



NEW MEXICO LEGISLATURE

TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

2018 INTERIM FINAL REPORT

LEGISLATIVE COUNCIL SERVICE
411 STATE CAPITOL
SANTA FE, NEW MEXICO 87501
(505) 986-4600
WWW.NMLEGIS.GOV

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INTERIM SUMMARY

Tobacco Settlement Revenue Oversight Committee 2018 Interim Summary

New Mexico's Tobacco Settlement Permanent Fund (TS Permanent Fund) receives annual payments of approximately \$30 million to \$40 million as its share of payments made by tobacco product manufacturers to various states to settle litigation addressing state health care costs related to consuming tobacco products. Pursuant to Section 6-4-9 NMSA 1978, one-half of the annual tobacco settlement revenue is distributed to the Tobacco Settlement Program Fund (TS Program Fund), with the other one-half remaining in the TS Permanent Fund as a reserve fund.

The TS Program Fund, pursuant to Section 6-4-10 NMSA 1978, is used primarily for health and education purposes. Pursuant to Section 2-19-1 NMSA 1978, the Tobacco Settlement Revenue Oversight Committee (TSROC) is charged with monitoring the use of tobacco settlement revenues by evaluating programs receiving tobacco settlement funding and making recommendations to the New Mexico Legislative Council and the Legislative Finance Committee for program funding for the next fiscal year.

The TSROC requires current awardees to justify their requests for continued funding, and prospective awardees to justify their initial requests, by completing a tobacco settlement revenue funding request. Current funding recipients are the Department of Health, the Human Services Department, the Indian Affairs Department and the University of New Mexico Health Sciences Center.

The Tobacco Settlement Revenues

In 1994, the attorneys general of 46 states, including New Mexico, filed suit against major tobacco companies for deceptive and fraudulent marketing, targeting children and conspiracy to conceal the health effects of smoking. The attorneys general argued that states should not be forced to pay the costs of treating smoking-related diseases and conditions such as lung cancer, heart disease, emphysema and low-birth-weight babies. The states sought recovery of Medicaid and other public health expenses incurred by the states in the treatment of smoking-related diseases and conditions. In November 1998, the states settled the lawsuit with the tobacco companies, which are referred to as "participating manufacturers" (PMs). The PMs were the largest tobacco companies in the country, but there are smaller tobacco companies that did not participate in the settlement. These companies are referred to as "nonparticipating manufacturers" (NPMs).

The document that sets out the agreement is called the "Master Settlement Agreement" (MSA). The MSA requires PMs to stop deceptive marketing of cigarettes, particularly to children, and to make payments to settling states in perpetuity to compensate for the increased costs to the states because of use of the tobacco companies' products. In exchange, states have given up any future claims against the PMs based on the tobacco companies' actions at issue in the settled lawsuits.

The PMs were concerned, however, that because of the payments the PMs had to make to the settling states, the NPMs would gain an unfair advantage in sales, leading to an increased market share for the NPMs and therefore a loss of market share to the PMs as an unintended result of the settlement. To level the playing field between PMs and NPMs, the MSA provided that the annual payment amounts could be reduced if it could be shown that the PMs had lost market share to NPMs as a result of the settlement; these reductions are called "NPM adjustments".

The MSA allowed settling states to avoid NPM adjustments by: (1) passing model escrow statutes that neutralize the cost disadvantages that the PMs experience by requiring NPMs operating in the settling states to either join the MSA and comply with its terms or establish an escrow account and make regular payments into that account; and (2) enforcing the escrow legislation. In the 1999 legislative session, almost immediately after the MSA was signed, the New Mexico Legislature enacted the model escrow statutes.

The annual calculation of the settlement payment to be made by each PM and the amount to be received by each settling state, including any NPM adjustments, is very complex, and the parties can dispute the calculations. Disputes are resolved by arbitration, and the arbitration decisions may be challenged in state court.

The Attorney General's Office manages enforcement of and compliance with the MSA and represents the state in any disputes. In 2006, the PMs disputed the 2003 settlement payment, resulting in withholding of the challenged amounts in the 2007 payment. The dispute was partially resolved in the state's favor in 2016, and the withheld sum, approximately \$14 million, was paid in 2017. The total 2018 payment was approximately \$37 million.

2018 Interim Funding Requests and Recommendations

For fiscal year 2020, funding requests rose slightly from the previous fiscal year. The Human Services Department requested the amount that Medicaid actually received from the tobacco settlement funds in the previous fiscal year; the Department of Health requested more funding for two of the four programs receiving tobacco settlement funding; and the University of New Mexico Health Sciences Center requested modest increases in funding for some of its programs to restore them to fiscal year 2016 levels and submitted a new request of \$5.85 million for the University of New Mexico Comprehensive Cancer Center.

