

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

August 27, 2010
Room 311, State Capitol
Santa Fe

The third meeting of the Tobacco Settlement Revenue Oversight Committee (TSROC) was called to order as a subcommittee on Friday, August 27, 2010, at 10:10 a.m. in Room 311 of the State Capitol in Santa Fe. The co-chair announced that the meeting was being webcast.

Present

Rep. Gail Chasey, Co-Chair
Sen. Dede Feldman
Rep. Danice Picraux
Rep. Gloria C. Vaughn

Absent

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

Advisory Members

Sen. Rod Adair
Sen. Sue Wilson Beffort
Rep. Ray Begaye
Sen. Linda M. Lopez

Rep. Karen E. Giannini
Sen. Mary Kay Papen

Staff

Sandy Mitchell
Roxanne Knight
Karen Wells

Guests

The guest list is in the meeting file.

Handouts

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

Friday, August 27

Indian Affairs Department (IAD) Tobacco Use Prevention and Control (TUPAC) Program Report; Response to Budget Cuts; Recommendations for Efficiency; Implementation of Cigarette Tax on Tribal Lands

Alvin H. Warren, secretary of Indian affairs, described the overall goals of the cessation and prevention of commercial tobacco abuse programs within the IAD, emphasizing the impact on youths and the promotion of the cultural awareness of traditional and ceremonial uses of tobacco among Native Americans. The programs are conducted with a contracted provider to conduct

reporting, monitoring and other administrative activities. Statistics were provided regarding the prevalence of commercial tobacco use among Native American adults and youths. Secretary Warren summarized the funding for these programs, noting that reductions in tobacco funding were offset by funding from the IAD. All of the funds that were appropriated were used by grantees in 2010. He highlighted how the funds were used, including the number of people served and the nature of the programs offered by grantees. Grantees included the Albuquerque Indian Center, the Pueblos of Isleta, Laguna, Pojoaque, Santa Clara and Tesuque, the Oso Vista Ranch Project and Tohatchi (District 14) of the Navajo Nation. Youths from the Pueblo of Santa Clara program who were in the audience were recognized. A survey of tribal youths in 16 New Mexico tribes conducted in 2010 revealed that almost one-half of respondents lack an understanding of the importance of traditional tobacco; however, nearly 20% of respondents have tried commercial cigarettes, and they report that 30% of their friends smoke. Close to 50% of respondents said that at least one immediate family member smokes. The IAD sponsored a meeting on August 18, 2010 to present best practices in the area of prevention and cessation for Native Americans. Secretary Warren identified ongoing challenges, which include a lack of awareness of available resources as well as reimbursement and funding difficulties. He identified the allocation of funding for FY 2011.

Before going to questions from the committee, the co-chair asked committee members to introduce themselves. Staff was also introduced. The Santa Clara youths were invited to comment. Hannah Johnson noted the importance of the program. Other audience members were invited to make comments. Margaret Merrill, executive director, Oso Vista Ranch Project, Joseph M. Talachy, lieutenant governor, Pueblo of Pojoaque, and Marissa Sward-Hinds, tobacco cessation coordinator, Pueblo of Tesuque, offered supportive comments regarding the tribal tobacco cessation and prevention programs. Clarice Tafoya, coordinator of the Pueblo of Santa Clara Pueblo program, reported on the long-term impact of the program on the youths, including an observation that very reserved youths are finding a voice by speaking publicly regarding the potential harm from tobacco use.

Committee members asked questions and made comments in the following areas:

- appreciation for the efforts of the IAD to continue to fund these programs despite the loss of tobacco funding;
- an observation that continued smoking in casinos is a topic that may need to be addressed;
- whether the programs are collecting data consistent with TUPAC and Department of Health goals. Human resources do not support full alignment of data collection; however, an abbreviated activity report has been developed to outline the TUPAC goals; and
- whether there has been a decline in commercial advertising; the Oso Vista Ranch Project has reported a reduction in commercial sales of tobacco.

Secretary Warren continued his presentation by acknowledging the great value of the support of Representative Begaye in promoting all of these programs. Secretary Warren spoke of the impact of the implementation of cigarette tax on tribal lands and noted that the IAD is not the agency responsible for implementation of this tax. The information provided was obtained from the Taxation and Revenue Department (TRD). The TRD reviewed the ordinances that tribes submitted to determine which tribes would be eligible to receive cigarette tax credit stamps and identified 21 entities that were eligible. Each tribe, as a sovereign government, determines its own process for licensing retailers.

