

**Unapproved  
MINUTES  
of the  
FOURTH MEETING  
of the  
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**October 31, 2011  
State Capitol, Room 311  
Santa Fe**

The fourth meeting of the Tobacco Settlement Revenue Oversight Committee (TSROC) was called to order by Senator Mary Jane M. Garcia, co-chair, on October 31, 2011 at 10:15 a.m. in Room 311 of the State Capitol.

**Present**

Rep. Gail Chasey, Co-Chair  
Sen. Mary Jane M. Garcia, Co-Chair  
Sen. Dede Feldman  
Rep. Jim W. Hall  
Rep. Danice Picraux

**Absent**

Sen. John C. Ryan

**Advisory Members**

Sen. Sue Wilson Beffort  
Rep. Ray Begaye  
Sen. Linda M. Lopez  
Sen. Mary Kay Papen

**Staff**

Roxanne Knight  
Cassandra Jones

**Guests**

The guest list is in the meeting file.

**Handouts**

Handouts and written testimony are in the meeting file.

**Monday, October 31**

Committee members and staff introduced themselves.

**Proposed Legislation for 2012 Legislative Session: Arbitration Update**

Nan Erdman, assistant attorney general, Attorney General's Office (AGO), introduced Scott Fuqua, director of the Litigation Division, AGO, and explained that he will be managing the AGO's legislation for the 2012 session. Senate Bill 397 was passed by the legislature in

2011, but it was subsequently vetoed by Governor Martinez. Mr. Fuqua and Damian Lara, staff attorney with the Legislative Council Service, briefly discussed a proposed bill that is identical to SB 397 except that an applicability clause has been added to clarify the date of application of the act.

Ms. Erdman stated that the AGO is considering ways to track the number of cigarettes sold in New Mexico more accurately, particularly cigarettes sold on tribal lands. The Taxation and Revenue Department (TRD) has auditors that go to stores to verify the presence of tax stamps on cigarettes sold. Off-reservation sales have few instances of noncompliance. When auditors find stores that are not in compliance with tax stamp regulations, they notify the AGO.

Ms. Erdman explained that sellers on tribal lands are less likely to comply with tax stamp regulations. The TRD does not audit stores located on tribal lands; rather, the AGO staff will perform random checks on tribal property. Any noncompliance with tax stamp laws is reported to the AGO, and action is taken against the distributor and the manufacturer. No action is taken against the retailer. In response to questions from members of the committee, Mr. Fuqua stated that the AGO does work with tribal representatives; however, the state does not have any formal compacts with tribal entities for enforcement of tax stamp regulations. Penalties may be imposed for failure to follow regulations. Mr. Fuqua noted that New Mexico is compliant with the diligent enforcement provisions of the Master Settlement Agreement (MSA). Representative Hall explained that he would support arrangements that would help to actively track tobacco sales. He inquired about the penalties for selling without the proper tax stamps, to which Ms. Erdman responded the state could ask for up to 300 percent of the tax due. However, the AGO settles with manufacturers, and the penalty depends on the level of culpability.

Ms. Erdman told the committee that the manufacturers participating in the MSA will announce which states are not being contested in the MSA arbitration on November 3, 2011.

Ms. Erdman explained that the arbitration still has 46 states and six territories included. In response to questions from a committee member, Ms. Erdman clarified that the MSA calls for an economics firm to make decisions in certain instances.

Members of the committee discussed the governor's veto of SB 397 after the last session. Representative Hall and some members expressed an interest in participating in a November 7 meeting between the AGO and the Governor's Office. Additionally, the members offered to sign on as sponsors to the bill after it might be prefiled.

