



NEW MEXICO LEGISLATURE

**TOBACCO SETTLEMENT  
REVENUE OVERSIGHT  
COMMITTEE**

2015 INTERIM FINAL REPORT

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## INTERIM SUMMARY



## **Tobacco Settlement Revenue Oversight Committee 2015 Interim Summary**

The Tobacco Litigation. In 1994, the attorney general of the State of Mississippi filed suit against major tobacco companies for deceptive and fraudulent marketing, targeting children and conspiracy to conceal the health effects of smoking, arguing that Mississippi should not be forced to pay the costs of treating smoking-related diseases and conditions such as lung cancer, heart disease, emphysema and low-birth-weight babies. Eventually, 45 other states, including New Mexico, filed similar lawsuits against the same defendants, seeking recovery of Medicaid and other public health expenses incurred in the treatment of smoking-related diseases and conditions.

The Settlement. In 1997, four states settled individually with the tobacco company defendants, and on November 23, 1998, the attorneys general of 46 states, five U.S. territories and the District of Columbia (the "settling states") resolved all of the remaining pending cases when they entered into a Master Settlement Agreement (MSA) with the largest tobacco companies in the United States. The original participating manufacturers were Philip Morris, Inc.; R.J. Reynolds Tobacco Co.; Brown & Williamson Tobacco Corp.; and Lorillard Tobacco Co. Since 1998, approximately 50 other tobacco companies (collectively, the "participating manufacturers") have also signed the agreement. (The MSA only settled state and local government lawsuits and does not apply to private suits such as class action lawsuits and claims brought by individuals, labor unions and private health care insurers.)

Under the terms of the MSA, the participating manufacturers agreed to prohibitions and restrictions on the marketing and advertising of their tobacco products, particularly marketing tobacco products to youth. The tobacco companies also agreed to make annual payments to the settling states in perpetuity based on the companies' shares of national cigarette sales and shipments to compensate the settling states for taxpayer money spent for health care costs connected to tobacco-related illness; the agreement does not limit the settling states' discretion in spending the money. In return, the settling states gave up any future legal claims they might have based on the tobacco companies' actions at issue in the settled lawsuits.

The participating manufacturers were the largest tobacco companies in the country, but there are smaller tobacco companies that did not participate in the settlement (NPMs or "non-participating manufacturers"). The participating manufacturers were concerned that, because of the payments they were obliged to make to the settling states, the NPMs would gain an unfair advantage, leading to an increased market share (and therefore a loss of market share to the participating manufacturers) as an unintended result of the settlement.

To avoid that result, the MSA provided that the annual payment amounts could be reduced if it could be shown that the participating manufacturers had lost market share to NPMs as a result of the settlement ("NPM adjustments"). The MSA allowed settling states to avoid NPM adjustments by: (1) passing model legislation ("model escrow statutes") "that effectively and fully neutralizes the cost disadvantages that the participating manufacturers experience" by requiring NPMs operating in the settling states to either join the MSA and comply with its terms,

or to establish an escrow account and make regular payments into that account; and (2) "diligently [enforcing]" the escrow legislation. In 1999, the legislature enacted the model escrow statutes, Sections 6-4-12 and 6-4-13 NMSA 1978, followed in 2003 by the complementary Tobacco Escrow Fund Act (Sections 6-4-14 through 6-4-24 NMSA 1978).

Each year, an independent auditor calculates the settlement payment to be made by each participating manufacturer and the amount to be received by each settling state, including any NPM adjustments. The calculation is very complex, the parties can dispute them and tobacco product sales have been decreasing nationwide; so the amounts vary every year.

Disputes between the participating manufacturers and the states regarding calculation of the payments, including the NPM adjustments, may be resolved by arbitration; the arbitration decisions may be challenged in state court. The Attorney General's Office (AGO) manages enforcement of and compliance with the MSA and represents the state in any disputes with participating manufacturers or NPMs.

Litigation Against the State by Participating Manufacturers. The AGO regularly reports to the Tobacco Settlement Revenue Oversight Committee (TSROC) regarding enforcement of and compliance with the MSA. An arbitration proceeding filed in 2009 by the participating manufacturers challenging the state's diligent enforcement efforts of the model escrow statutes and the Tobacco Escrow Fund Act for calendar year 2003 was concluded in September 2013 with a ruling against the state. A summary of the issues and findings can be found in the 2014 TSROC Interim Committee Report Summary. The state appealed the arbitration ruling to district court, where it is still pending. The adjustment resulting from the arbitration award in September 2013 was deducted from the annual MSA payment to the state in fiscal year (FY) 2014 (July 1, 2014 through June 30, 2014).

The AGO has informed the TSROC that the participating manufacturers are pursuing diligent enforcement challenges against New Mexico for succeeding years. While it is possible that the state could be facing future adverse diligent enforcement determinations, the AGO does not expect a resulting reduction in future annual MSA payments to occur every year.

Accounting for the Distributions. In 1999, the legislature devised the accounting scheme to receive and use the annual distributions from the tobacco companies.

The Tobacco Settlement Permanent Fund (permanent fund) was created by Section 6-4-9 NMSA 1978 to receive the money distributed to the state pursuant to the MSA. The permanent fund statute has been amended over the years to direct the distributions from the permanent fund to the Tobacco Settlement Program Fund (program fund) and for other state purposes. In 2003, it was amended to make the permanent fund a reserve fund of the state that could be expended, under certain circumstances, to avoid an unconstitutional deficit. At various times since, amendments have allowed for distributions from the permanent fund to the general fund.

The program fund, consisting of distributions from the permanent fund, was established by Section 6-4-10 NMSA 1978. The program fund statute allows money in the program fund to

be appropriated for health and educational purposes, including:

- support of additional public school programs, including extracurricular and after-school programs designed to involve students in athletic, academic, musical, cultural, civic, mentoring and similar types of activities;
- any health or health care program or service for prevention or treatment of disease or illness;
- basic and applied research conducted by higher educational institutions or state agencies addressing the impact of smoking or other behavior on health and disease;
- public health programs and needs; and
- tobacco use cessation and prevention programs, including statewide public information, education and media campaigns.

Each year that the settlement money is received in the permanent fund, a certain amount is transferred to the program fund, and appropriations are made from the program fund for health and education purposes. In most of the fiscal years since the creation of the permanent fund, amounts equal to the total annual MSA settlement payment have been appropriated, with no increase to the corpus of the permanent fund. In June 2015, however, the permanent fund received a \$35 million payment and distributed \$19.3 million from the permanent fund to the program fund; this was the first time since FY 2008 that 100% or more of the annual payment was not appropriated. As of September 2015, the balance in the permanent fund was \$205.1 million.

TSROC. The TSROC was created in 2000 by Section 2-19-1 NMSA 1978 as a joint interim legislative committee to:

- "(1) monitor the use of tobacco settlement revenue and meet on a regular basis to receive and review evaluations of programs receiving funding from tobacco settlement revenues;
- (2) prepare recommendations [to the legislature] based on its program evaluation process, of program funding levels for the next fiscal year...; and
- (3) make recommendations as necessary for changes in legislation regarding use of the tobacco settlement revenue."

The Department of Health (DOH), the Human Services Department (HSD) Medicaid program and the University of New Mexico (UNM) Health Sciences Center have historically been the primary recipients of appropriations from the tobacco settlement funds.

FY 2016 Appropriations. In FY 2016 (July 1, 2015 through June 30, 2016), tobacco settlement funds were appropriated to:

- the Indian Affairs Department for tobacco cessation and prevention programs;
- the HSD for breast and cervical cancer treatment and other Medicaid programs;
- the DOH for tobacco-use cessation and prevention programs; a diabetes prevention

- and control program; HIV/AIDS prevention, services and medicine; breast and cervical cancer screening programs; and the Family Infant Toddler Program;
- the Children, Youth and Families Department for early childhood programs;
  - the Higher Education Department to support Lottery Tuition Fund scholarships; and
  - UNM for instruction and general purposes; research in genomics and environmental health; the poison control center; the pediatric oncology program; and specialty education in trauma and pediatrics.

TSROC Meetings in the 2015 Interim. The TSROC held five meetings in the 2015 interim to fulfill its oversight duties. The agendas, minutes and handouts provided by presenters are available on the legislature's website and in the Legislative Council Service library. The meetings are briefly summarized below.

At the initial meeting, on June 24 in the State Capitol in Santa Fe, the committee heard a summary of the tobacco litigation, settlement, enforcement and related litigation, and it approved the work plan for the interim.

On July 8, the committee met in Santa Fe again and heard reports from the DOH on the various DOH programs that receive funds from the tobacco settlement.

The committee met in Las Cruces at New Mexico State University (NMSU) on September 18, where it heard reports about research on tobacco-use trends and the impact on public health costs and about tobacco-use cessation and prevention programs in the Las Cruces area. The committee also heard a report on integrated health care and delivery of health care services in rural New Mexico and an overview of health programs at NMSU, including an update on cancer research, and it toured the nearly completed Burrell College of Osteopathic Medicine.

On October 21, the committee met in Albuquerque at the UNM Health Sciences Center, where it heard reports on the various UNM programs that receive tobacco settlement funds, toured the UNM Comprehensive Cancer Center and heard reports on tobacco-use cessation and prevention efforts in Indian country.

The last meeting of the 2015 interim was in the State Capitol in Santa Fe on November 2. The committee heard reports on the permanent fund asset allocation and the arbitration proceedings, on use of tobacco settlement funds in the Medicaid program and on cigarette tax revenue distributions and bonding; a request for funding for a 3-D mammography machine; a panel on the latest health effects of e-cigarettes; and a panel on nicotine taxation.

Recommendations for FY 2017 Appropriations. The committee did not make formal recommendations regarding FY 2017, but a majority of the committee signed a letter to the Legislative Finance Committee supporting continuation of the distribution of the program fund in the same amounts as in FY 2016.

Endorsed Legislation. The TSROC did not endorse any legislation for the 2016 regular session.

## WORK PLAN AND MEETING SCHEDULE



**2015 APPROVED  
WORK PLAN AND MEETING SCHEDULE  
for the  
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**Members**

Sen. Cisco McSorley, Co-Chair  
Rep. John L. Zimmerman, Co-Chair  
Rep. Gail Chasey

Sen. John C. Ryan  
Sen. John Arthur Smith  
Rep. Monica Youngblood

**Advisory Members**

Sen. Linda M. Lopez  
Sen. Mary Kay Papen  
Rep. Patricio Ruiloba

Rep. Don L. Tripp  
Rep. Jim R. Trujillo

**Work Plan**

The Tobacco Settlement Revenue Oversight Committee (TSROC) was established pursuant to Section 2-19-1 NMSA 1978. The committee will continue its statutory oversight duties for the programs that request and receive funding through the Tobacco Settlement Program Fund. The committee will also receive testimony regarding the balances in and projected revenues for both the Tobacco Settlement Program Fund and the Tobacco Settlement Permanent Fund.

