

Tobacco Settlement Revenue Oversight Committee

2012 INTERIM REPORT



New Mexico State Legislature
Legislative Council Service
411 State Capitol
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TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE (TSROC)
HISTORIC RECOMMENDATIONS & APPROPRIATIONS
(thousands of dollars)

AGENCY AND PROGRAM	2011 TSROC Recs	2011 TSPrgm Fund Approps	2011 Revised (b)	2012 TSROC Recs	2012 TSPrgm Fund HB2	2012 TSPrgm Fund UNM alloc.	2012 Revised OpBud (c)	2013 TSPrgm Fund HB2	2014	FY2014 Notes
Department of Health										
Tobacco cessation and prevention programs	\$9,115.00	\$6,695.30	\$5,794.60	\$6,695.30	\$5,827.40	\$5,827.40	\$5,682.00	\$5,682.00		(DOH reqs \$5,682.0)
Diabetes prevention and control program	\$1,200.00	\$881.40	\$762.90	\$881.40	\$767.10	\$767.10	\$748.00	\$748.00		(DOH reqs \$748.0)
HIV/AIDS services	\$470.00	\$345.20	\$298.70	\$345.20	\$300.50	\$300.50	\$293.00	\$293.00		(DOH reqs \$293.0)
Breast & cervical cancer <i>screening</i> program	\$600.00	\$146.90	\$127.20	\$146.90	\$131.80	\$131.80	\$128.60	\$128.60		(DOH reqs \$128.6)
Total Department of Health	\$11,385.00	\$8,068.80	\$6,983.40	\$8,068.80	\$7,026.80	\$7,026.80	\$6,851.60	\$6,851.60		Flat 6,851.6
Human Services Department										
Breast & cervical cancer <i>treatment</i> program	\$1,800.00	\$1,500.00	\$1,298.00	\$1,500.00	\$1,345.90	\$1,345.90	\$1,312.40	\$1,312.40		(HSD reqs \$1,312.4)
Medicaid	\$6,340.00	\$7,655.40	\$6,625.50	\$5,175.40	\$8,109.50	\$8,109.50	\$7,736.10 (d)	\$7,907.30		(HSD reqs \$7,907.6)
Medicaid - Solvency; Diversion of 50% fr. TS PermFund		\$22,280.00 (a)	\$19,283.60		\$19,776.00 (a)	\$19,776.00	\$19,453.90 (e)	\$19,282.70		not requested
Total Human Services Department	\$8,140.00	\$31,435.40	\$27,207.10	\$6,675.40	\$29,231.40	\$29,231.40	\$28,502.40	\$28,502.40		Flat 9,220
University of New Mexico										
Innovations in preventing and treating tobacco-related diseases										
Research in genomics, biocomputing & envir. health	\$1,500.00	\$1,215.00	\$1,051.50	\$1,215.00	\$981.20	\$1,004.90	\$979.80	\$979.80		
Subtotal UNM tobacco-related diseases	\$1,500.00	\$1,215.00	\$1,051.50	\$1,215.00	\$981.20	\$1,004.90	\$979.80	\$979.80		
Other programs										
Area Health Education Center	\$50.00	\$45.00	\$39.00	\$45.00	\$36.30	\$0.00	\$0.00	\$0.00		No tobacco funds
Center for telehealth (formerly telemedicine)	\$150.00	\$135.00	\$116.90	\$135.00	\$0.00	\$0.00	\$0.00	\$0.00		No tobacco funds
Los Pasos program	\$50.00	\$45.00	\$39.00	\$45.00	\$36.30	\$0.00	\$0.00	\$0.00		No tobacco funds
Pediatric oncology	\$400.00	\$360.00	\$311.50	\$360.00	\$290.70	\$268.10	\$261.40	\$261.40		
Poison & Information Center	\$450.00	\$405.00	\$350.50	\$405.00	\$0.00	\$405.30	\$395.20	\$590.20		
Specialty education in pediatrics	\$400.00	\$360.00	\$311.50	\$360.00	\$290.70	\$268.10	\$261.40	\$261.40		
Specialty education in trauma	\$400.00	\$360.00	\$311.50	\$360.00	\$290.70	\$268.10	\$261.40	\$261.40		
Not specified in HB 2.					\$436.10		(f)			
Subtotal UNM other programs	\$1,900.00	\$1,710.00	\$1,479.90	\$1,710.00	\$1,380.80	\$1,209.60	\$1,179.40	\$1,374.40		
Lung/tobacco research contract (LRR1)	\$1,250.00	\$1,000.00	\$865.40	\$1,000.00	\$0.00	\$200.00	\$195.00			(UNM reqs \$2,962.1
Funding retained by UNM (Instruction & General)	\$930.00	\$837.00	\$724.30	\$837.00	\$675.90	\$623.40	\$607.90	\$607.90		in one line item)
Subtotal UNM Contracts/I & G	\$2,180.00	\$1,837.00	\$1,589.70	\$1,837.00	\$675.90	\$823.40	\$802.90	\$607.90		
Total University of New Mexico	\$5,580.00	\$4,762.00	\$4,121.10	\$4,762.00	\$3,037.90	\$3,037.90	\$2,962.10	\$2,962.10		
Indian Affairs Department										
Tobacco cessation and prevention programs	\$500.00	\$293.80	\$253.70	\$293.80	\$255.70	\$255.70	\$249.30	\$249.30		
Total Indian Affairs Department	\$500.00	\$293.80	\$253.70	\$293.80	\$255.70	\$255.70	\$249.30	\$249.30		
Total Recurring Programs	\$25,605.00	\$22,280.00	\$19,281.70	\$19,800.00	\$19,775.80	\$19,775.80	\$19,111.50	\$19,282.70		
Medicaid\Solvency Funding--contingent 100% distribution	\$0.00	see above (a)	see above	\$0.00	see above (a)	see above	see above	\$38,565.40		
GRAND TOTAL	\$25,605.00	\$44,560.00	\$38,565.40	\$19,800.00	\$39,551.80	\$39,551.80	\$38,565.40	\$39,565.40		

(a) Appropriation is offset of General Fund dollars that would have been required if TS Permanent Fund dollars were not diverted.
(b) Final revised allotments reported by DFA, after two revisions, based on the actual payment received April 2011, which was \$1.4 million below the June 2010 projection.
(c) DFA advised agencies in April 2011 of reduced allotments/appropriations for FY2012 based on the 2011 actual tobacco settlement payment. See (b).
(d) Should have read **\$7,907.3.2** based on a reduction of 2.5%, since revenue now estimated at 97.5% of the original appropriation.
(e) This amount exceeds the 50% of distribution. Should have been reduced to **\$19,282.7**
(f) \$1 million appropriated but not funded Laws 2012 Ch 62 to Ben Lujan Cancer Research Project to Speaker Ben Lujan Cancer Research Project.

TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE (TSROC)
FY 2013 AND 2014 RECOMMENDATIONS
(thousands of dollars)

AGENCY AND PROGRAM	2013 TSROC Recs	2013 TSProgFund HB2	2014 TSROC Recs	2014 Proposed Change
Department of Health				
Tobacco cessation and prevention programs	\$5,682.00	\$5,682.00	\$5,819.70	
Diabetes prevention and control program	\$748.00	\$748.00	\$766.13	
HIV/AIDS services	\$293.00	\$293.00	\$300.10	
Breast & cervical cancer <i>screening</i> program	<u>\$128.60</u>	<u>\$128.60</u>	<u>\$131.72</u>	
Total Department of Health	\$6,851.60	\$6,851.60	\$7,017.65	
Human Services Department				
Breast & cervical cancer treatment program	\$1,312.40	\$1,312.40	\$1,344.20	
Medicaid	<u>\$7,907.30</u>	<u>\$7,907.30</u>	<u>\$8,098.93</u>	
Total Human Services Department	\$9,219.70	\$9,219.70	\$9,443.13	
University of New Mexico				
Innovations in preventing and treating tobacco-related diseases				
Research in genomics, biocomputing & envir. Health	<u>see footnote</u>	<u>\$979.80</u>	<u>\$1,003.54</u>	
Subtotal UNM tobacco-related diseases	<u>see footnote</u>	<u>\$979.80</u>	<u>\$1,003.54</u>	
Other programs				
Area health education center		\$0.00	\$0.00	
Center for telehealth (formerly telemedicine)		\$0.00	\$0.00	
Los Pasos program		\$0.00	\$0.00	
Pediatric oncology		\$261.40	\$267.73	
Poison & information center		\$590.20	\$604.50	
Specialty education in pediatrics		\$261.40	\$267.73	
Specialty education in trauma	<u>see footnote</u>	<u>\$261.40</u>	<u>\$267.73</u>	
Subtotal UNM other programs	<u>see footnote</u>	<u>\$1,374.40</u>	<u>\$1,407.71</u>	
Contracts and I&G				
Lung & tobacco-related disease research (LRRRI contract)				
Funding retained by UNM (Instruction & General)	<u>see footnote</u>	<u>\$607.90</u>	<u>\$622.63</u>	
Subtotal UNM/LRRI/I & G	<u>see footnote</u>	<u>\$607.90</u>	<u>\$622.63</u>	
Total University of New Mexico	\$2,962.10	\$2,962.10	\$3,033.88	
Indian Affairs Department				
Tobacco cessation and prevention programs	<u>\$249.30</u>	<u>\$249.30</u>	<u>\$255.34</u>	
Total Indian Affairs Department	\$249.30	\$249.30	\$255.34	
GRAND TOTAL - Programs	\$19,282.7	\$19,282.70	\$19,750.00	

The original 2013 TSROC recommendation was to fund the University of New Mexico with a lump sum appropriation. However, the legislature later decided to delineate the funding by line items to accurately record the multiple sources of funding some University of New Mexico programs receive from the legislature.

SUMMARY

On November 23, 1998, the attorneys general of 46 states entered into a Master Settlement Agreement (MSA) with the four largest tobacco companies in the United States: Brown & Williamson; Lorillard; Philip Morris; and R.J. Reynolds (Participating Manufacturers). Under the terms of the agreement, the Participating Manufacturers agreed to accept prohibitions and restrictions on the marketing and advertising of their tobacco products and to compensate the states for costs associated with tobacco-related illness and disease attributed to the Participating Manufacturers' products. In turn, the states agreed to enact model legislation, or a similar qualifying statute, to charge tobacco manufacturers that did not participate in the MSA an escrow payment, and to diligently enforce such legislation. Later, an additional 50 tobacco companies joined the MSA. Beginning in 1999, New Mexico passed various MSA-related legislation.

The Tobacco Settlement Revenue Oversight Committee (TSROC) was created in 2000 as a joint interim legislative committee to monitor the use of revenues received as a result of the MSA. The committee meets during the interim to evaluate programs that receive appropriations from tobacco settlement revenues. Each year, the TSROC takes testimony regarding the performance of funded programs and makes recommendations for future funding. Funding recommendations for fiscal year 2014 were provided to the Legislative Finance Committee (LFC) on December 4, 2012 by Representative Gail Chasey, the committee co-chair.

In 1999, the Tobacco Settlement Permanent Fund (Permanent Fund), consisting of money distributed to the state pursuant to the MSA, was created. In 2000, the Tobacco Settlement Program Fund (Program Fund), consisting of distributions from the Permanent Fund, was established. Appropriations are made from the Program Fund for health and education purposes. The Department of Health, the Human Services Department, (Medicaid has received the bulk of appropriations from MSA revenues) and the University of New Mexico Health Sciences Center have historically been the primary recipients of those appropriations.

Beginning in fiscal year 2001, the distribution to the Program Fund from the Permanent Fund was limited to 50% of MSA settlement funds received by the state in the preceding fiscal year, until such time as that amount is less than 4.7% of the average of the year-end market values of the Permanent Fund for the preceding five years. The remaining 50% was to be retained in the Permanent Fund. In 2003, an amendment made the Permanent Fund a reserve fund of the state, which could be expended, under certain circumstances, to avoid an unconstitutional deficit. At various times since, other amendments have allowed for distributions from the Permanent Fund to the general fund or for additional distributions to the Program Fund. In their 2011 presentation to the LFC, the committee co-chairs noted that, in nine of the fiscal years since the creation of the Permanent Fund, no part of the annual MSA settlement revenues had been retained in the Permanent Fund. In fiscal year 2013, all of the MSA annual settlement revenue went into the Program Fund. None was retained in the Permanent Fund.

