MAD, HSD

2:15 p.m. **Public Comment**

Adjourn

Tour New UNM Cancer Research and Treatment Center
—Donald Whitehead, Clinical Services Administrator, UNM Cancer Center
—Rae Ann Paden, Research Administrator, UNM Cancer Center

TENTATIVE AGENDA
for the
FOURTH MEETING
of the
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

September 24-25, 2009
Room 311, State Capitol
Santa Fe, New Mexico

Thursday, September 24

10:00 a.m. **Call to Order**

Interim Update on Legislation, Litigation and Arbitration from the Office of the Attorney General
—David Thomson, Deputy Attorney General

11:30 a.m. **Report on Centers for Disease Control and Prevention Recommendations and Performance of New Mexico**
—Cynthia Serna, Regional Grassroots Development Director, American Cancer Society

12:00 noon **Lunch**

1:15 p.m. **Tobacco Settlement Permanent and Program Funds — Revenue Projections**
—Tom Clifford, Chief Economist, Legislative Finance Committee

2:15 p.m. **Tobacco Settlement Permanent Fund Performance Review and Projections**
—Charles Wollmann, Public Information Officer, State Investment Council

3:00 p.m. **Review of FY09 and FY10 Program Funding Levels and Preliminary Committee Discussion of FY11 Program Funding Recommendations and Proposed Legislation**

4:00 p.m. **Funding Requests — Public Health Advocates and Committee Members**

Public Comment

Committee Business

Recess

Friday, September 25

9:30 a.m. **Call to Order**

Review of Proposed Legislation

FY11 Funding Recommendations

Adjournment

COMMITTEE MINUTES

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

June 16, 2009
Room 311, State Capitol

The first meeting of the Tobacco Settlement Revenue Oversight Committee (TSROC) was called to order on June 16, 2009 at 10:00 a.m. in Room 311, State Capitol, by Representative Gail Chasey and Senator Mary Jane M. Garcia, co-chairs.

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

Absent
Sen. Dede Feldman
Sen. John C. Ryan

Advisory Members
Sen. Rod Adair
Sen. Sue Wilson Beffort
Rep. Ray Begaye
Rep. Karen E. Giannini
Sen. Linda M. Lopez
Sen. Mary Kay Papen

Staff
Sandy Mitchell, Legislative Council Service (LCS)
Michael Hely, LCS
Roxanne Knight, LCS
Brent Earnest, Legislative Finance Committee (LFC) Analyst
Ellie Ortiz, LFC Analyst

Interim Legislative Committee Protocols

Raúl Burciaga, assistant director for drafting services for the LCS, addressed questions and concerns regarding interim committee protocols. He reminded the committee that four voting members constitute a quorum. Without a quorum, a subcommittee may be formed to conduct the hearing without voting. Once established, a quorum is presumed to exist until roll is called or it is challenged by a voting member.

Mr. Burciaga explained the stacking rules and the rules for establishing a subcommittee.

A member may resign at any time; a voting member will be replaced by the New Mexico Legislative Council (LC) as soon as possible. If the member is advisory, the LC may not replace the person immediately.

New Mexico Attorney General (NMAG) Presentation Regarding Tobacco Litigation, the Master Settlement Agreement (MSA) and New Legislation

Claudia Ravanelli, special projects coordinator, and Nan Erdman, assistant attorney general, provided an overview of the MSA and reviewed some of the enforcement and litigation issues involving tobacco settlement revenues. The MSA was reached pursuant to a 1994 lawsuit begun by the Mississippi attorney general. Other states, including New Mexico, joined. The MSA was reached to reimburse states for extra health care costs related to tobacco use. The original settlement involved four large companies as defendants. Since 1998, 48 additional tobacco manufacturers have joined in the settlement. The MSA encompasses 46 states and several territories. From 1999 until 2003, the MSA and manufacturer payments were not challenged. The state receives an annual MSA payment on April 15. PricewaterhouseCoopers compiles sales information and calculates and determines all payments owed under the MSA. Each state's MSA receipts are in accordance with a formula agreed to in the MSA. Through April 2009, New Mexico has received $413 million in MSA payments.

Many tobacco manufacturers did not take part in the MSA. States have had to pass laws to ensure that manufacturers that signed on to the MSA would not lose market share due to a competitive disadvantage with nonparticipating manufacturers. The MSA requires that states set up an interest-bearing escrow account and that manufacturers comply with an excise stamp regime by making payments to the escrow account. The escrow payments and interest do not accrue to the state automatically. The state must sue to collect from escrow in order to collect for smoking-related health care costs, enforce excise stamp requirements and collect the excise tax.

If New Mexico is not diligent in enforcing stamp requirements against nonparticipating manufacturers and the participating manufacturers can show a loss of over two percent in market share, then participating manufacturers can retrieve some of their MSA money from the state.

A question was raised about the possibility of revenue reductions due to less tobacco use. The NMAG staff said that the participating tobacco manufacturers would be likely to argue that their tobacco revenues are declining and that is due to lack of diligence on the state's part. This could involve a $370 million potential payback. For reasons such as this, the NMAG requires adequate staff to enforce the MSA and to defend against allegations of lack of diligence.

National arbitration was ordered with respect to the 2003 MSA payment. Now New Mexico is faced with a challenge by participating tobacco manufacturers and must fight alongside other states. Deputy Attorney General David Thomson is on the Arbitration Negotiating Committee. Arbitration is scheduled for 2010; the state must litigate and provide evidence refuting the manufacturers' evidence that New Mexico allowed contraband to be sold in this state and did not diligently enforce its laws.

The NMAG requested $300,000 for expert witnesses and travel expenses (none for salaries) in the last session, and the NMAG was allocated nothing. The NMAG staff explained that, given its current budget, the NMAG cannot protect the $370 million in MSA receipts.

Current litigation staff can only devote a small amount of time to tobacco litigation. The NMAG is gravely concerned that without more money for litigation expenses, the state will lose. The NMAG also requests funds so that IT systems may be updated to allow the NMAG to download Taxation and Revenue Department (TRD) forms online. A committee member suggested that the NMAG make the funding requests to the LFC.

The NMAG staff then discussed relevant legislation passed during the last legislative session. Senate Bill 219 makes tremendous changes in civil investigative demand authority — meaning that New Mexico would not be forced to file a lawsuit in order to investigate contraband sales. The bill would allow the NMAG to collect bonds from companies. It would allow the NMAG to collect escrow not only on stamped cigarettes but also on exempt cigarettes. Tobacco manufacturers would be forced to pay into escrow even for sales taking place on property belonging to Indian nations, tribes and pueblos.

The committee asked questions about how the NMAG handles opinion requests, litigation resources and budgetary matters and how it cooperates with Indian tribes, nations and pueblos. In response, the NMAG staff explained that its civil division responds to opinion requests. Some requesters want an opinion on SB 219, but the NMAG cannot respond to this request because the NMAG is litigating two lawsuits on that bill. A committee member raised doubts about the impropriety of speaking about the matters in litigation, arguing with the assumption that the court is concerned with the NMAG's opinions on these matters. As for relations with Indian tribes, nations and pueblos, rapport is excellent and mutual cooperation is increasing, yet there are some challenges because each government has its own protocol regarding enforcement and wishes to meet with the attorney general or governor rather than with legislators. Representative Begaye offered to investigate this matter.

The NMAG informed the committee that there are only seven lawyers on staff in the litigation division, including one who does antitrust full time. The civil division must provide general counsel to agencies that do not have their own. This is why the NMAG is requesting $500,000 in supplemental funding for application to litigation expenses, none of which will be applied to staff salaries.

Questions were raised about online cigarette sales and the enforceability of age provisions. The NMAG staff answered that this is mostly a federal issue. A federal bill, S. 1147, is moving through Congress. It would shut down tobacco internet sales nationwide. With the recently passed federal Family Tobacco Act, the U.S. Food and Drug Administration has authority to regulate those internet sales as well.

Update on Tobacco-Related Issues Nationwide

Nathan Bush, vice president of government relations, and Traci Cadigan, New Mexico government relations director, both of the American Cancer Society, presented on issues related to tobacco cessation and policy trends.

Mr. Bush related that the "number one myth" about MSA payments is that they will stop. He emphasized that the payments will not stop as long as the MSA is in effect. However, to

avoid paying back any payments, states must make smart use of them in accordance with the MSA.

New Mexico is at about 50 percent of the Centers for Disease Control and Prevention (CDC) funding recommendations for tobacco cessation. New Mexico is eleventh-best in tobacco-control funding.

Ms. Cadigan reported that tobacco taxes are one of the most effective vehicles for tobacco cessation because smoking decreases when costs rise. Each pack of cigarettes represents a $2.78 burden on the state's Medicaid funds. New Mexico has only a $.91 cigarette tax; the national average is $1.27 per pack. This places New Mexico at thirty-first in the nation, and the state receives $63 million in revenue per annum.

Arizona, with a $2.00 tax, has shown a four percent decrease in tobacco use, attributable to extremely strict ordinances on nonsmoking and to its tax increase of $1.00 per pack. The federal tax increase adds to the cost. The federal tax increase is now $.616 on manufacturers and applies to both tribal and nontribal sales.

Funding Levels and Changes in Distributions to Address Budget Solvency Issues

Ms. Mitchell, staff attorney with the LCS, distributed and discussed a spreadsheet showing recommendations for appropriations and actual appropriations of tobacco settlement program funds for fiscal years 2009 and 2010. She also discussed the changes in distributions that were made to address budget solvency issues.

Work Plan

The committee adopted the work plan, which Ms. Mitchell will present to the LC for approval.