During the 2015 interim, the TSROC 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 federal 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 2017, based on the committee's program evaluation process;
- (3) make recommendations to the Legislative Finance Committee on the use of the tobacco settlement revenue; and
- (4) make findings and recommendations, including proposed legislation, available to the legislature as part of the TSROC's final report.

**Tobacco Settlement Revenue Oversight Committee  
2015 Approved Meeting Schedule**

<u>Date</u>	<u>Location</u>
Wednesday, June 24	Santa Fe, Room 322
Wednesday, July 8	Santa Fe, Room 321
Friday, September 18	Las Cruces
Wednesday, October 21	Albuquerque
Monday, November 2	Santa Fe, Room 321

# AGENDAS AND MINUTES



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

**June 24, 2015  
Room 321, State Capitol  
Santa Fe**

**Wednesday, June 24**

- 9:30 a.m.           **Welcome and Introductions**  
—Senator Cisco McSorley, Co-Chair  
—Representative John L. Zimmerman, Co-Chair
- 9:35 a.m.       (1)   **[History of the Master Settlement Agreement in New Mexico](#)**  
—Ari Biernoff, Assistant Attorney General, Office of the Attorney  
      General
- 10:00 a.m.       (2)   **[Post-Session Update: Tobacco Settlement Permanent and Program  
Funds](#)**  
—Peter van Moorsel, Chief Economist, Legislative Finance Committee
- 10:30 a.m.       (3)   **[Review and Adoption of 2015 Interim Work Plan and Meeting Schedule](#)**  
—Caela Baker, Staff Attorney, Legislative Council Service
- 11:00 a.m.       **Adjourn**



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

**June 24, 2015  
Room 321, State Capitol  
Santa Fe**

The first meeting of the Tobacco Settlement Revenue Oversight Committee (TSROC) was called to order by Representative John L. Zimmerman, co-chair, on June 24, 2015 at 9:49 a.m. in Room 321 of the State Capitol in Santa Fe.

**Present**

Sen. Cisco McSorley, Co-Chair  
Rep. John L. Zimmerman, Co-Chair  
Rep. Monica Youngblood

**Absent**

Rep. Gail Chasey  
Sen. John C. Ryan  
Sen. John Arthur Smith

**Advisory Members**

Rep. Jim R. Trujillo\*\*

Sen. Linda M. Lopez  
Sen. Mary Kay Papen  
Rep. Patricio Ruiloba  
Rep. Don L. Tripp

\*\*Representative Trujillo was appointed as a voting member for this meeting.

**Staff**

Caela Baker, Staff Attorney, Legislative Council Service (LCS)  
Douglas Carver, Staff Attorney, LCS

**Guest Legislator**

Sen. Nancy Rodriguez

**Guests**

The guest list is in the meeting file.

**Handouts**

Handouts and other written testimony are in the meeting file.

**Wednesday, June 24**

**Welcome and Introduction**

After welcoming those in attendance to the meeting and after introductions, Representative Zimmerman announced that Representative Trujillo would be a voting member of the committee for the meeting in order to establish a quorum.

**History of the Master Settlement Agreement in New Mexico**

Ari Biernoff, assistant attorney general, Office of the Attorney General (AGO); Phillip M. Bachicha, special projects coordinator, Litigation Division, AGO; and Jennifer Van Wiel, paralegal, Litigation Division, AGO, made a presentation on the Master Settlement Agreement (MSA). Mr. Biernoff discussed how the major tobacco companies signed the MSA in 1998 with all states (and the District of Columbia) but four (Florida, Minnesota, Mississippi and Texas). The companies agreed to certain restrictions on their sales and marketing practices and were required to open certain of their corporate records to examination. In addition, the companies agreed to make payments in perpetuity to the states that are part of the MSA, though, Mr. Biernoff noted, the payments cover less than 10 percent of the actual health care costs that tobacco use has caused the states. The money from the companies comes from a percentage of annual national cigarette sales and is divided proportionally between the signatories of the MSA based on the percentage of sales when the agreement was signed in 1998. New Mexico receives 0.6 percent of the total money pool.

The signatory states to the MSA have obligations as well. They must adopt certain regulations for tobacco companies that were not party to the MSA, companies known as non-participating manufacturers (NPMs). These regulations include money that must be paid into an escrow account by the NPMs, which money is intended to satisfy any judgments against these companies were they to be sued in the future. Mr. Biernoff discussed some of the details of the escrow account. Mr. Bachicha gave an overview of the amounts that New Mexico has received as part of the MSA — New Mexico has received roughly \$628 million since payments started in 1999.

Mr. Biernoff informed the members of the committee that the AGO is not involved with allocating money from the MSA, but it is concerned with enforcement efforts. The AGO works closely with the Taxation and Revenue Department (TRD) to ensure that cigarette sales are tracked accurately. Mr. Bachicha discussed the process for companies to become certified to sell tobacco products in the state, and Ms. Van Wiel discussed the auditing process the AGO undertakes to ensure that the records that are provided to the state are accurate and that the amounts paid into the escrow account are valid.

Mr. Biernoff then discussed the litigation that is ongoing concerning past payments. If the companies that signed the MSA believe that a state signatory is not holding up its end of the agreement, the amount required to be paid in a given year can be challenged. The MSA requires challenges concerning annual payments to be decided by an arbitrator. In 2013, the arbitrator

reduced the payments made to New Mexico for 2003 by some \$12 million to \$15 million. New Mexico is challenging the arbitrator's decision. The payments for 2004 are now under review. Mr. Biernoff discussed with members of the committee the long delays in coming to decisions on the appropriateness of past payments, such as the 10-year lag between the 2003 payment and the 2013 determination that New Mexico's amount should be reduced. He opined that the AGO believes that the arbitrator used criteria to determine a state's compliance that were not contemplated in the MSA, which is the basis of the pending court challenge to the arbitrator's decision. He said it appears that every year's payment from 2003 will be subject to challenge. He acknowledged that New Mexico has learned a great deal in the years since 2003 and that the state is now far better in complying with the MSA.

Members of the committee asked Mr. Biernoff for further details concerning the NPM escrow account and questioned him about the ability of the state to access those funds. Mr. Bachicha informed the committee of the coordination on these matters on the part of the attorneys general of the participating states. There was further discussion with members of the committee concerning the staffing levels of investigators for the TRD and whether it might be possible to have the arbitrator review past years en masse, rather than year-by-year. Mr. Biernoff also discussed the improvements in getting NPMs to comply versus 10 years ago.

#### **Post-Session Update: Tobacco Settlement Permanent and Program Funds**

Peter van Moorsel, chief economist, Legislative Finance Committee, gave the committee an update on the Tobacco Settlement Permanent Fund and Tobacco Settlement Program Fund Program, working his way through a handout provided to the committee. He noted that the fiscal year (FY) 2013 payment was \$39.3 million, but the FY 2014 payment was only \$21.2 million due to a reduction required by the arbitrator's decision about New Mexico's enforcement of MSA provisions in 2003. There have been some corrections and challenges to the FY 2015 payment, which was initially \$35 million. The estimated FY 2016 payment is \$40 million, but those numbers will be revised in the autumn.

Mr. van Moorsel discussed the required legislation that was passed during the 2015 legislature to spend 50 percent of the tobacco MSA payment. He also discussed transfers from the Tobacco Settlement Permanent Fund to the Tobacco Settlement Program Fund and language in the general appropriation act regarding such transfers. He also discussed the gains and losses from the State Investment Council's investment of the Tobacco Settlement Permanent Fund. He noted that this fund is a significant contributor to general fund reserves.

#### **Review and Update of the 2015 Interim Work Plan and Meeting Schedule**

Members of the committee discussed the work plan for the 2015 interim and decided on its meeting locations and dates for meetings. On a motion made and seconded, the committee approved the 2015 interim work plan.

**Adjournment**

There being no further business before the committee, the TSROC adjourned at 12:00 noon.

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

**July 8, 2015  
Room 321, State Capitol  
Santa Fe**

**Wednesday, July 8**

- 9:00 a.m.           **Welcome and Introductions**  
—Senator Cisco McSorley, Co-Chair  
—Representative John L. Zimmerman, Co-Chair
- 9:05 a.m.       (1)   **[New Mexico Health System Innovation Design Project Overview](#)**  
—Shannon Barnes, M.S., A.B.D., Project Director, Department of Health  
      (DOH)
- 10:00 a.m.       (2)   **[Update on Harm Reduction Program](#)**  
—Dominick V. Zurlo, M.A., Program Manager, Harm Reduction Program,  
      DOH
- 10:30 a.m.       (3)   **[Update on the Tobacco Use Prevention and Control \(TUPAC\) Program](#)**  
—Benjamin Jacquez, Program Manager, TUPAC Program, DOH
- 11:30 a.m.       (4)   **[Update on Diabetes Prevention and Control Program](#)**  
—Judith Gabriele, Program Manager, Diabetes Prevention and Control  
      Program, DOH
- 12:00 noon       (5)   **[Update on Breast and Cervical Cancer Early Detection Program](#)**  
—Beth Pinkerton, Breast and Cervical Cancer Early Detection Program,  
      DOH
- Action Item: Approval of Minutes from June 2015 Meeting*
- 12:20 p.m.       **Public Comment**
- 12:30 p.m.       **Adjourn**



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

**July 8, 2015  
Room 321, State Capitol  
Santa Fe**

The second meeting of the Tobacco Settlement Revenue Oversight Committee was called to order by Representative John L. Zimmerman, co-chair, on July 8, 2015 at 9:12 a.m. in Room 321 of the State Capitol in Santa Fe.

**Present**

Sen. Cisco McSorley, Co-Chair  
Rep. John L. Zimmerman, Co-Chair  
Sen. John Arthur Smith  
Rep. Monica Youngblood

**Absent**

Rep. Gail Chasey  
Sen. John C. Ryan

**Advisory Members**

Rep. Patricio Ruiloba  
Rep. Jim R. Trujillo

Sen. Linda M. Lopez  
Sen. Mary Kay Papen  
Rep. Don L. Tripp

**Guest Legislator**

Sen. Nancy Rodriguez

**Staff**

Caela Baker, Staff Attorney, Legislative Council Service (LCS)  
Douglas Carver, Staff Attorney, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

Handouts and other written testimony are in the meeting file.