For fiscal years 2012 through 2014, MSA revenues have been, or are projected to be, essentially flat, hovering at around \$39 million. MSA revenue for fiscal year 2012 was \$39.3 million. As of October 31, 2012, the balance in the Permanent Fund is \$148,977,549.

After meeting four times to receive testimony from agencies and programs currently receiving appropriations, the committee adopted funding recommendations for fiscal year 2014. The committee's recommendations for fiscal year 2014 are similar to those for fiscal year 2013.

The Office of the Attorney General (AGO) regularly reports to the TSROC regarding enforcement of, and compliance with, the MSA. The state is currently a party to an arbitration proceeding challenging the state's diligent enforcement efforts under the terms of the MSA since 2003, and to a dispute in which Participating Manufacturers contend that New Mexico has not had a qualifying statute since 2006. Adverse decisions in these controversies could place at risk up to \$550 million in future MSA revenues, as an award in favor of the Participating Manufacturers would be offset against future MSA revenues for several years.

Once again, at the request of the AGO, the TSROC has endorsed a bill identical to Senate Bill 225 (2012), which was vetoed last year by the governor. The bill amends the definition of "units sold" to include both "tax-exempt" and "tax-credit" stamps for the purposes of determining escrow payments of cigarette manufacturers that are not participating in the MSA. In the past several legislative sessions, the AGO has recommended passage of such legislation to "remove ambiguity under current law about which sales are subject to escrow payment and to ensure equalization of treatment of participating and nonparticipating manufacturers". This year, the AGO has added that passage of the bill would immunize the state against any further challenges to the state's qualifying statute.

**2012 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. Jim W. Hall

Rep. Danice Picraux

Sen. John C. Ryan

Advisory Members

Sen. Sue Wilson Beffort

Rep. Ray Begaye

Sen. Linda M. Lopez

Sen. Mary Kay Papen

Work Plan

The Tobacco Settlement Revenue Oversight Committee will continue its statutory oversight duties for the programs that request and 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 2012 interim, the Tobacco Settlement Revenue Oversight Committee proposes to:

(1) monitor the status of the revenue for current and future fiscal years and reserves for the Tobacco Settlement Permanent Fund and the use of the Tobacco Settlement Program Fund 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; and compare recommended funding levels by the Centers for Disease Control and Prevention with those funded in New Mexico;

(2) receive testimony regarding tobacco settlement-related issues, litigation and legislation, and prepare recommendations of program funding levels for fiscal year 2014, 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) make recommendations available to the New Mexico Legislative Council and the Legislative Finance Committee on or before December 15, 2012.

**Tobacco Settlement Revenue Oversight Committee
2012 Approved Meeting Schedule**

<u>Date</u>	<u>Location</u>
June 14*	Santa Fe
August 3	Albuquerque
September 19	Santa Fe
October 31	Santa Fe

COMMITTEE AGENDAS

Revised: June 13, 2012

**TENTATIVE AGENDA
for the
FIRST MEETING IN 2012
of the
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**June 14, 2012
Room 311, State Capitol
Santa Fe**

Thursday, June 14

9:30 a.m. **Call to Order; Webcasting Announcement; Introduction of Members and
New Staff**

2012 Committee-Related Legislation and Update; Review Handouts
—Roxanne Knight, Staff, Legislative Council Service (LCS)

Fiscal Year 2013 Funding Levels
—Roxanne Knight, Staff, LCS
—Greg Geisler, Staff, Legislative Finance Committee

Status — Update
—Nan Erdman, Assistant Attorney General, Office of the Attorney General

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

Public Comment

Adjournment

Revised: August 1, 2012

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

**August 3, 2012
University of New Mexico Cancer Center
Albuquerque**

Friday, August 3

- 8:45 a.m. **Reception; Call to Order; Approval of Agenda**
—Senator Mary Jane M. Garcia and Representative Gail Chasey, Co-Chairs
- 9:00 a.m. **Welcoming Remarks**
—Dr. Robert G. Frank, President, University of New Mexico (UNM)
- 9:15 a.m. **UNM Health Sciences Center Performance Report: Pediatric Oncology;
Poison and Information Center; Specialty Education in Pediatrics and
Trauma; I and G Allocation**
—Richard S. Larson, M.D., Ph.D., Vice Chancellor for Research, Senior
Associate Dean for Research
- 10:30 a.m. **UNM Cancer Research Initiatives**
—Dr. Cheryl L. Willman, M.D., Director and Chief Executive Officer (CEO),
UNM Cancer Center
- Approval of June 14, 2012 Minutes**
- 10:45 a.m. **Tour UNM Cancer Center**
—Dr. Cheryl L. Willman, M.D., Director and CEO, UNM Cancer Center
- 11:30 a.m. **New Mexico State University (NMSU) — Cancer Research Initiatives**
—Dr. Mary O'Connell, Ph.D., NMSU
- Lunch at UNM Cancer Center (may be a working lunch to complete
morning
session)**

- 1:30 p.m. **Tobacco Marketing to Youth — Master Settlement Agreement (MSA) and Other Related Provisions**
—Rebecca Parish, Assistant Attorney General, Office of the Attorney General (OAG)
—Claudia Ravanelli, Special Projects Coordinator, OAG
—Kimberle Lowe, Taxation and Revenue Department
- 2:00 p.m. **Incidence of Cancer in New Mexico; Oncologists in New Mexico**
—Dr. Michael Landen, M.P.H., Acting State Epidemiologist, Department of Health
- 2:30 p.m. **Lovelace Respiratory Research Institute (LRRI) Performance Report: Research Contract**
—Dr. Steven Belinsky, LRRI
- 3:00 p.m. **Promoting and Advertising to Youth; Related Food and Drug Administration Regulations and MSA Provisions; Other Tobacco Products and Taxing Tobacco Products**
—Sandra Adondakis, New Mexico Government Relations Director, American Cancer Society Cancer Action Network, Inc.

Staff Reports

Public Comment

Adjourn

Revised: September 13, 2012

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

**September 19, 2012
Room 311, State Capitol**

Wednesday, September 19

- 10:00 a.m. **Welcome and Introduction, Call to Order and
Approval of August 3 Minutes**
- 10:15 a.m. **Human Services Department (HSD) — Breast and Cervical Cancer
Program Performance Report**
—Julie Weinberg, Director, Medical Assistance Division, HSD
—Virginia Brooks, Staff Manager, Breast and Cervical Cancer Program, HSD
- 11:15 a.m. **Department of Health (DOH) Performance Reports for Tobacco Use
Prevention and Control Program; Diabetes Prevention and Control
Program; HIV/AIDS Services; and Breast and Cervical Cancer
Screening Program**
—Dr. Michael Landen, State Epidemiologist, DOH
—David Vigil, Chief, Chronic Disease Prevention and Control Bureau, DOH
- 12:15 p.m. **Tobacco Settlement Permanent Fund Performance and Balances;
Projections and Scenarios**
—Steven K. Moise, State Investment Officer, State Investment Council (SIC)
—Vince Smith, Deputy State Investment Officer, SIC
- 1:15 p.m. **Working Lunch**
**Review of Handouts and Spreadsheets Regarding Tobacco Settlement
Permanent Fund and Previous Committee Questions**
—Staff
- 1:45 p.m. **Proposed Legislation; Preliminary Discussion and Direction to Staff**
- 2:15 p.m. **Public Comment**
- Adjourn**

Revised: October 29, 2012

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

**October 31, 2012
Room 311, State Capitol
Santa Fe**

Wednesday, October 31

- 10:00 a.m. **Call to Order, Approval of Agenda and Approval of September 19 Minutes**
- 10:05 a.m. **Tobacco Settlement Permanent and Program Funds; Revenue Projections**
—Elisa Walker-Moran, Chief Economist, Legislative Finance Committee
- 10:15 a.m. **Tobacco Use Prevention and Control Program — Indian Affairs Department (IAD) Performance Report**
—Arthur P. Allison, Secretary, IAD
—Duane Duffy, Deputy Secretary, IAD
—Lillian Brooks, Administrative Services Director, IAD
- 10:45 a.m. **Proposed Legislation from the Attorney General for 2013 Legislative Session; Arbitration Update**
—Scott Fuqua, Assistant Attorney General and Director, Litigation Division, Office of the Attorney General
- 11:45 a.m. **Agency Comments**
- 12:00 noon **Public Comment**
- 1:00 p.m. **Committee Legislation**
—Shawn Mathis, Staff Attorney, Legislative Council Service (LCS)
—Tom K. Pollard, Ph.D., Legislative Fiscal Analyst, LCS
- 2:00 p.m. **Review of FY12 and FY13 Program Funding Levels and FY14 Funding Recommendations**
- 3:00 p.m. **Adjourn**

COMMITTEE MINUTES

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

**June 14, 2012
Room 311, State Capitol**

The first meeting of the Tobacco Settlement Revenue Oversight Committee (TSROC) was called to order by Representative Gail Chasey, co-chair, on Thursday, June 14, 2012, at 9:46 a.m. in Room 311 of the State Capitol in Santa Fe.

Present

Rep. Gail Chasey, Co-Chair
Sen. Mary Jane M. Garcia, Co-Chair
 Sen. Dede Feldman
Rep. Jim W. Hall
Sen. John C. Ryan

Absent

Rep. Danice Picraux

Advisory Members

Sen. Linda M. Lopez

Sen. Sue Wilson Beffort

Rep. Ray Begaye

Sen. Mary Kay Papen

Staff

Roxanne Knight, Legislative Council Service (LCS)
Shawn Mathis, LCS
Sean Sullivan, LCS

Guests

The guest list is in the archived meeting file.

Handouts

Copies of all handouts are in the archived meeting file.

Thursday, June 14

Introductions

Representative Chasey welcomed the committee and members of the audience to the meeting. She reviewed the webcasting announcement, informing everyone that meetings are webcast and that members and presenters need to use the microphones. The committee members and staff introduced themselves.

2012 Committee-Related Legislation and Update; Review Handouts

Ms. Knight introduced herself to the committee. She provided the members with an update of 2012 tobacco-related legislation. (See handout.) Ms. Knight reviewed the contents of SB 225, noting that the purpose of the bill was to remove ambiguity regarding which cigarette sales are subject to escrow. The bill would also redefine "units sold" and give the secretary of taxation and revenue the authority to adopt rules regarding the amount of state excise tax to be paid. Ms. Knight noted that this bill was passed by the legislature but vetoed by the governor. She asked to defer questions on the bill to the assistant attorney general during her presentation.

Ms. Knight spoke briefly about HB 2, the General Appropriation Act of 2012, noting that in addition to normal Tobacco Settlement Program Fund (program fund) appropriations to the various state agencies for health and research programs, the bill contains additional budget adjustment authority from other state funds for the attorney general to request up to \$150,000 increases in both fiscal year (FY) 2012 and FY 2013 to fund discovery costs for the tobacco arbitration.

Ms. Knight finished the legislative update by detailing HB 315, which appropriates \$1 million from the program fund to the University of New Mexico Health Sciences Center (UNM HSC) for FY 2013 to conduct the Speaker Ben Lujan Lung Cancer Research Project. She pointed out that the \$1 million appropriation pushes beyond the projected revenues, and she indicated that she would discuss this jointly with Greg Geisler, an analyst with the Legislative Finance Committee (LFC).

Ms. Knight pointed out a packet of handouts in the members' folders. She explained that the handouts contain some of the most current tobacco-related information pertaining to New Mexico, including recent tobacco tax articles and statistics from the American Lung Association, the federal Centers for Disease Control and Prevention (CDC), the Campaign for Tobacco-Free Kids and others.

FY 2013 Funding Levels

Ms. Knight reviewed an LCS information memorandum pertaining to miscellaneous interim committee items and to SM 33. Mr. Geisler introduced himself to the committee.