Committee members made comments and asked questions in the following areas:

- the difference between the New Mexico cigarette tax and federal cigarette tax; Secretary Warren did not have that information; and
- whether the statutory \$.75 add-on tax is being collected by tribes that have an ordinance in place; representatives of the Pueblo of Isleta, the Pueblo of Pojoaque, the Pueblo of Acoma and the lobbyist for several tribes and pueblos testified that they are all collecting the tax.

A quorum being present, the minutes of the July meeting were approved following a motion by Senator Feldman that was seconded by Representative Vaughn.

University of New Mexico Health Sciences Center (UNM/HSC) Report; Response to Budget Cuts; Recommendations for Efficiency in Programs

Dr. Paul Roth, M.D., executive vice president for health sciences, dean, UNM school of Medicine, identified patient care, education and research programs that have critical needs at the UNM/HSC. Originally, only biomedical research was identified for support with tobacco settlement funds; however, over time, other needed health-related programs have also been funded. He reviewed the funding history, which has grown since 2001 to a current funding level of \$3,375,620. He emphasized that the UNM/HSC has managed reductions in funding but further cuts may result in substantial reductions in services.

Dr. Richard Larson, M.D., Ph.D., vice president for relational research, UNM, provided more detail regarding the effect of reductions, efficiencies and modifications that the UNM/HSC has implemented, the benefit of each program and the implication of future cuts. Cuts have resulted in reduced federal funding of clinical and research positions, as well as reduced recruitment of health care professionals in rural areas and an increase in the overall cost of health care in New Mexico. He identified the important programs supported by tobacco settlement funds, including research and public service projects such as biomedical research, the poison and drug information center, Los Pasos (a program of early intervention to young children at risk of developmental delays), area health education centers (AHECs), telehealth and the pediatric oncology program. Some tobacco funds were committed to replace instruction and general funds, specifically to support specialty education in pediatric trauma. The effect of cuts in the

2010 tobacco settlement funds has had a tremendous multiplier effect. He identified a loss of \$7.00 for every \$1.00 of reduced allocation, which translates into a combined loss of \$960,000 in federal funding. He identified the funding of pilot projects as the main source of federal matching funds. The ability of the UNM/HSC to leverage tobacco settlement funds with federal matching funds has resulted in a significant creation of jobs, development of new technologies and the introduction of clinical and intervention drug trials. Further reductions will lead to a reduction of services, further loss of federal funds, loss of jobs and compromises to the clinical, research and education mission of the UNM/HSC. Dr. Larson urged the committee to provide fiscal flexibility in the budget to allow the UNM/HSC to determine the best way to deal with future reductions.

Committee members had questions and made comments in the following areas:

- the impact on the UNM Hospital due to Medicaid cuts; Dr. Roth estimates an impact of approximately \$35 million so far, which has resulted in the implementation of greater efficiency of management and administration;
- an observation that the increased cigarette tax was not earmarked to health care;
- a need to identify the specific impact of anticipated future Medicaid cuts prior to the next legislative session; this impact is being developed and communicated to Kathryn "Katie" Falls, secretary of human services; Dr. Roth is especially concerned about the potential elimination of the State Coverage Initiative (SCI) Program, upon which UNM depends;
- whether residency programs in rural areas serving Navajos will be affected by the cuts, and whether collaborative partnerships offer promise in dealing with cuts; Dr. Larson indicated that there are no duplications in educational efforts as UNM is the only medical school in the state. Dr. Roth believes there is no clinical duplication because the need always exceeds the availability of providers; however, he will communicate with providers in San Juan County to ensure effective partnerships;
- whether reductions in tobacco funding affect the actual teaching of medical students; the answer was yes, research projects formerly conducted by medical students have been limited;
- the extent to which further reductions would impact the number of medical students; the number of students who graduate will not change;
- how the UNM/HSC is positioned to respond to the effects of the federal Patient Protection and Affordable Care Act (PPACA), especially regarding access to care. The impact of the PPACA will be huge, but the UNM/HSC is not prepared to meet that impact at all. The PPACA contains many opportunities, and the UNM/HSC will pursue all to which it may qualify; however, the major growth of residents who will

qualify for health insurance will have an enormous impact on the state and on the UNM/HSC;