**Wednesday, July 8**

**Welcome and Introduction**

Representative Zimmerman welcomed those in attendance and conducted introductions.

## **New Mexico Health System Innovation Design Project Overview**

Shannon Barnes, state innovation coordinator with the Department of Health (DOH), discussed the State Innovation Model (SIM) Initiative, working through a PowerPoint presentation provided to the committee. She noted that the SIM was created through the federal Patient Protection and Affordable Care Act and was developed to test innovative health care delivery and payment models that reduce spending, enhance the quality of care and improve population health. There are two phases to the SIM: 1) the design phase, which takes one to two years to develop the proposed design model; and 2) the test phase, which is a three-year period to test the approved design model.

The DOH, in partnership with the Human Services Department (HSD), was awarded funds from the federal Centers for Medicare and Medicaid Services Innovation Center to develop a design to innovate the state's health care system, with the aims of: 1) improving population health and health outcomes; 2) reducing health care costs and investing in health promotion; and 3) enhancing the experience of care. The priority measures on which the SIM is focusing are obesity, diabetes and tobacco use, areas that were chosen due to their high social cost. Ms. Barnes gave an overview of the engagement structure for the initiative and noted that the design vision was intended to build on and innovate current transformation initiatives that already exist in the state.

Members of the committee asked Ms. Barnes about engagement with stakeholders, funding of the SIM and collaboration between the DOH and HSD. In response to a query from a member of the committee, David Abbey, director, Legislative Finance Committee (LFC), noted that there was a concern with a duplication of effort between the SIM and the Centennial Care waiver effort at the HSD. Mr. Abbey told the committee that he would get someone from his staff to report to the committee on this subject by the end of the meeting.

## **Update on Harm Reduction Program**

Dominick V. Zurlo, program manager for the DOH's Harm Reduction Program, spoke to the committee about hepatitis and harm reduction, working through a PowerPoint presentation provided to the committee. He noted that the hepatitis program received \$43,400 in support from tobacco settlement revenue in fiscal year (FY) 2015 and the same amount in FY 2016. The Harm Reduction Program received \$249,600 in each of those years. These figures amount to 11 percent of the total contractual dollars for the hepatitis program and 34 percent for the Harm Reduction Program. Mr. Zurlo gave an overview of the accomplishments of both programs in FY 2015, with particular focus on the Syringe Services Program (SSP). Members of the committee asked for further details of the SSP, including questions about liability and the involvement of law enforcement officers. Members also asked about outreach efforts, particularly in rural areas, the progress on developing hepatitis vaccines and hepatitis in the state's prisons and jails; and they questioned whether these programs, while admirable, are an approved use of funds under the Master Settlement Agreement.

### **Update on the Tobacco Use Prevention and Control (TUPAC) Program**

Benjamin Jacquez, program manager for the DOH's TUPAC Program, discussed tobacco control in the state, working through a PowerPoint presentation provided to the committee. He noted the negative effects on New Mexicans from tobacco, including 2,600 people in the state who die each year from smoking and 42,000 people who suffer from smoking-related diseases. He discussed how TUPAC is an evidence-based statewide tobacco control program meant to prevent the start of tobacco use by youths, promote quitting tobacco use, eliminate exposure to secondhand smoke and identify and eliminate tobacco-related health disparities among population groups. Mr. Jacquez discussed how TUPAC mirrors the Centers for Disease Control and Prevention (CDC) guidelines for tobacco prevention and control efforts. He also mentioned steps that have already been taken in the state to reduce tobacco use, including passage of the Dee Johnson Clear Indoor Air Act in 2007, an increase in the price of tobacco products and use of Master Settlement Agreement funds for tobacco prevention and control. FY 2015 funding for TUPAC included \$5,682,000 from the tobacco settlement funds and \$1,141,221 from a CDC cooperative agreement; in FY 2016, TUPAC received a \$206,000 budget cut due to CDC cutbacks. Mr. Jacquez then detailed the TUPAC outcomes, giving an overview of the Quit Now cessation services, engagement with health care providers, leveraging of CDC resources, outreach to new audiences, protecting people from secondhand smoke and prevention of youth tobacco-use initiation. He noted that trends in youth tobacco use are encouraging, with declines noted in all categories, except for a worrying increase in hookah use, and that adults show a slower rate of decline but still reflect progress. He then briefly discussed continuing challenges, including a large population of people who use tobacco products and disparities in smoking rates among certain population groups.

Members of the committee asked about how New Mexico's tobacco taxation rates compare with other states, how the state tracks cessation and how the state is tracking the return on investment for these programs.

### **Update on Diabetes Prevention and Control Program**

Judith Gabriele, program manager for the DOH's Diabetes Prevention and Control Program, gave an update on the program, working through a PowerPoint presentation provided to the committee. She noted the slow growth of diabetes cases in the state and that New Mexico's numbers are statistically similar to the rest of the United States. She discussed the growing problem with prediabetes, noting that the prediabetes rate could be as much as 35 percent, which would translate to 500,000 prediabetes cases in New Mexico, with rates higher for Hispanic and Native American communities. This could mean close to 720,000 cases of diabetes and prediabetes in the state. She discussed the diabetes death rates in the state, with the northwest region of the state having the highest rate, and spent time covering the massive economic burden that diabetes imposes on the state. After giving an overview of the Diabetes Prevention and Control Program budget, which includes \$621,100 from state tobacco settlement funds, she gave an overview of what measures work for diabetes prevention and control, including the National Diabetes Prevention Program, an evidence-based lifestyle change program; diabetes management, especially focusing on glucose control; and controlling the ABCs of diabetes — the

A1c glucose test, blood pressure, cholesterol and smoking cessation. Ms. Gabriele then gave an overview of how tobacco settlement funds were spent and discussed some of the details concerning the implementation of the National Diabetes Prevention Program, the Kitchen Creations cooking school, the Manage Your Chronic Disease Program and professional development for providers.

Members of the committee asked questions concerning the connections between diabetes and smoking, how to disseminate information concerning the Diabetes Prevention and Control Program to constituents and the relation of exercise to diabetes prevention.

### **Update on Breast and Cervical Cancer Early Detection Program**

Beth Pinkerton from the DOH's Breast and Cervical Cancer Early Detection Program spoke to the committee about issues surrounding breast cancer in New Mexico, working through a PowerPoint presentation provided to the committee. She noted that approximately 1,322 women in the state are diagnosed with breast cancer each year, and approximately 247 women in the state die each year from breast cancer. The most effective strategy for detecting early-stage breast cancer is undergoing a screening mammogram, but she noted that there are disparities between communities in the frequency of mammogram screening. In particular, Native American women are two times more likely not to have had a mammogram, and women in families with under \$50,000 in annual income are more likely not to have had the screening. Ms. Pinkerton addressed how the tobacco settlement revenue funds are allocated for the provision of mammograms, and she gave an overview of how the Breast and Cervical Cancer Early Detection Program serves communities throughout the state by region and by racial and ethnic background. She discussed the funding for the program and gave the numbers of women treated for the past six fiscal years, noting that all of the tobacco settlement revenue funds that the program receives are used for direct clinical care. Ms. Pinkerton reviewed the eligibility requirements for the program and informed the committee that since it was established in 1991, the Breast and Cervical Cancer Early Detection Program has provided screening and diagnostic services to more than 150,700 underserved women.

### **LFC Presentation on the HSD Centennial Care Waiver and Medicaid Managed Care Costs Report**

As promised during the "New Mexico Health System Innovation Design Project Overview" presentation, members of the LFC staff made a presentation to the committee about their report on the HSD Centennial Care waiver. Charles Sallee, deputy director, LFC, and Maria Griego, program evaluator, LFC, presented the committee with copies of the LFC's *Human Services Department Centennial Care Waiver and Medicaid Managed Care Costs* report, published June 24, 2015. They gave an overview of the executive summary to the report, noting the doubling of Medicaid enrollment and spending since FY 2005. Much of the increased growth is attributable to the expansion of Medicaid in the state, with the state assuming 10 percent of the share of costs for the expansion. Centennial Care was a significant change, consolidating existing programs and Medicaid expansion into a single managed care program.

The evaluation presented in the report has three themes: 1) cost growth; 2) the inability to track trends in the amount of care that enrollees are receiving; and 3) the need for additional controls on the Medicaid budget. The projected cost savings of Centennial Care were \$453 million; the final projections, however, are \$253 million in cost savings. They noted that cost drivers include new populations coming into Medicaid; programmatic changes that are not explicit in budgeting, such as hepatitis C screening; and coordination of care. They recommended that the Medicaid budget, now currently two line items, should be broken up in order that the legislature might prioritize spending and exert better control. They noted that there are many benefits to the Medicaid expansion and the leveraging of the expansion, but these present budget challenges and opportunities. An examination of the overall health system for the state is warranted, as it is antiquated, and the legislature needs to ensure that the state is investing in what works and to look at how Medicaid can be invested in particular health needs, as was shown with the tobacco cessation program.

Members of the committee asked about how the report's findings mesh with the SIM initiative. Mr. Sallee and Ms. Griego noted that the LFC has begun a new project to look at how stand-alone budget items would work with Medicaid. The LFC report on this issue should be completed in October. The committee requested that the LFC present its findings at the committee's final meeting of the interim.

#### **Public Comment**

Sandra Adondakis, New Mexico government relations director for the Cancer Action Network, informed the committee that she has extensively researched the use of federal dollars and supports implementation of a quitline in the state.

#### **Adjournment**

There being no further business before the committee, the committee adjourned at 12:44 p.m.





- 2:15 p.m. (6) [Overview of Programs at NMSU](#)  
—Dr. Donna Wagner, Dean, College of Health and Social Services, NMSU
- 2:45 p.m. (7) [Update on Cancer Research at NMSU](#)  
—Mary O'Connell, Professor, Department of Plant and Environmental  
Sciences, NMSU
- 3:15 p.m. **Public Comment**
- 3:45 p.m. **Adjourn**

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

**September 18, 2015  
Barbara Hubbard Room, New Mexico State University  
Las Cruces**

The third meeting of the Tobacco Settlement Revenue Oversight Committee (TSROC) was called to order by Representative John L. Zimmerman, co-chair, on September 18, 2015 at 9:51 a.m. in the Barbara Hubbard Room of New Mexico State University (NMSU) in Las Cruces.