During the 2018 interim, the TSROC heard presentations on all of the funding requests. Each of the projects was explained in detail during the interim meetings; minutes for all meetings and handouts for all presentations are available on the TSROC's page of the legislature's website.

The TSROC met on November 1, 2018, reviewed the funding requests and voted to recommend adoption of all funding requests as presented. A summary table of the funding requests is included in this report.

The TSROC also considered and voted to endorse five bills. The first endorsed bill would include e-cigarettes in the Dee Johnson Clean Indoor Air Act. The second endorsed bill

would ban the sale of tobacco products, e-cigarettes and nicotine liquid containers to persons under 21 years of age. The third endorsed bill would ban the sale, purchase or provision of flavored tobacco products. The fourth endorsed bill would increase the cigarette tax and tobacco products tax; include e-cigarettes in the scope of the Tobacco Products Tax Act; and distribute revenue from the tax increases to the Public School Fund for the state equalization guarantee distribution. The fifth endorsed bill would remove the designation of the Tobacco Settlement Permanent Fund as a reserve fund. Copies of the bills are included in this report.

WORK PLAN AND MEETING SCHEDULE

2018 APPROVED
WORK PLAN AND MEETING SCHEDULE
for the
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

Members

Sen. Cisco McSorley, Co-Chair
Rep. Elizabeth "Liz" Thomson, Co-Chair
Rep. Joanne J. Ferrary

Sen. Sander Rue
Sen. John Arthur Smith
Rep. Monica Youngblood

Advisory Members

Rep. Gail Chasey
Sen. Candace Gould
Sen. Linda M. Lopez

Sen. Mary Kay Papen
Rep. Jim R. Trujillo

Work Plan

The Tobacco Settlement Revenue Oversight Committee (TSROC) was established pursuant to Section 2-19-1 NMSA 1978. The committee will continue its statutory oversight duties for the programs that request and receive funding through the Tobacco Settlement Program Fund. The committee will also receive testimony regarding the balances in and projected revenues for both the Tobacco Settlement Program Fund and the Tobacco Settlement Permanent Fund.

During the 2018 interim, the TSROC will:

- (1) review the status of the revenue for current and future fiscal years and reserves for the Tobacco Settlement Permanent Fund;
- (2) receive testimony regarding tobacco settlement-related issues, litigation and legislation;
- (3) receive testimony regarding the use of the appropriations from the Tobacco Settlement Program Fund by those programs recommended by the committee and funded by the legislature in prior years;
- (4) prepare recommendations to the Legislative Finance Committee for program funding levels for fiscal year 2020, based on the committee's program evaluation process; and
- (5) make findings and recommendations, including proposed legislation, available to the legislature as part of the TSROC's final report.

**Tobacco Settlement Revenue Oversight Committee
2018 Approved Meeting Schedule**

<u>Date</u>	<u>Location</u>
May 29	Santa Fe
August 13**	Santa Fe
August 20	Albuquerque
November 1	Santa Fe

**Changed from July 12 to August 13

AGENDAS AND MINUTES

**TENTATIVE AGENDA
for the
FIRST MEETING
of the
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**May 29, 2018
State Capitol, Room 311
Santa Fe**

Tuesday, May 29

- 9:30 a.m. **Welcome and Introductions**
 —Senator Cisco McSorley, Co-Chair
 —Representative Elizabeth "Liz" Thomson, Co-Chair
- 9:45 a.m. (1) [History of the Master Settlement Agreement in New Mexico](#)
 —Celia Ludi, Staff Attorney, Legislative Council Service
- 10:00 a.m. (2) [Post-Session Update: Tobacco Settlement Permanent and Program Funds](#)
 —RubyAnn Esquibel, Principal Fiscal Analyst, Legislative Finance Committee
- 10:30 a.m. (3) [Update on Master Settlement Agreement Litigation](#)
 —Ari Biernoff, Assistant Attorney General, Office of the Attorney General
- 11:15 a.m. (4) [Review and Adoption of 2018 Interim Work Plan and Meeting Schedule](#)
 —Celia Ludi, Staff Attorney, Legislative Council Service
- 11:30 a.m. **Public Comment**
- 11:45 a.m. **Adjourn**

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

**May 29, 2018
State Capitol, Room 311
Santa Fe**

The first meeting of the Tobacco Settlement Revenue Oversight Committee (TSROC) was called to order by Representative Elizabeth "Liz" Thomson, co-chair, on May 29, 2018 at 9:43 a.m. in Room 311 of the State Capitol in Santa Fe.