Ms. Knight began by stating that tobacco settlement revenue in April 2011 was lower than expected, and the Department of Finance and Administration (DFA) required agencies to reduce their FY 2011 operating budgets last year. A committee member explained that these reductions are frequently required because of the funding cycle. The member pointed out that the appropriations from the program fund are made each legislative session for the start of the following fiscal year; however, the actual revenue is not received until the following April. This causes those agencies relying on that revenue to adjust their budgets during the last few months of the FY. Ms. Knight presented a spreadsheet to the committee denoting the final budget for agencies receiving tobacco settlement revenue for FY 2012. She added that for FY 2013, the legislature adopted the committee's funding recommendations, which were the same as the original recommendations for FY 2012.

Ms. Knight explained that tobacco settlement revenue goes into the Tobacco Settlement Permanent Fund (permanent fund) and that 50% of that money is then distributed into the program fund to fund various tobacco cessation and prevention programs. She added, however, that in years when additional money has been needed for the state budget, the remaining 50% of revenue normally dedicated to the permanent fund has been distributed to the program fund for appropriation, primarily to Medicaid. Ms. Knight stated that this second 50% distribution, roughly \$19.4 million this FY, will cease after FY 2013 unless legislation is enacted to extend the distribution.

Mr. Geisler reported that the LFC recommendation is to appropriate \$19.4 million from the general fund to offset the money that has usually been allocated to Medicaid through the second distribution. He emphasized the need to make up this \$19.4 million during the FY 2014 budget process, and he noted that the LFC had made a similar recommendation for FY 2013.

Mr. Geisler went on to discuss the fiscal impact of HB 315, noting that there was no tobacco settlement revenue available beyond the projected \$38.5 million to fund the Speaker Ben Lujan Lung Cancer Research Project. He noted that upon passage of HB 315, the LFC met with the DFA to discuss funding possibilities and recommended a pro rata reduction (in accordance with Section 6-4-9(C) NMSA 1978) to all the appropriations (now totaling \$39.4 million) by including the HB 2 appropriations. Ms. Knight read from the governor's message to the house of representatives regarding HB 315, which outlined the administration's desire to work with the UNM HSC to find an appropriate way to fund the program. Ms. Knight also referred to correspondence from Dr. Paul Roth of the UNM HSC to Secretary of Finance and Administration Tom Clifford, explaining that the UNM HSC is planning to seek a \$600,000 supplemental appropriation in FY 2013 to take the place of the \$1 million appropriation from the program fund and for the \$600,000 appropriation to be recurring starting in FY 2014.

Mr. Geisler concluded by explaining that in order to compensate for the \$19.4 million Medicaid distribution, plus the \$600,000 appropriation for the Speaker Ben Lujan Lung Cancer Research Project, a general fund appropriation of around \$20 million would be required to maintain the same level of funding.

Questions

A committee member asked whether the UNM HSC is expecting the \$600,000 appropriation to be recurring. Mr. Geisler reported that the UNM HSC is proposing a recurring appropriation.

Another committee member inquired into the current balance of the permanent fund. Ms. Knight stated that she estimates a balance of between \$120 million and \$130 million. The legislator questioned what the balance would have been if the permanent fund had not been "raided" in the previous years. A committee member noted that the State Investment Council would be testifying regarding these issues at the end of the FY. The legislator explained that the rationale is to grow the permanent fund over time, and as tobacco company payments are anticipated to diminish, the interest earned on the permanent fund is to be used annually to fund

the tobacco cessation programs. Mr. Geisler referred to a recent fiscal impact report, which stated that the permanent fund is projected to be around \$132 million at the end of FY 2012.

The committee member acknowledged that predicting the balance of the permanent fund would be speculative because of market fluctuations. The committee member asked whether the LFC kept its promise to continue funding programs through the general fund when revenues were distributed into Medicaid. Ms. Knight mentioned that Department of Health tobacco cessation appropriations peaked in FY 2008 and FY 2009 and have since been reduced. Ms. Knight reported that prior to FY 2008, some of the first distributions of the program fund were appropriated for nonrecurring budget items and supplementary funding for Medicaid expansion.

Another committee member expressed satisfaction that the settlement revenue has been used for tobacco prevention and cessation programs, rather than for infrastructure and other projects as has been done nationwide. The legislator asked the presenters to clarify the funding situation for the Speaker Ben Lujan Lung Cancer Research Project. Ms. Knight explained that the \$1 million appropriation in HB 315 addresses the discontinued funding in HB 2 for UNM's contract with Lovelace Respiratory Research Institute.

A committee member recounted that during the floor debate on HB 315, he did not recall any discussion that it was to be a recurring expenditure. The member went on to express his concern about the failure to put money into the permanent fund, and he noted that smoking rates are still high, suggesting that the committee prune any non-smoking-related programs from the appropriations. After a discussion between members regarding the effectiveness of cigarette taxes to reduce cigarette sales to youths, the member stated that he is interested in seeing a presentation comparing the smoking rates of states that have raised cigarette taxes versus those states that have not.

Another committee member inquired into the target goal for the permanent fund. Mr. Geisler stated his understanding that the goal is to have a permanent fund of \$661 million by 2021. A committee member further noted that the goal is to draw upon the permanent fund at a rate similar to that of the state's Permanent School Fund as provided in Article 12, Section 7 of the Constitution of New Mexico.

Master Settlement Agreement (MSA) Status Update

Nan Erdman, assistant attorney general, Office of the Attorney General (OAG), and Claudia Ravanelli, paralegal, OAG, introduced themselves to the committee. Ms. Erdman presented to the committee a brief overview of the MSA primer, noting that she would focus on the MSA risk analysis spreadsheet and chart.

Ms. Erdman stated that New Mexico is at risk of losing MSA money due to challenges to the state's diligent enforcement and qualifying statute issues. Ms. Erdman went on to outline the factors under which there could be a nonparticipating manufacturer (NPM) adjustment, by which the participating manufacturers (PMs) could get a refund of their MSA payments. Ms. Erdman explained that the PMs could obtain a refund if they lost over 2% in market share from 1997 and an economics firm determined that the MSA was a significant factor in this market share loss.

She added that while payments prior to 2003 have been settled, there are still 34 states in arbitration regarding the 2003 payments. Ms. Erdman explained that the satisfaction of these conditions would result in an NPM adjustment, unless the state has a qualifying statute and diligently enforced that statute. Ms. Erdman indicated that while New Mexico passed an MSA model qualifying statute verbatim in 1999, New Mexico's statute is still at issue in the arbitration. In addition, she summarized the disputes over New Mexico's diligent enforcement of this statute as it relates to cigarette sales on tribal property. Ms. Erdman informed the committee that as part of the arbitration for 2003 adjustments, the arbitration panel is attempting to develop a list of what states must do to "diligently enforce" their escrow statutes and will consider the steps that other states have taken in their enforcement to see where New Mexico ranks comparatively.

Ms. Erdman advised the committee that an unfavorable ruling for New Mexico could result in a loss of the entire MSA payment, and she noted that if the state is required to pay back all of the 2003 payment, the state would not receive the FY 2014 payment. In addition, New Mexico could be forced to forgo MSA payments for each year in which a finding of "no diligent enforcement" is made. Ms. Erdman detailed the argument by the PMs that the original model statute left room for states to collect escrow on tribal sales but that New Mexico has created an uneven playing field by refusing to do so. She explained that New Mexico has avoided charging excise taxes on cigarette sales on tribal lands to nontribal members because smoke shops are a significant source of income to tribes. Ms. Erdman further noted that although SB 225 would have clarified the definition of which sales are subject to escrow payment, it was vetoed by Governor Susana Martinez. In addition, the PMs are arguing that New Mexico no longer has a qualifying statute because an exempt stamp was created in 2006 that altered the cigarette tax code. The PMs suggest that this language removes the possibility of the state collecting excise taxes. Ms. Erdman reminded the committee that an unfavorable decision regarding a qualifying statute, combined with a loss of 2% market share for the PMs, could deprive the state of MSA payments.

Ms. Erdman recounted the challenges that New Mexico faces in keeping this MSA funding. She reiterated that an adverse diligent enforcement finding could result in the state losing MSA money from 2003 through 2009, and an adverse qualifying statute finding could result in the state losing MSA money from 2006 until whenever a qualifying statute is passed. Ms. Erdman stressed that the total amount of MSA money at risk during these 10 to 11 years totals \$389 million.

Ms. Erdman went on to discuss the possible legislative fixes and to update the committee on arbitration proceedings. Ms. Erdman stated that the OAG will advance another bill to resolve these issues, although the legislation would need a new sponsor. She explained that similar bills have been vetoed in the past because the governor was concerned that the escrow is a tax and because, according to the governor, amending the statute was tantamount to admitting that New Mexico's original statute was not a qualifying statute. Ms. Erdman noted her disagreement with the latter argument. She suggested that the OAG may request direct funding for enforcement from the MSA money to address the PMs' allegations that enforcement is insufficient without a

dedicated funding source. Ms. Erdman finished by informing the committee that state-specific arbitration hearings have begun, with the panel not expected to rule until 2014.

Ms. Ravanelli detailed the OAG enforcement efforts, noting that New Mexico collected 100% of the escrow that was due in 2011, based on the NPMs' argument that the statute does not require escrow payments for sales on tribal property. She added that there are 13 NPMs active in the state, all of which are compliant. Ms. Ravanelli also summarized the increased reporting requirement for PMs and NPMs and the enforcement of roll-your-own tobacco laws. She finished by discussing concerns relating to NPM sales of unstamped cigarettes to prisons and military bases.

Questions

A committee member asked why PMs can go back and challenge New Mexico's qualifying statute, especially considering that the statute is based on the MSA template. Ms. Erdman stated that PMs have challenged the state's qualifying statute every year since 2006 and that this is permissible under the four-year statute-of-limitation provision. She added that this type of statute of limitation is standard procedure and New Mexico is contractually bound by it. The legislator also inquired into whether there is a provision under which the PMs would have to prove their market share loss. Ms. Erdman explained that the states can challenge the market share argument, but she pointed out that market share loss is determined nationally rather than by state by PricewaterhouseCoopers and that all challenges to the determination to date have been unsuccessful.

Another committee member inquired into the OAG qualified statute argument. Ms. Erdman noted that the issue is interpreted by an economics firm, but reiterated that the AG believes that New Mexico has a qualifying statute in place. The committee member then asked about how tribal sovereignty fits into these issues. Ms. Erdman explained that the state can collect excise taxes on sales that take place on tribal property to nontribal members, but it cannot impose a tax on a sale from a tribe to a tribal member. She pointed out that the escrow issue is analyzed by comparing the state interest to the tribal interest. Ms. Erdman asserted that the state interest is huge because tribal members take advantage of the tobacco prevention and cessation programs and they may be enrolled in Medicaid. Ms. Erdman went on to explain that if a tribe has a qualifying tribal tax, which 22 of 24 tribes do, it may be imposed, but if it does not have a qualifying tribal tax, the tribe must pay excise tax on cigarettes sold to nontribal members. The legislator concluded by asking about the number of NPMs making escrow payments. Ms. Erdman stated that only three of the 13 NPMs are making full escrow payments for all state taxes. She noted that a declaratory judgment action was recently filed by these NPMs against the OAG and a New Mexico court will determine whether the state can collect escrow on tribal sales.

A committee member asked for an explanation about Native Trading Associates. Ms. Erdman stated that Native Trading Associates is the largest NPM selling in New Mexico and its sales are targeted at tribal property. She added that roughly 98% of NPM sales are on tribal property.

Another committee member asked about the status of the state's qualifying statute if a bill is not passed in the next session. Ms. Erdman stated that the current version might be upheld, but if it is not, the state could be at risk of losing roughly \$400 million in MSA payments over the next 10 years if the state is unable to prevail in this challenge.

A committee member inquired into what type of immunity government actors enjoy. Ms. Erdman explained that immunity applies only to individual actors, not to the state's contractual obligations.

