

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

**November 10, 2004
Room 311, State Capitol
Santa Fe**

The third meeting of the Tobacco Settlement Revenue Oversight Committee (TSROC) for the 2004 interim was called to order by Representative Gail C. Beam, co-chair, on November 10, 2004 at 10:30 a.m. in Room 311 of the State Capitol.

PRESENT

Rep. Gail C. Beam, co-chair
Sen. Mary Jane M. Garcia, co-chair
Sen. Richard C. Martinez

ABSENT

Sen. Ramsay L. Gorham
Rep. J. Paul Taylor
Rep. Gloria C. Vaughn

Advisory Members

Sen. Dede Feldman
Sen. Linda M. Lopez
Rep. Danice Picraux
Rep. Luciano "Lucky" Varela
Rep. Teresa A. Zanetti

Sen. Joseph J. Carraro
Sen. Steve Komadina

Staff

Maha Khoury
Ramona Schmidt
Sarah Salazar
Kathleen Dexter

Guests

The guest list is in the meeting file.

Wednesday, September 29

The committee initially convened as a special subcommittee; when a sufficient number of voting members subsequently arrived to constitute a quorum, the minutes to the September 29, 2004 meeting were approved upon motion duly made, seconded and passed without objection.

**TUPAC PROGRAM FUNDS TRANSFER TO BEHAVIORAL HEALTH SERVICES
DIVISION (BHSD)**

Pilo Bueno, staff supervisor for the Prevention Services Bureau (PSB), BHSD; Michael Fiero, director of the Office of Policy Planning and Evaluation, Department of Health (DOH);

Patsy Nelson, deputy director of the Public Health Division (PHD); and Bob Horwitz, chief financial officer, PHD, gave an explanation of a perceived transfer of tobacco settlement funds from one division to another contrary to the intent of the legislature. As part of DOH's performance-based budgeting reorganization, certain programs within PHD and BHSD were combined in order to emphasize the prevention aspects of each division's work. The money in question — \$1 million appropriated to the TUPAC program in PHD — was allocated for the SmartMoves prevention program and other programs within BHSD. On questioning from committee members, the presenters stated that:

- BHSD programs are subject to standards and evaluation procedures as rigorous as those set by the Centers for Disease Control and Prevention;
- up to 10 percent of each prevention program contract is earmarked for evaluation, which is required for evidence-based programs; evaluations are conducted annually by Behavioral Assessment, Inc.; if all programs within DOH were evaluated similarly, it would be easier to track the most effective programs; and
- the Department of Public Safety has contracted for an investigation into sales of tobacco to minors.

In general discussion, members expressed concern that legislative intent for appropriations might be lost in reorganization efforts and that past appropriations for certain programs were line-item vetoed because they were not specific to prevention.

SMARTMOVES PROGRAM

Marco Gonzales, Al Padilla, Concha Montano, Peter Gomez and Francisco Cavazos, all of the New Mexico Alliance for Boys and Girls Clubs (BGC) and the Santa Fe BGC, gave a presentation on the SmartMoves program, a national prevention program that has received tobacco settlement funds in several states. The program currently serves nearly 1,500 youth statewide, ages 6 through 17, and addresses risk factors for tobacco, alcohol and drug use as well as teen pregnancy in the family, individual, community and school domains. Ms. Montano, who acts as the local program evaluator, explained the program's evaluation framework and cited statistically significant positive outcomes in the majority of areas measured, noting that the New Mexico SmartMoves program has the highest success rate of all SmartMoves programs nationwide. On questioning from committee members, the presenters stated that:

- the Albuquerque BGC did not participate this year but intends to in the future; all BGCs in the state are invited to participate in SmartMoves, and even some other entities are making inquiries about starting their own programs;
- a pilot program, SmartGirls, was developed in response to results showing that the SmartMoves program is less effective for girls than for boys; national evaluations show that girls need more support in prevention efforts than boys;
- girls are now more likely to use diet pills than to take up smoking to stay thin;
- the SmartMoves program in Dona Ana County had the best results in the state;
- media literacy for both youth and tobacco merchants is included in the program;

- because the intent of the program is education rather than enforcement, program facilitators are reluctant to attempt "sting" operations on retailers who sell tobacco to minors; and
- SmartMoves received a federal match for its state appropriation four years ago but the match is no longer available.