Present

Sen. Cisco McSorley, Co-Chair
Rep. Elizabeth "Liz" Thomson, Co-Chair
Rep. Joanne J. Ferrary
Sen. Sander Rue
Sen. John Arthur Smith

Absent

Rep. Monica Youngblood

Advisory Members

Sen. Candace Gould

Rep. Gail Chasey
Sen. Linda M. Lopez
Sen. Mary Kay Papen
Rep. Jim R. Trujillo

Guest Legislator

Sen. Nancy Rodriguez

Staff

Celia Ludi, Staff Attorney, Legislative Council Service (LCS)
Kathleen Dexter, Researcher, 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 29

Brief History of the Master Settlement Agreement in New Mexico

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

In 1998, New Mexico and 45 other states settled a lawsuit they brought against five major tobacco companies for, among other things, concealing the detrimental health effects of tobacco use. The states successfully argued that the companies should share the burden of treating diseases and conditions related to using the tobacco companies' products. The resulting MSA requires that the tobacco companies — referred to in the settlement as "participating manufacturers" or PMs — cease all deceptive marketing of cigarettes, especially to children, and make compensatory payments to the states in perpetuity. In return, the states gave up the right to make future claims against the PMs for the same behaviors that led to the lawsuit.

Under the MSA, New Mexico receives an annual settlement payment — generally between \$30 million and \$40 million — from the PMs based on their revenue from cigarette sales in the previous year and the state's population. This payment is deposited into the Tobacco Settlement Permanent Fund (permanent fund), with one-half of the payment further transferred to the Tobacco Settlement Program Fund (program fund) for expenditure. The permanent fund, however, was also designated as a "reserve" fund, which allows the legislature to make transfers from the fund to the General Fund when necessary to avoid unconstitutional deficit spending. In 2015 and 2016, the permanent fund was used for this purpose.

While the MSA does not prescribe or limit the use of the settlement funds, the legislature enacted statutes to limit their use to "health and educational purposes". The funds are primarily used for public health programs; research and teaching at the University of New Mexico (UNM) Health Sciences Center; supporting public health programs; and various tobacco use prevention and cessation programs. In 2014, some of the settlement money was used for early childhood care and education programs administered by the Children, Youth and Families Department, and some was used for legislative lottery scholarships. For the last few years, the bulk of the tobacco settlement funds have been used for the Medicaid program.

The PMs were the largest tobacco companies in the country, but there are smaller tobacco companies that did not participate in the lawsuit or the settlement. These companies are referred to as "nonparticipating manufacturers", or NPMs.

The PMs were concerned that, because of the payments they had to make to the settling states, the NPMs would gain an unfair advantage in sales, leading to an increased market share for the NPMs and, therefore, a loss of market share to the PMs as an unintended result of the settlement.

To compensate for that, the MSA provided that the annual payment amounts to a state could be reduced if it could be shown that the PMs had lost market share to NPMs as a result of the settlement. These payment reductions are called "NPM adjustments".

The MSA allowed a state to avoid NPM adjustments by passing model escrow statutes that require NPMs operating in the state to either join the MSA and comply with its terms or to establish an escrow account and make regular payments into that account. An NPM that does not

join the MSA must make annual payments into escrow accounts in perpetuity. The payments for a given year will be returned to the NPM after 25 years if no judgments are made against the NPM in that time period.

The New Mexico Legislature enacted the model escrow statutes that would allow it to avoid NPM adjustments (Sections 6-4-12 and 6-4-13 NMSA 1978) along with the permanent fund and program fund statutes, in the 1999 legislative session after the MSA was signed in November 1998. In 2003, the complementary Tobacco Escrow Fund Act (Sections 6-4-14 through 6-14-24 NMSA 1978) was enacted. As a result, New Mexico immediately met the first requirement for avoiding NPM adjustments.

States must also "diligently" enforce the escrow legislation by keeping complete and accurate records of NPMs operating in the state and making sure that an NPM either joins the MSA or makes escrow payments.

The MSA allows PMs to challenge the required annual payments and seek to have them reduced. Payment disputes are settled through arbitration, with appeals to those decisions heard in court. The first payment challenge brought by the PMs against New Mexico concerned the 2003 settlement payment and the state's "diligent enforcement" of its escrow statutes as required under the MSA. The challenge was filed in 2009, and New Mexico has been involved in arbitration and litigation with the PMs ever since. The PMs have declared that they intend to challenge the enforcement of the escrow statutes in every year.