In response to questions from the committee, Ms. Erdman clarified that the distributor is responsible for making sure cigarettes from the manufacturer are in the directory and that they receive the appropriate stamp. A complex auditing process is performed throughout the year to ensure that reports from the distributor and the manufacturer reflect the same numbers and that the appropriate taxes have been paid. Senator Feldman made a motion that the TSROC endorse the proposed AGO legislation to amend the Cigarette Tax Act to clarify that cigarette packs

stamped with tax-credit stamps are "units sold" for the purpose of determining escrow payments due pursuant to the MSA. The motion was seconded and adopted unanimously.

Ms. Erdman noted that an earlier motion at an interim meeting of the Revenue Stabilization and Tax Policy Committee was successful and that Speaker Ben Lujan had offered to carry the legislation.

Representative Chasey inquired about how it happened that an economics firm, and not a court of law, is making the diligent enforcement decision. Ms. Erdman noted that the MSA contains the requirement, and there may be appellate challenges. Participating manufacturers are anticipated to be opponents. The November 3 meeting refers to the arbitration, not the qualifying statute.

Noncompliance in the nontribal areas is minimal, according to Ms. Erdman. The TRD makes a daily effort to monitor various taxing initiatives for compliance. The three things recovered from these noncompliance cases are taxes, escrow payments and penalties. Most cases are resolved without the state having to file a lawsuit.

Ms. Erdman provided additional information about the arbitration, noting that extensive discovery (e.g., depositions) had been done. Discovery ended on October 27, 2011. The case will move forward as one of the cases to be heard on April 14, 2012. The trial might last about two weeks. Dates have been set through August 2012, with trials for "state groupings" running for about two weeks. Then there is a two-week break and another trial, and so on.

The AGO hopes to get a decision on the units sold, but the panel has twice rejected briefings on the units sold issue.

Senator Garcia asked Ms. Erdman to clarify what would happen with a state case being filed. A state case would only apply to the qualifying statute, which is being determined by the economics firm. A favorable ruling from the state court might help, with a final decision by the economics firm. New Mexico is looking at the MSA and whether there are challenges.

The AGO estimates litigation costs, not including regular staff salaries, at about \$300,000.

In response to a question, Ms. Erdman noted that the tobacco distributors report all sales made to the participating manufacturers (PMs), and the data required by the distributors include all sales, not just the PMs' products.

Representative Hall agreed to carry the adopted legislation if the committee members want him to do so. The members indicated they want to sign off on a prefiled bill.

Representative Picraux inquired about the status of her letter for an AG opinion, to which Mr. Fuqua responded that the AG is working on it. Representatives Picraux and Chasey indicated they want it by early January.

### **Minutes**

Senator Garcia made a motion to adopt the minutes from the third meeting of the TSROC for the 2011 interim. The motion was seconded by Representative Chasey and passed without opposition.

### **Tobacco Settlement Permanent and Program Funds; Revenue Projections**

Elisa Walker-Moran, chief economist for the Legislative Finance Committee, reminded the committee that the MSA revenue is unpredictable. The MSA revenue dropped in fiscal year 2011 to \$38.6 million from \$40.9 million in fiscal year 2010. The projection for fiscal year 2012 and the next fiscal year is \$38.6 million. The program funds may be used to fund health care, research and tobacco use cessation. Beginning in fiscal year 2014, half of the tobacco settlement revenue will remain in the Tobacco Settlement Permanent Fund and will no longer be distributed to the Tobacco Settlement Program Fund. Actual revenue from the MSA is not known until April and is not distributed until the end of the fiscal year.

### **Review of Fiscal Year 2011 and Fiscal Year 2012 Program Funding Levels and Fiscal Year 2013 Funding Recommendations**

Members of the committee discussed the funding recommendations. Ms. Knight clarified that the statutes require tobacco settlement funds to be used for health and educational purposes, and she reviewed the contents of a document containing preliminary recommendations. Currently, the statute requires that 100 percent of the tobacco revenue deposited into the Tobacco Settlement Permanent Fund be transferred to the Tobacco Settlement Program Fund for appropriation to programs.