Public Comment

A member of the public raised the issue of whether the state sometimes promotes tobacco use through its investments and whether anyone has looked into this. Mr. Bush said that this is difficult to investigate. The American Cancer Society does not have complete data about the government's dealings with tobacco manufacturers.

The committee adjourned at 12:25 p.m.

MINUTES
of the
SECOND MEETING
of the
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE
July 29, 2009

The Tobacco Settlement Revenue Oversight Committee (TSROC) was convened on July 29, 2009 at 10:16 a.m. as a subcommittee.

Present
Sen. Mary Jane M. Garcia, Co-Chair
Rep. Ray Begaye
Sen. Dede Feldman
Rep. Danice Picraux

Absent
Rep. Gail Chasey Co-Chair
Sen. John C. Ryan
Rep. Gloria C. Vaughn
Rep. Karen E. Giannini
Sen. Mary Kay Papen

Advisory Members
Sen. Rod Adair
Sen. Sue Wilson Beffort
Sen. Linda M. Lopez

Diabetes Program Evaluation and Request for Proposals (RFP) Process Report
Judith Gabriele, Program Manager, Department of Health (DOH) (see handout).

Ms. Gabriele discussed FY09 tobacco settlement funds expenditures. The number of diagnoses for diabetes is increasing in New Mexico with the aging population growing. The prevalence in New Mexico is similar to the USA's prevalence, although the death rate is higher in New Mexico. Age-adjusted rates are used when comparing county-county or county-state overall, which levels the playing field. Los Alamos, Santa Fe, Socorro, McKinley and Chaves counties are high end.

The DOH is trying to strengthen the diabetes education program with children by increasing parent involvement. The Chronic Disease Bureau is strategizing around social determinants (family income, etc.) of health in its prevention efforts.

Question/comments included:

- *Do statistics include Native Americans (NA)?* Yes, yet BRFSS has some shortcomings with the NA population because of communication barriers. It does sample to make up for that.
- It is difficult to segregate NA statistics because they often include Utah, Colorado and Arizona figures.
- *Are there RFPs for any of these programs for NA country?* Only for self-management education provider trainings and professional development and technical assistance. Five of the 21 programs for technical assistance are in NA communities. NA partnerships have begun and the DOH is brainstorming with them about what works and how to support NA communities. They have met three times and have identified professional

development and provider support, including cultural competency. Indian Health Service does not have a lot of training for its professionals. The second priority is working with families and communities on prevention.

- Concern was expressed regarding elimination of physical education (PE) programs from schools. Obesity was not the problem it is now 30 years ago when PE was part of school. There was critique of education cuts that eliminated PE. The DOH needs lawmakers to understand that PE cost-cutting affects health costs. A study shows a connection between physical activity and academic performance. The DOH is adding money for physical activity programs.
- *Coordinated approach to child health (CATCH) program*: physical activity; nutrition; healthy schools; healthy foods; paths; parent involvement. Children bring home assignments to familiarize their families with good foods.
- *33 elementary schools are involved; how are they selected?* The application process is through New Mexico State University (NMSU). Every district gets applications, and schools are selected for their capacity to do the program.
- *If we want to promote this to districts, is there information about preparing and applying?* Yes, the DOH will send FY10 participating schools information about the application process.
- *Do the schools receive money?* Yes, they go to a training and costs are covered.
- *What about obesity?* Obesity is a major risk factor; the DOH funds programs throughout the state to get children involved in more physical activity to reduce weight and thus diabetes risk. Gestational diabetes is more likely to produce overweight children at risk of diabetes.
- *Health care providers can write prescriptions for physical activity; there can also be partnerships with parks and recreation.*
- *Why are there so many different medications for type II diabetes?* There are a lot of medicines for a lot of things; not sure why.
- *How are certified diabetes educators found?* They are listed on this web site: www.diabetesnm.org.
- *Are some people more prone to getting diabetes?* Some people are more prone: a baby weighing more than nine pounds and a women with polycystic ovary syndrome.
- *The death rate in New Mexico is higher than the USA. Are there statistics? Statistics show whether chronic disease is being managed. Personal responsibility plus societal change takes time, but it is important that reports are received in incremental changes in behavior such as self-testing rates and other indicators that should be tracked in terms of increasing compliance. Are these things being tracked?* Yes. Data on exams are received; they do not show improvements. The DOH thinks those are not the best indicators; just because someone got tested does not mean that person is controlling diabetes just because of the test. People may get the exam, but resources prevent compliance. The Centers for Disease Control and Prevention (CDC) does not look at these indicators any longer; the CDC looks at whether people are controlling diabetes and blood pressure.
- *Yes, but tracking compliance alerts one to whether someone needs more care. Tests are critical to flag where treatment is necessary and where additional resources are needed to address the areas identified. How is this achieved?* The DOH is working with the

Primary Care Association's ABC (a1c, blood pressure and cholesterol testing) system. The DOH is piloting with a few primary care clinics.

These tests are a means of indicating compliance, so I would request that information (summary) on this and on mortality rates. I request that you send this information to Sandy Mitchell.

- Do advisory council members get compensation or per diem and mileage? No, the board and steering committee get travel funding.

HIV/AIDS Program Evaluation and RFP Process Report
Robert Horwitz, Deputy Director, Public Health Division, DOH
Diane Tapia, Program Manager, HIV/AIDS Treatment Program, DOH
Dominick Zurlo, Program Manager, Harm Reduction Program, DOH
(See handout.)

The DOH is looking at using money to get ahead of prevention and risk behaviors. One hundred sixty thousand dollars is going to harm reduction, with 66% going to HIV services, and $310,000 is going to HIV/AIDS treatment and harm reduction. The majority of individuals are in the insurance assistance program versus DOH paying for services/medication because of less disability and increased employment. This is as a result of people living with HIV being healthier now and less likely to have complications.

Questions/comments included:

- *There are treatment services in Santa Fe, Albuquerque, Las Cruces and Roswell. Is anyone providing services in McKinley County and San Juan County?* Yes, these providers resulted from an RFP process for specialists. Many have satellites, including one in Farmington (NM AIDS Services). Community Health Source in Albuquerque serves a population, half of whom is from those areas.
- *What about Gallup, with a large prevalence of HIV/AIDS*? The only responder to the RFP has been FirstNations, though NAs may be enrolled in other programs.
- *Are NA organizations aware of the RFP? One of the problems is that many times the RFP packets are not put together until maybe first quarter of year. When are service organizations notified of an RFP?* The providers are contracted through a provider agreement; it is an annual process that is used for delivering speciality clinical care. It is a hybridized version of the RFP process. A program works with the specialist community and the Governor's Advisory Council on HIV/AIDS, which provides input. The prevention program does a formal RFP process tied to the federal funding cycle. It is a limited community of specialists capable of delivering this care. Provider agreements are on a one-year cycle.
- *Any complaints about the annual process by providers?* Provider agreements tend to be single-year. Federal and state appropriations change year to year. July is always a challenge, because the DOH and the Department of Finance and Administration are closing out the old fiscal year and handling large volumes.
- *Clinic locations: is [the handout showing clinic locations] representative of the geographics of patient concentration?* The DOH has recruited agencies having the appropriate expertise. Every client gets a case manager. There are centers of excellence

developed per population. The model of care for patients is relatively flexible with satellite facilities and a very responsive system of care.

- *Is any money allocated to bupenorphine programs?* The DOH works in conjunction with community-based organizations that are piloting bupenorphine programs and working with DOH's Stanford [Avenue – Albuquerque] health office. Bupenorphine is used to help people come off of heroin. Most money gets allocated for health care for the homeless in Albuquerque.
- *What is [DOH's Public Health Division's relationship] with the [behavioral health] statewide entity, OptumHealth?* The DOH tries to expand those services and integrate with other programs. It works with Project ECHO and several other organizations.
- *Is OptumHealth responsive?* The DOH has had lots of conversations with Optum Health. Each region has a series of points of contact around services. It is early [in the contract with OptumHealth].
- *How is Camino de la Vida in Las Cruces?* The DOH has received some calls from staff that the new director was not sensitive to the Hispanic community. The DOH has been concerned about significant changes in leadership with six executive directors in five years. It continues to struggle, and complaints continue.
- *Will you follow up and report? How many patients?* About 175 total patients, with 78 in Roswell and 325 in Santa Fe.

Tobacco Use Prevention and Control (TUPAC) Program Evaluation
Larry Elmore, Program Manager, TUPAC Program, DOH
(See handout.)

High school youth smoking dropped 6% between 2003 and 2007. The University of New Mexico (UNM) is going smoke-free on August 1, 2009. Ninety-two percent of New Mexicans are protected by strong clean indoor air laws.

A competitive RFP process and negotiation increased services for less money. TUPAC is meeting with health plans, and over 653 people who called the quit line have private health insurance. TUPAC is expecting over 1,000 individuals to receive services through private insurance.

The number of cigarettes sold per New Mexican fell from 54 in 2001 to 30 in 2003. Tribal sales were tracked starting in 2008. 2009 data on use will be collected. Expect the Dee Johnson Clean Indoor Air Act to have an effect alongside the federal and state tobacco taxes.
New Mexico is the third lowest state in addiction measures (e.g., number cigarettes smoked per day; number of daily smokers).

Questions/Comments included:

- *Has there been any concern from any providers about money matters and reimbursement invoicing?* Mainly, TUPAC has it right, but every now and then something arises.