Post-Session Update: Tobacco Settlement Permanent and Program Funds

RubyAnn Esquibel, principal fiscal analyst, Legislative Finance Committee, gave a summary of appropriations made in the General Appropriation Act of 2018 from tobacco settlement funds. In addition to the Human Services Department, which administers the Medicaid program, entities that received appropriations include:

- the Indian Affairs Department, for tobacco use prevention and cessation programs;
- the Department of Health, for tobacco use prevention and cessation programs; diabetes prevention and control; human immunodeficiency virus and acquired immune deficiency syndrome, or HIV/AIDS, services; and breast and cervical cancer screening; and
- the UNM Health Sciences Center, for instruction and general purposes; genomics and environmental health research; the poison control center; pediatric oncology; trauma specialty education; and pediatric specialty education.

New Mexico's tobacco settlement payment for fiscal year (FY) 2018 totaled \$35.7 million. Because this payment was \$3.3 million less than had been projected, all of the programs that receive funding saw their allotments proportionally adjusted, with the exception of the Medicaid program, which absorbed most of the overall reduction. In making the adjustments, the

Department of Finance and Administration gave the receiving entities leeway in how to apply the reductions.

State revenues were robust enough leading into the 2018 legislative session that the legislature did not need to dip into the permanent fund to avoid deficit spending in the FY 2019 budget. The current permanent fund balance is approximately \$184.5 million.

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

Program allotment reductions. Because the reduced FY 2018 tobacco settlement payment arrived in April, cuts to program spending must be absorbed entirely from program budgets for the last two months of the fiscal year. Programs cannot spend at a deficit and may have to reduce program functions. If an administering agency has other funds available, it might submit a budget adjustment request to cover program costs.

Permanent fund. Since 2009, \$384 million has been taken from the permanent fund. A member spoke in favor of dedicating some of the state's revenue from the oil and gas industry to rebuilding the fund and eliminating statutory language that allows the fund to be used as a reserve fund so that it will be a true permanent fund.

Update on MSA Litigation

Ari Biernoff, assistant attorney general, Attorney General's Office (AGO), gave an update on the state's efforts to comply with the MSA and litigation to recover the money to which the state is entitled.

The MSA requirement for diligent enforcement includes not only ensuring that NPMs make escrow deposits, but also making sure that cigarettes sold in New Mexico bear appropriate tax or tax-exempt stamps. Through this effort, the AGO follows through on the state's diligent enforcement obligations while the Taxation and Revenue Department collects taxes due to the state. One joint action under way concerns a cigarette seller in Las Cruces that has been selling unstamped cigarettes.

In addition to its enforcement duties, the AGO is engaged in ongoing arbitration and litigation concerning the tobacco settlement payments made to the state. Last year, New Mexico received a one-time payment adjustment of approximately \$14.5 million following settlement of a dispute initially filed in 2009. The membership of the arbitration panel has recently been revised; while it previously consisted of one member chosen by the tobacco companies, one chosen by the states and one chosen by the two other panelists, it now includes two members chosen by the tobacco companies. New Mexico disputed this change; after losing in district court, the state filed an appeal and the court issued a stay. Mr. Biernoff noted that the matter may not be decided for a few years.

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

Arbitration and litigation. In the single arbitration cycle that has been completed, New Mexico incurred costs of contracting with an economist and a tribal law expert, transaction costs, travel costs and lost-opportunity costs. The MSA does not provide for states or tobacco companies to recover their costs in arbitration and litigation.

Diligent enforcement. Based on their assertion that all states have failed in their duty to diligently enforce the MSA's escrow requirements, tobacco companies have begun to withhold approximately 10 percent of the payments to the states. If payments that are withheld by the tobacco companies are later found to be due to the states, the companies must pay interest on the withheld amounts.

New York signed an agreement for a permanent reduction of approximately 11 percent in exchange for not having to engage in future arbitration or litigation on the matter of escrow payment enforcement. In another, less beneficial, settlement, approximately 30 states signed a settlement that provides a claims split between the states and the tobacco companies; unlike New York's settlement, this "term sheet" settlement does not provide the states with immunity from further arbitration or litigation. New Mexico is not a party to the term sheet settlement.

It is possible that the U.S. tobacco companies will assert that states must enforce the MSA's escrow payment obligations, not only on domestic tobacco manufacturers but on overseas manufacturers as well, which would be very costly for the states.

Tribal cigarette sales currently do not trigger the requirement for escrow payments; however, tobacco companies contend that such sales do require escrow payments.

Tobacco sales at military commissaries. Tobacco sales at military commissaries are tax exempt.

Permanent fund. The permanent fund is invested through the State Investment Council. The fund is also used to calculate the state's reserve percentage.

E-cigarettes. E-cigarettes are not covered by the MSA because of the agreement's definition of "cigarette"; nor are they regulated or subject to any excise tax. The major tobacco companies have invested heavily in the e-cigarette, or "vaping", industry and own the majority of the market share in the U.S. Vaping liquids are manufactured overseas, and their contents, including nicotine content, are not verified.

