

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

**June 4, 2010
Room 311, State Capitol**

The first meeting of the Tobacco Settlement Revenue Oversight Committee (TSROC) was called to order as a subcommittee by Representative Gail Chasey, co-chair, at 10:25 a.m. on Friday, June 4, 2010, in Room 311 of the State Capitol in Santa Fe.

Present

Rep. Gail Chasey, Co-Chair
Sen. May Jane M. Garcia, Co-Chair
Rep. Gloria C. Vaughn

Absent

Sen. Dede Feldman
Rep. Danice Picraux
Sen. John C. Ryan

Advisory Members

Sen. Sue Wilson Beffort
Rep. Ray Begaye
Rep. Karen E. Giannini
Sen. Mary Kay Papen

Sen. Rod Adair
Sen. Linda M. Lopez

Staff

Sandy Mitchell
Michael Hely
Roxanne Knight

Guests

The guest list is in the meeting file.

Handouts

Handouts and written testimony are in the meeting file.

Government Restructuring Task Force Update

Paula Tackett, director, Legislative Council Service (LCS), discussed the calendar for interim committee meetings and explained the considerations for avoiding conflicts for voting members. She mentioned that the New Mexico Legislative Council (LC) had reduced the number of committee meetings, including the number of meetings for the TSROC, which is being limited to three meeting days in addition to the organizational meeting. She stressed that the LC is discouraging committees from meeting outside of Santa Fe and that committees wishing to do so will have to provide strong justification.

The LC will review interim work plans on June 29. The LC asked that interim committees examine the programs and agencies that the committees oversee, with an eye toward identifying critical core functions and identifying cost-saving measures, and make recommendations to the Government Restructuring Task Force. Ms. Tackett said that the TSROC should concentrate on the programs that use tobacco settlement money.

Ms. Tackett reminded the TSROC of her retirement as of June 11, and she stated that Raúl E. Burciaga has been appointed as director.

Ms. Tackett was asked whether the Courts, Corrections and Justice Committee (CCJ) would be allowed to travel to continue its oversight of facilities throughout the state. Ms. Tackett stated that the CCJ may be considered to have justification to visit some facilities, especially those in Santa Fe and Albuquerque.

Representative Chasey expressed concern as to whether it is appropriate for the TSROC to make recommendations on improving the efficiency of state agencies. She suggested that it may be more appropriate for the committee to ask the state agencies that testify before the committee to provide suggestions on how to cut costs in the programs that the TSROC monitors and to relay those suggestions to the Government Restructuring Task Force. She noted that the Department of Health had reported to the co-chairs of the committee that it used federal Centers for Disease Control and Prevention guidelines to make adjustments following recent budget cuts. Ms. Tackett suggested that the TSROC could tell the task force that it has found that certain programs have taken appropriate measures in such cases.

2010 Committee-Related Legislation and Fiscal Year 2011 Funding Levels

Ms. Mitchell, staff attorney, LCS, provided a summary of legislation enacted since the committee last met in 2009. During the first special session, which met in October 2009, House Appropriations and Finance Committee Substitute for House Bills 17 and 33 was enacted to reduce fiscal year 2010 appropriations. Included in that act was a provision appropriating the balance remaining in the Tobacco Settlement Program Fund to the Human Services Department for expenditure in fiscal year 2010 for Medicaid. The TSROC, at its last meeting, had estimated the cash balance to be \$3.325 million, and the committee had included that amount in its recommendations for fiscal year 2011 appropriations.

During the regular session in January, the legislature enacted House Bill 79, which provides that, for fiscal year 2011, 100 percent of the tobacco settlement payments be distributed to the Tobacco Settlement Program Fund. Normally, only 50 percent of the payments are distributed to the program fund, with the remaining 50 percent going into the permanent fund. This will be the third fiscal year in a row that payments will be diverted from the permanent fund. The reason for this diversion is to supplant general fund appropriations and help with the overall budget situation.

During the second special session, which was held in March of this year, the legislature enacted a \$.75 per-pack increase in the cigarette tax, bringing the total tax to \$1.66 per pack.

While the bill that was passed by the legislature would have increased the tax temporarily through June 30, 2014 and would have dedicated a portion of the money to other state funds for education and youth services, the governor's vetoes made the increase permanent, put the entire increase in the general fund and repealed certain distributions to counties and municipalities so that a larger portion of the entire tax goes to the general fund. The tax increase goes into effect on July 1 of this year.

