

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

**July 13, 2011  
Room 311, State Capitol  
Santa Fe, NM**

The second meeting of the Tobacco Revenue Settlement Oversight Committee (TSROC) was called to order by Representative Gail Chasey, co-chair, on July 13, 2011 at 10:28 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. Mary Jane M. Garcia, Co-Chair  
Sen. Dede Feldman  
Rep. Jim Hall  
Rep. Danice Picraux

**Absent**

Sen. John C. Ryan

**Advisory Members**

Rep. Ray Begaye  
Sen. Linda M. Lopez

Sen. Sue Wilson Beffort  
Sen. Mary Kay Papen

**Staff**

Alise Rudio  
Roxanne Knight  
Zelda Abeita

**Guests**

The guest list is in the meeting file.

**Handouts**

Handouts and other written testimony are in the meeting file.

**Wednesday, July 13**

The committee members introduced themselves. Upon a motion made by Representative Picraux, seconded by Senator Feldman, the minutes from the previous meeting were adopted.

Committee members discussed the need to understand and be able to explain the potential consequences of the veto of 2011's Senate Bill 397. Upon a request from the committee, Nan Erdman, assistant attorney general, Attorney General's Office (AGO), agreed to provide a simple written explanation that included a short background and a brief statement of the relevant issues.

**Tobacco Control Overview; Tobacco Control Progress in New Mexico**

Sandra Adondakis, New Mexico government relations director, American Cancer Society Cancer Action Network (ACS CAN), provided an update on the federal Patient Protection and Affordable Care Act of 2010 (PPACA) and tobacco use prevention and control. Changes under the PPACA include mandatory coverage by private insurance for smoking cessation and other preventive services and more federal funding for community-based prevention programs. With respect to Medicaid coverage for cessation services, the PPACA requires mandatory coverage for pregnant women, increased federal reimbursements for states that cover cessation services and mandatory coverage of smoking cessation medications. Ms. Adondakis noted that there will be a 100 percent federal match for providing telephone quitline services to Medicaid beneficiaries.

Ms. Adondakis provided an update on electronic cigarettes, or e-cigarettes. On April 25, the federal Food and Drug Administration decided to regulate e-cigarettes as tobacco products instead of drug-delivery devices. She said that there is no scientific evidence that e-cigarettes are safe or that they help people quit smoking. The ACS CAN will continue to focus on advocating for smoke-free work environments, pricing strategies that disincentivize youth tobacco use and full funding for tobacco control programs.

Ms. Adondakis discussed New Mexico's progress in reducing the impact of tobacco. She said that New Mexico has made significant progress in implementing policies that are proven to decrease tobacco-related death and disease. Those policies include requiring insurers to cover tobacco cessation treatment, passing the Dee Johnson Clean Indoor Air Act, raising cigarette taxes to \$1.66 per pack and funding comprehensive tobacco control programs. She presented information about tobacco control funding and smoking rates. Funding for tobacco control progressively increased from fiscal year 2003 until fiscal year 2010 before decreasing in the last two years. Meanwhile, the adult smoking rate has decreased from 23.8 percent in 2001 to 17.9 percent in 2009. Ms. Adondakis compared the adult smoking rate in New Mexico to rates across the nation and in other states. Among youths, tobacco use rates are 24 percent, which is above the national average of 19.5 percent. New Mexico ranks first among the states in youth cigar use. Ms. Adondakis said that the federal Centers for Disease Control and Prevention recommend that a minimum of \$23 million to \$25 million be spent on tobacco control programs to see significant decreases in tobacco use and tobacco-related disease. She said that when program funding decreases, which has occurred in New Mexico over the past two years, states see an increase in smoking rates.

Ms. Adondakis said the ACS CAN promotes restoring funding to tobacco control programs after a two-year decrease, a return to saving 50 percent of the Master Settlement Agreement (MSA) payments in the Tobacco Settlement Permanent Fund, defending the Dee Johnson Clean Indoor Air Act and increasing the tax on non-cigarette tobacco products.

Committee members had comments and questions about the number of pregnant women who smoke, the level of federal reimbursements, the number of people who take advantage of tobacco cessation programs, the amount of money New Mexico spends for tobacco-related illness compared to the amount it collects in cigarette taxes, the marketing tactics of the tobacco

companies, the amount of money tobacco companies spend on advertising and whether the Department of Health uses certain strategies to reach specific populations in tobacco control programs.