- *In terms of program evaluations, does TUPAC do site visits and provide technical assistance?* TUPAC does site visits at least quarterly and makes monthly phone calls. It has a manual for contractors and each contractor has a monitor. Travel is more difficult because of funding. There are also monthly evaluation reports; TUPAC will not pay invoices until evaluation reports are received. TUPAC also started a professional training program. Turnover is an issue. The Public Health Division of DOH has the CDP and C Bureau, including Ms. Gabriele. TUPAC works with the obesity, breast and cervical cancer program. The CDP and C Bureau is trying to integrate a lot more. The CDC recommends this also.
- *Are you planning any NA programs?* There are eight northern pueblos, five Sandoval pueblos, Mescalero Apache, Navajo, Santa Fe Indian Hospital, Gallup Presbyterian Medical Services and Southwest Tribal Tobacco Coalition programs. TUPAC provides per diem and mileage to members. TUPAC is concerned because NA youth have higher and increasing smoking numbers. The RFP process provides an obstacle to tribes because they have to meet with leaders to get permission to apply, which delays the process. An extra month has been added to the RFP process. There are four trainings across the state to inform about the application process.
- *Does TUPAC work with the Corrections Department (CD) as prisoners are entering/exiting the system*? TUPAC has not worked with the CD.
- *We might ask the CD if it is doing anything to address [tobacco addiction].*
- *Is this part of the alcohol and drug prevention program integrated with tobacco prevention?* It is harder and harder to get into schools with specific curricula, so TUPAC has narrowed its approach to teaching life skills—drug use; sexual behavior; stress. TUPAC asks about alcohol use because of nicotine metabolism.
- *Are there any measures to address co-addiction?* We hear about practices such as cigars being hollowed out for marijuana use. TUPAC is not doing a comprehensive prevention and abuse program. TUPAC has environmental strategies available to anti-tobacco programs that are different (taxes, etc.). TUPAC is moving away from curriculum.

TUPAC Program Update
Alvin H. Warren, Secretary, Indian Affairs Department (IAD)
(See handout.)

TSROC funding of $500,000 has been allotted to the IAD for TUPAC. Native American youth have the highest cigarette use (31%).

The IAD is trying to make funds equally available to all 22 tribes. There were eight grantees: four mini-grants for $60,000; four responses to the RFP for $369,910.

There are $38,065 in reversions, a 2% decrease between FY08 and FY09. This is attributed in part to difficulty in intergovermental processes.

About 50% of NA communities served is funded through TCPP.

TUPAC was funded at $400,000 this year versus $500,000 last year. Keres Consulting has helped TUPAC to survey and evaluate grantees. Keres conducted site visits and informed communities and providers. Summer grantees present a problem because of co-existence with the change in fiscal years. TUPAC is still in process of awarding, but eight grants have been awarded.

Questions/Comments included:

- The Alta Vista Ranch's budget was reduced by $38,000 this year. It had a youth conference at the ranch. Concerns were raised with the protocols and possible prejudicial evaluations of Alta Vista. Some citations made by evaluators were untrue. It was cut $38,000 and likely had to cut staff; it was doing well and was still cut. There have been allegations of race and prejudice that must be supported. Confidence was expressed about the process used this year, especially with the involvement of Keres Consulting. There were issues identified that the director acknowledged. There was no prejudice whatsoever in fund allocation. Alta Vista tried to do its best with the 20% cut.
- Representative Begaye will email the committee and secretary the complaints he has received.

Federal Tobacco Legislation Update

Nathan Bush, Vice President of Government Relations, American Cancer Society (See handouts (2).)

New federal legislation, known as the Family Smoking Prevention and Tobacco Control Act of 2009, grants the federal Food and Drug Administration (FDA) authority over food and tobacco products. The Family Smoking Prevention and Tobacco Control Act requires manufacturers to disclose natural and added chemicals and any changes. The FDA is just now setting up a Tobacco Control Office, as product regulation authorities with the FDA. The FDA can dictate to tobacco companies ingredients and population effects can be evaluated. The FDA cannot ban all tobacco or require reduction of nicotine yields to zero, but can mandate that the level be non-addicting. However, states can prohibit the sale of tobacco products.

The act also clarifies advertising matters unclear since the Master Settlement Agreement.

What can states do?

- increase tobacco taxes;
- implement and enforce smoke-free laws;
- fully fund tobacco control programs; and
- restrict the sale and distribution of tobacco.

States used to be preempted from restricting advertising. Cannot permit states to restrict time, place and manner but not content of tobacco advertising or promotions (in accordance w/1st American).

There were no questions or comments.

Biomoda Update on Research
Richard Cervantes, New Mexico Institute of Mining and Technology
John Cousins, President, Biomoda, Inc.
John Garcia, Secretary, Veterans' Services Department
(See handouts.)

The panel informed the committee that it has only been about 15 months since it has been able to identify partners and implement its research. The panel has completed all of the intended tasks. It received no funding during the 2009 legislative session. It is hoping to get funding through the federal stimulus package: the American Recovery and Reinvestment Act of 2009 (ARRA). The panel requests the TSROC to support additional funding to meet program goals. Secretary Garcia believes this program could be a model for New Mexico. A lot of sampling has been done; this particular modality can have major implications. The federal Veterans Administration (VA) is interested. Iraq veterans have problems with inhalants. The partnership's contractual arrangement has ceased because there was no funding allocated in 2009 legislative session. It is currently searching for more funds.

Questions/comments included:
What has Governor Anaya's [of the New Mexico Office of Recovery and Reinvestment (NMORR)] reaction been regarding ARRA funds for these purposes? So far, NMORR has been unable to find research/development funds.

- *It appears veterans are getting radiology and being referred [for health care services] because of early detection.* Yes. Los Alamos technology used by Biomoda is being used; radiology is being used for comparison. Picture of glowing red cell in handout comes from one of the participants. These uses are not solely for detection of lung cancer.
- *Are there any ARRA funds for comparative effectiveness research being pursued?* Karen Wells of the Legislative Council Service identified it as belonging in both health reform bills and in the ARRA and perhaps through the CDC. There are measures of performance to offer the VA to identify special funding.
- *You may bring this to the economic development committee.* This is an innovative program. In order to create a bio-cluster, a critical mass is needed. The payroll was $500,000 last year. There are significant state taxes; we would like money to go back into the community.

Public Comment

Adjournment at 2:30 p.m.

MINUTES
of the
THIRD MEETING
of the
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE
August 28, 2009
Health Sciences Pete Domenici Center
North Campus, University of New Mexico
Albuquerque

The third meeting of the Tobacco Settlement Revenue Oversight Committee (TSROC) for the 2009 interim was called to order as a subcommittee by Representative Gail Chasey, co-chair, on Friday, August 28, 2009, at 10:20 a.m. at the University of New Mexico Health Sciences Pete Domenici Center in Albuquerque.

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

Absent
Rep. Gloria C. Vaughn

Advisory Members
Sen. Rod Adair
Sen. Sue Wilson Beffort
Rep. Ray Begaye
Rep. Karen E. Giannini
Sen. Linda M. Lopez
Sen. Mary Kay Papen

Staff
Sandy Mitchell, Staff Attorney, Legislative Council Service (LCS)
Michael Hely, Staff Attorney, LCS
Roxanne Knight, Researcher, LCS

Guests
The guest list is in the meeting file.

Copies of all handouts and written testimony are in the meeting file.

Committee Business
Representative Chasey welcomed committee members. Committee members and staff introduced themselves. Dr. Paul Roth, vice president of the University of New Mexico's (UNM) Health Sciences Center (HSC), and Dr. Richard S. Larson, vice president for translational research at UNM HSC, welcomed the committee.

Federal Tobacco Legislation Update

At 10:23 a.m., Nathan Bush, vice president of government relations for the American Cancer Society (ACS), gave a presentation regarding the new federal Family Smoking Prevention Tobacco Control Act (FSPTCA). Mr. Bush informed the TSROC that the FSPTCA grants the federal Food and Drug Administration (FDA) authority to regulate tobacco products. The bill had been before Congress for over a decade. Cigarettes' harm is well-established. Section 904 of FSPTCA requires disclosure of: all ingredients of cigarettes; industry research regarding health effects; and notification to the FDA of any changes to a product. Section 907 of the act holds that the FDA does not have authority to ban all cigarettes, smokeless tobacco or nicotine in tobacco products. There is federal preemption regarding limits on sales, marketing and promotions. New regulations may go as far as the free speech limit of the U.S. Constitution. The time, place and matter, though not content, of that speech may be regulated. The ACS has cautioned states about moving quickly on regulating commercial speech because, as yet, this is untested.

Mr. Bush offered to get experts in touch with legislators interested in consulting with the ACS on this subject.

Section 102 of the act concerns point-of-sale advertising. It limits the text to black and white and limits tobacco advertising in publications with "significant teen readership". There is debate as to the definition of "significant teen readership".

Section 906 of the act states that the federal secretary of health and human services may impose additional restrictions by regulation. Currently, the FDA is taking public comment on the implementation of regulations pursuant to the FSPTCA.

The old federal statute on cigarette regulation, which gave rise to mandatory warning labels on tobacco products, has been amended to provide for much more explicit warning labels. Fifty percent of cigarette packages will have a graphic warning label on the top half of the package.

Mr. Bush discussed the options state lawmakers have in regulating tobacco in this climate of preemption. The ACS suggests that legislators may:

- increase tobacco taxes and use the revenues to fund programs on tobacco use; and
- restrict sales at certain locations not already set forth in the FSPTCA.

Questions and comments included the following:

- *Are organizations commenting on FDA regulations pursuant to the FSPTCA?* Yes. The ACS wants to comment after public input has been made.

- *How can the public give input on FDA regulations pursuant to the FSPTCA?* Mail or email.

- *Does the ACS foresee any Commerce Clause problems with restricting the time, place and manner of tobacco marketing by the states?* Mr. Bush informed the committee that he would investigate this matter with ACS counsel.