Another committee member initiated a discussion regarding tribal involvement in challenging the state's attempts to collect from NPMs. Ms. Erdman noted that tribes have always agreed to stand down from any opposition as long as the state does not impose a state excise tax on any of their sales. She added that while imposing escrow on sales may reduce sales, the tribes have agreed to do this to protect the MSA. The legislator then asked about when tribes can claim sovereign immunity. Ms. Erdman noted that once tribal products enter the state's commerce stream, there is no longer sovereign immunity. The committee member concluded by asking whether tribes have challenged excise taxes on sovereign immunity grounds, if the incidence of the tax is properly assessed on sales to nontribal consumers and, if not, why the state does not impose an excise tax on all sales. Ms. Erdman replied that states have the authority to tax sales to nontribal members. Another legislator added that tribal leaders prefer to deal with the executive branch, government to government.

A committee member opined that if the state loses in the arbitration, the only recourse would be for the legislature to pass a heavy state excise tax. Ms. Erdman stated that a statute that keeps escrow sales even between nontribal and tribal sales should be sufficient. The legislator reiterated that state excise tax would be the likely result.

Public Comment

Maxine Velasquez, general counsel for the Pueblo of Tesuque, stated that tribes are supportive of the state and are taking the MSA issue seriously. She noted that tribes will continue to do what is right for the state while ensuring the preservation of tribal tax agreements. Ms. Erdman remarked that Ms. Velasquez is one of the many liaisons to whom the OAG reaches out whenever cigarette tax legislation is offered. Ms. Erdman again cited the need for a member to sponsor another version of SB 225 in the next legislative session.

TSROC 2012 Work Plan and Meeting Locations

Ms. Knight reviewed the work plan item by item. A committee member reiterated that, given the financial situation and high levels of smoking, the committee should "prune" appropriations that are not related to smoking prevention and cessation.

Upon a motion by Senator Feldman, seconded by Representative Hall, the committee voted without objection to approve the work plan.

Discussion then turned to the committee's meeting locations. Ms. Knight noted that the preliminary budget allowed for one meeting in Albuquerque to visit the UNM HSC. A

committee member requested consideration of the oncologist shortage in Las Cruces. There was discussion among the committee members about having an epidemiologist present an overview of oncologist distribution throughout the state. Another committee member remarked that the American Cancer Society and the CDC should be brought before the committee to give an update about necessary levels of tobacco prevention and cessation funding. Another legislator wondered whether tobacco companies are living up to the advertising restrictions in the MSA. Staff was asked to look at tobacco sales to youths and potential correlations to cigarette sales and taxes.

Suggestions were made for additional research on the subject of marketing to youths, the related prohibitions and what enforcement role the state has, as well as what the current trends are with regard to tobacco and how they may be meeting the goals of the MSA.

Vanessa Hawker, associate budget director, UNM HSC, stated that the UNM HSC would be available for the TSROC meeting in August.

Adjournment

There being no further business before the committee, the first meeting of the TSROC adjourned at 11:56 a.m.

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

**August 3, 2012
University of New Mexico Cancer Center
Albuquerque**

The second meeting of the Tobacco Settlement Revenue Oversight Committee for the 2012 interim was called to order by Representative Gail Chasey, co-chair, on Friday, August 3, at 9:15 a.m. at the University of New Mexico (UNM) Cancer Center (CC) in Albuquerque, New Mexico.

Present

Rep. Gail Chasey, Co-Chair
Sen. Dede Feldman
Rep. Danice Picraux
Sen. John C. Ryan

Absent

Sen. Mary Jane M. Garcia, Co-Chair
Rep. Jim W. Hall

Advisory Members

Sen. Linda M. Lopez

Sen. Sue Wilson Beffort
Rep. Ray Begaye
Sen. Mary Kay Papen

Staff

Roxanne Knight, Legislative Council Service (LCS)
Shawn Mathis, LCS
Sean Sullivan, LCS
Theresa Rogers, LCS

Guests

The guest list is in the meeting file.

Handouts

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

Friday, August 3

Committee Business

Representative Chasey welcomed the members to the meeting and explained that Senator Garcia had a personal conflict and was unable to attend today.

Welcoming Remarks

Richard S. Larson, M.D., Ph.D., vice chancellor for research, senior associate dean for research, UNM Health Sciences Center (HSC), introduced Dr. Robert G. Frank, the new president of UNM.

Dr. Frank began his remarks by acquainting the committee with his extensive education and experience in public health, which includes establishing colleges of public health at both Kent State University and the University of Florida, where he held university leadership positions. Dr. Frank recognized the hard work of the legislators in public health areas. Dr. Frank grew up and attended high school in New Mexico. He has three degrees from UNM, including a doctorate in clinical psychology. Dr. Frank observed that, with its broad program of academics and state-of-the-art cancer treatment center, UNM has diverse opportunities to serve the state and nation. However, since it is competing for research dollars with universities in larger population centers, the university needs support from the legislature to continue and expand its record of achievement, particularly in the area of research.

Dr. Frank explained how funding from the Master Settlement Agreement (MSA) helps the university. According to Dr. Frank, the challenge in New Mexico is to create an economy that provides jobs for UNM graduates. Each year, between 3,000 and 4,000 UNM graduates cannot find jobs in their fields, and so they leave the state. In addition, each year, 2,000 high school students leave the state for college because they are not aware of the value or quality of a UNM education. The role of the university in creating economic opportunities for New Mexico's young people is critical.

To that end, UNM is sponsoring an economic development summit on growing the regional economy on Friday, September 21, 2012. Dr. Frank will be joined by guests who include Governor Susana Martinez; Victor Hwang, author of "The Rainforest: The Secret to Building the Next Silicon Valley"; and Ed Poppell, innovator and former vice president of business affairs and economic development at the University of Florida, who will speak on building entrepreneurial communities. Dr. Frank invited committee members and staff to attend the conference.

Dr. Frank informed the committee that for the first few months of his tenure as UNM's president, he has been engaged in a "listening campaign" as the first step in a strategic planning exercise for UNM 2020.

UNM 2020 is a planning exercise that maps 10-year benchmark goals for UNM. By early spring, UNM will have a very clear strategy across the breadth of the university that encourages broad planning efforts, collaboration and catalytic movement. Students, faculty, staff and the surrounding neighborhoods are all being consulted.

A committee member asked what Dr. Frank perceived as the biggest challenge facing UNM. He responded that frequent changes in leadership make it difficult to set common goals across the university. UNM is 126 years old and has had 21 presidents.

A committee member asked about Dr. Frank's public health background and his plans for establishing a school of public health at UNM. According to Dr. Frank, UNM's public health program is fragmented. To be accredited, there must be a separate school of public health, with at least 25 faculty members and courses in at least five lines. In his opinion, New Mexico could greatly benefit from a school of public health, but there are significant challenges surrounding its creation. The legislature has asked UNM and New Mexico State University (NMSU) to collaborate on a proposal for a school of public health. Schools of public health in other states have proven to have tremendous value, but it is critical to define their goals and vision.

Committee members stated their support for the field of public health. *A member requested that the issue of establishing a school of public health be placed on the agenda of the Legislative Health and Human Services Committee.

UNM HSC Performance Report; Pediatric Oncology; Poison and Drug Information Center; Specialty Education in Pediatrics and Trauma; I&G Allocation

Dr. Larson stated that the UNM HSC fills a critical need resulting from the gap in comprehensive programs throughout the state.

The UNM HSC is critically engaged in improving jobs in health care and addressing the health care work force shortage in New Mexico. The UNM HSC has a strong research mission designed to deliver timely quality care to rural communities.

The original intent of the MSA was to support clinical care and research in tobacco-related illness as well as to support biomedical research and health-related clinical activities. Besides causing cancer, tobacco use has other health effects, including weakening the immune system, increasing the risk of diabetes and heart disease and damaging neurological health. The UNM HSC is currently trying to deploy the most efficient ways to address these health concerns.

Dr. Larson described how appropriations to the UNM HSC from the MSA originally increased, peaked and then declined. A portion of this funding also goes to the UNM HSC's partner, Lovelace Respiratory Research Institute (LRRI). The UNM HSC is also trying to attain additional funding for programs that have been cut.

Dr. Larson also described how the UNM HSC plans to continue to seek funding for the Speaker Ben Lujan Lung Cancer Research Project, which passed last legislative session but was not funded. The UNM HSC will request the \$1 million as supplemental instruction and general (I&G) funding.

There are three core projects funded by the MSA in which the UNM HSC invests: the Poison and Drug Information Center, biomedical research and pediatric oncology. To deliver quality care, the UNM HSC needs to be able to hire faculty to deliver care and conduct research. I&G supplemental funding requests are periodically necessary to cover these needs.

The UNM HSC has had to streamline and modify programs to preserve them, including consolidating where possible and increasing staff workloads. Three programs have lost their funding entirely.

The Poison and Drug Information Center experienced a financial crisis, but data show that immediate care through the center results in cost savings since patients do not have to come to the hospital and can be effectively treated at home. The pediatric oncology program also benefits from the MSA. As the principal pediatric oncology center for New Mexico, 96% of children with cancer in New Mexico are treated at the UNM HSC. UNM's biomedical research programs have taken a 35% budget cut. UNM receives no state funding for this research, and it seeks all of its funding from out of state.

Originally, in the fiscal year 2013 budget, the committee recommended a lump-sum allocation to the UNM HSC, but the Legislative Finance Committee (LFC) recommended that the sum be distributed by line item.

About \$300,000 to \$400,000 is leveraged from the MSA in pilot funding. This is a common business model at the UNM HSC. This pilot money allows the university to develop data from which to request larger amounts of money from other entities. The process for faculty to apply for pilot funding is very competitive, and only 35% of the applications are accepted. However, large returns are gained from the pilot funding model; for example, a project funded at \$50,000 to create a handheld device that can determine whether an infection is viral or bacterial eventually generated \$10 million in external funding.

In the last year, the American Association of Medical Colleges hired an outside consultant to evaluate the economic impact of research enterprises in each state. The direct economic impact of the UNM HSC is \$148 million. This impact allows the UNM HSC to fund 990 jobs, which has an indirect economic impact of approximately \$236.8 million. This indirect impact results in 2,568 jobs for New Mexico. The leverage from the pilot program creates 55 jobs in the local economy.

The UNM HSC has very robust evaluation plans for MSA funds; the UNM HSC has been audited on numerous occasions and always received exemplary remarks.

The Speaker Ben Lujan Lung Cancer Research Project bill originally appropriated \$1 million for lung cancer research at the UNM HSC. However, it was not funded because all available MSA funds had already been appropriated. The governor decided that she would not cut other programs funded by the MSA to fund this project, a position that the UNM HSC supports. The UNM HSC believes that the funding for this appropriation should come from I&G.

Finally, cuts in funding used for clinical activities and research have affected outpatient care and resulted in job cuts. The UNM HSC would like restoration of funds for core programs. Future funding from the MSA may be at risk due to pending litigation.

In response to a committee member's question regarding practice-based research networks, Dr. Larson said it is important for the UNM HSC to use these networks because they elicit community priorities, research disease in communities and disseminate and provide information on the latest health care advances. The UNM HSC is trying to directly link its research mission to health care outcomes and is searching for the best ways in which to fund these metrics.

Dr. Larson responded to a committee member's concerns that the state is not properly funding the basic needs of the UNM HSC by stating that a great effort is made to best present the mission, research and accomplishments of the UNM HSC to all funding entities. A committee member asked about the metrics used to evaluate a budget request by the LFC. Greg Geisler, senior fiscal analyst, LFC, responded that the LFC makes recommendations on budgets, not appropriations. Appropriating money from the MSA before it becomes available is a risky practice, especially in light of pending litigation.

*A member requested that the LFC look at the value-added and cost avoidance metrics in every budget request.

Approval of June 14, 2012 Minutes

A motion was made to approve the minutes, and the motion passed with no objection.

UNM Cancer Research Initiatives

Dr. Cheryl L. Willman, M.D., director and chief executive officer, UNM CC, explained that the UNM CC was founded by the legislature in 1981 as a component of the school of medicine. The UNM CC is the state's first research and public service project. The UNM CC is the state's primary cancer center and was designated as a National Cancer Institute (NCI) center in 2003, helping to secure greater funding. The UNM CC will reapply to maintain this designation in 2014. In addition, the NCI designation is shared with the LRRI, Sandia National Laboratories and Los Alamos National Laboratory. The UNM CC mission is the same today as in the past: to ensure that all New Mexicans can access and benefit from cancer research.