Committee members also discussed the possibility of passing legislation to increase taxes on non-cigarette tobacco products. Representative Picraux volunteered to carry a bill to deal with tax loopholes on such products.

### **Tobacco MSA and Litigation Update (Continued)**

Ms. Erdman answered questions from committee members about her presentation at the first meeting. Committee members discussed the need for a clear picture of the issues that were being discussed. Ms. Erdman agreed to try to create a chart for the committee.

Committee members had questions and comments about smokeless tobacco products and about a recent news article that reported that the AGO was investigating whether a store owned by Arthur P. Allison, secretary-designate of Indian affairs, is selling contraband cigarettes. Ms. Erdman gave the committee a copy of a letter that the AGO sent to Governor Martinez that claimed that the store was selling unstamped, untaxed cigarettes to non-tribal members. Ms. Erdman told the committee that she could not discuss the investigation. However, in response to a question about legal remedies, she said that the AGO is seeking compliance with New Mexico's statutes.

The committee members asked Ms. Erdman about the sale of contraband cigarettes in New Mexico and the use of the tax credit program by tribes.

Wayne Bladh, an attorney who represents Kewa Pueblo, the Pueblos of Taos, Santa Ana and Laguna and Indian Pueblos Marketing, Inc., questioned some of the statements made by the AGO and offered to present the committee with a written explanation of the law.

Drew Setter, a lobbyist for several pueblos, discussed the Navajo Nation's efforts to pass a tribal cigarette tax. He explained that the Navajo Nation is imposing a \$1.00 per pack tax but that the ordinance has not been certified by the Taxation and Revenue Department.

### **Tobacco Settlement Permanent Fund Performance and Balances**

Steve Moise, state investment officer, Vince Smith, deputy state investment officer, and Charles Wollmann, director of communications, State Investment Council (SIC), provided an update on the status of the Tobacco Settlement Permanent Fund. Mr. Moise began by providing an overview of SIC reforms implemented between April 2010 and July 2011. He discussed investment performance, litigation, investigations and legislative matters.

Mr. Wollmann and Mr. Smith provided current information regarding the Tobacco Settlement Permanent Fund. The fund was created in May 2000 with a market value of \$49 million. At the last committee update in September 2010, the fund was valued at \$138.8 million. As of May 31, 2011, the fund was valued at \$188.6 million, but \$38.6 million was distributed in

June 2011, which leaves an approximate current value of \$150 million. Mr. Wollmann noted that there have not been any new contributions since fiscal year 2008. He noted that House Bill 79 (Laws 2011, Chapter 3) provides that for fiscal years 2012 and 2013, 100 percent of the tobacco settlement payments into the Tobacco Settlement Permanent Fund will be distributed to the Tobacco Settlement Program Fund. Mr. Wollmann also discussed House Bill 52 (Laws 2011, Chapter 167), which added language to require the Tobacco Settlement Permanent Fund to be invested "in accordance with limitations" of land grant fund investments.

Mr. Wollmann noted that language in the General Appropriation Act of 2011 authorizes a transfer of up to \$30 million during fiscal year 2012 from the Tobacco Settlement Permanent Fund to the benefit account of the Unemployment Compensation Fund under certain circumstances. He said that the SIC was not asked for an opinion on the language. The SIC representatives explained that, as managers of the fund, the SIC must set aside \$30 million in cash in case money is needed for the loan. They said that the provision does not address interest and noted that the state could lose interest by keeping the money in cash.

Mr. Wollmann mentioned the veto of Senate Bill 397 and statements made by the attorney general about the risk of losing \$160 million, or four years of tobacco payments, due to the question of whether New Mexico is in compliance with the MSA's escrow requirements. A discussion followed about the need to clarify the various scenarios of risk that the state faces. The committee members asked the SIC to speak with the AGO.

Mr. Smith reviewed the allocation of the assets of the fund into investments and said that a new asset allocation study is underway. Returns, on average, have shown modest growth.

Upon inquiry from the committee, Mr. Smith discussed how the SIC would invest the fund if it were not designated as a reserve fund. Mr. Smith responded that the investment would be more "long term". The fund was designated a reserve fund in 2003.

#### **Tobacco Use Prevention and Control (TUPAC) Program Report, Indian Affairs Department (IAD)**

A program report on the IAD's TUPAC program by Secretary-Designate Allison was canceled by the agency.

#### **Adjournment**

There being no further business before the committee, the second meeting of the TSROC adjourned at 2:44 p.m.