- *What are "modified risk" tobacco products?* These products go back to 1970s to 1990s-era big class-action lawsuits. These are products labeled "light" or "low tar" cigarettes and now include smokeless tobacco. There are also breath-mint-like lozenges and smokeless tobacco that may be used without spitting.

- *What about electronic cigarettes?* Electronic cigarettes are vaporized nicotine inhalers without any tobacco. The FDA just issued a statement. Due to the FDA's oversight, much of state regulation on tobacco is not applicable. The FDA issued a statement saying these inhalers are NOT safe; chemicals in inhalants are harmful.

- *What are "adultered or misbranded" tobacco products?* Counterfeit cigarettes ("knock-offs") belong in this category (*e.g.*, a product sold as "Marlboros" that is not made by Phillip Morris). Phillip Morris would be a good authority on this.

- *Are the electronic cigarettes lit at the very tip?* Mr. Bush informed the TSROC that he has never seen these. These might be new cigarettes that claim to heat but not smoke the tobacco; they are heated but not lit. Mr. Bush suggested that, if any legislation were introduced to regulate this product, drafters might want to include this phrase. He explained that lower temperatures may be more dangerous because of smaller particles entering the system faster.

- *There was a request to see popular brand names for some of these products.* Mr. Bush is going to be presenting in Madison, Wisconsin, soon and may make all of these definitions clear.

- *Comment: demonstrations of these products would be helpful;* e.g.*, it was helpful when attorneys general provided charts. (Then-State-)Senator Tsosie brought in look-alikes for alcohol products.* Mr. Bush pointed out that New Mexico is not usually a test market for new products, so residents see them later than other states do.

- *With regard to the slide on page 4:*
  A. Does "more than 15 percent or two million" mean the greater of the two?
  B. Referring to the advertising restrictions in the FSPTCA, what is a "teen readership"? How is this reported? If a family subscribes to a magazine, how does the family isolate teens' access? Mr. Bush will investigate this matter. This is likely a regulation that is being developed by a federal executive agency. What has not been fleshed out is who will enforce the advertising rule. The FDA has a history of contracting with state departments of health and other enforcers. The committee will be informed.

- *Candy cigarettes: they are obviously set up to induce smoking among children. Is there any legislation about this?* Mr. Bush informed the committee that he believes a lawsuit is currently pending in Oregon, but that he knows of no legislation banning candy cigarettes in the United States.

- *Members exchanged ideas about where this candy is banned; some conjectured that Canada has a ban, and that North Dakota has a ban.*

- *What about on page 4 of the handout, giveaways and coupons? (Bullet 2, slide 1 on p. 4)* Mr. Bush alluded to coupons (Camel Cash, etc.) for smoking. Promotional products were addressed in part by the Master Settlement Agreement (MSA). New Mexico Attorney General Gary King filed a complaint against National Tobacco for having given away some promotional items.

- *Regarding page 3 of the handout, if states may regulate advertising outside of content, what are the legal views of the ACS for any Commerce Clause problems? When the MSA was being negotiated, the state was trying not to disadvantage its one local manufacturer, but the state was not allowed to favor an in-state manufacturer versus an out-of-state manufacturer.*

- *Page 8 of the handout reports that states are allowed to restrict tobacco sales. New Mexico does this already. Are locked cases in stores not a retail decision, or is it required?* The legislation was for a clerk-assisted sale — not for locked cases, but likely this is due to shoplifting concerns.

- *Regarding page 9 of the handout and Commerce Clause (of the U.S. Constitution) issues: states' attorneys general have developed model legislation based on the MSA. Attorneys general should develop model legislation pursuant to the FSTPCA.* Mr. Bush agreed.

- *If states tax too much, revenues will actually decline. Do the data support a raise in the tobacco tax?* Only a $.50 to $1.00 increase in the tobacco tax has been studied. Revenues from these taxes have always been a net gain. There is always the concern about where people will try to buy cigarettes alternatively. Since 2003's increase from $.21 to $.91, Mr. Bush saw that revenues increased substantially to $59 million to $60 million in state excise taxes, and numbers have held steady. States saw a big decrease when the Centers for Disease Control and Prevention (CDC) chartered a smoking survey that showed that people are smoking fewer cigarettes. Mr. Bush told the TSROC that he would send members data indicating a $40 million a year increase in revenue for the state from the latest tobacco tax increase.

New Mexico did not increase smokeless tobacco taxes, but revenues from smokeless tobacco increased from $3 million-$4 million to $5 million-$6 million, which Mr. Bush attributes to increased usage.

- *Do you follow lung-cancer statistics? As smoking rates are reduced, does this translate into less lung cancer?* Mr. Bush will supply CDC data showing that an increase in tobacco taxes correlates with fewer people smoking cigarettes. Mr. Bush told the TSROC that he did not know the lag time between a decrease in smoking and

a decrease in the incidence in lung cancer, but heart disease numbers may indicate good things for cancer statistics.

- *Comment: early detection advances may contribute to reductions in tobacco-related illness.* Mr. Bush informed the TSROC that the Taxation and Revenue Department has legislation to track tax-free cigarettes. The department has linear tracking as to how many tax-free cigarettes are sold by tribes.

- *Regarding the $59 million-$60 million net from tobacco tax revenue — is this earmarked or going to the state's general fund?* Mr. Bush suggested that staff should investigate this matter.

With the arrival of several committee members, a quorum was achieved at 10:45 a.m.

The University of New Mexico Health Sciences Center Performance Report

At 11:15 a.m., the UNM HSC Executive Vice President for Health Sciences and Dean of UNM's School of Medicine, Dr. Roth, gave an HSC performance report.

Dr. Roth praised the legislature's move to use tobacco settlement funds to fund a great deal of clinical, instruction and general programs at UNM. He began by discussing UNM HSC's participation in the Area Health Education Centers (AHEC) program, which he characterized as a popular program that receives federal funding. Usually, AHEC representatives appear at schools of medicine, though they support allied health professional students. The AHEC promotes health care work force pipeline programs and provides middle and high school students with health career information. There is a northern AHEC, southern AHEC and a UNM HSC AHEC.

Next, Dr. Roth gave an overview of UNM HSC's Center for Telemedicine, whose director, Dale Alverson, has been active in building telehealth and telemedicine programs.

The Los Pasos program uses state dollars, which have supplanted lost federal dollars, to work with high-risk families in order to prevent child abandonment, abuse and neglect. It is a home-based program that monitors the development of children and supports parents in eliminating substance addiction.

UNM HSC's Poison Control Center serves New Mexico and nearby communities in neighboring states. The major impact is that it allows people to get advice over the phone and avoid emergency room visits. The center reduces morbidity and mortality because it offers timely information. The TSROC helped address salary issues with the 16.5 full-time employees (FTEs).

UNM HSC's pediatric oncology program is the only one in the state. It employs roughly 14 FTEs, who are supported through state funds. The program is trying to raise more money through its development program.

The Specialty Education Pediatric Trauma Center has unfortunately seen business increasing in recent months. The TSROC funds are responsible in part for the center being able to bring in more trauma surgeons and to train future surgeons. The center needs to bring in more faculty for this program. Funding for medical school is not done through the funding formula.

Questions and comments included the following:

- *Regarding Casa Esperanza, the home where individuals with cancer from outside Albuquerque and their families stay during treatment in Albuquerque, is it only charity-supported? Are any state funds used by Casa Esperanza? It's free to families, right?* Dr. Roth does not know the details of Casa Esperanza's funding. This is highly dependent on private donations. Casa Esperanza is designed to accommodate families who have children with cancer.

Staff from UNM's pediatric oncology program go throughout the state to help families manage care in local communities. UNM HSC develops relationships with local providers and general internists who may be able to pick up treatment. Periodically, they return to Albuquerque for testing, etc.

- *How are Los Pasos sites selected? How is money used?* Dr. Roth does not have detailed information on this. Historically, it began in southeast Albuquerque and the south valley of Albuquerque, and the program expanded gradually. The details of the treatment plan are not known, but Dr. Roth can get this information to the committee. As the years went on, the federal government reduced and eliminated funding, so state funds replaced the federal money lost.

- *Regarding UNM's pediatric oncology program, how are children brought in from other areas of the state?* When children are referred by providers throughout the state, they are brought to Albuquerque for an initial evaluation and they begin their initial treatment in Albuquerque. They return to their local communities for continued treatment.

- *Is the incidence of cancer growing among children?* Dr. Larson says the rate is flat, but grows with the population.

- *On page 6 of your handout, you list the distribution of TSROC funds. How does UNM HSC distribute the money?* UNM receives this funding like any other state funding: it receives it as a single bonus at the beginning of the fiscal year (July 1).

- *Providers do not see funds for a long time after funds are allocated. The Department of Finance and Administration (DFA) says it can only go back a month. If a contract is signed in August, the month of July is lost. This problem is being experienced by the Indian Affairs Department. Is it happening here?* It is different with contracts than with appropriations. There are about $18 million in funds through contract services with the Department of Health (DOH). The contract piece has been very difficult. There were delays in signing the contract. Dr. Roth pointed out that appropriations to

UNM do not revert under most circumstances, but when it initially receives new funding, there is reversion language.

- *Who is the fiscal agent for appropriations? UNM?* The state will appropriate to various agencies, who will then contract with UNM. Funds should flow as described earlier between the state and agency, but the processing of individual contracts goes through the agencies. UNM expends a "huge amount" of effort making sure contracts are signed with the DFA.

- *Regarding Los Pasos: are there any policies or regulations on the funding? Are these nonprofits or UNM?* It is a UNM-funded organization, not an outside organization. Money allocated for Los Pasos must go only to this program.

