

## Attorney General on Tobacco Settlement Legislation

**O**n Tuesday, April 5, 2011, Governor Martinez vetoed Senate Bill 397, a bill that would level the playing field for all cigarette manufacturers by requiring that they all pay their fair share of the health care costs their products cause in New Mexico. The veto was in direct contradiction to the legal advice provided to her by my office, which for years, has been in charge of maintaining the historic Master Settlement Agreement with major tobacco companies. Besides clearly putting the interests of the tobacco industry ahead of the health of New Mexico citizens, the veto enables a continuation of unequal treatment for cigarette makers who did not join the Master Settlement Agreement. The biggest benefactor of the Governor's veto is a large cigarette manufacturing plant in New York.

It also puts at risk tens of millions of dollars that are currently flowing into the general fund and a separate escrow account. That is not the worst of it. New Mexico may be on the hook to pay back roughly \$160 million that tobacco manufacturers have paid the state under terms of the MSA. If these funds are lost, New Mexico may be forced to repay the \$160 million by giving up our MSA payment of \$40 million per year for the next four years. Where will replacement funds come from? Unfortunately, increased taxes for all New Mexicans is the likely answer. I do not believe this is what the Governor intended as a result of her veto.

The real possibility of New Mexico having to repay tobacco settlement monies would be just one more step toward our state having to face a near catastrophic financial setback.

State Representative Gail Chasey, who co-chairs the Tobacco Settlement Revenue Oversight Committee tells us, "The legislature understands the importance of diligent enforcement to protect our permanent funds and future effective anti-smoking programs. Additionally, this legislation would have it made it very difficult for MSA participating members to prevail in

claims against the state for failure to diligently enforce its escrow statutes; at the same time the bill would provide statutory support for the state to bring claim against non-participating members who fail to pay escrow.

One of Representative Chasey's concerns, shared by my office, has already happened. MSA participating members have just filed notice with the Independent Auditor for the Tobacco Settlement funds alleging New Mexico no longer has a qualifying escrow statute. This notice appears to be triggered by the veto of Senate Bill 397. This could result in a claim against New Mexico that calls for refunding tobacco payments for 2007, 2008, 2009 and 2010. New Mexico could be found liable for our entire payments for those years (roughly \$160 million), and would then have to forfeit our payments for the next 4 years.

The bill the Governor vetoed would have cured that problem for 2012 going forward. Now, we may have to wait until 2014 before a statutory change can be implemented for an entire calendar year to fix the problem in a way that protects New Mexico from the loss of MSA funding.

We believe New Mexico is and has always been compliant with the tenets set forth in the MSA, but we must continue to fight the legal challenges brought by the tobacco manufacturers that argue to the contrary.

There is no question that all of us in New Mexico are and will be paying for the health care costs of tobacco for the foreseeable future. This bill would have ensured that these costs be shared more equitably by tobacco manufacturers and smokers.

**New Mexico  
Attorney General  
Gary King**