**Present**

Sen. Cisco McSorley, Co-Chair  
Rep. John L. Zimmerman, Co-Chair  
Rep. Gail Chasey  
Sen. John Arthur Smith

**Absent**

Sen. John C. Ryan  
Rep. Monica Youngblood

**Advisory Members**

Sen. Linda M. Lopez

Sen. Mary Kay Papen  
Rep. Patricio Ruiloba  
Rep. Don L. Tripp  
Rep. Jim R. Trujillo

**Staff**

Celia Ludi, Staff Attorney, Legislative Council Service (LCS)  
Douglas Carver, Staff Attorney, LCS  
Nancy Martinez, Intern, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

Handouts and other written testimony are in the meeting file.

**Friday, September 18**

**Welcome and Introductions**

Representative Zimmerman welcomed those in attendance and conducted introductions.

### **Welcoming Remarks by Chancellor Carruthers**

Garrey Carruthers, chancellor, NMSU, welcomed the committee to the "Yale of the yuccas". He discussed three projects under way at NMSU: (1) the Senator Pete Domenici Building; (2) the project to turn two dormitories into an undergraduate learning center; and (3) the construction of a kinesiology building. He also stated that the university will be seeking approval for a general obligation bond to construct a new building for the Department of Art. Dr. Carruthers noted that NMSU is setting an enrollment cap of 18,000 students and has close to 16,000 students now, but the demographics are not favorable, and the university's graduation rate is not improving. Thus, there is no need to build more capacity. He noted that the Burrell College of Osteopathic Medicine has more than 3,000 applicants for 162 places. The program is due to begin in August 2016; the building for the program is to be completed in July 2016. He added that there is a 6.69 percent increase in freshman enrollment but an overall school population decline of 2.4 percent. There are approximately 25,000 to 26,000 students in the two-year and four-year programs.

Members of the committee asked questions concerning the reaccreditation of the nursing program, the funding formula for higher education and other funding issues for higher education in the state.

### **Integrated Health Care and Delivery of Health Care Services in Rural New Mexico**

Charles Alfero, executive director of the Southwest Center for Health Innovation, discussed the delivery of health care services in rural New Mexico, working through a PowerPoint presentation provided to the committee. Mr. Alfero began his presentation by noting that rural America does not have enough of an advocacy voice in the health care discussion in the nation. He discussed the importance of integrating services at the primary care level, with the four core services of medical health, dental health, behavioral health and family services. He noted that in the United States, the trend is to spend a great amount of money on a few people versus a more public model of spending fewer dollars on more people. Medical training focuses on disease and illness, when most of the issues have a social basis. The four principal areas of care are prevention, diagnosis, treatment and management of illness; the system pays well for diagnosis and treatment but poorly for prevention and management. Mr. Alfero noted that he would like to see a more level playing field among the four principal areas. Most of the money in the health care system goes toward sub-specialty care, with five percent of people using 50 percent of the dollars and 20 percent of people using 80 percent of the dollars. A different focus would have a greater impact on health outcomes. Mr. Alfero advocated for a more comprehensive approach to community health and discussed problems surrounding the lack of a payment system model for community health workers. In the United States, the only way to get paid is through face-to-face visits, but attention to a patient outside of the exam room is beneficial for prevention of health care problems. He noted that in 1965, 80 percent of physicians in the country were trained in primary care, but in 2015, that number dropped to 10 percent to 15 percent, resulting in a shortage of primary care physicians.

Mr. Alfero then discussed various aspects of the Forward New Mexico Pathways model, which is a program beginning at young ages and continuing through college to encourage people to enter the health care professions. He also discussed the related work of the New Mexico Primary Care Training Consortium, which is focusing on residency program development, quality improvement and recruitment.

Members of the committee discussed and asked questions concerning residency hubs, tobacco cessation and prevention efforts, home visits, issues concerning the lack of pharmacies in rural parts of the state and health care collaborations across the state.

### **Tobacco Use Trends and Impact on Public Health Costs**

Joe Tomaka, associate dean, College of Health and Social Services (HSS), and interim head of public health sciences, NMSU, discussed tobacco-use trends and their impact on public health costs, working through a PowerPoint presentation provided to the committee. He began by noting that smoking is the leading preventable cause of death in the United States, and he discussed smoking's various adverse health impacts. After giving an overview of the underlying data sources for his discussion of tobacco-use trends in New Mexico, Dr. Tomaka noted that tobacco-use trends in adults have held fairly steady in the state in recent years and have tracked use trends nationally. Men have higher smoking rates than women in the state, while the rates for Hispanics and non-Hispanic whites show some variability but are close. Tobacco use trends by income level show that, in general, there are higher use rates the lower one's income. The geographic distribution of smoking prevalence shows some evidence of clustering. Dr. Tomaka discussed disparities in tobacco use rates among various groups, noting that the lesbian, gay, bisexual or transgendered population has the highest usage rates.

Dr. Tomaka continued with an overview of youth tobacco use, noting first that there has been a steady decline in youth use. In 2013, for the first time, youth usage rates in New Mexico dropped below the national average, and a drop in use by girls that began in 2009 has now been nearly matched among boys. Declines have converged for Hispanic and non-Hispanic white youth, and most types of tobacco use, aside from spit tobacco, have declined. Dr. Tomaka then discussed additional components of evidence indicating the progress toward cessation of tobacco use among youth.

Dr. Tomaka then discussed the public health costs of tobacco use, noting the difficulties in estimating these costs. According to the federal Centers for Disease Control and Prevention, smoking-related illnesses cost more than \$300 billion a year. In New Mexico, smoking accounts for well over 2,000 deaths per year, and approximately 42,000 people in the state have at least one serious illness that is attributable to smoking. The health care cost impacts to New Mexico range from \$844 million to \$976 million a year, with other significant economic impacts, including impacts on costs to private employers and to employee health plans. He added that increases in cigarette prices lead to significant reductions in smoking, the single most effective way to reduce smoking. Cigarette price increases are likely the reason behind the drop in youth smoking. Dr. Tomaka concluded by discussing the American Lung Association grade for the

state in its tobacco-use cessation efforts, noting that New Mexico received an F for tobacco-use prevention, a B for smoke-free air, a D for tobacco taxes and a C for access to cessation services. While these scores are low, they are, in general, better than some of New Mexico's neighbors, especially Texas.

Members of the committee asked questions about and discussed the data source behind the numbers that Dr. Tomaka presented, the impact of price increases for tobacco products, geographic distribution numbers and the effectiveness of increasing the age at which one can purchase tobacco.

### **Tobacco-Use Prevention and Cessation Accomplishments**

Javier Garcia, tobacco prevention specialist, Families and Youth, Inc., and Jewelie Smith, tobacco prevention consultant, Families and Youth, Inc., discussed the accomplishments of their tobacco-use cessation efforts. They gave overviews of their public awareness campaigns, particularly those focused on Spanish-speaking populations and the lesbian, gay, bisexual, transgendered, queer or questioning and intersex population. They discussed their collaboration with NMSU's Stonewall Coalition, the Sexual Gender Diversity Resource Center at NMSU and the Mayfield High School Gay-Straight Alliance and the provision of mentoring for students through these programs. They also discussed their work providing increased access to tobacco-use cessation services for people experiencing poverty and for Spanish-speaking populations, as well as their education efforts regarding issues of secondhand smoke in those populations.

Members of the committee discussed and asked questions concerning the budget for these programs, including the reasons why the Department of Health (DOH) ceased funding their efforts this year. The principal reason given by the department was a change in how the department was going to grant funding. Funding was only going to be provided to organizations with a statewide reach, and as the Families and Youth, Inc., programs are regionally focused, operating in nine counties, they no longer qualify. Benjamin Jacquez, program manager, Tobacco Use Prevention and Control Program, DOH, who was in attendance at the meeting, was asked by members about the cessation of funding. A member requested that the department work with the staff of the Legislative Finance Committee to provide a better explanation.

### **Approval of Minutes**

The minutes of the July meeting of the TSROC were approved with no objections.

### **Update on the Burrell College of Osteopathic Medicine**

Justin McHorse, assistant dean for multicultural affairs, marketing and communications, NMSU, gave the committee an update on the Burrell College of Osteopathic Medicine, working through a PowerPoint presentation provided to the committee. He noted that the inaugural osteopathic medicine class in August 2016 will have 162 students and 38 full-time faculty members. He discussed the clinical hubs associated with the program, which include Las Cruces, Albuquerque and El Paso. He added that the university is proud to be bringing more preceptors and residents to the state. Mr. McHorse discussed the locations of new residencies and noted that

more than 600 new positions are anticipated by 2020. Mr. McHorse stressed the importance of role models in pipeline programs in the state, particularly from underserved communities, and discussed the wish to have culturally informed, targeted recruitment to establish a culturally diverse, supportive and inclusive environment from the outset. He also discussed how regional American Indian and Hispanic cultural ways of healing body, mind and spirit most appropriately align with the philosophy of osteopathy. He reviewed the current and projected economic impacts of the college, including \$87.3 million from 2014 through 2016, 390 new jobs and \$77.7 million a year after 2016. Mr. McHorse concluded by requesting the legislature to consider expanding the primary care physician student loan for service program to include all medical schools in the state.

Members of the committee discussed and asked questions concerning the private ownership of the facility and accreditation.

### **Overview of Programs at NMSU**

Donna Wagner, dean, HSS, NMSU, gave the committee an overview of the health programs at the university, working through a PowerPoint presentation provided to the committee. She noted that the HSS consists of the School of Nursing, the School of Social Work and the Department of Public Health Sciences. The HSS has 31 tenured or tenure-track faculty members and 70 college faculty members and adjuncts. The School of Nursing has 811 undergraduate students and 114 graduate students. The School of Social Work has 215 undergraduate students and 146 graduate students. The Department of Public Health Sciences has 118 undergraduate students and 84 graduate students. She also discussed various health care-related programs connected to other colleges at NMSU. Dr. Wagner then discussed how research at the HSS focuses on health disparities, including childhood obesity; cancer screening; promotion of healthy eating and physical activity, particularly among Hispanic American families in colonias; strategies to encourage Hispanic men to seek medical attention for health issues; and screening brief intervention and referral training to help primary care providers address alcoholism and substance abuse through early intervention. She also gave an overview of how the HSS contributes to the health care policy conversation in the state and in the nation and how the HSS engages the community. She then discussed the Southern Area Health Education Center and efforts to take evidence-based programming to the colonias. She concluded by noting the high National Council Licensure Examination pass rate — over 90 percent — and mentioned the growing use of telemedicine and that the HSS is looking to develop programs for Parkinson's disease.

Members of the committee asked questions about and discussed the demand and requirements for social work degrees, funding sources for the HSS and telemedicine.