- *What happened to the Milagro program?* Dr. Roth informed the committee that Milagro and Los Pasos were very similar programs. Milagro treated drug-dependent pregnant women; Los Pasos treats mothers and children after birth. Much of Milagro's functions have been subsumed in the UNM Obstetrics and Gynecology Department. Dr. Roth told the committee that he would follow up and provide the staff with further information.

- *Please tell us about UNM's Center on Telemedicine organization.* Dr. Roth informed the committee that the center creates the infrastructure — hardware connectivity — the highways on which individual programs travel.

- *UNM is a member of the AHEC; is this a good way to initially spot students for health career programs?* AHECs have historically been based around nursing. There are recruiters that go out to all New Mexico high schools. There is also BA/MD program promotion.

- *Is AHEC a physical center? Is patient care delivered?* It is a physical site — in Las Cruces (NMSU) and in Las Vegas. It is education provided to high school and college students. The AHEC serves as a great entry into those communities to arrange for housing and other services.

Biomedical Research at UNM

Dr. Larson testified to the committee regarding UNM HSC's success over the last several years in getting federal dollars. It is viewed as a model biomedical research program for how to promote health care and act as a local economic engine.

UNM HSC's fund strategy has been to "build a state highway on which to move federal monies into the state". The TSROC has appropriated funds to pilot funding and core facility support.

UNM HSC is having great successes in technology development; *e.g.*, scientists at UNM have invented a hand-held device to diagnosis lung disease or infection, which is adapted to

diagnose H1N1 flu. This technology is more advanced than Biomoda's. This is all the result of investing $50,000 in 2003 in pilot funds.

Clinical trials at UNM HSC provide over 100 therapies otherwise unavailable in New Mexico, including a new oral drug to help stop smoking.

- *What percentage of people on trials survive?* Dr. Larson informed the committee that the answer depends on what the disease is.

The TSROC funded a few jobs directly (around 62) in 2009, but a lot of jobs indirectly (1,219 in 2009). Within the last five years, 758 new jobs in private industry have been developed as the result of new technologies (see page 22, handout).

The Clinical and Translational Science Center (CTSC) is a name mandated by the federal government, which has contributed greatly to the CTSC. It allows UNM HSC to move new therapies from the lab into practice much more quickly. What the cancer center has done for cancer, UNM wants to do with all other diseases.

UNM has increased federal, private foundation and private industry funding for biomedical research in New Mexico to $137.5 million, an increase of $ 3.5 million from 2008.

Questions and comments included the following:

- *Referring to page 24 of your handout, is this what UNM has to do to get the designation as a CTSC?* The federal government requires an investment over a period of years. UNM has not requested additional state funds for the CTSC because of the use of federal and other funding. However, existing TSROC funds are crucial.

- *Are tobacco settlement funds designated by law to biomedical research? Is there any other biomedical research competing for MSA funding?* TSROC funds are a single allocation; UNM does not compete on an annual basis.

- *It is quite imperative that the legislature fund this program because of all of the federal leveraging, is it not?* Yes.

- *Biomoda: the TSROC has supported Biomoda. What do you think about its work?* Dr. Larson pointed out that even though there are competing technologies, these technologies should be developed alongside each other so that the best technology results. Biomoda's work is for screening, not diagnosis. Diagnosing flu is exact, whereas cancer is screened, not diagnosed, with this type of technology.

- *Please discuss UNM's work in genomics.* UNM can put all 54,000 genes in a human body on a chip; the facility can analyze all of these in a matter of moments. UNM uses that to figure out what genes predict breast cancer, for example. UNM scientists discovered that they could predict a small percentage of children who would not respond to chemotherapy

if they have leukemia. This helps save children and families from the tribulation of going through chemotherapy before learning that it would not work.

- *What does bioinformatics mean?* It means the application of information technology to medicine, in this case. It is used to look at data, for instance, to see when physicians order too many or too few tests.

- *What does epidemiology mean?* It is study of what happens in a population to try to understand what exposures there are, etc.

- *Have you heard reports that the best therapy for diabetes is nopal?* Some drug therapies are more directed at unusual situations. They are trying some very unusual substances for snake bites. There are some trials using nutriceuticals such as nopal.

- *Comment:* Remedios *are known to our communities; Hispanics use them regularly.*

- *Has there been much focus on early detection?* UNM's overall research mission emphasizes prevention; hence the prevention research center at UNM. Some are drug-based; others intervention-based. Project CHILE is changing behaviors among fourth graders by showing the risk of obesity and reversing that. There are school interventions throughout the state.

There is a program working with adults at the Pueblo of Zuni, which looks at changes in young adult behavior to prevent renal diseases.

TSROC funds support prevention research.

- *What about screening versus prevention — when disease occurs despite prevention efforts?* Screening technologies are generally failed diagnostic technologies; they screen because they are not precise enough to diagnose.

- *Does UNM HSC disseminate to the technical community needs for certain technologies;* e.g*, the syringe invented at UNM HSC, which is usable one-handed?* Dr. Larson answered that UNM HSC facilitates this dissemination, but does not itself disseminate this information.

- *Comment: regarding page 21 of the handout, which discusses small cuts to state government being unwise when so many jobs are created through state funding. The legislature is trying to avoid job loss and it is good for the Legislative Finance Committee (LFC) to know this. Page 21 demonstrates this.* Drs. Larsen and Roth agreed it is a good idea to present this information to the LFC.

- *Will you provide the details regarding site selection, funding sources and types of treatment plans devised for families in the Los Pasos program?* Dr. Roth agreed to provide this information to committee staff.

Approval of June and July 2009 Minutes

Upon a member's motion, seconded by another member, the minutes from the June and July 2009 TSROC meetings were adopted unanimously.

Lovelace Respiratory Research Institute (LRRI) Performance Report

At 12:45 p.m., Robert W. Rubin, Ph.D., president and chief executive officer of LRRI, made a performance report to the TSROC. According to Dr. Rubin, there are 100 Ph.D.-level scientists doing lung research at LRRI. It is turning down research requests because it cannot even keep up with demand. Clients include federal national institutes for health and over 200 pharmaceutical and trade associations for respiratory disease biotechnology.

TSROC funds are the only funds received from New Mexico sources.

The LRRI has done research that will likely reduce the push for "reduced-harm cigarettes". It will not likely be able to show any benefit from using these products.

The LRRI is interested in developing new therapies for people with lung disease and creating technical jobs in New Mexico by leveraging state money for federal funding. It wants to prevent chronic obstructive pulmonary disease (COPD) and lung cancer.

Every year smoking is implicated in more diseases, reported Dr. Rubin.

The LRRI is currently testing 130 new therapies for COPD and emphysema.

Questions and comments included the following:

- *Now that the LRRI has examined genetic susceptibility to disease, can people start getting diagnosed?* The LRRI has licensed to biotech companies technologies for kits for self-diagnosis; these are already being used in Europe and undergoing review in the U.S. One can take a cheek sample and mail the swab to a biotech company in California, and for $100, screen for susceptibility.

- *Regarding the handout, on page 13: the LRRI is transferring technology to biotech and pharmaceutical companies. Will there be any companies in New Mexico receiving this technology?* Dr. Rubin answered that there would not be any companies in New Mexico receiving this technology because biotech in New Mexico is "tiny". New Mexico is superior in engineering technology, and biotechnology may not be developed.

Dr. Tesfaigzi of the LRRI testified about a study of smokers that focused on quitting, diet and lung function. The study established two things, which were unexpected results: Hispanics in general have less susceptibility than other ethnic populations to developing COPD. Yet, Puerto Ricans showed a higher risk of developing COPD. New Mexico offers interesting opportunities because of the high percentage of Hispanics in this area. It is a population unique in the world, affording an opportunity to compare Hispanics and non-Hispanic whites. This study opened a new study regarding genetic differences. The findings also showed that burning wood in the

home does not predict COPD, and that leafy-green vegetables may help reduce risk of lung disease.

- *Have* remedios *been studied?* Dr. Tesfaigzi answered that in order to study the efficacy of these folk remedies (*remedios*), one has to study whether any correlations exist first. Then one conceivably has to do experiments, though it will cost too much to do an experiment. A researcher can give the remedy to people or to animals. If there is an effect and a correlation, there is proof. Also, it is difficult to do a study of folk remedies in a small population.

The LRRI's focus has been on early detection: looking at people susceptible to developing a disease and investigating which genes make people susceptible to disease. The LRRI's focus has come to the stage when it is looking at genetic associations.

- *Is there a 10:1 ratio above base funding required? Is the funding ratio kept at 10:1 in order to avoid losing independence from private companies?* Dr. Rubin did not think the LRRI is in danger of losing any independence if it retains a wide diversity of clients; LRRI's clients are often in competition with one another. The LRRI does try to keep it at about 50:50 public-private ratio for reasons of stability.

- *Now that information will be available about ingredients in cigarettes as a result of the new tobacco legislation, are you looking at what ingredients are in the products used by your subjects?* It is difficult to have enough assurance that a particular effect is trackable in a population of 2,100 people. However, if a product chemistry is changed, the LRRI can ask its subjects to report this change, and the LRRI can test for changes in blood chemistry. It is very complicated. If a reduced-harm product comes out, the LRRI will definitely start identifying users to see if there is a change in their physiological status.

- *Does loyalty to a particular brand show differences?* Dr. Rubin explained that the LRRI does not know what the differences between brands are, but he guessed that scientists would need a larger sample of smokers in order to demonstrate differences.