The UNM CC is one of the nation's 126 medical schools that has an NCI cancer center and a clinical and translational science center. Total federal funding for the UNM CC reaches nearly \$60 million in total revenue, an increase from the \$8.3 million received in 2000. Funding has also come from cigarette tax allotments that occurred in 1981 and 2003.

The collaborative relationships between the UNM CC and other groups such as Los Alamos National Laboratory and Sandia National Laboratories have made the UNM CC a model for other programs nationwide.

The goals of the UNM CC are to build institutional and regional scientific centers of competency and consortium partnerships and to reduce the burden of cancer on New Mexicans. The tumor registry, community partnerships and the New Mexico Cancer Genome Project are the result of this strategy. Collaborating with the LRRI, the UNM CC has been successful in developing new approaches to lung cancer, such as finding new mutations in lung cancer

through sequencing. The UNM CC and the UNM Statewide Cancer Care Network are helping to improve access to quality care through collaboration. The New Mexico Cancer Care Alliance increases the accessibility and participation of all New Mexicans in cancer clinical investigations and trials, which are facilitated by the UNM Statewide Collaborative Clinical Trials Network.

The UNM CC's goals for 2015 include successfully renewing the NCI designation and increasing federal funding, gaining designation as an NCI comprehensive care center, completing a clinical treatment facility, strengthening collaborations and continuing to develop cutting-edge science.

Responding to a committee member's question regarding federal funding for treating the uninsured, Dr. Willman responded that the UNM HSC receives no federal funding for treating uninsured patients.

Dr. Willman explained that politics are a large factor in applying for and achieving NCI comprehensive designation; contacting the state's congressional delegation will be an important step in receiving the designation.

Tour of UNM Cancer Center

Committee and staff members were given a tour of the UNM CC by Dr. Willman.

NMSU — Cancer Research Initiatives

Dr. Mary O'Connell, Ph.D., NMSU, stated that NMSU does not receive MSA money, but there are activities in Las Cruces addressing cancer research and prevention. NMSU fosters strong collaborations with the Institutional Development Award (IDeA) Network and the Fred Hutchinson Cancer Research Center. The Hutchinson Center, which is centered out of the Yakima Valley in Washington State, is an agricultural hotspot. This allows for an interesting comparison between its work and the work of NMSU, especially in researching health disparities.

NMSU operates cancer health fairs targeted at New Mexicans who cannot get to their doctors. Many neighborhoods in the southern portions of the state do not have any running water; infrastructure that is taken for granted elsewhere is not always available for many people in New Mexico.

A community health educator was hired through supplemental grant funds from the National Institutes of Health. The program is double-booked all over the state.

A committee member commented that public health curricula in schools should be strengthened, as early education may positively affect the residents' futures.

A committee member asked whether there is funding available through the federal Patient Protection and Affordable Care Act for free preventive cancer screening for those over 65 years of age. Dr. O'Connell stated that there are no co-payments for screening programs.

Tobacco Marketing to Youth — The MSA and Other Related Provisions

Rebecca Parish, assistant attorney general, Office of the Attorney General (OAG), and Kimberle Lowe, Taxation and Revenue Department (TRD), addressed the committee on the restrictions surrounding youth and tobacco marketing. The federal Family Smoking Prevention and Tobacco Control Act, passed on June 22, 2009, regulates the manufacture, marketing and sale of tobacco products. This law applies to tribal lands.

The OAG requires certain steps to be taken in order to be licensed to manufacture tobacco in the state: a sample of the package, carton or pouch designs; a copy of the State Fire Marshal's certification of fire safety; proof of permission from the federal Treasury, Alcohol and Tobacco Tax and Trade Bureau to manufacture tobacco products within the state; approval from the Federal Trade Commission; and an annual certification of compliance from the federal Department of Health and Human Services.

Enforcement against participating manufacturers is through a certification process. Nonparticipating manufacturers' products may be seized and considered contraband if the manufacturers are noncompliant. Penalties must be adequate to deter noncompliance. Distributors can also be audited. There are compacts with Indian nations, tribes and pueblos, which levy a \$.75 tax to increase competition. The state is considering creating retailer licenses to make it easier to track retail activity. A license is not needed to sell cigarettes, only a storefront.

A committee member noted that a bill requiring licensing of cigarette retailers failed in the past because a retail association lobbied against it, along with tobacco manufacturers and distributors. Federal law overrides state law; the MSA only applies to the parties to the MSA, while federal law applies to all manufacturers.

A committee member asked whether nonparticipating manufacturers are following regulations on advertising to juveniles. Ms. Lowe responded that most problems in this area come from nonparticipating manufacturers, not participating manufacturers. Under New Mexico's current law, all participating manufacturers are compliant.

A committee member asked whether the TRD levies tax on roll-your-own tobacco machines. Ms. Lowe responded that no tax is levied on the machine or on cigarettes manufactured with these machines.

Incidence of Cancer in New Mexico; Oncologists in New Mexico

Dr. Michael Landen, M.P.H., acting state epidemiologist, Department of Health, presented data on the rates of cancer in the United States versus New Mexico.

Notably, cancer rates are lower in Native American and Hispanic communities than in other communities. The rate of cancer is calculated through the incidence of cancer per every 100,000 people. The data show that a multifaceted approach is needed in addressing cancer.

There are 3.58 oncologists for every 100,000 people in New Mexico, similar to the U.S. rate of 3.63.

A committee member asked Dr. Landen to provide data on colorectal cancer in Hispanic men to cover the data gaps between his and Dr. Willman's presentations.

The committee discussed how cancer statistics broken down by ethnicity and region could affect policymaking decisions.

LRRI Performance Report: Research Contract

Dr. Steven Belinsky, LRRI, introduced himself to the committee and explained that while genetic abnormalities play a role in cancer, age also plays a very significant role.

The joint lung cancer program between the LRRI and the UNM CC is an innovative mix of teamwork and science. It is important to integrate and bring teams together to provide the best possible care. A sobering fact of lung disease research is that despite tobacco cessation efforts, the number of smokers has not decreased because the United States population has increased.

Lung cancer is the number-one cancer killer in the western world. The LRRI and UNM CC have performed extensive research to design new treatments, diagnostics and potential cures for the disease. The LRRI provides tissues to the UNM CC for development of unique molecular markers of cancer that could improve treatments.

There are new avenues of research being explored by the LRRI and the UNM CC. These include testing novel therapies that awaken genes to kill tumor cells; using aerosols to deliver drugs directly to the lungs; the use of drugs used to treat other diseases that prove effective against lung tumor cells; and focusing on the neurological basis for tobacco addiction.

Promoting and Advertising to Youth; Related Federal Food and Drug Administration (FDA) Regulations and MSA Provisions; Other Tobacco Products and Taxing Tobacco Products

Sandra Adondakis, New Mexico government relations director, American Cancer Society Cancer Action Network, Inc. (ACSCAN), presented an overview of MSA restrictions, FDA regulations, tobacco products tax information and moving forward to combat tobacco-related illness and death information.

Ms. Adondakis stated that print advertisements, in-store advertising, internet tobacco advertisements, direct mail, event sponsorships under corporate names, televising events, vending machines and self-service displays are not subject to MSA overview, although some restrictions not covered by the MSA are covered by federal laws.

The MSA does not require manufacturers to provide more effective warning labels, obtain tobacco retail licensing, follow FDA regulations to establish comprehensive tobacco

prevention and control programs, enforce minimum age laws or enforce proof-of-age requirements for purchase.

The ACSCAN supports legislation to restore funding to tobacco control programming, a return to saving 50% of MSA payments in the Tobacco Settlement Permanent Fund, enforcement of the Dee Johnson Clean Indoor Air Act and increased taxes on noncigarette tobacco products.

Staff Reports

The members of the committee and the staff discussed spreadsheets relating to the Centers for Disease Control and Prevention's recommended funding formulas, historical data surrounding tobacco prevention use and control funding and State Investment Council reports on tobacco fund performance.

Public Comment

There was no public comment at this meeting.

The committee adjourned at 4:15 p.m.

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

**September 19, 2012
Room 311, State Capitol**

The third meeting of the Tobacco Settlement Revenue Oversight Committee (TSROC) was called to order by Representative Gail Chasey, co-chair, on Wednesday, September 19, 2012, at 10:20, a.m. in Room 311 of the State Capitol in Santa Fe.

Present

Rep. Gail Chasey, Co-Chair
Sen. Dede Feldman
Rep. Jim W. Hall
Rep. Danice Picraux

Absent

Sen. Mary Jane M. Garcia, Co-Chair
Sen. John C. Ryan

Advisory Members

Sen. Sue Wilson Beffort
Sen. Linda M. Lopez

Rep. Ray Begaye
Sen. Mary Kay Papen

Staff

Shawn Mathis, Legislative Council Service (LCS)
Theresa Rogers, LCS
Renée Gregorio, LCS

Guests

The guest list is in the meeting file.

Handouts

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

Wednesday, September 19

Representative Chasey asked both members and staff to introduce themselves and informed the committee that Roxanne Knight has retired and Ms. Mathis has replaced her as lead staff for the committee.

Human Services Department (HSD) — Breast and Cervical Cancer Program Performance Report

Julie Weinberg, director, Medical Assistance Division of the Human Services Department (HSD), and Virginia Brooks, staff manager, breast and cervical cancer program (BCC), HSD, presented data on the BCC. Beginning with background, Ms. Weinberg identified Medicaid as the payer for the program's services. The Medicaid category started in July 2002 as an optional category of eligibility. She indicated that over 1,700 women have been enrolled in the BCC since its inception. Enrollment by fiscal year (FY) is given in the handout and includes new and existing enrollees for each year. She then reviewed total expenditures for each year, noting the drop in expenditures in FY 2011, which she said was due to some reductions in outpatient hospital reimbursement and physician fees. She stated that the FY 2012 data are incomplete, as all claims have not yet been received. She spoke of the breakdown by category of costs, with outpatient and physician services being the highest costs. Ms. Weinberg introduced Dr. Ann Foster, who is an ob-gyn and medical director at the HSD.

Ms. Weinberg mentioned that in prior years, there has always been a line item for hospice costs, but not for the current FY, which the HSD is interpreting positively. She added that women qualify for the BCC using Department of Health (DOH) screening and then the BCC helps qualifying women to access services. Since last year, the BCC implemented tobacco cessation treatment services for those in pregnancy-related categories of eligibility and for those under the age of 21. Under these services, Medicaid pays for counseling and drug items and reimburses pharmacies for face-to-face sessions.

The co-chair asked for clarification on exactly how the eligibility works in the BCC. Ms. Weinberg said that this category is for women whose income is up to 250% of the federal poverty level (FPL). Such women are encouraged to be screened for breast and cervical cancer through the DOH, which is essentially the doorway into the program. If the women test positive, they would be eligible through the DOH for enrollment in the BCC.

A committee member asked if the smoking cessation program overlaps with the program at the Lovelace Respiratory Research Institute (LRRI); the BCC is not associated with LRRI. Several committee members questioned whether there are measurements in place to gauge the program's effectiveness. Members expressed how helpful it is to see how funding dollars are spent. Although there are not any current follow-up procedures in place, Ms. Weinberg assured the committee that her division would look at ways to measure effectiveness from those who have received services to see whether they have subsequently quit smoking. She added that although there is already literature that shows the effectiveness of doctors counseling their patients on the risks of tobacco use, there are not specific measurements of this.

Committee members spoke about the importance of tracking data of youth and adult smoking rates and evaluating the effectiveness of programs through the University of New Mexico (UNM), as well as how crucial it is that youth understand that smoking could be a cause of cancer. Some members questioned the effectiveness of pharmacists being the go-between for giving out knowledge about the cessation of smoking. Dr. Foster assured the committee that pharmacists play an important role and are often an underutilized resource in health care.

