

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

**May 28, 2019  
State Capitol, Room 305  
Santa Fe**

The first meeting of the Tobacco Settlement Revenue Oversight Committee (TSROC) was called to order by Senator Gabriel Ramos, co-chair, on May 28, 2019 at 9:36 a.m. in Room 305 of the State Capitol in Santa Fe.

**Present**

Sen. Gabriel Ramos, Co-Chair  
Rep. Elizabeth "Liz" Thomson, Co-Chair  
Rep. Joanne J. Ferrary  
Sen. Candace Gould  
Sen. John Arthur Smith

**Absent**

**Advisory Members**

Sen. Linda M. Lopez  
Rep. Jim R. Trujillo

Rep. Gail Chasey  
Sen. Mary Kay Papen  
Sen. Sander Rue

**Staff**

Elisabeth Johnson, Staff Attorney, Legislative Council Service (LCS)  
Lenaya Montoya, Staff Attorney, LCS  
Rebecca Griego, Records Officer, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

Handouts and other written testimony are on the website and in the meeting file.

**Tuesday, May 28**

**Brief History of the Master Settlement Agreement in New Mexico**

Ms. Montoya provided the committee with a history of the settlement agreement between tobacco companies and states, known as the Master Settlement Agreement (MSA).

In 1998, New Mexico and 45 other states settled a lawsuit against five major tobacco companies. These companies are referred to as "participating manufacturers" (PMs). In April of each year, New Mexico receives a payment from the PMs pursuant to the MSA.

In addition, the state must diligently enforce escrow legislation by keeping complete and accurate records of nonparticipating manufacturers (NPMs) and making sure that a particular NPM either joins the MSA or makes escrow payments.

### **Post-Session Update**

RubyAnn Esquibel, principal fiscal analyst, Legislative Finance Committee (LFC), gave a summary of appropriations made in the General Appropriation Act of 2019 from tobacco settlement funds. Ms. Esquibel was joined by Dawn Iglesias and Ismael Torres, lead economists, LFC.

Ms. Esquibel noted that recurring tobacco settlement payments are expected to be \$1 million less in fiscal year (FY) 2020 than in FY 2019. Tobacco revenue appropriations to support Medicaid have been reduced by \$500,000. The adjustment was made to the Medicaid appropriation because the Tobacco Settlement Program Fund was more able to handle the volatility.

Ms. Esquibel also noted that in FY 2018 and earlier, the legislature suspended deposits into the Tobacco Settlement Permanent Fund and the revenue was used to support Medicaid.

The total tobacco settlement payment for FY 2019 was \$34.7 million, which was \$1.3 million less than the estimated tobacco settlement revenue of \$36 million. This resulted in a 3.6% reduction in funding to recipients. The reduction might be partially caused by arbitration costs. Because the costs of negative arbitration initiated against the state are taken from future payments, the FY 2019 payment was affected by the 2004 arbitration.

On questioning, Ms. Esquibel and committee members addressed the following topics.

***Decreases in funding.*** Because tobacco settlement revenue is derived from tobacco sales, there is concern regarding a depletion of funding as vaping and the use of e-cigarettes become more prevalent. Ms. Esquibel indicated that it is up to the legislature to address this issue.

***Withdrawals from permanent fund.*** A question was raised as to how much money would be in the Tobacco Settlement Permanent Fund had withdrawals not been made. Members of the LFC indicated that the agency would get the information to answer this question.

***Additional money for the Human Services Department (HSD).*** A question was raised addressing why the HSD received money for breast cancer treatment and whether those

treatments were covered by Medicaid. An LFC member indicated that the agency would look into this.

***Expected returns for permanent fund.*** A question was raised regarding how the 5.5% expected return on investment for the permanent fund was derived. An LFC member indicated that this was a conservative estimate based on State Investment Council figures and market analyses.

***Effect of House Bill 6 (HB 6) (2019).*** A question was raised regarding whether HB 6 was considered when conducting the LFC financial analysis. An LFC member indicated that negative effects could result. HB 6 applies a 12.5% tax to vaping liquids and cartridges, which could cause a switch from vaping to cigarette use and thus affect the permanent fund.

Another question was raised regarding whether the tax revenue created by HB 6 should be placed in the Tobacco Settlement Permanent Fund instead of the General Fund. An LFC member indicated that this is an issue that could be addressed during session.

***Use of funding to support nursing scholarships.*** A question was raised regarding whether tobacco settlement program funds can be used for scholarships for nursing students.

### **Update on MSA Litigation**

Phillip Bachicha, special projects coordinator, Office of the Attorney General (OAG), gave an update on the state's effort to comply with the MSA. Mr. Bachicha was accompanied by Olga Serafimova, assistant attorney general, OAG.

Mr. Bachicha indicated that the OAG works closely with the Taxation and Revenue Department.

Mr. Bachicha also indicated that the arbitration process is moving slowly and that PMs have an interest in arbitrating the 2005 revenues. New Mexico is interested in pursuing single-state arbitration because the state faces unique issues.

The arbitration process typically consists of a panel of three arbitrators: one selected by the tobacco manufacturers, one selected by the state and a third selected by the first two arbitrators. However, the 2004 arbitration is using a panel of four arbitrators. The OAG believes that this is inconsistent with the MSA. The OAG also indicated that it is unsure how long it will take to finish hearing the case.

Vaping products are not covered under the MSA, yet tobacco companies own over 50% of the market share of tobacco alternative products, Mr. Bachicha said. Thus, the MSA may need to be renegotiated in the future.

On questioning, Mr. Bachicha and committee members addressed the following topics.

***Change in the makeup of arbitration panel.*** A question was raised as to why the arbitration panel was changed from three arbitrators to four. The OAG indicated that state-specific issues are still addressed before a panel of three arbitrators. Other states have agreed to the panel of four arbitrators, but New Mexico has not.

***Use of tobacco settlement revenue.*** A question was raised regarding whether the 2004 arbitration stems from an allegation that New Mexico is not using settlement funds properly. The OAG clarified that there was only one finding regarding New Mexico's enforcement of the MSA. As a result, New Mexico has increased its enforcement by requiring quarterly reports.

***Nature of the settlement funds.*** A question was asked regarding whether the settlement funds are unconditional. The OAG responded by stating that pursuant to the MSA, the settlement funds are unconditional and the MSA imposes no requirements on the use of funds. However, New Mexico statutes require that settlement funds must be used for health and educational purposes.

***OAG's intent to request funding.*** Ms. Serafimova indicated the OAG's intent to request funding to cover arbitration and litigation expenses. However, a formal request was not made.

#### **Review and Adoption of 2019 Interim Work Plan and Meeting Schedule**

Ms. Johnson presented a work plan and schedule for the committee's interim work. Committee members discussed interest in meeting in Gallup with Dr. Barbara L. McAneny, M.D., president, American Medical Association.

#### **Adjournment**

There being no further business before the committee, the first meeting of the TSROC for the 2019 interim adjourned at 11:06 a.m.