UPDATE FROM THE OFFICE OF THE ATTORNEY GENERAL

Glenn Smith, deputy attorney general, gave a presentation on lawsuits filed against tobacco manufacturers and their potential effect on payments to states under the master settlement agreement (MSA). A Department of Justice lawsuit based on the Racketeer Influenced and Corrupt Organizations Act, or RICO, seeks \$280 billion; additional lawsuits are under way in Illinois and Florida. A previous lawsuit that could have affected MSA payments was modified by the judge in order to avoid pushing tobacco manufacturers into Chapter 11 bankruptcy, and Mr. Smith stated that there is a possibility the federal lawsuit could send the companies into bankruptcy as well. If manufacturers do file for Chapter 11, there would be a significant impact on MSA payments. On questioning from committee members, Mr. Smith added that:

- though the \$280 billion would go to the federal government, states might influence use of the settlement through their congressional delegations;
- foreign sales would not be considered in a Chapter 11 filing for some manufacturers because of how the companies are structured; and
- Utah and Minnesota have enacted surcharges that must be paid regardless of whether a company is bankrupt.

CRIMINALIZATION OF TOBACCO POSSESSION BY MINORS

The committee heard arguments on both sides of the issue of criminalization of tobacco possession by minors. Speaking in favor of criminalization were James Ulibarri, a student at Escalante High School, and Valentina Galvan, counselor for the Chama Schools. They were joined by Representative Debbie A. Rodella, who presented a bill she had sponsored in the 2003 session that would have amended the Tobacco Products Act to make tobacco possession by a minor a petty misdemeanor, with completion of a tobacco use prevention and cessation program as an alternative penalty. On questioning from committee members, the presenters stated that:

- current law sends mixed signals by making it illegal for a minor to purchase tobacco while tobacco possession is not illegal;
- prevention and cessation programs can be provided by community clinics;
- some schools still have smoking areas; and
- enforcement of the law would involve citing a youth caught with tobacco; searches would only take place if there is a suspicion of tobacco possession.

In general discussion, committee members expressed concern that the law would not be enforced that the judicial system might be overloaded and that penalties associated with petty misdemeanors are too high.

Shelley Mann-Lev, drug prevention coordinator for the Office of Student Wellness at the Santa Fe Public Schools, spoke against criminalization. She cited national studies showing that criminalization is not effective in reducing smoking rates, and she urged the committee to focus its efforts and appropriations on programs that have proven positive results.

TOBACCO SETTLEMENT PERMANENT FUND

Janet Peacock, research and fiscal policy analyst for the Legislative Council Service, presented a distribution analysis for the tobacco settlement permanent fund through the year 2026. With the current distribution schedule, which temporarily redirects all of the tobacco settlement money to the general fund until 2007, the tobacco settlement permanent fund will be self-sustaining by 2018, with programs funded solely by earnings on the fund thereafter. This date would be significantly delayed if the current 2007 sunset date for the redirection of tobacco funds is delayed or repealed. Committee members discussed the need to protect the tobacco settlement permanent fund in the next 30-day session, when state revenues will be affected by recent tax cuts.

GENERAL FUND REVENUE AND EXPENDITURE OUTLOOK

Bill Taylor, assistant director, Legislative Finance Committee (LFC), and Olivia Padilla-Jackson, fiscal analyst, LFC, presented the general fund revenue and expenditure outlook for fiscal years (FYs) 2006 and 2007 as it relates to a possible repeal of the 2007 tobacco settlement permanent fund sunset provision. While oil and gas prices contributed to stronger-than-predicted revenues for FY04, the effects of tax cuts, state employee salary increases, recently enacted school reforms, the change in the federal Medicaid match rate and other general fund obligations are expected to offset the positive revenue projection by FY07. Committee members discussed the uphill battle they expect to face in preventing a repeal of the 2007 sunset provision.

PROGRAM FUNDING RECOMMENDATIONS AND PROPOSED LEGISLATION

Committee members agreed without objection to:

- reintroduce the cigarette stamp bill (House Bill 86 from the 2004 regular session);
- add an endorsement to the Legislative Health and Human Services Committee bill to raise the tax on smokeless tobacco; and
- recommend the same funding levels for the same programs as recommended in FY05, earmarking the \$8 million for the TUPAC program, and add a line item under DOH for the SmartMoves program at \$500,000, for a total funding request of \$15,670,000.

Having no further business, the committee adjourned at 4:05 p.m.