A committee member questioned the federal match in this program, which is at 90%. Another committee concern was whether the state is confident that women with breast or cervical cancer are getting the appropriate treatment or missing out. Ms. Weinberg responded that because of the doorway into the program, women are missed. For example, women without health insurance get screened elsewhere and so they are not eligible to come into this program; at the same time, the DOH has done a lot to raise awareness that the program exists. Committee members suggested that the single portal into the system could be a fundamental flaw in the system and wondered how the state can address this issue if the program is regulated federally. Ms. Weinberg assured committee members that the HSD has had this discussion, and that this was a legislative choice made at the program's start. Committee members agreed that this is an appropriate issue for an upcoming committee-endorsed bill.

A committee member questioned if the coordination between the DOH and HSD is smooth, and Ms. Weinberg indicated that the program works well between the two agencies. She added that the issues the two agencies work with include being sure those who are screened and found positive get into the system quickly so treatment can be administered right away and ensuring that women receive their full category of eligibility quickly by working together to find providers and services that the women need.

In response to committee questions about the relationship between cancer and tobacco use, Dr. Foster spoke of the tendency of carcinogens in tobacco to gather at the cervix, thus causing cervical cancer. She added that the human papillomavirus is sexually transmitted and is the primary cause of cervical cancer, for which the screening in this program is crucial. She spoke of the importance of early intervention, prevention and screening to prevent the progression of cervical cancer. She said that the cause of breast cancer is primarily genetic but that tobacco use is implicated in head and neck cancers. In response to a question on guidelines for the screening of older women, Dr. Foster said that there are specific guidelines that the U.S. Public Health Task Force follows, including recommending a mammogram screening every year. She said that the start date is under debate but that there is the benefit of an increased life span when screening is started at age 50.

In response to a committee member's question about whether there is a proven relationship between prostate cancer and cigarette smoking, Dr. Foster indicated that although her profession is as an ob-gyn, she has seen that incidents for both prostate and breast cancer are extremely high and frequently go undiagnosed.

A committee member questioned how the costs for mammograms are paid, and Dr. Foster said that the appropriate state share depends on the category of eligibility for members and there can be no member out-of-pocket expenses. She also clarified that there is not a breast and cervical cancer waiver, but an optional eligibility category under Medicaid that covers women with incomes up to 250% of the FPL.

Gina Love of the BCC under the DOH said that the eligibility program is for those age 30 or older living at 250% of the FPL and who are either uninsured or underinsured. She added that

there are 250 hospitals throughout the state that participate in the initial screening in addition to the DOH facilities that offer screening.

In response to a committee member's question about whether the eligibility program can be changed under state law, Ms. Love said that New Mexico originally chose the most restrictive option when the law was adopted and that there is a fiscal consideration here because the program was funded to serve only 15% to 18% of the population. Committee members expressed concern over the possibility that someone income-eligible could be diagnosed and not treated under this program and the desire to research and solve this problem through legislation.

Committee members suggested that what is needed is a public health motivational campaign for all women that includes clear numbers for income level rather than the mysterious "250% of FPL" so that eligibility can be determined more readily. Members said that it is incumbent on the HSD to have a vigorous outreach program for Medicaid along with a branding process in plain English to provide outreach to all.

In response to a committee member's questions regarding coverage of counseling sessions for tobacco cessation programs, Ms. Weinberg said that the HSD would research and get back to the committee on what reimbursements are mandated under state law and how the department works with this.

Senator Feldman moved that the minutes from the second meeting of the TSROC be adopted. Representative Picraux seconded the motion, and the committee approved the adoption unanimously.

DOH Performance Reports for Tobacco Use Prevention and Control Program; Diabetes Prevention and Control Program; HIV/AIDS Services; and Breast and Cervical Cancer Screening Program

Dr. Michael Landen, state epidemiologist, and David Vigil, chief of the Chronic Disease Prevention and Control Bureau, DOH, spoke to the committee about funding that comes to the DOH from tobacco settlement revenue and several programs administered by the DOH. Dr. Landen said that the operating budget for these programs has been the same for the last two years.

Mr. Vigil highlighted the diabetes program, stating that the program follows the Centers for Disease Control and Prevention's (CDC's) guidelines. He added that during FY 2012, three new requests for proposals (RFPs) were issued that focused on reducing adult and youth tobacco use. With the many contracts that go out to communities, 16 have been issued, one of which is a cessation services contract for a "1-800 quit now" telephone-based service. In an effort to reach more youth, other contracts are focused on including web-based and text services. One of the new contracts has an evaluation component that defines rates of quitting more clearly. He added that two new RFPs were issued this year as well that focus on mass media marketing and mobilizing priority populations by working with groups targeted by the tobacco industry.

In delineating the percentages of adult smokers, Mr. Vigil said that the downward trend in New Mexico (21.5%) is following the current national trend (21.2%). Also, in 2011, the CDC implemented a new survey method that allows for the addition of cell phone calls; this caused a slight bump in New Mexico's adult smoking rates, and the DOH is not trending these lines together because of the change in methodology, which actually results in truer estimates. He spoke of the decline in the percentage of youth smoking — from 30.2% to 19.9% between 2003 and 2011. (This represents 9,900 fewer high school smokers.) New Mexico's youth smoking rate is slightly higher than the national level, which is at 18.1%, he stated.

Mr. Vigil then focused on the "QUIT NOW" program, which includes a new feature in 2012 that can use text messaging to send a photo of a loved one to encourage the receiver not to smoke; the message pops up on the receiver's phone at crucial times during the day. He said that the DOH works with pharmacists to help assess whether people want to quit smoking and whether to speak to them. He spoke of the proactive engagement with health care providers in helping people to quit smoking. (Refer to page three of the handout for figures of enrollees and information calls made in QUIT NOW.)

Mr. Vigil highlighted the tobacco use prevention and control program's (TUPAC) "have a heart" media campaigns that produced a series of Native American art cards from the Navajo Nation, Jicarilla Apache Nation and the Pueblos of Santa Clara and Tesuque. He said that 23,000 cards have been passed out and were well received and that this is a joint effort of the diabetes and tobacco cessation programs.

Another program with great success is the "show you know" effort, in which youth compete to create a lyrical interpretation of why one would not want to smoke, and then these songs are featured online. Other initiatives with youth include work with high school students across the state to change community program access to cigarettes.

A committee member questioned the figures that show advances in youth cessation of smoking; what was discussed involved members remembering declines in high school smoking statistics, but increases in chewing tobacco and snuff intake. Also, the DOH mentioned that youth initiation into smoking is happening earlier. In addition, it has been determined that it is just as difficult for youth to quit as adults.

Another committee member mentioned that a lot of the TUPAC funding has been directed toward youth, and Mr. Vigil clarified that the quit line and media efforts receive significant funding and a lot of money goes to youth for prevention, but the largest expenditure is for tobacco cessation services.

In response to a question about if there is another way to track tobacco use prevention and cessation, for example, by directing prevention services to the youth and cessation services toward the older population, Mr. Vigil said that it is correct that people start smoking at a younger age and not really after age 24.

A committee member suggested that it would be interesting to track expenditures in tobacco use prevention and cessation as related to adult and youth declines in smoking. Mr. Vigil indicated that the DOH does have a breakdown of tobacco use prevention and cessation contracts and can provide a further breakdown of these categories. He added that the program uses two different media marketing companies, McKee and Rescue Social Change, which work with youth. A committee member praised the DOH for its creativity in adjusting to new technologies and being innovative and culturally sensitive in its programming.

In response to a committee member question about whether the youth smoking figures include other forms of ingesting tobacco, Mr. Vigil said it does not; the figures are solely from cigarette smoking itself.

A committee member questioned if the military has a smoking cessation program, and Mr. Vigil indicated that the DOH is working with Kirtland Air Force Base to evolve a stringent policy regarding tobacco use and enhancing cessation services within the military population.

In response to a question about whether these programs are reaching youth in different ways, Mr. Vigil spoke of the ad campaign that features a man who has half of his chin removed and who also speaks to kids in schools, which has been quite effective.

Next, Mr. Vigil gave statistics from the diabetes prevention and control program that indicate there are 198,417 adults in New Mexico with diabetes and 546,820 with pre-diabetes. The figures for the U.S. are 26 million adults with diabetes and 79 million with pre-diabetes. He stressed that if all adults with pre-diabetes developed diabetes, there would be a huge impact on the state's health system. Figures over time show a slow and steady increase over the past 10 years. He added that because the 2011 figures include cell phone data, there has been an increase in the estimated number of adults with diabetes, and that this data cannot be gauged just yet. Mr. Vigil spoke about the ways in which funding has been spent in this program, which include: additional staff; initiatives such as the ABC project and the national diabetes prevention program; services focusing on child health; kitchen creations, which features classes that teach participants in cooking schools how to cook balanced meals; professional development with health educators; online courses for professional training; and collaborations to reach and target individuals in tribal and other communities affected by diabetes.

Mr. Vigil talked about the screening program for the BCC as a gateway for getting Medicaid services. He said that 1,380 women were served last year who might not have otherwise received a mammogram. Also, 16% of all eligible individuals in the state are covered by funds from the CDC. This program can only serve women age 50 and older, but he added that the DOH uses funds to help younger women as well. He stressed the importance of the programs receiving federal matching dollars. He reviewed eligibility criteria for women wanting to enter the BCC and said that the language for eligibility is very clear and uses dollar amounts rather than the percentage of the FPL to make it clearer to those applying. In FY 2012, the BCC served 11,996 from all funding sources combined. He also stated that in FY 2012, more diagnostic mammograms were provided through the program to women whose services were paid from tobacco settlement revenue. He added that all legislative funding goes directly into

the clinics and that federal grant money and some general fund money is what goes to overhead. He ended by saying that the DOH's intent is to integrate programs to better serve varying populations.

A committee member questioned the structure of programs as eligibility- or entitlement-based, and the response was that there is a federal program for breast and cervical cancer screening and a different program for Medicaid and that the DOH is the gatekeeper, and that once someone qualifies for the program, it is an entitlement program. The committee member then pointed out that the program could be classified as a gatekeeping program that is funding-limited; once through, the participant gets into the Medicaid program, which has a 90% federal match and is an entitlement program. Committee members agreed that all women with breast cancer should have access to the Medicaid program, and that the best solution would be to broaden the funnel at the front end to allow for more women to be included and helped.

Another committee member pointed out that the issue is money, and with the current one-to-three match, the state is already spending \$638 million, adding that it is really a separate issue to open access to more women. Another member said that by not doing the appropriate amount of early screening, the state might end up paying more for care.

In response to a committee member's question on state discounts for cancer drugs, Dr. Landen pointed out that the state receives a good discount on HIV drugs and he will check on discounts for cancer drugs for the committee. He added that the DOH has a huge HIV drug program and that the state does receive a significant break on childhood vaccines through the CDC.

Dr. Landen indicated that tobacco settlement funds helped to initiate the healthy kids program in New Mexico and that the CDC sustains this program. He said that it is a community-based, coalition-driven program to motivate kids and families to eat healthier and to be more physically active. In response to committee members' questions about cooking classes in the schools, one program that was spoken about takes place at a Hatch elementary school, which developed a culinary arts and mentorship program, with the intention of building a program that is sustainable by leveraging community and state resources and designing innovative ways to deliver services without having to hire outside teachers. In Hatch, for example, the elementary school wanted to create a garden, and the middle school has an agricultural class that got involved to make this happen without hiring resources outside the school system.

Dr. Landen spoke of the cost-efficient funding in the hepatitis and harm reduction program, which provides funding for contract nursing services to do the work, which includes investigation of hepatitis cases; obtaining adult blood specimens for hepatitis B and C tests; giving hepatitis vaccinations to high-risk clients; and HIV/AIDS counseling, education and referral. In discussing achievements in the harm reduction program, Dr. Landen said that funding from tobacco settlement revenue is a great help in terms of the syringe exchange and overdose prevention program.

In response to a committee member's question on whether such a program exists in other states or if New Mexico is one of the first, Dr. Landen said that New Mexico was an early innovator and other states now have similar programs, but that New Mexico's model program is one of the most impressive and aids in overdose prevention.