### **Update on Cancer Research at NMSU**

Mary O'Connell, professor, Department of Plant and Environmental Science, NMSU, gave the committee an update on cancer research at the university, working through a PowerPoint presentation provided to the committee. She told the committee about four recent cancer

research award recipients at the university and discussed the partnership that NMSU has forged with the Fred Hutchinson Cancer Research Center (FHCRC) in Seattle. When the partnership began, NMSU was not a cancer center, but the university was approached by the FHCRC because of NMSU's training of minority students and researchers. She informed the committee that the partnership had been continuously funded by the National Institutes of Health National Cancer Institute since 2002 and that the current grant ends in August 2018, but NMSU will reapply for funding for the subsequent five years. She noted that the \$21 million for cancer research, training and outreach has included more than 40 projects and programs and more than 350 trainees, has resulted in more than 100 publications and has allowed for more than 60 additional grants. Professor O'Connell then discussed how the NMSU-FHCRC partnership conducts outreach and research efforts across the cancer care continuum, from prevention to screening to diagnosis to treatment to palliative care and recovery. She discussed various research efforts, especially those that involve collaboration across disciplines. She then discussed various cancer prevention and education programs sponsored through the university, including cancer 101 courses held at public libraries, cancer health education events, a colorectal cancer knowledge assessment survey and an inflatable walk-through colon that is brought to public events. She noted that the NMSU-FHCRC partnership has resulted in outreach to more than 8,000 people in the New Mexico region and how 84 percent of the partnership's graduate student interns have completed their degrees and 84 percent work in the area of health disparities.

#### **Public Comment**

Annette Enriquez, cancer advocate for Colleges Against Cancer at NMSU, and Lacey Daniell, a staff member with the American Cancer Society College Action Network, thanked the committee for coming to NMSU and for its work on the issues surrounding tobacco use.

#### **Adjournment**

There being no further business before the committee, the TSROC adjourned at 3:25 p.m.

Revised: October 19, 2015

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

**October 21, 2015  
University of New Mexico  
Comprehensive Cancer Center  
Albuquerque, New Mexico**

**Wednesday, October 21**

- 9:00 a.m.           **Welcome and Introductions**  
—Senator Cisco McSorley, Co-Chair  
—Representative John L. Zimmerman, Co-Chair
- 9:10 a.m.       (1) **[Welcome and Update on Genomics; Biocomputing; Specialty Education in Trauma; Specialty Education in Pediatrics; University of New Mexico \(UNM\) School of Medicine Instruction and General Purposes](#)**  
—Richard Larson, M.D., Ph.D., Executive Vice Chancellor and Vice Chancellor for Research, UNM Health Sciences Center
- 10:00 a.m.       (2) **[UNM Cancer Center Update](#)**  
—Cheryl Willman, M.D., Director and Chief Executive Officer, UNM Comprehensive Cancer Center
- 11:00 a.m.       (3) **[Tobacco Use in American Indian Communities](#)**  
—Kevin English, Dr.P.H., Director, Albuquerque Area Southwest Tribal Epidemiology Center
- 11:45 a.m.       (4) **[Update on Tobacco Cessation Programs Funded Through the Indian Affairs Department \(IAD\)](#)**  
—Suzette Shije, Deputy Secretary, IAD  
—Allie Moore, Project Manager, IAD

**Working Lunch**

*Action Item: Approval of Minutes from the September 2015 Meeting*

- 12:45 p.m.       (5) **[New Mexico Poison and Drug Information Center Update](#)**  
—Susan Smolinske, Pharm.D., D.A.B.A.T., Director, New Mexico Poison and Drug Information Center; Professor, College of Pharmacy, UNM

- 1:30 p.m. (6) [Pediatric Oncology Update](#)  
—John Kuttesch, Jr., Ph.D., M.D., Division Chief, Pediatric Hematology/Oncology, UNM Children's Hospital
- 2:15 p.m. (7) [Smoke-Free Policies in Multi-Unit Housing](#)  
—Terry Huertaz, Executive Director, American Lung Association (ALA) in New Mexico  
—JoAnna Strother, Director of Programs, ALA in New Mexico
- 3:00 p.m. (8) [Nor-Lea General Hospital and Cigarette Tax Revenue Funding for Cancer Treatment Centers](#)  
—David Shaw, Chief Executive Officer, Nor-Lea General Hospital
- 3:45 p.m. **Public Comment**
- 4:00 p.m. **Adjourn**
- 4:00 p.m. **Optional: Tour of the UNM Comprehensive Cancer Center**

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

**October 21, 2015  
Comprehensive Cancer Center, University of New Mexico  
Albuquerque**

The fourth meeting of the Tobacco Settlement Revenue Oversight Committee (TSROC) was called to order by Representative John L. Zimmerman, co-chair, on October 21, 2015 at 9:18 a.m. in the University of New Mexico (UNM) Comprehensive Cancer Center (CCC) in Albuquerque.

**Present**

Sen. Cisco McSorley, Co-Chair  
Rep. John L. Zimmerman, Co-Chair  
Rep. Gail Chasey  
Sen. John C. Ryan  
Rep. Monica Youngblood

**Absent**

Sen. John Arthur Smith

**Advisory Members**

Sen. Linda M. Lopez  
Rep. Jim R. Trujillo

Sen. Mary Kay Papen  
Rep. Patricio Ruiloba  
Rep. Don L. Tripp

**Staff**

Celia Ludi, Staff Attorney, Legislative Council Service (LCS)  
Douglas Carver, Staff Attorney, LCS  
Nancy Martinez, Intern, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

Handouts and other written testimony are in the meeting file.

**Wednesday, October 21**

**Welcome and Introduction**

Representative Zimmerman welcomed those in attendance and conducted introductions.

## **UNM Welcome and Update on Genomics**

Dr. Richard Larson, executive vice chancellor and vice chancellor for research, UNM Health Sciences Center (HSC), welcomed the committee and gave an overview of the role the UNM HSC plays in delivering health care services in the state, the training of health professionals and the center's contributions to the state's economy, working through a PowerPoint presentation provided to the committee. He discussed the differences between the role of the center and those of its marketplace competitors and other universities.

He noted that the UNM HSC is one of the few comprehensive cancer research centers in the country. The center needs to educate tomorrow's work force and conduct its research missions, yet it must also compete with private actors. The center has a particular responsibility to focus on the training and care needs of New Mexico. He noted the center's statewide reach through health extension rural offices, practice-based research networks, Project ECHO telemedicine and investigator-led community-based programs.

Dr. Larson explained how the tobacco settlement funds support tobacco-related research and clinical care at the center and how the cigarette tax supports clinical care, education and research. He gave an overview of the variety of tobacco-related illnesses and then discussed the various levels of financial support for the last decade and a half. Core projects supported by tobacco settlement funds include the New Mexico Poison and Drug Information Center (NMPDIC), the UNM Pediatric Hematology/Oncology Program and UNM HSC biomedical research, while instruction and general funds support specialty education trauma, specialty education pediatrics and general instruction.

Dr. Larson gave a brief overview of all of these areas. Dr. Larson then discussed how the UNM HSC has been able to leverage the dollars it has received from the tobacco settlement funds, focusing on how pilot funding becomes a mechanism for obtaining federal support and noting how pilot funding returns \$8.00 to \$20.00 per \$1.00 invested. He ran through some examples of areas of study that have benefited from the use of pilot funding. He also noted how some tobacco settlement funds were used to support core facilities that support the entire health sciences community, including especially biostatistics.

Dr. Larson discussed the tremendous economic impact that tobacco settlement funding and research funding helps to generate in the state and concluded by noting the threats to the tobacco settlement funding, especially from legal challenges by manufacturers, and the adverse impact that the loss of these funds would have on the state.

Members of the committee discussed and asked questions concerning funding support for the UNM HSC, the economic impact of the UNM HSC, targeted taxes to support the UNM HSC and how states can restrict Medicaid to in-state medical facilities. The committee requested that issues surrounding e-cigarettes, especially e-cigarette taxation, be discussed at the committee's next meeting to include a presentation by pharmacology experts and that Ms. Ludi prepare a bill on e-cigarette taxation for discussion at that meeting. Senator McSorley also requested that a

letter be prepared for his signature requesting that the Jobs Council hear a presentation from Dr. Larson on the economic impact of the UNM HSC.

### **UNM Cancer Center Update**

Dr. Cheryl Willman, director and chief executive officer, UNM CCC, gave an update on the UNM CCC, working through a PowerPoint presentation provided to the committee. She noted that New Mexico has had a cancer registry since it was established by law in 1968, providing a tremendous wealth of data on cancer in the state. She discussed the history and mission of the UNM CCC and the center's four main goals: 1) to provide outstanding cancer diagnosis and treatment to all New Mexicans; 2) to focus on the cancers that disproportionately affect the state's multiethnic and underserved populations; 3) to reduce the state's cancer burden and cancer health disparities; and 4) to train the next generation of cancer scientists and health care professionals, with particular focus on underrepresented minorities. Dr. Willman gave an overview of the UNM CCC's accomplishments and of its leadership team. She discussed the rise in colorectal cancer in the state and collaborations between the UNM CCC and the state's national laboratories. She explained to the committee what is required for an institute to be designated a national comprehensive cancer center and gave an overview of the UNM CCC's clinical programs and metrics and its research programs and clinical work groups.

Dr. Willman noted that the UNM CCC has been designated as the head of Region 3 of the National Cancer Institute Center to Reduce Cancer Health Disparities' geographical management regions. Region 3 includes California and Texas. This is a particularly high accolade for the UNM CCC and the state.

Dr. Willman discussed the UNM CCC's strategic plan, focusing particularly on the challenge in New Mexico of getting patients the care they need for their types of cancer. These challenges include the costs to get to the UNM CCC, the costs of housing and food once at the UNM CCC and the costs and concerns involved with being away from home for treatment. She discussed the impact of the federal Patient Protection and Affordable Care Act on these costs, noting the positive impact of increased insurance coverage but noting also that co-pays and co-insurance still pose financial difficulties for some and that insurance often will not cover newer drugs. Dr. Willman then discussed the completion of the UNM CCC, scheduled for October 2016, and the recruitment goals for the center. She concluded her presentation by discussing the participation of the UNM CCC in the Oncology Research Information Exchange Network, a program of tumor genome sequencing to target therapy.

Members of the committee discussed and asked questions concerning genome sequencing and transportation issues and access to the UNM CCC for residents of the state.