Members expressed concern about a lack of funding for Project ECHO, and about confusion between Project ECHO and the telemedicine program. Others indicated support for continued pilot funding to the University of New Mexico (UNM) Health Sciences Center. Ms. Knight noted that UNM had requested that its funding be awarded in a lump sum to allow more budgeting flexibility, especially in light of potential revenue losses.

Due to revenue projections remaining the same as for fiscal year 2012, Representative Picraux made a motion to adopt the fiscal year 2013 recommendations as the ones outlined on the sheet. The motion was seconded by Senator Garcia and passed without opposition.

### **Adjournment**

There being no further business before the committee, the fourth meeting of the TSROC for the 2011 interim adjourned at 12:10 p.m.

**TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE (TSROC)**  
**FY 2012 AND 2013 RECOMMENDATIONS**  
(thousands of dollars)

<b>AGENCY AND PROGRAM</b>	<b>2012 TSROC Recs</b>	<b>2012 Revised OpBud</b>	<b>2013 TSROC Recs</b>	<b>2013 Proposed Change</b>
<b>Department of Health</b>				
Tobacco cessation and prevention programs	6,695.3	5,682.0	5,682.0	
Diabetes prevention and control program	881.4	748.0	748.0	
HIV/AIDS services	345.2	293.0	293.0	
Breast & cervical cancer <i>screening</i> program	146.9	128.6	128.6	
<b>Total Department of Health</b>	<b>\$8,068.8</b>	<b>6,851.6</b>	<b>6,851.6</b>	<b>0</b>
<b>Human Services Department</b>				
Breast & cervical cancer <i>treatment</i> program	1,500.0	1,312.4	1,312.4	
Medicaid expansion	5,175.4	7,736.1	7,907.3	
<b>Total Human Services Department</b>	<b>\$6,675.4</b>	<b>9,048.5</b>	<b>9,219.7</b>	<b>see notes</b>
<b>University of New Mexico</b>				
<b>Innovations in preventing and treating tobacco-related diseases</b>				
Research in genomics, biocomputing & envir. health	1,215.0	979.8	see notes	
Subtotal UNM tobacco-related diseases	\$1,215.0	979.8	TBD	
<b>Other programs</b>				
Area health education center	45.0			
Center for telehealth (formerly telemedicine)	135.0			
Los Pasos program	45.0			
Pediatric oncology	360.0	261.4		
Poison & information center	405.0	395.2		
Specialty education in pediatrics	360.0	261.4		
Specialty education in trauma	360.0	261.4	see notes	
Subtotal UNM other programs	\$1,710.0	1,179.4	TBD	
<b>Contracts and I&amp;G</b>				
Lung & tobacco-related disease research (LRRRI contract)	1,000.0	195.0		
Funding retained by UNM (Instruction & General)	837.0	607.9	see notes	
Subtotal UNM/LRRRI&G	1,837.0	802.9	TBD	
<b>Total University of New Mexico</b>	<b>\$4,762.0</b>	<b>2,962.1</b>	<b>2,962.1</b>	<b>see notes</b>
<b>Indian Affairs Department</b>				
Tobacco cessation and prevention programs	293.8	249.3	249.3	
<b>Total Indian Affairs Department</b>	<b>\$293.8</b>	<b>249.3</b>	<b>249.3</b>	
<b>GRAND TOTAL - Programs</b>	<b>\$19,800.0</b>	<b>19,111.5</b>	<b>19,282.7</b>	

Allocations for FY 2012 appropriations were reduced as a result of revised tobacco settlement actual revenues. The amount paid to Medicaid was incorrectly reduced and added to the 50% of revenue diverted to additional Medicaid rather than to the Tobacco Settlement Permanent Fund. The FY 2013 recommendation corrects that error.

Appropriations to UNM are recommended as a lump sum with language to be inserted into the General Appropriation Act stating that the funds shall be expended in accordance with Section 6-4-10 NMSA 1978 for health and educational purposes.