A committee member questioned the CDC's recommendation for screening for hepatitis C, which is that all adults born between 1947 and 1965 be screened. This is because the CDC, through surveillance data nationally, has determined that a lot of people do not know they have hepatitis C and that the screening could help the individual but also have some prevention benefits. Dr. Landen indicated that the federal program is likely based on recent survey data that suggest there is a bigger problem nationally than is perceived.

Committee members were given a handout answering questions from the last meeting concerning cancer statistics. Highlights of these statistics include a large drop in the white/non-Hispanic rate of colorectal cancer in New Mexico, which leaves the Hispanic rate much higher. Although there was a wide gulf between the two as related to rates of colorectal cancer deaths, there has been a recent convergence of the Hispanic and non-Hispanic rates, making them much closer in recent years. In addition, charts comparing New Mexico rates to those of the rest of the U.S. for several types of cancer reveal that New Mexico cancer rates are favorable in males as compared to the U.S., with the only male cancer rate higher in New Mexico being for liver cancer. In comparing cancer rates for females, the only two that show higher rates in New Mexico than the rest of the U.S. are for leukemia and thyroid cancer, but both are only slightly higher.

Tobacco Settlement Permanent Fund (TSPF) Performance and Balances

Steve Moise, state investment officer, State Investment Council (SIC), reported good news to the committee, saying that New Mexico's investment returns at the SIC have been very strong this year. He added that the state's permanent funds earned 9.5% in the calendar year to date. Also at the end of the June quarter, the land grant permanent funds performed number one nationally. He said that the SIC has been restructuring the state's investments and that the fixed income allocation in the first asset class has been restructured as well. He spoke of reforms that have been put into place that impact the TSPF that include portfolio restructuring, governance reform and the restructuring of the SIC. He added that the SIC moved its core bonds portfolio to external management and that less than 10% of its investments are now managed in-house, which is fiduciarily responsible. Mr. Moise indicated that the restructuring in 2010 has fully taken hold and that members of the council are deeply engaged in all of the SIC's doings. He stated that the SIC hired Hewitt EnisKnupp to assess the SIC's progress since the fiduciary review of 2010, in which the SIC was given 82 suggestions on how to improve. Most of these improvements have been completed, he said, along with suggestions for legislative initiatives, which have been endorsed by the SIC and are being drafted.

Mr. Vince Smith, deputy state investment officer, SIC, gave details of the TSPF to the committee. He spoke of the fund's allocation targets, which consist of 61% in public equities, of which 51% are U.S. equities and 10% are non-U.S. equities; 29% in fixed income; and 10% in absolute return or hedge funds. Mr. Smith said that the SIC wants legislative assistance in

determining whether this asset allocation mix is too aggressive. A committee member added that the difficulty is in counting the state's permanent fund as part of its reserves and how that ties the SIC's hands in terms of investment. The difference between the TSPF and the other funds the SIC manages is that all the other permanent funds have constitutional protection. The original legislative intent for the TSPF, a committee member said, is that when a permanent fund is established, it would eventually have a corpus and an interest rate to draw on as a revenue stream. Mr. Moise said that this would be ideal, but that is not what is currently in place. He pointed to the fact of the TSPF's numbers, which indicate \$484 million in contributions and \$428 million in distributions. He added that whatever the legislature could do to ensure that the corpus of the fund remains intact would be fiduciarily responsible.

A committee member encouraged Mr. Moise to speak to the Legislative Finance Committee (LFC) about this issue to ensure that the corpus is built so that the money in the corpus equalizes the money needed to borrow against it. In response to a committee member's question about how to protect the corpus, Mr. Moise said that he does not know the full answer to that question but that the SIC has been encouraged to increase inflows to the Severance Tax Permanent Fund, which was once at 50% and is now at 5%. Because the TSPF does not have the same protection as the state's other permanent funds, it can be drawn from in case of a budgetary shortage.

The TSPF breakdown for investment is 60% stocks and 40% bonds, and he stated that the best returns in the stock market are currently at about 9% and in the bond market the yield is at about 2%. The TSPF earns about 6.2% on its investments, which he said is not enough, but that the SIC cannot buy the same assets for the TSPF as for other funds because its status does not provide it with enough liquidity. In comparison, the land grant permanent fund represents 70% of the SIC's assets.

In response to committee members' questions, Mr. Smith indicated that if there is protection to the corpus and the TSPF is not a reserve fund, the SIC could make investments for the fund that would have better returns. He said that the SIC could make recommendations on the fund after review by the fund's managers on both investment and governance matters. Committee members agreed that when the SIC makes its presentation to the LFC, the TSROC should be invited and receive per diem to sit in to hear this; a request will be made to the New Mexico Legislative Council for approval of this idea.

Greg Geisler from the LFC said that the LFC needs to be clear on what the committee's desires are and that a conversation with all involved is a good idea.

Review of Handouts and Spreadsheets Regarding the TSPF and Previous Committee Questions

Ms. Mathis reviewed a grouping of handouts and told the committee that she will be updating the TSPF program spreadsheet to make it more readable. She will also put together a small booklet that represents the spreadsheet in a more user-friendly format.

Ms. Mathis said that among the requests over the TSROC's last two meetings was one that would compare smoking rates in states that have raised cigarette taxes versus those that have not. She referred to the CDC's "Morbidity and Mortality Weekly Report" of March 30, 2012, which indicates that increasing the price of cigarettes reduces the demand, especially among youth and young adults. Increasing cigarette excise tax is the most common way that governments have raised taxes on cigarette sales. A committee member questioned whether the report separated out states that have cigarette sales from sovereign nations as New Mexico does, which affect the revenue received from taxes, and a suggestion was made to ask the National Conference of State Legislatures for a listing of states that do not have tribal sales. Another committee member suggestion was to look at the shift from off-reservation sales to tribal sales in the last 10 years to see if there was a shift in the majority of sales, and a suggestion was made to ask the Attorney General's Office for confirmation of this data and how the data are analyzed.

Ms. Mathis said that the committee had requested looking at tobacco sales to youth as well as how these sales correlate to taxation. She referred members to an *Albuquerque Journal* article on hookah use, which speaks to the impression that youth have that hookah smoking is less damaging than cigarette smoking. She also referred to a surgeon general report that says that while cigarette smoking is declining, other forms of tobacco use are proving to be popular with youth and that this group of smokers is not captured as much in the research. She added that a 2010 survey found that 17% of the nation's high school students and 4% of middle school students had used a hookah. Hookah use has been reported in at least 33 states, mainly those having large universities; other statistics show water pipe use and state that using water pipes poses a serious hazard. Among the hazardous components in these alternative ways of ingesting tobacco are the increased volume of smoke inhaled, the high levels of toxic compounds and the fact that by using heat sources to burn tobacco, these fuels produce their own toxins as well. Other risk factors include that of secondhand smoke of both tobacco and fuels, causing a serious risk to nonsmokers, as well as the sharing aspect of water pipes, which increases the risk of the transmission of communicable diseases.

Ms. Mathis brought forth the idea from the World Health Organization working group that water pipes and water pipe tobacco should be subject to the same regulations as tobacco, which would include strong health warnings, the prohibition of claims of safety, prevention measures that include water pipes and prohibition of the use of these alternative means in public places in a manner that is consistent with other forms of tobacco and information about risks. She added that there is currently no law for hookah bars in New Mexico and that the Dee Johnson Clean Indoor Air Act permits hookah lounges.

The committee closed the day's work with a brief preliminary discussion of proposed legislation by asking the departments to guide it on what legislation is needed to ensure that there is not the existing narrow funnel or lottery for women seeking eligibility in the BCC. A committee member suggested amendments to the Dee Johnson Clean Indoor Air Act related to hookah bars. Another member expressed interest in reintroducing the bill that the committee endorsed in 2012 and the governor vetoed that would have amended the Cigarette Tax Act to clarify that nonparticipating manufacturers have to pay escrow on all tobacco sales in New Mexico, whether on tribal property, federal property, state property or any retail operation.

Members were provided with a handout delineating legislation related to the TSROC from the past several years and were encouraged to review this and decide what they want the committee to introduce and which bills they want to sponsor.

The meeting came to a close with a public comment segment. Lobbyist Marc Saavedra of UNM gave an update on House Bill 315, which was sponsored by Representative Luciano "Lucky" Varela, and the appropriation of \$1 million for lung cancer research in the name of the Speaker of the House Ben Lujan and Carmen Lujan. He said that the bill went through the legislative process with no appropriation and that the speaker did not want existing funds to be used for this purpose. In discussing other means of appropriating this funding, Mr. Saavedra said that he is working with the Office of the Governor and that UNM would like to propose supplemental legislation to take care of funding for this research. He added that the current appropriation is nonrecurring and questioned whether the committee would want to make it recurring.

Adjournment

There being no further business, the TSROC adjourned at 2:21 p.m.

**MINUTES
for the
FOURTH MEETING
of the
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**October 31, 2012
Room 311, State Capitol
Santa Fe**

The fourth meeting of the Tobacco Settlement Revenue Oversight Committee (TSROC) was called to order by Representative Gail Chasey, co-chair, on Wednesday, October 31, 2012, at 10:30 a.m. in Room 311 of the State Capitol in Santa Fe.

Present

Rep. Gail Chasey, Co-Chair
Sen. Dede Feldman
Rep. Danice Picraux
Sen. John C. Ryan

Absent

Sen. Mary Jane M. Garcia, Co-Chair
Rep. Jim W. Hall

Advisory Members

Sen. Sue Wilson Beffort
Sen. Linda M. Lopez

Rep. Ray Begaye
Sen. Mary Kay Papen

Guest Legislator

Sen. Nancy Rodriguez

Staff

Shawn Mathis, Legislative Council Service (LCS)
Rebecca Griego, LCS
Theresa Rogers, LCS

Guests

The guest list is in the meeting file.

Handouts

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

Wednesday, October 31

Welcome and Introductions

Representative Chasey called the meeting to order and invited members of the committee and legislative staff to introduce themselves.

Tobacco Settlement Permanent and Program Funds Revenue Update

Elisa Walker-Moran, chief economist, Legislative Finance Committee (LFC), explained that the Master Settlement Agreement (MSA) revenue increased from \$38.6 million to \$39.3 million between FY 2011 and FY 2012. Revenue decreased in previous years as a result of falling participating manufacturers (PM) market shares. Although the revenue forecast is subject to significant uncertainty due to litigation and PM fund withholding, MSA revenue is currently projected to be \$39 million for FY 2013.

The MSA, signed in 1998, is the result of a lawsuit against four major tobacco companies for the health care costs associated with tobacco sales. The MSA contains statutory provisions that require tobacco manufacturers to make payments to the MSA to fund tobacco prevention and cessation programs; a PM must pay a portion of its market share in perpetuity. Nonparticipating manufacturers (NPM) pay equivalent amounts into an escrow account for the settlement of future claims. Currently, 46 states participate in the MSA.

Legislation passed in 2000 authorized an annual distribution from the Tobacco Settlement Permanent Fund to the Tobacco Settlement Program Fund of an amount equal to 50% of the MSA revenue to the Tobacco Settlement Permanent Fund. This split occurs annually until the 50% distribution to the Tobacco Settlement Program Fund is less than an amount equal to 4.7% of the average of the year-end market values of the Tobacco Settlement Permanent Fund for the immediately preceding five calendar years. Upon reaching this milestone, the distribution to the Tobacco Settlement Program Fund will be based on 4.7% of the five-year average Tobacco Settlement Permanent Fund balance and, thereafter, all MSA revenues will be retained in the Tobacco Settlement Permanent Fund.

Ms. Walker-Moran explained that MSA payments are reduced if the PM loses market share, a practice called volume adjustment. Volume adjustment rates have averaged -3% in recent years, but are steadily increasing.

In 2006, some PMs began withholding payments, arguing that the state was not correctly enforcing the MSA. PM withholding amounts have cost the state \$3 million to \$6 million per year.