- clarification regarding jobs lost due to the loss of tobacco funds; the loss of federal matching funds could result in the loss of full-time-equivalent positions or a substantial reduction in salaries due to the loss of a project;
- clarification about exactly how many jobs have been lost due to reductions in state tobacco settlement funds; it was noted that all components had a general fund component and that it is difficult to isolate the effect of the tobacco funds; cuts exacerbate the job losses;
- clarification regarding the anticipated reduction of the recruitment of health care professionals to rural and underserved areas; reductions are due to cuts to AHECs, rural residency opportunities and the inability of receiving entities to accommodate these professionals;
- the impact of the possible elimination of the SCI by 2014, and the opportunity, through the PPACA, to create an alternative program to serve these populations; there was an invitation to the UNM/HSC to assist in the development of a substitute SCI program;
- the potential of PPACA provisions that enable the expansion of Medicaid to childless adults sooner than 2014 to cover SCI enrollees; a logical transition is needed from SCI coverage to a potentially new model in 2014;
- a request for a summary of suggestions of opportunities for meaningful cuts in programs; and
- an observation that the TSROC has the opportunity to make suggestions to the Government Restructuring Task Force (GRTF) regarding health reform opportunities.

Lovelace Respiratory Research Institute (LRRI) Report; Recommendations for Efficiency

Dr. Robert W. Rubin, Ph.D., president and chief executive officer, LRRI, provided a historical perspective regarding research on tobacco products and the history of the LRRI, which is the only private basic-science, biomedical research organization totally dedicated to the study of respiratory diseases. He highlighted the revenue for the institute's work provided by tobacco settlement funds, noting the increases since 2000. These funds have contributed to progressive growth jobs, including more than 2,500 jobs in 2010 alone.

Dr. Yohannes Tesfaigzi, Ph.D., director, Chronic Obstructive Pulmonary Disease (COPD) Program, LRRI, reviewed the accomplishments of the LRRI over the last 10 years. For example, one study found that people exposed to wood smoke have a six-fold chance of developing COPD. The studies conducted have had a significant effect on the scientific community as a whole and

have led to more research. Another study revealed that individuals with COPD have a four-fold chance of developing lung cancer. The LRRI has developed a sputum test that allows very early detection of lung cancers, 75% of which were identified by LRRI biomarkers. Studies are ongoing to identify interactions between Hispanic and non-Hispanic white ethnicities and those at risk for COPD. Other current and pending federal grants beyond tobacco settlement funds in support of these and other activities were identified, as well as recent publications resulting from funding.

Committee members had questions and comments in the following areas:

- the amount received in tobacco settlement funds this year was \$897,000; it was noted that the allocation from the TSROC was \$1 million; Bob Barberousse, a lobbyist, clarified that the amount was cut back pursuant to general, across-the-board budget cuts;
- clarification regarding oversight of the state funds received; the LRRI is overseen by UNM;
- a request for the presenters to provide any additional recommendations for further efficiencies to the GRTF and for information regarding jobs lost as a result of cuts; and
- whether and what amount of tax revenues could be lost as a result of cuts; Dr. Rubin will work on developing those figures.

Federal Tobacco Regulations Update; Update on Cigarette Tax in New Mexico and Neighboring States; Increase in Tax on Tobacco Products Other Than Cigarettes

Nathan Bush, vice president for government relations, American Cancer Society, described the impact of new federal Food and Drug Administration (FDA) regulations that call for larger, stronger warning labels on smokeless tobacco products; no vending machine sales except in adult-only facilities; no branded tie-ins such as shirts; no sales of cigarettes in packages of less than 20; and no free samples. The regulations went into effect during the summer. He highlighted the position of New Mexico in the ranking of state cigarette tax rates relative to other states by noting that New Mexico now has the nineteenth-highest rate in the country at \$1.66 per pack of cigarettes. He noted that it is widely recognized that the price of cigarettes is the most dominant deterrent to smoking.

Mr. Bush presented information on taxation of non-cigarette tobacco products. New Mexico's current tax code allows for a tax of 25% of the value of non-cigarette tobacco products. The American Cancer Society and other health-based partners prefer a tax based on price (or value), which New Mexico has, rather than a weight-based tax, as exists elsewhere. The New Mexico tax on non-cigarette tobacco products, however, has not been raised in close to 20 years. He noted that smokeless tobacco products are not covered by the new FDA regulations, which could lead to an increase in the use of non-cigarette tobacco products. Additionally, smokeless

tobacco products frequently are flavored and serve as entry-level products to tobacco use. Larry Elmore, program manager, TUPAC, Department of Health, stated that non-cigarette tobacco products are the next major focus for the department. Mr. Bush provided a handout that demonstrates that a tax increase of 25% on non-cigarette tobacco products would be needed to create tax equity between tobacco and non-cigarette tobacco products in New Mexico. A clarification was sought regarding the point at which the tax would be assessed and the ultimate impact on smoking cessation. Mr. Bush stated the tax should be assessed at the point of sale, which would result in a higher sticker price, thereby possibly deterring the purchase. Clarification was sought regarding the estimated \$6.8 million in revenues from a tax such as this. Mr. Bush noted that the estimate was affirmed by the TRD and upheld by American Cancer Society models for projecting the impact on usage as a result of such a tax. He emphasized disturbing trends in usage among youths of non-cigarette tobacco products. Overall, New Mexico saw nearly a 12% increase in usage among youths in 2009. The products smell and taste like candy, but they are very high in nicotine.