One study shows that 24 percent of American youth use e-cigarettes. The governor vetoed a bill that would have increased the age for purchasing e-cigarettes to 21.

Mr. Biernoff will provide:

- (1) information on the volume and percentage of tobacco sales in New Mexico that are attributable to overseas tobacco companies; and
- (2) the percentage of the e-cigarette industry that is owned by the PMs.

Ms. Esquibel will provide information at a future date on how the permanent fund is invested.

Review and Adoption of 2018 Interim Work Plan and Meeting Schedule

Ms. Ludi presented a work plan and schedule for the committee's interim work. In discussion, members requested that the following be included in the plan:

- (1) a focus on e-cigarettes, with information on what other states are doing on the matter;
- (2) a presentation on federal changes regarding nicotine and its recent designation as a narcotic, which qualifies it for federal regulation; and
- (3) legislation to change the permanent fund so it cannot be used as a reserve fund.

Members discussed the need to protect the programs that rely on tobacco settlement funding.

Adjournment

There being no further business before the committee, the first meeting of the TSROC for the 2018 interim adjourned at 11:43 a.m.

Revised: August 13, 2018

**TENTATIVE AGENDA
for the
SECOND MEETING
of the
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**August 13, 2018
State Capitol, Room 311
Santa Fe**

Monday, August 13

9:30 a.m. **Welcome and Introductions**

- Senator Cisco McSorley, Co-Chair
- Representative Elizabeth "Liz" Thomson, Co-Chair

Action Item: Approval of Minutes of May 29 Meeting

9:45 a.m. (1) **Department of Health (DOH)**

- Daniel Burke, M.P.H., Bureau Chief, Infectious Disease Bureau, Harm Reduction and Hepatitis Program, DOH
- Beth Pinkerton, Program Manager, Breast and Cervical Cancer Early Detection Program, DOH
- Benjamin Jacquez, Program Manager, Tobacco Use Prevention and Control Program, DOH
- Christopher Lucero, Program Manager, Diabetes Prevention and Control Program, DOH

12:15 p.m. (2) **Human Services Department (HSD)**

- Megan Pfeffer, R.N., Bureau Chief, Quality Bureau, Medical Assistance Division, Breast and Cervical Cancer Treatment Program, HSD

12:45 p.m. (3) **Winnable Battles: Policy Solutions to Save Lives and Money by Reducing Tobacco Use**

- Abinash Achrekar, M.D., M.P.H., Division of Cardiology, Department of Internal Medicine, University of New Mexico; Board Member and Past President, American Heart Association
- Sandra Adondakis, M.S., New Mexico Government Relations Director, American Cancer Society Cancer Action Network

1:15 p.m. (4) **Are Electronic Cigarettes an Emerging Public Health Problem?**

- Dona Upson, M.D., M.A., American Lung Association

1:45 p.m. **Public Comment**

2:00 p.m. **Adjourn**

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

**August 13, 2018
State Capitol, Room 311
Santa Fe**

The second meeting of the Tobacco Settlement Revenue Oversight Committee (TSROC) was called to order by Representative Elizabeth "Liz" Thomson, co-chair, on August 13, 2018 at 9:43 a.m. in Room 311 of the State Capitol in Santa Fe.

Present

Sen. Cisco McSorley, Co-Chair
Rep. Elizabeth "Liz" Thomson, Co-Chair
Rep. Joanne J. Ferrary
Sen. Sander Rue
Sen. John Arthur Smith

Absent

Rep. Monica Youngblood

Advisory Members

Sen. Candace Gould
Sen. Linda M. Lopez
Sen. Mary Kay Papen
Rep. Jim R. Trujillo

Rep. Gail Chasey

Guest Legislator

Sen. Elizabeth "Liz" Stefanics

Staff

Celia Ludi, Staff Attorney, Legislative Council Service (LCS)
Lenaya Montoya, Bill Drafter, LCS
Kathleen Dexter, Researcher, LCS

Guests

The guest list is in the meeting file.

Handouts

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

Monday, August 13

Minutes Approval

On a motion duly made and seconded, the committee unanimously approved the minutes from its May 29, 2018 meeting.

Department of Health (DOH) Program Updates

Representatives from the DOH gave updates on four programs that receive funding through the Tobacco Settlement Program Fund.