### **Tobacco Use in American Indian Communities**

Dr. Kevin English, director, Albuquerque Area Southwest Tribal Epidemiology Center (AASTEC), discussed tobacco use in American Indian communities in the state, working through a PowerPoint presentation provided to the committee. He noted that the AASTEC was part of a

consortium of 12 other tribal epidemiology centers in the state. He discussed the fact that there are often no data on health issues in the American Indian community. He then discussed in detail the Youth Risk and Resiliency Survey (YRRS), a biennial classroom-based survey of sixth to twelfth graders conducted in partnership among the Department of Health, the Public Education Department, the UNM Prevention Research Center and the AASTEC. The AASTEC has worked to ensure that the YRRS oversamples schools likely to have a significant population of American Indian students in order to ensure that data on American Indian students are captured by the survey. These data have allowed the AASTEC to publish in-depth reports on tobacco use in the state's American Indian communities. Dr. English discussed a variety of trends in cigarette use by American Indian youth in the state, including e-cigarette use and ceremonial tobacco use. He also discussed the data about tobacco use by adults in the American Indian community in the state, including metrics concerning pregnant women and postpartum use.

Members of the committee discussed and asked questions concerning the collection of survey data and when the newest results will be published.

#### **Update on Tobacco Cessation Programs Funded Through the Indian Affairs Department (IAD)**

Suzette Shije, deputy secretary, IAD, and Allie Moore, project manager, IAD, discussed the IAD's fiscal year (FY) 2015 tobacco cessation and prevention programs, working through a PowerPoint presentation provided to the committee. Deputy Secretary Shije noted that the IAD is the lead coordinating agency in state government for state-tribal government-to-government relations and stated that the IAD's mission is both to promote cessation and prevention of commercial tobacco use while also promoting cultural awareness of Native American traditional and ceremonial uses of tobacco. Ms. Moore discussed the IAD's grant program process, noting that tobacco settlement funds were initially allocated to the IAD in 2007, whereupon the department developed a grant program to reach and engage tribal communities. In 2011, the IAD switched from a noncompetitive grant program to a competitive program that required evidenced-based elements. She discussed the integration of evidence-based strategies into the grant process and gave the committee a four-year history of the grants awarded. She demonstrated how the IAD is one piece of a system of comprehensive commercial tobacco control in the state's tribal communities. Ms. Moore discussed the FY 2015 and FY 2016 funded programs, including the growth in tribal contributions to tobacco cessation programs. She gave the committee a breakdown of the reach and successes of the department's tobacco cessation programs and focused on outcomes in the Pueblo of Isleta, Kewa Pueblo, the Albuquerque Area Indian Health Board, the Pueblo of Tesuque, the Pueblo of Acoma, the Pueblo of Laguna, the Pueblo of Sandia and the Five Sandoval Indian Pueblos, Inc. She also discussed Indian Health Service (IHS) tobacco control activities, giving some details of the 2014 assessment of 12 service units and health centers in New Mexico and opportunities for collaboration with the IHS. Ms. Moore concluded by discussing some challenges to the department's tobacco cessation programs, including the diversity of project approaches, personnel changes in tribal programs and the varied levels of technical capacity within the grant programs.

Members of the committee discussed and asked questions concerning the funds provided from the tobacco settlement funds to the IAD, the results of the IAD programs and data collection concerning e-cigarette use.

### **Approval of Minutes**

The minutes of the September meeting of the committee were approved with no objections.

### **New Mexico Poison and Drug Information Center Update**

Dr. Susan Smolinske, director, NMPDIC, gave the committee an update on the center, working through a PowerPoint presentation provided to the committee. She first gave the committee an overview of the prevalence of poisoning across the nation and discussed the growing number of poisoning incidents involving e-cigarettes. Dr. Smolinske discussed the mission of the NMPDIC and the service impacts of the center. She noted that the center was working on a needs assessment of American Indian tribes. She gave the committee a summary of the center's program use and discussed how the NMPDIC saved health care dollars. She noted that 82 percent of the time, if someone calls the center from home, the person can resolve the concern without needing to use a health care facility, for a savings of approximately \$13.5 million. Additionally, the NMPDIC's consultation with health care teams has reduced hospital stays by an average of 3.2 days, translating to a savings of \$36 million in FY 2014. She discussed the NMPDIC's funding sources, noting a reduction in federal dollars, and gave the committee details on the center's expenses. Dr. Smolinske concluded by noting that tobacco settlement funds provided 25 percent of the NMPDIC's funding, providing direct support for 6,700 callers and the means to deliver the center's message to approximately 630,000 New Mexicans and reducing health care expenses by \$12 million.

Members of the committee discussed and asked questions concerning calls to the center that involve illicit drugs and naloxone.

### **Pediatric Oncology Update**

Dr. John Kuttesch, division chief, Pediatric Hematology/Oncology Program, UNM Children's Hospital, discussed pediatric oncology at the UNM HSC, working through a PowerPoint presentation provided to the committee. He gave an overview of childhood cancer in the United States and discussed the mission of pediatric oncology at the UNM HSC, which is the only tertiary care provider of oncology services for infants, children and adolescents in New Mexico. He discussed the Pediatric Hematology/Oncology Program's comprehensive treatment planning and care and its comprehensive clinics and programs. There are referrals to the Pediatric Hematology/Oncology Program from all parts of the state, including a total of 225 referrals from 2010 to 2015. The last fiscal year saw more than 300 active patients and 4,500 clinic and inpatient visits.

Dr. Kuttesch gave an overview of the research being undertaken by the Pediatric Hematology/Oncology Program and the work of the clinical trial teams. He also discussed

education and outreach, including medical student and resident education, professional presentation, and community outreach. He went into some detail about the Young Enduring Survivors Clinic (YES), which provides multidisciplinary follow-up for more than 600 survivors of pediatric malignancies. YES sees over 80 percent of survivors and is currently looking for a donor to build out a clinic space. Dr. Kuttesch also discussed the UNM Mariposa Program, the only pediatric hospice and palliative care group in the state. Mariposa treats both the family and the child and provides care for infants, children and adolescents with life-limiting conditions, not just cancer. A member of the committee discussed Mariposa's volunteers with Dr. Kuttesch. Dr. Kuttesch concluded by discussing the UNM Pediatric Hematology/Oncology Program's FY 2015 budget.

### **Smoke-Free Policies in Multi-Unit Housing**

Terry Huertaz, executive director, American Lung Association in New Mexico (ALANM), and JoAnna Strother, director of programs, ALANM, discussed smoke-free policies in multi-unit housing in the state, working through a PowerPoint presentation provided to the committee. Ms. Huertaz stated that the ALANM serves the entire state and receives many calls concerning smoke-free housing. Ms. Strother gave an overview of the work of the Smoke-Free@Home Program, focusing on FY 2012 through FY 2015. She discussed the progress that has been made in creating smoke-free spaces in society and the benefits that have flowed from these changes. She noted that 81 percent of New Mexicans are nonsmokers. She then discussed the work the ALANM has done in conjunction with partners in the community in recent years to map multi-unit housing in the state and create a market demand survey and to integrate those data. The ALANM has found that 72 percent of New Mexico renters favor nonsmoking policies where they live. Ms. Strother discussed the ALANM's outreach and education efforts in this area and highlighted that 29 properties representing more than 3,800 units are smoke-free and that the New Mexico Mortgage Finance Authority (MFA) gives a two-point tax credit for properties that will be nonsmoking properties. She discussed recent recipients of the Lung Champion Award and the ALANM's work with public housing authorities statewide.

Members of the committee discussed and asked questions concerning the MFA tax credit.

### **Nor-Lea General Hospital and Cigarette Tax Revenue Funding for Cancer Treatment Centers**

David Shaw, chief executive officer, Nor-Lea General Hospital, discussed rural county cancer treatment funding and the work of Nor-Lea General Hospital, working through a PowerPoint presentation provided to the committee. He gave some background to the committee on the cancer treatment provided by Nor-Lea General Hospital, and he gave the committee an overview of the hospital's funding, including a 2009 hospital improvement loan secured and repaid by the rural county cancer treatment cigarette tax. He discussed the expansion of treatment by Nor-Lea Cancer Center since its founding in 2006, including an increase of more than 3,000 procedures since initial funding. He also discussed Nor-Lea Cancer Center's regional reach, which includes caring for cancer patients in southeastern New Mexico and west Texas.

Mr. Shaw discussed the role of volunteers in the cancer center's work and thanked the legislature for the dollars provided from cigarette tax funds.

Members of the committee discussed and asked questions concerning funding for Nor-Lea General Hospital, the possibilities of collaboration with and utilization of the resources of the UNM CCC and telemedicine.

**Public Comment**

Teresa Gomez with the Gynecological Cancer Awareness Project is an ovarian cancer survivor and noted the importance of prevention, the need to raise awareness and increasing education concerning cancer. She applauded the committee's efforts in preventing tobacco use.

Shelah Roanhorse, a volunteer with the American Cancer Society Cancer Action Network, thanked the committee and the IAD for their work on tobacco cessation.

**Adjournment**

There being no further business before the committee, the TSROC adjourned at 3:51 p.m.



Revised: October 28, 2015

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

**November 2, 2015  
Room 321, State Capitol  
Santa Fe**

**Monday, November 2**

- 9:00 a.m.           **Welcome and Introductions**  
—Senator Cisco McSorley, Co-Chair  
—Representative John L. Zimmerman, Co-Chair
- 9:10 a.m.       (1)   **Tobacco Settlement Permanent Fund Asset Allocation**  
—Steve Moise, State Investment Officer, State Investment Council (SIC)  
—Vince Smith, Deputy State Investment Officer, SIC
- 9:45 a.m.       (2)   **Update on Arbitration**  
—Ari Biernoff, Assistant Attorney General, Office of the Attorney General
- 10:30 a.m.       (3)   **Update on Breast and Cervical Cancer Treatment Program**  
—TBD, Human Services Department (HSD)
- 11:00 a.m.       (4)   **Utilization of Tobacco Cessation Services Within the Medicaid Program**  
—TBD, HSD
- 11:30 a.m.       (5)   **Proposed Legislation for Committee Endorsement**  
—Celia A. Ludi, Staff Attorney, Legislative Council Service
- 12:00 noon       (6)   **Opportunities to Leverage Federal Medicaid Funds**  
—Brian Hoffmeister, Program Evaluator, Legislative Finance Committee  
      (LFC)  
—Maria Griego, Program Evaluator, LFC
- Action Item: Approval of Minutes from the October 2015 Meeting*
- 12:30 p.m.       **Working Lunch**
- 12:30 p.m.       (7)   **3-D Mammography Funding Request Update**  
—Pamelya Herndon, Executive Director, Southwest Women's Law Center

- 1:00 p.m. (8) [Cigarette Tax Revenue Distributions and Bonding](#)  
—Zach Dillenback, Chief Lending Officer, New Mexico Finance Authority
- 1:45 p.m. (9) [E-Cigarettes: Latest Research on Health Effects](#)  
—Dr. Matthew Campen, Ph.D., Associate Professor, Department of  
Pharmaceutical Sciences, University of New Mexico Health Sciences  
Center (UNMHSC)  
—Dr. Joel Nitzkin, Senior Fellow in Tobacco Policy, R Street Institute
- 2:45 p.m. (10) [Nicotine Taxation](#)  
—Maggie Mahoney, Executive Director, Tobacco Control Legal  
Consortium at the Public Health Law Center, William Mitchell  
College of Law, St. Paul, MN (via Skype)  
—Dr. Richard Larson, Executive Vice Chancellor and Vice Chancellor for  
Research, UNMHSC  
—Sandra Adondakis, New Mexico Government Relations Director,  
American Cancer Society Cancer Action Network  
—Gregory Conley, President, American Vaping Association  
—Christina Keyes, Economist, LFC
- 4:15 p.m. **Public Comment**
- 4:30 p.m. **Adjourn**

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

**November 2, 2015  
Room 321, State Capitol  
Santa Fe**

The fifth meeting of the Tobacco Settlement Revenue Oversight Committee (TSROC) was called to order by Representative John L. Zimmerman, co-chair, on November 2, 2015 at 9:25 a.m. in Room 321 of the State Capitol.