Ms. Walker-Moran stated that the MSA revenue forecast assumption for New Mexico is \$39.5 million in FY 2014. This figure accounts for a 3% inflation factor, a volume adjustment of -4% and withheld payments from PMs of \$5.7 million. A representative stated that it is necessary to sustain contributions into the Tobacco Settlement Permanent Fund in order to mitigate the impact of withheld funding. The official LFC revenue estimate for the MSA will be available in December.

Tom K. Pollard, Ph.D., legislative fiscal analyst, LCS, said that although 50% of the annual MSA payments were pledged to the Tobacco Settlement Permanent Fund under the 2000 legislation, subsequent amendments caused this distribution to occur in only four of the last 12 years, with nothing going to the Tobacco Settlement Permanent Fund. In the other eight years,

the MSA revenues, as part of general fund reserves, went to replace general fund revenues. Dr. Pollard explained that if the deposits to the Tobacco Settlement Permanent Fund had occurred as authorized in the 2000 legislation, the Tobacco Settlement Permanent Fund would have a balance of approximately \$300 million instead of its current \$150 million balance.

The Tobacco Settlement Permanent Fund was originally designed to be invested by the State Investment Council (SIC) until 4.7% of the corpus would be distributed annually to the Tobacco Settlement Program Fund, and all future MSA revenue would be deposited to the Tobacco Settlement Permanent Fund. The diversion of the \$150 million from the Tobacco Settlement Permanent Fund for general fund expenditures has delayed this milestone by seven to nine years.

Dr. Pollard suggested that \$150 million could be transferred within general fund reserves, from the operating reserve to the Tobacco Settlement Permanent Fund, to reimburse that fund for revenues previously diverted. Dr. Pollard noted that reserve balances would not be reduced and that revenue could be appropriated from the Tobacco Settlement Permanent Fund without the requirement of a two-thirds' vote in both chambers. Further, this transfer would support the mission of the Tobacco Settlement Permanent Fund and would be a precautionary move against the possible loss of future MSA payments as a result of current litigation.

Ms. Walker-Moran stated that the transfer of funds from the operating reserve to the Tobacco Settlement Permanent Fund reserve account would make it more difficult to access such funds.

Tobacco Use Prevention and Control Program — Indian Affairs Department Performance Report

Arthur P. Allison, secretary of Indian affairs, described the ongoing efforts of the Indian Affairs Department (IAD) to mitigate tobacco use, pointing out that traditionally, only men used tobacco and that it was only used in ceremonial events. The abuse of commercial tobacco is a detrimental problem for Native health. Secretary Allison also pointed out the difficulty in regulating tobacco use among Native communities, as it is a large source of revenue to many tribes.

Allie Thompson, marketing and communication manager, Keres Consulting, described the program goals of the IAD Tobacco Use Prevention and Control Program (TUPAC) as the cessation and prevention of commercial tobacco abuse in Native communities while promoting the cultural and traditional use of tobacco.

The IAD was funded with \$249,000 in FY 2013 to sustain TUPAC programs. Of that funding, 44.7% funded cessation programs, 40.8% funded prevention programs, 12.4% funded administrative costs and 2.1% funded policy initiatives.

The funding for the IAD TUPAC programs has dwindled from FY 2007 through FY 2011. As a result, the IAD has decreased funded programs from 13 to seven. To strengthen the funded programs, the IAD has collaborated with the Centers for Disease Control and Prevention

(CDC) and has adopted its best practices with culturally relevant approaches, conducted CDC Best Practices in Tobacco Control Training and revised its reporting tools to align with Department of Health (DOH) TUPAC tools.

The IAD, in line with the CDC, works to prevent the initiation of smoking by youth. As a result, 100% of the programs funded by the IAD have a youth and young adult component. The programs are mainly school-based interventions, allowing students to research and create their own public service announcements surrounding smoking prevention. The IAD also follows CDC best practices by providing smoking cessation resources, such as the 1-800-QUIT NOW help line, collecting data surrounding the quantity and habits of Native American smokers and creating no-smoking zones.

The IAD programs have proven effective. Studies have shown that positive quantitative progress has been made in commercial tobacco use. The IAD has also collaborated with the DOH to gain access to the electronic TUPAC Evaluation Tool (eTET) system and guidance on reporting features.

The IAD recognizes the need for improvement, especially in the speed of awarding grants, increased community engagement and the restoration of funding levels.

Minutes

On a motion by Senator Feldman, seconded by Representative Picraux, the minutes for the September 19, 2012 meeting of the committee were approved without objection.

Proposed Legislation from the Attorney General for the 2013 Legislative Session and Arbitration Update

Scott Fuqua, assistant attorney general and director, Litigation Division, Office of the Attorney General, stated that the legislative initiatives of the Office of the Attorney General are identical to the initiatives of last year. Senate Bill 225 (2012) is an act clarifying that cigarette packs stamped with tax credit stamps are "units sold" for the purpose of determining escrow payments pursuant to the MSA. House Bill 277 (2003) is an act requiring that establishments that sell tobacco products be licensed with the DOH. Both will be reintroduced. Mr. Fuqua stated that there is strong collaboration with the executive branch, as there was last year, to draft a bill that will not be vetoed by the governor.

A committee member stated that continued efforts to pass these bills are consistent with the state's position in pending litigation.

A committee member asked whether the state would have to sue each PM every time it wants to access funds from the escrow account. Mr. Fuqua stated that this is true.

Mr. Fuqua further explained that the state is also a party to litigation arising under the Cigarette Tax Act, which affects how much NPMs need to pay into escrow.

Committee members discussed the litigation surrounding escrow payments and the effects of litigation on local tobacco manufacturers.

Agency Comments

There were no agencies wishing to comment.

Public Comment

There was no public comment.

Review of Committee Legislation

The committee requested that staff work with the Office of the Attorney General regarding endorsing a bill identical to SB 225 (2012).

The committee also requested that staff contact the Taxation and Revenue Department regarding the potential redefining of cigarette tax units.

Senator Lopez agreed to sponsor a memorial requiring cancer education in high schools.

Before concluding the meeting, the committee voted on and approved recommended FY 2014 funding from the Tobacco Settlement Program Fund, totaling \$19,750,000 (50% of the LFC's estimated MSA revenue for FY 2014).

Adjournment

There being no further business before the committee, the fourth meeting of the TSROC for the 2012 interim adjourned at 2:40 p.m.

ENDORSED LEGISLATION

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BILL

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

DISCUSSION DRAFT

ENDORSED BY THE TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

AN ACT

RELATING TO TOBACCO SALES; CLARIFYING THAT CIGARETTE PACKS
STAMPED WITH TAX-CREDIT STAMPS ARE "UNITS SOLD" FOR THE PURPOSE
OF DETERMINING ESCROW PAYMENTS DUE PURSUANT TO THE MASTER
SETTLEMENT AGREEMENT; AMENDING THE CIGARETTE TAX ACT; DECLARING
AN EMERGENCY.

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

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

"6-4-12. DEFINITIONS.--As used in Sections 6-4-12 [~~and~~
~~6-4-13~~] through 6-4-13.2 NMSA 1978:

A. "adjusted for inflation" means increased in
accordance with the formula for inflation adjustment set forth
in Exhibit C to the Master Settlement Agreement;

B. "affiliate" means a person who directly or

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underscored material = new
[bracketed material] = delete

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

9 C. "allocable share" means "Allocable Share" as
10 that term is defined in the Master Settlement Agreement;

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

14 (1) any roll of tobacco wrapped in paper or in
15 any substance not containing tobacco;

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

21 (3) any roll of tobacco wrapped in any
22 substance containing tobacco [~~which~~] that, because of its
23 appearance, the type of tobacco used in the filler or its
24 packaging and labeling, is likely to be offered to, or
25 purchased by, consumers as a cigarette described in Paragraph

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

8 E. "Master Settlement Agreement" means the
9 settlement agreement (and related documents) entered into on
10 November 23, 1998 by the state and leading United States
11 tobacco product manufacturers;

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

22 G. "released claims" means "Released Claims" as
23 that term is defined in the Master Settlement Agreement;

24 H. "releasing parties" means "Releasing Parties" as
25 that term is defined in the Master Settlement Agreement;

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1 I. "tobacco product manufacturer" means an entity
2 that, after the date of enactment of this act, directly (and
3 not exclusively through any affiliate):

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

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

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

23 The term "tobacco product manufacturer" shall not include
24 an affiliate of a tobacco product manufacturer unless such
25 affiliate itself falls within Paragraph (1), (2) or (3) of this

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1 subsection; and

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

13 (1) the excise tax due from cigarettes sold
14 bearing tax stamps pursuant to the Cigarette Tax Act;

15 (2) ounces of "roll-your-own" tobacco sold on
16 which the tobacco products tax is due pursuant to the Tobacco
17 Products Tax Act; or

18 (3) cigarettes sold bearing tax-exempt or tax-
19 credit stamps pursuant to the Cigarette Tax Act."

20 SECTION 2. A new Section 6-4-13.2 NMSA 1978 is enacted to
21 read:

22 "6-4-13.2. [NEW MATERIAL] RULES--AMOUNT OF STATE EXCISE
23 TAX PAID ON CIGARETTES OF TOBACCO PRODUCT MANUFACTURER.--The
24 secretary of taxation and revenue shall adopt rules regarding
25 how to determine for each year:

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

1 A. the amount of state excise tax paid on the
2 cigarettes of a tobacco product manufacturer and on the number
3 of ounces of "roll-your-own" tobacco sold; and

4 B. the number of cigarettes bearing tax-exempt or
5 tax-credit stamps that are sold."

6 **SECTION 3.** Section 7-12-5 NMSA 1978 (being Laws 1971,
7 Chapter 77, Section 5, as amended) is amended to read:

8 "7-12-5. AFFIXING STAMPS.--

9 A. Except as provided in Section 7-12-6 NMSA 1978,
10 all cigarettes shall be placed in packages or containers to
11 which a stamp shall be affixed. Only a distributor with a
12 valid license issued pursuant to the Cigarette Tax Act may
13 purchase or obtain unaffixed tax-exempt stamps, tax-credit
14 stamps or tax stamps. A distributor shall not sell or provide
15 unaffixed stamps to another distributor, manufacturer, export
16 warehouse proprietor or importer with a valid permit pursuant
17 to 26 U.S.C. 5713 or any other person.

18 B. Stamps shall be affixed by the distributor to
19 each package of cigarettes to be sold or distributed in New
20 Mexico within thirty days of receipt of those packages.

21 C. A distributor shall apply stamps only to
22 packages of cigarettes that the distributor has received
23 directly from another distributor or from a manufacturer or
24 importer of cigarettes that possesses a valid and current
25 permit pursuant to 26 U.S.C. 5713.

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1 D. A distributor shall not affix a tax stamp, a
2 tax-exempt stamp or a tax-credit stamp to a package of
3 cigarettes of a manufacturer or a brand family that is not
4 included in the directory or sell, offer or possess for sale
5 cigarettes of a manufacturer or brand family that is not
6 included in the directory.

7 E. Packages shall contain cigarettes in lots of
8 five, ten, twenty or twenty-five.

9 F. Unless the requirements of this section are
10 waived pursuant to Section 7-12-6 NMSA 1978, a tax stamp shall
11 be affixed to each package of cigarettes subject to the
12 cigarette tax, a tax-credit stamp shall be affixed to each
13 package of cigarettes subject to a qualifying tribal cigarette
14 tax and a tax-exempt stamp shall be affixed to each package of
15 cigarettes not subject to the cigarette tax pursuant to Section
16 7-12-4 NMSA 1978.

17 ~~[G. A tax-exempt stamp or tax-credit stamp is not~~
18 ~~an excise tax stamp for purposes of determining units sold~~
19 ~~pursuant to Section 6-4-12 NMSA 1978.~~

20 H.] G. Stamps shall be affixed inside the
21 boundaries of New Mexico, unless the department has granted a
22 license allowing a person to affix stamps outside New Mexico."

23 SECTION 4. APPLICABILITY.--The provisions of this act
24 shall apply to units sold on or after January 1, 2010 pursuant
25 to Section 6-4-13 NMSA 1978.

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SECTION 5. EMERGENCY.--It is necessary for the public
peace, health and safety that this act take effect immediately.

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