Infectious Disease Bureau Programs

Daniel Burke, bureau chief, Infectious Disease Bureau, Harm Reduction and Hepatitis Program, Public Health Division, DOH, reported on bureau activities to reduce the spread of hepatitis and the human immunodeficiency virus (HIV). New Mexico's hepatitis rate is high compared to other states, and the bureau depends on tobacco settlement revenue funding for nearly 10% of its hepatitis testing and vaccination program budget. The bureau's harm reduction program, which addresses HIV infection through testing and a syringe exchange initiative, relies on tobacco settlement revenue funding for 34% of its budget, and this program receives no federal funding, he noted. Mr. Burke cited several accomplishments in the harm reduction program, including a near doubling of the number of clients served in the syringe exchange program since fiscal year (FY) 2013, collection of nearly 95% of the eight million syringes distributed in FY 2017 and hearing reports from nearly 85% of participants that they had not recently shared syringes.

The harm reduction program also includes opioid overdose prevention efforts, Mr. Burke said. The bureau supplied naloxone for distribution in nearly 5,000 overdose prevention educational sessions in FY 2018, and more than 1,600 overdoses were reversed during that period.

Mr. Burke noted that the bureau's tobacco settlement revenue funding request for FY 2020 is \$150,000 higher than its FY 2019 appropriation, with most of the increase intended for the harm reduction program.

Breast and Cervical Cancer Early Detection Program

Beth Pinkerton, program manager, Breast and Cervical Cancer Early Detection Program, DOH, reported on efforts to reduce the incidence of breast and cervical cancers in the state. The program, which began at the federal Centers for Disease Control and Prevention (CDC) in 1990 and was established in New Mexico a year later, provides breast and cervical cancer screenings at no cost to women who are at least 40 years of age; whose incomes do not exceed 250% of the federal poverty level; who have no health insurance or have insurance with high deductibles or copays; and who do not qualify for Medicare Part B or Medicaid. Approximately 70,000 women in New Mexico currently meet these eligibility criteria.

Tobacco settlement revenue funding — \$128,600 in FY 2018 — is used both to provide mammography services throughout the state through 10 providers, and it is also used as a match for federal funding. In FY 2018, nearly 1,000 women received mammograms under the program, up from nearly 800 women in the prior fiscal year. Program participants who receive a positive cancer diagnosis are eligible for Category 052 Medicaid, which covers their treatment costs, she said.

Tobacco Use Prevention and Control (TUPAC) Program

Benjamin Jacquez, program manager, TUPAC, DOH, reported to the committee on DOH efforts to reduce tobacco use, especially among minors.

There are more than 2,800 smoking-related deaths in New Mexico each year, and approximately 84,000 people in the state suffer from smoking-related diseases. The combined federal and state tax burden of smoking comes to approximately \$858 per New Mexico household, Mr. Jacquez said, with much of that cost attributable to the Medicaid program, where 27% of enrollees are smokers. Effective interventions for reducing tobacco use include smoke-free policies, tobacco cessation services, prohibition of tobacco access for minors and tobacco product price increases. These interventions have had a measurable effect: since 2003, the smoking rate among high school youth dropped by 65%, and the number of high school youth exposed to secondhand smoke dropped by 44%. Adult smoking rates have dropped as well, with a 23% decrease from 2011 to 2016. These gains, however, have been offset somewhat by the growing use of e-cigarettes and other vapor-based nicotine products. The *2016 New Mexico Youth Risk and Resiliency Survey*, conducted by the DOH and the Public Education Department, showed that 25% of high school youth have used e-cigarettes.

The TUPAC Program provides statewide resources to promote tobacco cessation, Mr. Jacquez said. In addition to services available to smokers through its QUIT NOW phone line and website, the program provides outreach and training for health care professionals on ways to help patients quit using tobacco products. The program is also working to get e-cigarettes and other vapor-based nicotine products included in smoke-free policies and statutes. Under current New Mexico law, e-cigarette use is not restricted indoors, e-cigarettes are not subject to a tobacco products tax, and no licensure is required for retail sales of e-cigarettes.

The TUPAC Program received \$5.4 million per year in the past three years from tobacco settlement revenue. When combined with other funding, the state allocates \$6.6 million annually to cessation efforts, less than one-third of the funding level recommended by the CDC.

Diabetes Prevention and Control Program

Christopher Lucero, program manager, Diabetes Prevention and Control Program, DOH, reported on how tobacco settlement revenue is used to prevent and control diabetes in New Mexico.

In 2016, 234,000 New Mexico residents had diabetes and another 538,000 were classified as prediabetic. Smoking is linked to diabetes, with smokers at a 30% to 40% higher risk of developing the disease than nonsmokers. Treatment and management costs for diabetes in the state total approximately \$2 billion per year. The DOH program aims to prevent or delay the onset of diabetes and to prevent complications and disabilities resulting from the disease through interventions such as weight loss services; diabetes and chronic disease self-management programs; and the Kitchen Creations program, which incorporates meal planning and nutrition services. Efforts planned for the next year include implementation of the New Mexico Diabetes Prevention Action Plan; expanded initiatives in tribal communities; expanded education services, including education for health care providers and workers; and further engagement with pharmacists in the state.