The committee was provided with a spreadsheet showing the appropriations made for fiscal year 2011 from the Tobacco Settlement Program Fund. All of the appropriations in fiscal year 2011 are less than the committee's recommendations. The actual appropriations for fiscal year 2011 are all lower than the appropriations for fiscal year 2010, except for the appropriations to the Human Services Department for Medicaid and to the University of New Mexico (UNM) for the lung and tobacco research contract with Lovelace Respiratory Research Institute (LRRI). The TSROC had recommended a \$350,000 increase in the UNM/LRRI appropriation. The final appropriation in HB 2 was a \$100,000 increase over the previous year's appropriation.

Overall, appropriations to the Department of Health are down 26.5 percent from the previous year. Appropriations to UNM are down 10 percent from the previous year, if the LRRI contract is not included. With the LRRI contract, appropriations to UNM are down 6.3 percent. The appropriation to the Indian Affairs Department is down 26.6 percent from the previous year.

The total amount appropriated for recurring programs for fiscal year 2011 is \$22,280,000. The discrepancy between the total amount appropriated for recurring programs and the amount recommended for appropriation by the TSROC is the balance in the program fund that was appropriated during the October special session to supplement the Human Services Department's Medicaid budget. The total solvency funding is an additional \$22,280,000, bringing the total amount appropriated from the Tobacco Settlement Program Fund in fiscal year 2011 to \$44,560,000.

The General Appropriation Act of 2010 also included an appropriation of \$300,000 to the legal services program of the attorney general for tobacco litigation and arbitration costs. Ms. Mitchell explained that this money does not come out of the Tobacco Settlement Program Fund, so it is not shown on the spreadsheet provided to the committee.

Ms. Mitchell informed the committee that the Master Settlement Agreement payments received in April of this year, which go to cover fiscal year 2010 appropriations, totaled just under \$41 million (\$40,949,708.41). That amount is approximately \$4 million (\$3,950,300) less than the amount that was anticipated. As a result, the Department of Finance and Administration (DFA) has sent out an email to the agencies receiving tobacco settlement funds, advising them of the situation and of the possibility that they will need to return a proportionate share (7.9 percent) of their fiscal year 2010 appropriations. The DFA is currently exploring options for lessening the impact of any reversions. The TSROC will be hearing from the Attorney General's Office and the DFA about this issue in an upcoming meeting.

Vanessa Hawker, UNM Health Sciences Center, was asked to explain how the university is dealing with the news of the shortfall in tobacco settlement payments. Ms. Hawker said that the university's proportionate share comes to \$401,000. She described how the university, in response to the DFA's request, is submitting a report detailing its appropriations, expenditures and encumbrances. She said that UNM is currently examining its options for dealing with the shortfall.

Ms. Knight, LCS, was asked to explain some of the history on how allotments have been made from the Tobacco Settlement Program Fund. Ms. Knight explained that the amount of the appropriations is determined each year before the tobacco settlement payments are received from the tobacco manufacturers. In the past, agencies did not receive their allotments until the end of the fiscal year, or they would receive them in monthly installments. For fiscal year 2010, the DFA allowed the entire allotment to state agencies to be made at the beginning of the fiscal year, before receipt of any tobacco settlement payments. This is the first year that the payments received were less than the amount anticipated, and now the agencies are being asked to return a portion of their appropriation (e.g., allotments). Ms. Knight commented that in the future, the DFA could reduce budgets at the beginning of the fiscal year or provide one-twelfth of the allotments each month to better manage any future revenue shortfalls.

Ms. Hawker was asked whether UNM will be affected by a decreased disproportionate share in hospital and indigent money. Ms. Hawker was not prepared to describe all of the effects of funding changes for the UNM Health Sciences Center, but she did say that the university has some concerns in that regard.

David Hadwiger, DFA, was asked whether there is a time line for the 7.9 percent reversion. He said the DFA is attempting to resolve the issue by the end of June 2010. Mr. Hadwiger said he thought it would be helpful if the agencies appearing before the committee would discuss how they would react to different methods of receiving allotments in the future.

2010 Interim Work Plan and Meeting Schedule Development

Ms. Mitchell reviewed the proposed work plan with the committee. Representative Chasey requested that the item concerning the Government Restructuring Task Force be modified to specify that the TSROC will ask agencies appearing before the committee to address the issue and make recommendations. Representative Chasey also requested that an item be added to the work plan concerning a review of how allotments are made from the Tobacco Settlement Program Fund.

The committee also discussed agenda items for upcoming meetings, including a ban on e-cigarettes in public places and a tax increase on tobacco products other than cigarettes. Senator Garcia and Representative Chasey expressed interest in hearing about the youth programs operated under the tobacco prevention and cessation program of the Department of Health.

At 11:10 a.m., Senator Beffort was appointed by the president pro tempore as a voting member for the purposes of this meeting only.

On a motion by Representative Vaughn, seconded by Representative Chasey, the committee approved the proposed work plan with changes.

The committee adjourned at 11:15 a.m.