**Present**

Sen. Cisco McSorley, Co-Chair  
Rep. John L. Zimmerman, Co-Chair  
Rep. Gail Chasey  
Sen. John C. Ryan  
Sen. John Arthur Smith

**Absent**

Rep. Monica Youngblood

**Advisory Members**

Sen. Linda M. Lopez  
Rep. Jim R. Trujillo

Sen. Mary Kay Papen  
Rep. Patricio Ruiloba  
Rep. Don L. Tripp

**Staff**

Celia A. Ludi, Staff Attorney, Legislative Council Service (LCS)  
Douglas Carver, Staff Attorney, LCS  
Nancy Martinez, Intern, LCS

**Minutes Approval**

Because the committee will not meet again this year, the minutes for this meeting have not been officially approved by the committee.

**Guests**

The guest list is in the meeting file.

**Handouts**

Copies of handouts are in the meeting file.

## **Monday, November 2**

### **Welcome and Introductions**

Representative Zimmerman welcomed those in attendance and conducted introductions.

### **Tobacco Settlement Permanent Fund Asset Allocation**

Steve Moise, state investment officer, State Investment Council (SIC), and Vince Smith, deputy state investment officer, SIC, made a presentation to the committee on the investment performance and asset allocation of the Tobacco Settlement Permanent Fund, working through a PowerPoint presentation given to the committee. Mr. Moise noted that the fund has assets of \$205.1 million as of September 30, 2015, with investment returns for the year ending on that date of -0.91 percent, but a fund asset value growth of over \$13 million over the prior 12 months. In June 2015, \$19.3 million was distributed from the fund and \$35 million was received in 2015 payments. Mr. Moise also noted that this year was the first time the fund's corpus did not have 100 percent or more appropriated from annual legal settlement payments since fiscal year (FY) 2008. Mr. Moise discussed how the fund played a part in the state's reserve funds, and then he discussed the fund's FY 2014 investment returns and its three-, five- and 10-year performance. Mr. Moise then discussed the allocation of fund assets, with a projected annual rate of return of 6.5 percent, noting that allocating 63 percent of the total equity is an aggressive position. He then gave an overview of the tough last decade for investments on a national level and discussed the pros and cons of diversifying the portfolio and investing the fund in private market investments. Mr. Moise finished with a series of suggestions, including removing the reserve status of the fund; returning to a 50/50 division of annual settlement revenue payments; and creating a revenue stream to increase the size of the fund so that it could start growing.

Members of the committee discussed and asked questions concerning maintaining the solvency of the fund, the history of the fund and how the legislature might help with the recommendations that the SIC presented.

### **Update on Arbitration**

Ari Biernoff, assistant attorney general, Office of the Attorney General (AGO), gave the committee a brief update on the status of the arbitration concerning past payments made as part of the Master Settlement Agreement. He noted that the ruling concerning the adjustment in payment for 2003, based on a 2013 review of the 2003 payment, was still pending. In that case, the judge was being asked to modify an aspect of the review, and the AGO was asking the Master Settlement Agreement judge to vacate the 2013 ruling. In addition, Mr. Biernoff noted that the 2004 enforcement year arbitration had not started and that there was a widening gap between the present and past settlement payments still in dispute.

Members of the committee asked questions about and discussed the progress and history of the litigation, what was occurring in other states that were part of the Master Settlement Agreement and whether the legislature could do anything to speed the process.

### **Approval of Minutes**

Upon a motion by Representative Chasey, seconded by Senator McSorley, the minutes from the October meeting of TSROC were approved with no opposition.

### **Utilization of Tobacco Cessation Services Within the Medicaid Program**

Charles Canada, Human Services Department (HSD), read a statement that he provided to the committee concerning the utilization of tobacco cessation services within Medicaid. He noted the public-private collaboration among the HSD, the Department of Health (DOH) and the American Cancer Society Cancer Action Network. He noted the number of people enrolled in Medicaid who smoke, 37 percent nationally, and the economic impact tobacco use has on Medicaid. He then discussed the importance of tobacco cessation services, especially telephone counseling services known as "quitlines", and noted that the HSD will provide hard data to the committee before it meets again. A member of the committee, after noting that the committee would not be meeting again this year, asked the department to provide its data to staff and discussed what was happening in other states.

### **Update on Breast and Cervical Cancer Treatment Program**

There was not a formal presentation on this topic. Kim Carter, bureau chief, Centennial Care Bureau, Medical Assistance Division, HSD, and Beth Pinkerton, section head, Cancer Prevention and Control Section, DOH, discussed with the committee the data the committee would like to receive concerning the Medicaid Breast and Cervical Cancer Early Detection Program (Medicaid category 052).

### **Opportunities to Leverage Federal Medicaid Funds**

Brian Hoffmeister, program evaluator, Legislative Finance Committee (LFC), and Maria Griego, program evaluator, LFC, presented the executive summary of the LFC report, "Various State Agencies Opportunities to Leverage Federal Medicaid Funds, Report #15-10", dated October 27, 2015. They noted the changes to the health care landscape in the state as a result of the passage of the federal Patient Protection and Affordable Care Act (ACA), especially the fiscal challenges posed by the state assuming a growing portion of Medicaid costs due to the ACA Medicaid expansion. The LFC evaluation "analyzed 16 programs across seven state agencies for the potential to either replace state funds with Medicaid reimbursements or enhance or reallocate revenues that would be used to draw down additional Medicaid funds". The three main themes identified were: 1) "increasing Medicaid billings for current services that are Medicaid eligible but receive state or local funds"; 2) "expanding Medicaid-eligible services for certain programs"; and 3) "reallocating resources related to programs with diminished roles due to the ACA". The LFC recommended that the legislature look at statutory adjustments to eliminate service overlaps, that agencies prioritize working with Medicaid-eligible providers and that the legislature work with the HSD and managed care organizations to ensure that health care services supported out of the general fund be transitioned to Medicaid when that is appropriate. Mr. Hoffmeister and Ms. Griego then read through the details of the executive summary regarding the report's findings and recommendations.

Members of the committee discussed and asked questions concerning some of the specific recommendations and the amounts involved in the ACA Medicaid expansion.

### **3-D Mammography Funding Request Update**

Pamelya Herndon, executive director, Southwest Women's Law Center, gave a presentation on tomosynthesis as an important tool in battling breast cancer, working through a PowerPoint presentation handout given to the committee. She discussed the differences between 2-D mammography and 3-D mammography (breast tomosynthesis), and she emphasized that the use of 3-D mammography in conjunction with 2-D mammography increased detection rates over 40 percent and was particularly useful when the size of the cancer was less than one centimeter. She requested that the committee support funding of 3-D mammography for the poor, specifically by providing \$2.5 million for the purchase of a 3-D machine in a mobile van that could bring this screening to disadvantaged communities. She also requested \$500,000 for the doubling of the provision of 3-D mammography services.

Members of the committee discussed and asked questions concerning the availability of 3-D screening services, Medicaid reimbursement for those services, the availability of 2-D services to women in New Mexico, the link between tobacco use and breast cancer and the costs for providing 3-D screening versus 2-D screening.

### **Cigarette Tax Revenue Distributions and Bonding**

Zach Dillenback, chief lending officer, New Mexico Finance Authority, gave a presentation to the committee concerning cigarette tax revenue distributions and bonding, working through a handout presented to the committee. He showed the distribution of current cigarette tax revenue distributions, noting that the great majority of those — 74.9 percent — went to the general fund. He discussed the various cigarette tax revenue bonds authorized in the 2003 and 2005 legislative sessions, noting that they are secured by the 8.89 percent University of New Mexico (UNM) Health Sciences Center (HSC) cigarette tax revenue distribution and the 9.77 percent credit enhancement account (CEA) distribution. He discussed the refunding of certain bonds to take advantage of the current interest rate environment, and he went through spreadsheets detailing the UNM HSC and CEA distribution revenue. Mr. Dillenback then discussed the cigarette tax revenue bonds authorized in 2003 to improve various DOH facilities; these bonds are secured by the 3.74 percent DOH cigarette tax revenue distribution. Mr. Dillenback also went through a spreadsheet detailing the DOH distribution revenue. He then discussed the various bond issuances to improve cancer treatment in rural class B counties, noting that they were secured by the 0.62 percent rural county cancer treatment cigarette tax revenue distribution, and he went through a spreadsheet detailing the distribution revenue from that source. He concluded his presentation by discussing the series 2006 behavioral health cigarette tax bonds, used to capitalize the Behavioral Health Capital Fund, which was created to finance capital needs for small nonprofit providers in rural and underserved areas.

Members of the committee discussed and asked questions concerning some of the data presented by Mr. Dillenback and asked about some of the specific projects funded by the bonds.