On questioning, the presenters and committee members addressed the following topics.

Infectious Disease Bureau Programs. The DOH pays for hepatitis C testing but not for treatment. Incarcerated patients receive treatment through the Corrections Department.

When the Syringe Service Program collects an increased number of syringes, it reflects an increase at existing clinics, not an increase in collection sites.

A member lamented that statistics coming from rural and underserved areas of the state help garner funding for harm reduction programs, but the funding is not subsequently allocated to those underserved areas. The presenters cited staffing limitations in those areas that contribute to the shortage of services.

Breast and Cervical Cancer Early Detection Program. The program provides screening services in all counties except Los Alamos County. The contract clinics that provide screening have sliding-scale fees to improve access for women who do not qualify for free screening. Eligibility for the program was originally restricted to women but now has been expanded to include certain transgender men and women.

TUPAC Program and Tobacco Use Issues. Certain school districts in the state, including the two largest districts, the Albuquerque Public School District and Las Cruces Public School District, have instituted smoke-free policies that apply to everyone on campus — students, faculty, staff and visitors. Youth groups have been advocating for enforcement of and compliance with these policies and for including e-cigarettes under the policies. While high school youth consider smoke-free environments the norm, many high school youth show interest in experimenting with emerging nicotine products, which are heavily marketed to youth.

Tobacco companies spend 90% of their marketing budget, including for e-cigarettes, on displays at the point of sale. Under federal law, states are allowed to regulate e-cigarette marketing.

TUPAC Program contractors are based in urban areas but serve the whole state. They also work with the U.S. Department of Defense and the Department of Veterans Affairs to provide cessation services to active military service members and veterans. Services are available in English, Spanish and 200 additional languages, including Native American languages.

Under the federal Patient Protection and Affordable Care Act, Medicaid and certain health insurers on the New Mexico Health Insurance Exchange provide cessation benefits.

Of all groups, smoking rates are highest among people with behavioral health issues. The TUPAC Program works with behavioral health providers to help patients quit smoking and urges providers not to use smoking as part of a person's recovery process.

Governor Susana Martinez vetoed a bill from the 2017 regular session that would have amended the Dee Johnson Clean Indoor Air Act to include e-cigarettes. E-cigarettes are not yet regulated or defined as a tobacco product.

New Mexico is one of only 13 states without required licensure for tobacco retailers; thus, there is no way to know where tobacco is sold and whether taxes are properly collected.

The TUPAC Program's budget request for FY 2020 includes funding for a return-on-investment study to assess the savings to the state from cessation programs.

Diabetes Prevention and Control Program. Tobacco settlement revenue funding to the program has been flat for the last few years. Approximately one-third of the funding goes to salaries for a tribal outreach coordinator, a nurse consultant and a marketing and communication specialist; the balance is used for contracts in diabetes prevention and self-management services, health care professional development, marketing, promotions and referrals.

The Kitchen Creations program partners with the New Mexico State University Cooperative Extension Service and with various food banks around the state.

Human Services Department (HSD) Program Update

Megan Pfeffer, R.N., bureau chief, Quality Bureau, Medical Assistance Division, Breast and Cervical Cancer Treatment Program, HSD, reported to the committee on appropriations from the Tobacco Settlement Program Fund to Centennial Care, the state's Medicaid program.

In FY 2018, Centennial Care received just over \$26.8 million from the Tobacco Settlement Program Fund, of which approximately \$1.5 million went to breast and cervical cancer treatment. In FY 2019, just over \$8.3 million was appropriated to Centennial Care from the fund, with approximately \$1.3 million allocated to breast and cervical cancer treatment. Individuals who receive treatment first enroll with the DOH, which determines eligibility, and

then work with the HSD's Income Support Division if treatment is necessary. As of May 2018, 145 individuals were receiving treatment under the program.

Tobacco Settlement Program Fund money is also used for tobacco prevention and cessation services, ranging from a quit line and counseling services to patches and chewing gum. As reported by the managed care organizations (MCOs) that administer Medicaid services, the number of Medicaid recipients who received cessation products and services increased from 7,615 in calendar year 2016 (at a cost of \$1.1 million) to 8,108 in calendar year 2017 (at a cost of \$1.4 million). MCO contracts require that MCOs educate recipients on the risks associated with the use of alcohol, tobacco and other substances, and tobacco cessation information is included in comprehensive needs assessments and prenatal assessments.

On questioning, Ms. Pfeffer noted that:

- (1) MCOs advertise their cessation services to both Medicaid recipients and Medicaid providers; and
- (2) the Medicaid program has received appropriations from the Tobacco Settlement Program Fund since the fund was first created.