Breast and Cervical Cancer Program

Julie Weinberg, deputy director of the Medical Assistance Division (MAD) at the Human Services Department (HSD), and Virginia Alcon, staff manager of the MAD breast and cervical cancer (BCC) program at HSD, gave a presentation on the BCC program. The HSD oversees BCC eligibility, while DOH implements the clinical aspects.

The BCC program was implemented on July 1, 2002, after the BCC Prevention and Treatment Act was passed by Congress to allow Medicaid coverage for BCC, as it is an optional coverage under federal regulations. All 50 states opted in. Every program has to follow a state plan amendment to make it an entitlement.

The DOH starts by screening women who meet the CDC program financial eligibility criteria; they must be screened and diagnosed by a DOH-contracted provider. Otherwise, a patient is not eligible for the BCC program.

- *Can someone get a non-DOH screening and then be rescreened by the DOH?* If diagnosed by a non-DOH provider, a person is not eligible for the Medicaid program. Based on data, the program is funded to serve 15% of eligible women in New Mexico. Of the 15% diagnosed, 21% are found not eligible for Medicaid for other reasons. It is assumed that approximately 62 women will be diagnosed; 85 will be diagnosed in the program but 12 to 19 women will not be eligible for Medicaid. While 350 women might be diagnosed; approximately 60 will not be eligible for Medicaid.

Here is a summary of the eligibility criteria for inclusion in the BCC program.

- The patient must have been diagnosed by a DOH provider and by no other.
- The patient must be uninsured; Native American women are included, because Indian Health Service is not "insurance".
- The patient must be under 65 years old.
- The patient must have an income below 250% of the federal poverty level (FPL).
- The patient must be a citizen of the United States.
- When the DOH determines Medicaid eligibility, the patient may be enrolled using a presumptive eligibility process for access to services as quickly as possible.
- There is no assets test; only an earned income test at 250% of the FPL with a 12-month certification.
- Patients receive the full Medicaid benefits package, not just cancer benefits.

- *Why do some counties with only small percentage of New Mexico's population show an incidence of breast cancer that is so much higher than the county's population?* These numbers reflect the fact that this a poverty program and those are high-poverty areas. The rates of diagnosis might also be higher in the BCC screening program than the average population because the program is building awareness in providers to look for uninsured women and emphasizing that these private providers should not diagnose their patients who may qualify for the BCC program, but send them to the DOH providers who can diagnose BCC.

- *Do these numbers reflect the total number of diagnoses and referrals to the BCC program?* Yes.

- *Out of all the people diagnosed in New Mexico with BCC, what percentage is diagnosed by a DOH-contracted provider?* The DOH will later provide this information to the TSROC.

- *How many women screened in Bernalillo County reported to the BCC program? How many were diagnosed? Why do the FY 2007 numbers in the handout not add up to 92%?* The DOH or the HSD will look into these matters and follow up with information.

- *At what FPL would non-pregnant women be qualified for Medicaid?* Family planning services are the only category for single non-pregnant women. The income limit for pregnant women and children is 133% of the FPL.

- The BCC waiver was supposed to increase eligibility. Women who qualify for regular Medicaid do not need the BCC program because these women are already insured. The BCC program is for higher-income women who do not qualify for Medicaid; i.e., women whose income is as high as 250% of the FPL.

- *When is treatment considered to be "concluded" in the BCC program? What about relapses; do they require re-enrollment?* It would be based on the doctor's determination as to when the cancer is considered to be in remission. When the cancer does not return, the patient is considered treated and the treatment is concluded. Dr. Cameron at the DOH is knowledgeable on this subject and does recertifications. If a woman has a relapse and is still eligible, she can come back so long as a physician states that she needs surveillance.

- *Is the federal match (FMAP) high for this program?* The panel informed the committee that, yes, the FMAP is higher than for regular Medicaid. The BCC program receives an "enhanced" FMAP of just under 80%.

- *A TSROC member requested the panel to provide figures to the TSROC regarding the diagnoses of breast and cervical cancer by county.*

Adjournment and Tour of the UNM Cancer Research and Treatment Center

At approximately 3:00 p.m., the committee adjourned. Some members of the committee toured the new UNM Cancer Research and Treatment Center, led by Donald Whitehead, clinical services administrator, UNM Cancer Center.

UNAPPROVED MINUTES
of the
FOURTH MEETING
of the
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

September 24-25, 2009
State Capitol, Room 311

Present
Rep. Gail Chasey, Co-Chair
Sen. Mary Jane M. Garcia, Co-Chair
Sen. Dede Feldman
Rep. Danice Picraux
Rep. Gloria C. Vaughn

Absent
Sen. John C. Ryan

Advisory Members
Sen. Rod Adair
Rep. Karen E. Giannini
Sen. Linda M. Lopez
Sen. Mary Kay Papen
Sen. Sue Wilson Beffort
Rep. Ray Begaye

Staff
Sandy Mitchell, Staff Attorney, Legislative Council Service (LCS)
Michael Hely, Staff Attorney, LCS
Roxanne Knight, Researcher, LCS

Guests
The guest list is in the meeting file.

Handouts
Copies of all handouts and written testimony are in the meeting file.

<u>Thursday, September 24</u>

Committee Business
The fourth meeting of the Tobacco Settlement Revenue Oversight Committee (TSROC) for the 2009 interim was called to order as a subcommittee by Representative Chasey, co-chair, on Thursday, September 24, 2009, at 10:12 a.m. in Room 311 of the State Capitol in Santa Fe. At 10:34 a.m., a quorum was achieved.

Update on Legislation, Litigation and Arbitration from the Office of the Attorney General
Deputy Attorney General David Thomson introduced himself and Attorney General's Office staffers Nan Erdman and Claudia Ravenelli. He informed the committee that he intended to cover several issues previously raised by committee members.

First, Mr. Thomson informed the committee that tobacco manufacturers have filed suit against the federal government in a case titled *Commonwealth Brands v. U.S.A.*, alleging that the new federal Family Smoking Prevention and Tobacco Control Act (FSPTCA) violates the tobacco manufacturers' constitutional rights by restricting certain commercial speech, such as the provisions that prohibit the use of colored lettering and other advertising restrictions. The tobacco manufacturers argue that anti-tobacco messages and the shocking imagery that the FSPTCA mandated upon the top of cigarette packs inhibits their ability to communicate with adult consumers.

The New Mexico attorney general may file an amicus — friend of the court — brief alongside other states' attorneys general, via the National Association of State Attorneys General, in this matter. The attorney generals' concern is with health. At this early stage, 10 states have joined.

Mr. Thomson then provided an update on federal arbitration. New Mexico is in a dispute with a number of tobacco manufacturers regarding what they owe the state for 2003, and this matter has been referred to arbitration. The tobacco manufacturers argue they owe less than New Mexico demands because the state has not enforced the Master Settlement Agreement (MSA) against nonparticipating manufacturers. Mr. Thomson explained the arbitration process to the committee. He informed the committee that three arbitrators will be picked on November 1, 2009. It will be a full trial-like adjudication and an enormous, costly task, according to Mr. Thomson. The arbitration will likely go forward after July 2010. Mr. Thomson is serving on a negotiating committee as to the arbitration process. He predicts a three-month arbitration. Two former White House counsel are opposing Mr. Thomson. It may be a regional arbitration, dividing the country into sections; or it may be national, meeting in a larger city. Due to the size of the litigation, it will likely be in a number of locations.

New Mexico believes it has enforced the MSA. The tobacco manufacturers must show that New Mexico has been noncompliant. New Mexico is also a plaintiff, alleging that tobacco manufacturers have themselves breached the MSA.

Compliance with the MSA is a quasi-strict-liability situation. New Mexico gets a portion (an "allocable share") of the annual tobacco settlement payment. Each state will be separately determined to have either complied or not. One possible outcome could be that a state loses its entire allocable share. If New Mexico is found to have not been diligent, the state must pay back a portion of the tobacco settlement money it received in 2003.

Tobacco manufacturers are trying to recover what they have paid to states. Participating manufacturers signed a contract with the MSA. In negotiations, New Mexico had taken the position that nonparticipating manufacturers are still causing harm and must make restitution for Medicaid costs, etc., incurred by states as the result of their residents' use of nonparticipating tobacco manufacturers' products. Nonparticipating manufacturers must deposit money into escrow, make it secure and accurately account for the amount of sales in the state. If a state wants to recover that money, it is there.

The arbitration in which New Mexico is currently a party is with participating manufacturers. New Mexico and the other states in the arbitration must show that participating manufacturers are on a "level playing field" in the market shared with nonparticipating manufacturers; *i.e.*, that the states' actions have not placed the participating manufacturers at a disadvantage for complying with the MSA.

New Mexico's compliance through legislation was explained. State attorneys general had recommended that each state pass model legislation to comply with the MSA. For example, Representative Chasey carried a bill that requires stamps on all cigarettes, whether tax-free sales or not. As one bill was not passed until 2009, the participating manufacturers may argue that New Mexico did not comply until then, but they will always devise an argument that the state is not complying. Mr. Thomson said that the requirements are always accelerating like an "arms race". In the first regular legislative session of 2009, the legislature passed Senate Bill 219, as amended, sponsored by Senator Howie C. Morales, which sought to strengthen the enforcement of and clarify New Mexico law relating to the MSA. The major issue was that if products are stamped, nonparticipating manufacturers must pay into escrow, which is a mere clarification of what the attorney general already believed to be true. A committee member explained that participating manufacturers were not opposed to the bill in the 2009 regular session, but nonparticipating manufacturers wanted to defeat the bill. One nonparticipating manufacturer had a concern that by making this requirement, the cost of product would increase and it would run it, New Mexico's only tobacco manufacturer, out of business. The effective date for Senate Bill 219 was July 1, 2009.