### **E-Cigarettes: Latest Research on Health Effects**

Dr. Joel Nitzkin, senior fellow in tobacco policy, R Street Institute, gave the first part of the presentation on the latest research on the health effects of e-cigarettes, working through a PowerPoint presentation provided as a handout to the committee. Dr. Nitzkin, after commenting that the R Street Institute was a Libertarian think tank, noted that e-cigarettes were a game changer in tobacco policy. He pointed the committee to the 2014 findings and recommendations in a Food and Drug Law Institute research paper, provided to the committee, that showed that e-cigarettes were not recruiting nonsmoking teenagers to smoking, that e-cigarettes were a gateway away from smoking and that e-cigarettes are far safer than traditional cigarettes. The policy recommendations include support for an age limit on the use of e-cigarettes but no taxation on e-cigarettes or other restrictions on their use. Dr. Nitzkin noted that 2014 findings had been reaffirmed in new studies, which have shown, among other findings, that e-cigarettes are 95 percent safer than smoking. He further noted that the data from the Centers for Disease Control and Prevention (CDC) emphasized increased concern with teen use of e-cigarettes, but the data actually show that if e-cigarettes were a gateway to other tobacco use, usage of other types of tobacco would be rising instead of declining. He alerted the committee to data indicating that imposing restrictions on e-cigarettes has the effect of increasing teen smoking. Dr. Nitzkin also cited data showing that e-cigarettes do not have the environmental effects of traditional tobacco. Dr. Nitzkin claimed that the public health community, because of its commitment to a tobacco-free society, has a conflict of interest and is hostile to any tobacco-related companies. Dr. Nitzkin proposed that there be no new restrictions or taxes on e-cigarettes.

Dr. Richard Larson, executive vice chancellor and vice chancellor for research, UNM HSC, gave the second part of the presentation on the latest research on the health effects of e-cigarettes, as Dr. Matthew Campen, who was scheduled to present this research, was unable to attend the meeting. He noted that there are significant health issues with combustible forms of tobacco use and that in-between products have large unknowns. While e-cigarettes are not combustibles, they do contain nicotine, which is known to have long-term negative cardiovascular effects on people. In addition, the concern about particulate matter is not referring to particles found within traditional tobacco, but the unknown effects of the different compounds included in e-cigarettes. Dr. Larson stated that he would support age restrictions on e-cigarette use because of the effects of nicotine and because of the many unknowns surrounding the long-term health effects of e-cigarettes. Additionally, given these unknowns, Dr. Larson suggested that legislators err on the side of prudence. He noted that there are correlations between youth tobacco use and e-cigarette use and that there have been studies published, including one in the prior 30 days, that showed that e-cigarettes are a gateway mechanism for the use of traditional tobacco products. He also noted that increased taxation has been shown to decrease usage.

Members of the committee discussed and asked questions of the two presenters about regulations on e-cigarettes and tobacco products, nicotine as an addictive substance, the gateway effects of e-cigarettes, the organic compounds in e-cigarettes and competing scholarship on the health effects of e-cigarettes.

## **Nicotine Taxation**

Maggie Mahoney, executive director, Tobacco Control Legal Consortium at the Public Health Law Center, William Mitchell College of Law, St. Paul, Minnesota, gave the first part of the presentation on nicotine taxation, appearing via Skype and working through a PowerPoint presentation provided as a handout to the committee. She noted that increasing the price of tobacco products is the most important way to decrease tobacco consumption, but she added that under the federal Tobacco Control Act, the federal Food and Drug Administration may not levy taxes on tobacco products. State taxes on cigarettes range from a low of \$0.17 in Missouri to \$4.35 in New York, with New Mexico falling somewhere in the middle as the twenty-second highest in the nation. Ms. Mahoney also discussed taxation rates on combustible and noncombustible tobacco products. Ms. Mahoney then moved to a discussion of taxation of e-cigarettes, noting that three states plus the District of Columbia have some sort of tax on e-cigarettes, and Minnesota considers e-cigarettes taxable if the e-cigarette contains some form of nicotine derived from tobacco. There are also certain individual communities, such as Chicago, that tax e-cigarettes. She noted that updated CDC data show that there is no convincing evidence supporting a shift from traditional cigarettes to e-cigarettes, and the data suggest that e-cigarette use may lead to use of traditional cigarettes or cigars. She reminded the committee that when considering taxation, one must consider the varieties of e-cigarettes, which products should be taxed and whether the tax should be applied at the wholesale or retail level. She concluded by discussing the experience of creating a tax in Minnesota as an example of the policy choices with which legislators would have to wrestle.

Members of the committee asked Ms. Mahoney about the revenue raised from the tax in Minnesota.

Gregory Conley, president, American Vaping Association, gave the second part of the presentation on nicotine taxation. He opened his discussion by noting that "smokers smoke for the nicotine, but die from the tar". He directed the members of the committee to the packet of articles he presented to them, noting especially a *New England Journal of Medicine* article that encouraged smokers to switch to tobacco-free products, and noting other articles that showed the amounts states have saved when smokers in those states switched to tobacco-free products. He discussed the drop in use of traditional cigarettes and the rise in exclusive use of e-cigarettes, especially among youth. He stated that the consequences of taxing vaping products would be a negative impact on small businesses and the drop in the use of e-cigarettes, resulting in a switch back to traditional cigarettes. He concluded by saying that no tax or user fee for e-cigarettes is justified.

Christina Keyes, economist, LFC, gave the third part of the presentation on nicotine taxation, working through a PowerPoint presentation provided as a handout to the committee and focusing on Senate Bill 65, from the 2015 regular session, which was a bill designed to amend the Tobacco Products Tax Act to impose a tax on specific nicotine products and delivery devices and to require labeling of nicotine content on products. If it had been signed into law, the bill would have imposed both an excise tax on e-cigarettes and a tax on e-cigarette solutions at parity

with cigarettes. Ms. Keyes addressed the tremendous recent and projected growth of the e-cigarette industry in New Mexico and nationally. Ms. Keyes concluded by noting that the passage of the bill would have had a high administrative impact on the state and that the use of e-cigarettes has a high number of health unknowns.

Sandra Adondakis, New Mexico government relations director, American Cancer Society Cancer Action Network, gave the fourth part of the presentation on nicotine taxation, working through a PowerPoint presentation provided as a handout to the committee. She opened her presentation by discussing where New Mexico stood with the trifecta of preventing tobacco use. The state has a smoke-free law, she noted, but does not invest in tobacco use and prevention cessation programs at the CDC-recommended level of \$22.8 million, nor does the state have significant and equivalent tax rates for all tobacco products. The advantages of increasing user fees on tobacco, she added, are new revenue, a benefit to public health and cost savings in health care expenditures. A \$1.00 increase in the state cigarette tax would generate \$27.24 million in new revenue each year, and an equivalent tax on non-cigarette tobacco products would generate \$8.7 million in new revenue each year. All tobacco products and e-cigarettes should be taxed equally to protect children, as high prices help to keep young people from starting to use tobacco. Equivalent taxes on all products would also help current users of tobacco to quit. Ms. Adondakis then detailed some of the costs to the state from cigarette smoking and how an increased cigarette tax would save health care costs for the state by reducing the number of smoking-related diseases and other illnesses, as well as reducing other adverse health effects. She discussed the trends for the use of tobacco products in the state, noting the decrease in cigarette use, that spit and chew tobacco use had leveled and that cigar and hookah use has increased. She added that e-cigarette use has likely increased as well, presuming New Mexico is following national trends. She concluded by noting the ways that tobacco product taxes, by reducing the number of smokers, would save a significant number of lives in the state.

Members of the committee asked Ms. Adondakis about sales of tobacco products on tribal lands and on military bases, the history of tobacco taxes in the state and usage rates among the state's youth.

Dr. Larson gave the final part of the presentation on nicotine taxation, working through a PowerPoint presentation provided as a handout to the committee, with a focus on bioscience development in New Mexico. He discussed the economic challenges facing the economy and the importance of investment in research and development. He then gave an overview of the significant positive economic impact that the bioscience sector has had across the nation. He discussed the core economic model of bioscience — that inventions lead to innovations, which bring about investment by technology-based companies, which spills over into broader economic impact. The key to making this model successful is effective public-private partnerships, especially those pairing universities with the private sector. Dr. Larson gave an overview of the process for commercialization of bioscience research and successful public-private partnerships, and he gave background on bioscience as a field and of bioscience as an industry in New Mexico. Other states, he noted, have given bioscience-specific incentives, which seem to have a greater

impact on developing the industry versus more general incentives. These specific incentives include research innovation pools, recruitment, financing, grants, tax credits, bio-ready communities, biomedical research bonds and the development of a state biocenter. He concluded by noting that a \$1.00 cigarette tax leads to approximately \$2 million in revenue to the UNM HSC, funding that helps to bridge the development gap that often exists between innovations and investment by technology-based companies. Dr. Larson added that cigarette taxes not already targeted to the UNM HSC could also be invested in bioscience, but that would require a public-private collaborative.

Members of the committee asked questions about and discussed with Dr. Larson various aspects of the bioscience industry, its economic impact and its potential for economic development in the state.

### **Public Comment**

Jennifer Van Velkingburgh, a volunteer with the American Cancer Society Cancer Action Network, encouraged the committee to consider supporting a strong indoor clean air law, funding tobacco cessation programs at CDC-recommended levels and imposing a more significant tobacco tax.

Heather Marcellus, a disabled veteran with posttraumatic stress disorder, told the committee that she uses e-cigarettes, that many disabled veterans had businesses selling e-cigarette products and that a tax on e-cigarettes could put businesses owned by disabled veterans out of business.

Gerald Chacon noted that he started smoking e-cigarettes about a year before as he wanted to live to see his grandchildren and that e-cigarettes have worked to get him off using traditional cigarettes and have helped him to live a healthier lifestyle.

Tim Hurst, with T&S Vapors, noted that both he and his wife were finally able to quit smoking tobacco with the use of e-cigarettes, that they have opened an e-vapor store that employs 14 people and that they have thousands of customers who have come in to thank them, because e-cigarettes have allowed them to quit using tobacco. He urged that the state embrace e-cigarettes.

Melissa stated that she owns a vape store in Albuquerque, that an e-cigarette tax would cause her to close her doors and that the money would move to another state.

Daniel Montañó stated that he owns a vape store in Santa Fe, that e-cigarettes helped him to quit using cigarettes and that, while he is in the process of opening a second location in Santa Fe, he is looking out-of-state for his plans to open an e-liquid manufacturing business due to the possibility of a tax in the state. Many of his customers speak to him of the benefits of e-cigarettes.

Mat Hollingshead said that he is a store owner in Taos and that he wished he had a journal of all of the stories his customers told about kicking their habits. He said a tax would hurt his business.

Freddie Olson, a database developer and small business owner, said that he was not able to stop smoking until he used e-cigarettes and his e-cigarette shop in Albuquerque employs six people. His product is anti-tobacco, and to tax it further as a deterrent would go against a growing body of evidence of the benefits of e-cigarettes. He is in favor of no tax whatsoever, and he favors placing e-cigarettes into a new category outside of tobacco.

**Adjournment**

There being no further business before the committee, the final meeting of the TSROC for the 2015 interim adjourned at 4:50 p.m.