Committee members had comments and questions in the following areas:

- clarification regarding the law that generated the new FDA regulations, and the impact the law may have on business; the law does not allow the removal of a product from the market;
- a suggestion from the co-chair that the Legislative Finance Committee be notified that tax revenue equity legislation would generate \$6.8 million in revenue; and
- an observation that because of the flavoring, youths can easily disguise their use of non-cigarette tobacco products while at school.

Electronic Cigarettes; Efforts to Ban Use in Public Places

Mr. Bush described an electronic cigarette, or e-cigarette, which is a battery-powered device that contains a cannister of nicotine in a vaporized solution. Use of e-cigarettes resembles use of a nicotine inhaler. Although costly, e-cigarettes are attractive and are selling rapidly. Some look like cigarettes, but some look like ballpoint pens, which makes them easy to conceal in school. E-cigarettes have not been reviewed, tested or approved by the federal government. The FDA, in limited testing, supports that e-cigarettes are potentially cancer-producing and are not regulated. There is no scientific evidence that e-cigarettes are useful in quitting smoking. Though the FDA has sought to bar importation of this product, at least one federal judge has said that the FDA cannot block importation of these products. The American Cancer Society and its national health partners are united in supporting regulation of these products as drug-delivery devices. Mr. Bush suggested that the state could prohibit all sales of these products until they are approved by the FDA. Additionally, Mr. Bush is advocating for regulations that define these products as drug-delivery devices, which is different than how tobacco products are defined.

Committee members had questions and comments in the following areas:

- an observation regarding the difficulty of quitting smoking and the strong desire of smokers to have devices and products to help them to quit;
- the impact of secondhand smoke, the cost of smoking to taxpayers and the need to promote this information more widely;
- whether a vehicle such as the Dee Johnson Clean Indoor Air Act could be used to limit the sale of this product; Mr. Bush will provide model language; and
- a request that opponents of legislation to limit the sale of e-cigarettes be identified.

Committee Discussion on Recommendations for Efficiency to the GRTF

The co-chair drew the committee's attention to a handout containing suggested efficiency recommendations to be brought to the GRTF. Ms. Mitchell noted that these suggestions were discussed at previous meetings and include enhanced collaboration combined with comprehensive review and performance evaluation, increased use of online training, teleconferencing and videoconferencing and more efficient use of existing resources. Representative Chasey suggested the committee get more guidance on the proper expenditure of tobacco settlement revenues so that expenditures are not appropriated in excess of revenues. She also recommended that the committee, in conjunction with the affected departments, develop a matrix of recommendations. Representative Chasey further suggested that staff work with the Department of Health, UNM and other partners to identify the proper columns, including resources needed, supportive documentation and recommendations. Committee members commented that it appears that cost-containment and true consolidation ideas are not emerging in the GRTF. It was recognized that health care is an especially difficult area in which to make deep cuts. It was acknowledged that the interim committees have greater knowledge of the programs and should offer real recommendations. It was noted that the TSROC may not play a major role in this effort. It will be necessary to estimate the savings that could be achieved through any efficiency or consolidation measures. A suggestion was offered that recommendations also include a request that no additional cuts be made to programs that are deemed vital to health care or job creation. It was noted that an outside audit may be necessary to fully evaluate the impact of consolidation and that a professional mediator may be needed to assist in decision-making. Many complex factors are at play and cannot easily be resolved. It was noted that the TSROC's role is more in determining program effectiveness, and it has no role in oversight of programs. At the same time, the TSROC can serve as a vehicle for communicating the thoughtful ideas of the departments as they are expressed. The scope of what needs to be done is much larger than what can be accomplished by any suggestions offered by this committee. A question was raised about the multiplicity of programs that the TSROC funds that are located in the Department of Health that have been affected by budget cuts. Mr. Elmore noted that many of these programs are within the Public Health Division of the Department of Health, which sustained major cuts. Cuts were accomplished through contracts such as federal contracts with the Centers for Disease Control and Prevention. Core positions have been retained, but two positions, so far, were lost in the TUPAC Program.

There being no further business, the meeting was adjourned at 4:05 p.m.

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