A lot of manufacturers have increasingly requested tax-exempt stamps. The attorney general plans to use additional subpoena authority to determine whether certain tobacco manufacturers have complied. The main concern is that it would present a burden to small business and an advantage to scofflaws. The Attorney General's Office audits these reports independently of taxation and revenue, though it reviews the Taxation and Revenue Department's (TRD's) audit as well. It also looks at every manufacturer's report and takes action against violators.

In response to a question about what New Mexico had done to comply in 2003, Mr. Thomson stated that he could not disclose work product, but that the attorney general believes the state complied with the MSA.

A question was posed as to whether New Mexico is still receiving its share of payments pursuant to the MSA. Mr. Thomson explained that it is, but the amount received in 2003 is being disputed in arbitration. It has taken a while because of procedural concerns with arbitration. The years 2004 through 2007 are in dispute as well. The concern is that New Mexico will have to repay its 2003 allocation.

The committee discussed the effect of the size of the pool of MSA states participating in arbitration. If some states have a judgment against them and some do not, the pool may be smaller. New Mexico's portion of the MSA payments would thus be deemed to be smaller, and the state would have to repay some of the payment it received up to its allocable share. If New Mexico is among five states that were found noncompliant for $50 million, for example, then it

would be responsible for repaying one-fifth of the $50 million ($10 million). If New Mexico is among 10 states that are found noncompliant, then its obligation will likely be less.

When asked about the cost of the ongoing arbitration, Mr. Thomson replied that New Mexico is paying $1 million for the arbitrators alone, and the Attorney General's Office has requested $300,000 in supplemental funding from the Legislative Finance Committee (LFC) to cover these costs. The National Association of States' Attorneys General did test trials, looking at factors such as whether a state dedicated part of the settlement money to its attorney general for enforcement.

A committee member remarked that New Mexico cannot use MSA funds to pay for arbitration costs because statute restricts use of the money. However, the state can use general fund money for costs. The attorney general has requested an appropriation for a full-time tobacco attorney.

The state's communication with Indian tribes, pueblos and nations (tribes) was discussed next. It was explained that the tribes did not, as a whole, oppose the tax stamp legislation when it was passed. There was concern about providing an advantage to nonparticipating manufacturers, and thus the TSROC met with the tribes and consulted with states that had entered into agreements with tribes. The tribes told the legislature they did not want legislative involvement but government-to-government interface. In Arizona, the tribes impose a tax, and they may keep it or share it with the state. New Mexico made a commitment to the tribes that it would not pass anything requiring tribes to tax tobacco.

Since the 2009 regular session, the Attorney General's Office has met with the governor's counsel, which believes this to be a sovereign-to-sovereign issue and not something with which the attorney general should be involved, though the Attorney General's Office offered assistance to the governor's counsel. Mr. Thomson explained that the Attorney General's Office has developed informal relationships with tribes that have been very fruitful. It offered its directory of manufacturers to the tribes.

Tribes agreeing to the MSA get additional revenue. There are circumstances in which tribes have a stamp that they retain. New Mexico uses a tax-exempt stamp to identify products and track the escrow payments that manufacturers make.

Mr. Thomson then discussed the amount of revenue available to New Mexico if it prosecuted the nonparticipating manufacturers for violations of state law. He explained that the Attorney General's Office does not enforce the tax code; it enforces the escrow statute. The Attorney General's Office believes that, for those circumstances when it brings lawsuits to recover the escrow for those manufacturers not stamping tobacco products or not paying into escrow, there is a direct revenue correlation: New Mexico gets neither tax revenue nor escrow. The Attorney General's Office has referred a "considerable" number of these cases to the TRD. When asked for clarification on this considerable number, Mr. Thomson estimated that this year, there may have been three fairly substantial cases referred to the TRD. The Attorney General's Office does not know how many cases the TRD has sought to prosecute. If the TRD can collect, it would be in

the area of tens of millions of dollars. Mr. Thomson stated that the Attorney General's Office has a good relationship with the TRD and that the Attorney General's Office encourages its focus upon tobacco enforcement because of "significant" revenue loss due to misapplication of stamps. The Attorney General's Office has provided a list (see tab 2, handout) of its civil litigation efforts.

The state does not use the money placed in escrow unless down the road it sues manufacturers to recover the funds held in escrow. Tobacco manufacturers can recoup their interest annually and recoup the principal after 25 years. After this arbitration ends, the Attorney General's Office will consider whether the state should go after these manufacturers.

A question was asked as to where the nonparticipating manufacturers are and whether any are Native American companies. The Attorney General's Office attendees replied that most manufacturers are New Mexico corporations and are not Native American-owned. The Attorney General's Office asked in this legislation that the manufacturers designate an agent to be sued. A lot of these were foreign manufacturers, against whom the law is impossible to enforce. The Attorney General's Office can actually ask for a bond up front until it trusts that the escrow payments are made. One corporation is Canadian; another is New Mexican; a couple are in New York state; one is in South Carolina; and some are overseas.

The Attorney General's Office will be filing two new actions to collect escrow and penalties from two tobacco companies that have significant escrow obligations and, the Attorney General's Office believes, tax liability. This contradicts what some tobacco manufacturers claim when SB 219 was being debated in the 2009 legislative session: that the state is not enforcing the MSA or the law pursuant to it.

A discussion ensued regarding the applicability of some federal contraband legislation that New York City is using against tobacco manufacturers. The Attorney General's Office representatives explained that New York City is "unique in many ways" and has its own separate cigarette tax; an individual purchasing cigarettes in New York City pays a state tax, a federal tax and a city tax. Contraband is flowing into New York City, according to the Attorney General's Office. When people are dealing in contraband, their reward increases because they are not paying those taxes. In a recent case, *City of NewYork v. Golden Feather*, New York City sued a tribal smoke shop for violation of the federal contraband act. The city was granted an injunction. New Mexico has not made an independent assessment as to whether to use this federal statute.

A legislator made the observation that New York City appears to be doing a better job on reducing youth smoking. The Attorney General's Office representatives explained that price is an essential factor in curbing youth smoking. New Mexico has one of the lower tobacco tax rates and has a long way to go to reach New York City's tobacco tax rate. There is a correlation between lower youth smoking and the tax rate. As usage drops, the Attorney General's Office predicts that the anticipated effect will be lower payments to states because of lower smoking rates.

A committee member observed that the most effective way to reduce youth smoking is increased taxes, according to the federal Centers for Disease Control and Prevention (CDC). Yet,

higher taxation provides an advantage for illegal sellers, as the reward to scofflaws who evade these taxes is increased. The Attorney General's Office and the TRD must be commited to enforcing the tobacco regulation and tax laws.

Attorney general opinion request: A legislator had requested an opinion by the Attorney General's Office, to which Mr. Thomson explained it was not able to respond because of pending litigation and investigations.

In the handouts, tabs 3 and 4 are indictments from the State of Washington. Paragraph 20 addressed conspiracy regarding certain activities that occurred in New Mexico. This delves into the issue of a federal trade zone — whether there were civil or criminal liabilities for individuals bringing in non-directory product. The Attorney General's Office is looking carefully at these cases.

New issues relevant to tobacco use cessation:

1. Electronic cigarettes. These are battery-powered devices delivering a vaporized nicotine solution. It is a reasonable argument that these are not cigarettes because they do not contain tar and do not emit smoke. It is debatable whether current law allows regulation of these. Advertisements call them smoking cessation products, with which Mr. Thomson disagrees.

The federal Food and Drug Administration (FDA) has issued a warning against using these and to watch for children's use.

2. Baggies. Now cigarettes are put into groups in bags, and one cannot identify a manufacturer on the bag. These are sold at flea markets, etc. There are concerns about the volume of these.

3. Internet sales. The Attorney General's Office may want to introduce legislation prohibiting internet sales. It investigates which internet companies are selling products to noncompliant vendors and contacts them. The representatives from the Attorney General's Office explained that New Mexico may need to expand this practice.

2010 payment projections. The Attorney General's Office's most conservative estimates include the scenario in which all of the participating manufacturers withhold what they are entitled to withhold or put in disputed payment accounts. They are disputing the years 2003 through 2007, so the office believes they will do so. Based on that, New Mexico's allocable share will be approximately $33,925,000. The Strategic Contribution Fund, to which New Mexico is entitled as a first MSA party, will provide around an additional $7 million. Inflation, usage and bankruptcies among manufacturers (coming out, going in) are all factors that may increase or decrease these numbers. The Strategic Contribution Fund sunsets at some point. Last year, it provided roughly $6 million.

Federal CDC Recommendations and Performance of New Mexico

At 11:30 a.m., Cynthia Serna, regional grassroots development director of the American Cancer Society, made a report about new CDC recommendations and how New Mexico has measured up vis a vis CDC recommendations. The Children's Health Insurance Program (CHIP, formerly known as the State Children's Health Insurance Program or SCHIP) expansion included a $.62 per pack tax increase. This is important for decreasing tobacco use. While the tax increase was a federal initiative, tobacco manufacturers' price increases have also helped.

Ms. Serna discussed the FSTPCA passed in June 2009, giving the FDA regulatory authority over tobacco products. She stated that federal health care reform bills currently under debate may have an effect upon tobacco use cessation. There is talk of requiring insurance companies to provide preventive services with no cost-sharing for enrollees; these preventive services would likely include cessation drugs in formularies.

