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

**October 31, 2012**
**Room 311, State Capitol**
**Santa Fe**

The fourth meeting of the Tobacco Settlement Revenue Oversight Committee (TSROC) was called to order by Representative Gail Chasey, co-chair, on Wednesday, October 31, 2012, at 10:30 a.m. in Room 311 of the State Capitol in Santa Fe.

**Present**
Rep. Gail Chasey, Co-Chair
Sen. Dede Feldman
Rep. Danice Picraux
Sen. John C. Ryan

**Absent**
Sen. Mary Jane M. Garcia, Co-Chair
Rep. Jim W. Hall

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

**Guest Legislator**
Sen. Nancy Rodriguez

**Staff**
Shawn Mathis, Legislative Council Service (LCS)
Rebecca Griego, LCS
Theresa Rogers, LCS

**Guests**
The guest list is in the meeting file.

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

**<u>Wednesday, October 31</u>**

**Welcome and Introductions**
Representative Chasey called the meeting to order and invited members of the committee and legislative staff to introduce themselves.

**Tobacco Settlement Permanent and Program Funds Revenue Update**

Elisa Walker-Moran, chief economist, Legislative Finance Committee (LFC), explained that the Master Settlement Agreement (MSA) revenue increased from $38.6 million to $39.3 million between FY 2011 and FY 2012. Revenue decreased in previous years as a result of falling participating manufacturers (PM) market shares. Although the revenue forecast is subject to significant uncertainty due to litigation and PM fund withholding, MSA revenue is currently projected to be $39 million for FY 2013.

The MSA, signed in 1998, is the result of a lawsuit against four major tobacco companies for the health care costs associated with tobacco sales. The MSA contains statutory provisions that require tobacco manufacturers to make payments to the MSA to fund tobacco prevention and cessation programs; a PM must pay a portion of its market share in perpetuity. Nonparticipating manufacturers (NPM) pay equivalent amounts into an escrow account for the settlement of future claims. Currently, 46 states participate in the MSA.

Legislation passed in 2000 authorized an annual distribution from the Tobacco Settlement Permanent Fund to the Tobacco Settlement Program Fund of an amount equal to 50% of the MSA revenue to the Tobacco Settlement Permanent Fund. This split occurs annually until the 50% distribution to the Tobacco Settlement Program Fund is less than an amount equal to 4.7% of the average of the year-end market values of the Tobacco Settlement Permanent Fund for the immediately preceding five calendar years. Upon reaching this milestone, the distribution to the Tobacco Settlement Program Fund will be based on 4.7% of the five-year average Tobacco Settlement Permanent Fund balance and, thereafter, all MSA revenues will be retained in the Tobacco Settlement Permanent Fund.

Ms. Walker-Moran explained that MSA payments are reduced if the PM loses market share, a practice called volume adjustment. Volume adjustment rates have averaged -3% in recent years, but are steadily increasing.

In 2006, some PMs began withholding payments, arguing that the state was not correctly enforcing the MSA. PM withholding amounts have cost the state $3 million to $6 million per year.

Ms. Walker-Moran stated that the MSA revenue forecast assumption for New Mexico is $39.5 million in FY 2014. This figure accounts for a 3% inflation factor, a volume adjustment of -4% and withheld payments from PMs of $5.7 million. A representative stated that it is necessary to sustain contributions into the Tobacco Settlement Permanent Fund in order to mitigate the impact of withheld funding. The official LFC revenue estimate for the MSA will be available in December.

Tom K. Pollard, Ph.D., legislative fiscal analyst, LCS, said that although 50% of the annual MSA payments were pledged to the Tobacco Settlement Permanent Fund under the 2000 legislation, subsequent amendments caused this distribution to occur in only four of the last 12 years, with nothing going to the Tobacco Settlement Permanent Fund. In the other eight years, the MSA revenues, as part of general fund reserves, went to replace general fund revenues. Dr. Pollard explained that if the deposits to the Tobacco Settlement Permanent Fund had occurred as authorized in the 2000 legislation, the Tobacco Settlement Permanent Fund would have a balance of approximately $300 million instead of its current $150 million balance.

The Tobacco Settlement Permanent Fund was originally designed to be invested by the State Investment Council (SIC) until 4.7% of the corpus would be distributed annually to the Tobacco Settlement Program Fund, and all future MSA revenue would be deposited to the Tobacco Settlement Permanent Fund. The diversion of the $150 million from the Tobacco Settlement Permanent Fund for general fund expenditures has delayed this milestone by seven to nine years.