There is a funding opportunity pursuant to the federal American Recovery and Reinvestment Act of 2009 (ARRA) stimulus bill for a new communities putting prevention to work program in New Mexico. It is a very competitive selection process for seeking $373 million, and a very limited number of grants will be provided. There is a limit of 30 possible programs to be awarded. It is also open to cities, counties and tribal entities. Larry Elmore anticipates applying for a grant, which lasts for two years. The CDC is administering this program and has made it clear that the CDC cannot supplant existing funding. CDC money cannot be used for things like nicotine replacement therapy.

The CDC has outlined four main goals (see handout; p. 2, slide 3) that are supposed to maximize interventions to reduce use. Their initial 1999 document recommended that New Mexico make a minimal investment of $13.7 million; they changed this upon revision and looked at best practices costs in specific states (cost of media, etc.). New Mexico should invest $23.4 million a year on five categories, which is $11.95 per capita. Thus far, New Mexico has done a pretty good job; the Department of Health (DOH) regularly examines how it allocates money. When the DOH felt that youth use was leveling, it shifted additional funding into youth-focused media. It also has a free help line. CDC money cannot be used for nicotine replacement therapy, but the DOH funded nicotine replacement therapy and used the CDC funds in media campaigns, which increased the calls to the help line.

The DOH's Tobacco Use Prevention and Control (TUPAC) program funding shifted considerably after the Dee Johnson Clean Indoor Air Act passed. The DOH is seeking to address disparities, some of which arise because tribes are not covered by the Dee Johnson Clean Indoor Act. Therefore, the DOH allocated more money to tribal efforts.

New Mexico funding for tobacco programs is around 40% of the CDC's recommendation.

The coalition supports current-level funding for fiscal year 2011, but would like to increase the funding if the economy improves (see letter in handout folder). It also wants a tobacco tax increase to supplant continued diversion of tobacco settlement money.

New Mexico is thirty-first among the states in tobacco taxes.

There are 33 states that have passed strong statewide smoke laws, most recently in North Carolina, which is a major tobacco-producing state.

The presenters drew the TSROC's attention to a one-page FSPTCA summary as well as extensive discussion of FSPTCA provisions and their effects. They also noted that page 13 of the slide handout shows the implementation time line.

Ms. Serna noted the September 29, 2009 deadline for public input on FDA rulemaking.

The CDC advises a cautious approach to introducing legislation because of potential national legal challenges. While the FDA has authority to regulate tobacco, states still have the responsibility of enforcing state laws.

Revenue Projections

Tom Clifford, chief economist with the LFC, testified regarding revenue projections. Mr. Clifford reminded the committee that the MSA was signed in 1998; the agreement was between four of the larger tobacco manufacturers to compensate states for tobacco-related expenses. Payments pursuant to the MSA are made in perpetuity.

In 1999, the legislature passed Sections 6-4-12 and 6-4-13 NMSA 1978 so that the state complied with the MSA. Tobacco manufacturers had the choice of paying pursuant to the MSA or paying an equivalent amount in escrow until states win a settlement within 25 years.

Any funds received are desposited in the Tobacco Settlement Permanent Fund (TSPF). Balances may be appropriated to cover a deficit in general fund dollars, but ONLY IF balances in other enumerated funds are inadequate to cover the deficit. In other words, the TSPF is the "last" reserve.

At the end of fiscal year 2010, there is expected to be $120 million in this fund. A committee member clarified that one of the reasons New Mexico created a permanent fund is that the MSA has some big concessions to tobacco manufacturers. There was no requirement that states spend on anti-smoking or health; some states even used MSA funds to fund tobacco farmers.

The other thing that happened to create a disadvantage to states is that the allocable share is tied to *domestic* profits for tobacco manufacturers, not to international markets. As tobacco use declines, state revenues decline. This is why most states, even in perpetuity, are counting on the money for 25 years. Hence, New Mexico puts money in the TSPF to pay its share in perpetuity as it grows. Yet, deficits have intervened, and the TSPF has been sometimes used for other reasons. Governor Richardson wanted to close the TSPF, and the legislature agreed to divert money for four years. Last year, another two-year diversion was made. The corpus is growing; New Mexico is not using the interest from it. The state is using only 50% of the new money that comes in for the programs rather than the TSPF corpus.

Nonparticipating manufacturers have a strong incentive not to join the MSA, as they would have to make up payments lost during the time before they joined. Also, escrow will entail a "huge amount" of litigation.

Budget considerations: p. 2 of handout

An 8.5% volume reduction is expected due to the federal excise tax increase, then another 7% reduction next year.

Beginning in fiscal year 2006, some participating manufacturers began withholding from states' payment amounts due to what they attributed to the states' lack of diligence in MSA enforcement. The Attorney General's Office is concerned because some of the largest participating manufacturers may be withholding $6 million.

The downside risk is that revenues could be lower than forecast — a risk that was not incorporated in the scenario.

In 2009, the state received a one-time $3.2 million payment from some of the manufacturers. Another positive settlement would represent an upside risk.

There are two offsetting risks: a positive risk would be to win settlement on all withheld payments around $20 million; a negative risk would be that arbitration might result in states paying back money to participating manufacturers, and New Mexico's share of the repayment might exceed the amount received in any given year.

The basic allocation is $48.7 million, of which $3.1 million was withheld. Previously, $3.22 million was withheld and has now been released. A total of $48.66 million went to the program fund. This was about $4 million over what had been forecast, most of this being due to the $3.22 million one-time payment.

In fiscal year 2010, the same base payment is expected, with $3.2 million being withheld, bringing it to $45.53 million.

In fiscal year 2011, revenues are expected to decrease, with a base of $47.76 million predicted (lower because of the federal excise tax), with a total distribution of $22.28 million.

A committee member suggested that Mr. Clifford accompany the TSROC on December 4 when it testifies before the LFC regarding budgetary matters.

A question was asked regarding why the distribution to the program fund drops from $45.5 million in fiscal year 2010 to $22.2 million in fiscal year 2011. The difference is going to the general fund to help with the budget shortfall. Otherwise, $22.8 million would have gone to the program fund. In fiscal year 2009, the program fund received a nonrecurring $3.22 million.

Mr. Clifford offered to modify the table in the handout to show diversions correctly.

TSPF Performance Review and Projections

At 2:05 p.m., Charles Wollmann, public information officer with the State Investment Council, made a report regarding the TSPF performance review and projections, guiding the committee through the spreadsheets he provided. Mr. Wollmann discussed how the TSPF is invested per the handout spreadsheet. He explained that the TSPF consists of approximately $130 million currently.

Mr. Wollmann identified some long-term targets for management of the TSPF. In 2007, the large cash equity was the result of when the investment officer decided to take a conservative position based upon risk assessment, believing the state was headed toward recession. This helped a fair amount until the last several months; there will likely be an allocation study to decide whether this is appropriate.

There has been $15.8 million in total income since 2000, which Mr. Wollmann explained is "not bad" considering two market crashes since then. There have been 3.4% in returns for the last five years; the Standard and Poor's Index was down 2.2% for the past five years. Stocks and bonds would have produced 0.9%. The investments protected the fund for the most part.

The current value is $126.7 million as of 8/31/09; peak value was $137.8 million (2008). The fund is NOT self-sustaining, meaning it could not generate enough income so that annual distributions of $32.5 million from those earnings could be made. To get to that size of a fund, 8% growth a year would be necessary. Many believe 8% is impossible, considering the last decade. The committee has to consider whether to rely on smaller distributions or to grow the fund. Had there never been a diversion, it would not take until 2032 to become self-sustaining. According to lobbyist Linda Siegle, it would have been self-sustaining in 2017 at 6% to 8% without the diversions. In 2002, it was predicted to be self-sustaining in 2016.

In response to the question as to what amount was lost in the economic crisis, Mr. Clifford answered that the fund peaked at $137 million in June 2008; it is now at $130 million. Conservative investing served it well, but it may have to be reconsidered as the economy improves. Mr. Clifford identified the state investment officer as the person to whom credit should be given for keeping the fund solvent.

Review of Fiscal Year 2009 and Fiscal Year 2010 Program Funding Levels

At 2:15 p.m., Ms. Mitchell explained the charts she had included in the committee's folders, including historical data since the TSPF's inception. It shows the last few years' recommendations by the TSROC and the LFC and final appropriations. Referring to the yellow chart handout, she explained that it contains the actual appropriation amounts for fiscal years 2009 and 2010. The purple handout sheet shows alternatives with cuts to programs.

The committee recessed at 3:21 p.m.

Friday, September 25

Fiscal Year 2011 Funding Recommendations

The meeting was called to order at 9:55 a.m. The committee reviewed each appropriation for the current fiscal year and adopted new recommendations for fiscal year 2011, including increases in funding for the breast and cervical screening and treatment programs, research in genomics, biocomputing and environmental health, lung and tobacco-related disease research and the tobacco cessation and prevention program for Native Americans.

A motion to appoint a subcommittee to the committee to revisit the committee's recommendations if the Legislative Finance Committee revised its revenue projections was adopted.

A motion to endorse cigarette and tobacco products tax increases was adopted.

The committee discussed the implications of the current dispute with tobacco manufacturers over the state's enforcement efforts under the Master Settlement Agreement. The Attorney General's Office is currently in arbitration with tobacco manufacturers over the state's enforcement efforts in 2003. If the state is found not to have diligently enforced its tobacco statutes, it is possible that New Mexico could be forced to pay back its entire allocable share of tobacco settlement revenue for 2003. Tobacco manufacturers have also initiated challenges to the state's enforcement efforts in all subsequent years, increasing the state's total potential liability. The committee agreed that until the results of the arbitration are made known and New Mexico's share of financial liability, if any, is established, the committee would oppose the diversion of tobacco settlement revenue to offset general fund appropriations.

The committee adjourned at 11:35 a.m.