Dr. Pollard suggested that $150 million could be transferred within general fund reserves, from the operating reserve to the Tobacco Settlement Permanent Fund, to reimburse that fund for revenues previously diverted. Dr. Pollard noted that reserve balances would not be reduced and that revenue could be appropriated from the Tobacco Settlement Permanent Fund without the requirement of a two-thirds' vote in both chambers. Further, this transfer would support the mission of the Tobacco Settlement Permanent Fund and would be a precautionary move against the possible loss of future MSA payments as a result of current litigation.

Ms. Walker-Moran stated that the transfer of funds from the operating reserve to the Tobacco Settlement Permanent Fund reserve account would make it more difficult to access such funds.

**Tobacco Use Prevention and Control Program — Indian Affairs Department Performance Report**

Arthur P. Allison, secretary of Indian affairs, described the ongoing efforts of the Indian Affairs Department (IAD) to mitigate tobacco use, pointing out that traditionally, only men used tobacco and that it was only used in ceremonial events. The abuse of commercial tobacco is a detrimental problem for Native health. Secretary Allison also pointed out the difficulty in regulating tobacco use among Native communities, as it is a large source of revenue to many tribes.

Allie Thompson, marketing and communication manager, Keres Consulting, described the program goals of the IAD Tobacco Use Prevention and Control Program (TUPAC) as the cessation and prevention of commercial tobacco abuse in Native communities while promoting the cultural and traditional use of tobacco.

The IAD was funded with $249,000 in FY 2013 to sustain TUPAC programs. Of that funding, 44.7% funded cessation programs, 40.8% funded prevention programs, 12.4% funded administrative costs and 2.1% funded policy initiatives.

The funding for the IAD TUPAC programs has dwindled from FY 2007 through FY 2011. As a result, the IAD has decreased funded programs from 13 to seven. To strengthen the funded programs, the IAD has collaborated with the Centers for Disease Control and Prevention (CDC) and has adopted its best practices with culturally relevant approaches, conducted CDC Best Practices in Tobacco Control Training and revised its reporting tools to align with Department of Health (DOH) TUPAC tools.

The IAD, in line with the CDC, works to prevent the initiation of smoking by youth. As a result, 100% of the programs funded by the IAD have a youth and young adult component. The programs are mainly school-based interventions, allowing students to research and create their own public service announcements surrounding smoking prevention. The IAD also follows CDC best practices by providing smoking cessation resources, such as the 1-800-QUIT NOW help line, collecting data surrounding the quantity and habits of Native American smokers and creating no-smoking zones.

The IAD programs have proven effective. Studies have shown that positive quantitative progress has been made in commercial tobacco use. The IAD has also collaborated with the DOH to gain access to the electronic TUPAC Evaluation Tool (eTET) system and guidance on reporting features.

The IAD recognizes the need for improvement, especially in the speed of awarding grants, increased community engagement and the restoration of funding levels.

**Minutes**

On a motion by Senator Feldman, seconded by Representative Picraux, the minutes for the September 19, 2012 meeting of the committee were approved without objection.

**Proposed Legislation from the Attorney General for the 2013 Legislative Session and Arbitration Update**

Scott Fuqua, assistant attorney general and director, Litigation Division, Office of the Attorney General, stated that the legislative initiatives of the Office of the Attorney General are identical to the initiatives of last year. Senate Bill 225 (2012) is an act clarifying that cigarette packs stamped with tax credit stamps are "units sold" for the purpose of determining escrow payments pursuant to the MSA. House Bill 277 (2003) is an act requiring that establishments that sell tobacco products be licensed with the DOH. Both will be reintroduced. Mr. Fuqua stated that there is strong collaboration with the executive branch, as there was last year, to draft a bill that will not be vetoed by the governor.

A committee member stated that continued efforts to pass these bills are consistent with the state's position in pending litigation.

A committee member asked whether the state would have to sue each PM every time it wants to access funds from the escrow account. Mr. Fuqua stated that this is true.

Mr. Fuqua further explained that the state is also a party to litigation arising under the Cigarette Tax Act, which affects how much NPMs need to pay into escrow.

Committee members discussed the litigation surrounding escrow payments and the effects of litigation on local tobacco manufacturers.

**Agency Comments**

There were no agencies wishing to comment.

**Public Comment**

There was no public comment.

**Review of Committee Legislation**

The committee requested that staff work with the Office of the Attorney General regarding endorsing a bill identical to SB 225 (2012).

The committee also requested that staff contact the Taxation and Revenue Department regarding the potential redefining of cigarette tax units.

Senator Lopez agreed to sponsor a memorial requiring cancer education in high schools.

Before concluding the meeting, the committee voted on and approved recommended FY 2014 funding from the Tobacco Settlement Program Fund, totaling $19,750,000 (50% of the LFC's estimated MSA revenue for FY 2014).

**Adjournment**

There being no further business before the committee, the fourth meeting of the TSROC for the 2012 interim adjourned at 2:40 p.m.