Winnable Battles

Abinash Achrekar, M.D., M.P.H., Division of Cardiology, University of New Mexico, Department of Internal Medicine; Sandra Adondakis, M.S., director, New Mexico Government Relations, American Cancer Society Action Network; and Dona Upson, M.D., M.A., New Mexico Veterans Health Care Services, reported on policy solutions to decrease the use of tobacco through cigarettes and electronic nicotine delivery products, or e-cigarettes.

Evidence shows that certain policies are effective for reducing tobacco use, including tobacco cessation coverage in Medicaid programs, increased tobacco taxes, smoke-free laws and fully funded tobacco prevention and cessation programs. New Mexico falls short in its Medicaid prevention and cessation benefits, despite the fact that 15% of Medicaid expenditures go to tobacco-related diseases. A recent study in Massachusetts showed that every \$1.00 spent on cessation treatment in its Medicaid program saved \$3.12 in cardiovascular medical treatments alone. The presenters urged the committee to strengthen Medicaid prevention and cessation services for all Medicaid enrollees and to maximize all federal match funding available. Sustaining the state's investment is also critical. The presenters cited research in other states showing that when cessation program funding is cut, smoking rates stop declining and even rise.

New Mexico also falls short in its tobacco tax, which is lower than the national average. The presenters cited a Legislative Finance Committee fiscal impact report for a 2017 bill that would have increased the cigarette tax by \$1.50 per pack. Combined with an equivalent tax on all other tobacco products, the report projected \$86.9 million in new recurring revenue to the state from such an increase.

The National Academies of Sciences, Engineering and Medicine recently released a study on the public health consequences of e-cigarettes. While these products have the potential to help smokers quit their combustible cigarette habits, they also increasingly serve as a "gateway" product in the other direction, with e-cigarette users moving to combustible cigarettes. Juul, a new e-cigarette on the market, has become especially popular among young adults because it is small and can pass as a computer flash drive. Because Juul is relatively new, the long-term health effects of using such electronic nicotine delivery products is unknown; however, nicotine in any form has known adverse health effects. The study projects that if e-cigarettes do, in fact, reduce combustible cigarette usage, there may be a public health benefit in the short term; however, the long-term effect is potentially negative.

On questioning, the presenters and committee members addressed the following topics.

Tobacco Retail Licensure. A preemption clause in the Tobacco Products, E-Cigarette and Nicotine Liquid Container Act prohibits local governments from requiring tobacco retailers to be licensed.

Medicaid Cessation Services. Cessation services are not consistent across all MCOs in Medicaid. Each MCO determines what services it will offer in its plan.

E-cigarettes. Federal regulations prohibit the sale of e-cigarettes to minors and also prohibit free samples. Studies have shown that cigarette price increases reduce smoking rates; however, there is not yet evidence that the same is true for e-cigarettes.

Adjournment

There being no further business before the committee, the second meeting of the TSROC adjourned at 1:50 p.m.

**TENTATIVE AGENDA
for the
THIRD MEETING
of the
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**August 20, 2018
University of New Mexico
Domenici Center for Health Sciences Education
West Wing, Room 3010
1001 Stanford Drive NE
Albuquerque**

Monday, August 20

- 9:30 a.m. **Welcome and Introductions**
—Senator Cisco McSorley, Co-Chair
—Representative Elizabeth "Liz" Thomson, Co-Chair
- 9:45 a.m. (1) **[Welcome; University of New Mexico \(UNM\) Health Sciences Center \(HSC\) Tobacco Settlement Revenue Programs Overview](#)**
—Richard S. Larson, M.D., Ph.D., Executive Vice Chancellor and Vice Chancellor for Research, UNM HSC
- 10:45 a.m. (2) **[Pediatric Oncology Program; Specialty Education in Pediatrics](#)**
—John Kuttesch, M.D., Ph.D., Division Chief, Pediatric Hematology and Oncology, UNM HSC
- 11:30 a.m. **Tour: Interprofessional Healthcare Simulation Center (IHSC), Domenici Center for Health Sciences Education, Northeast Building**
—Beth Mercer, Program Specialist, IHSC
—Joseph P. Sanchez, Ph.D., Program Operations Director, College of Nursing, UNM HSC
- 12:00 noon **Working Lunch (lunch provided for committee members):**
(3) **[UNM Comprehensive Cancer Center Update](#)**
—Cheryl Willman, M.D., Director and Chief Executive Officer, UNM Comprehensive Cancer Center
- 1:30 p.m. (4) **[New Mexico Poison and Drug Information Center](#)**
—Susan Smolinske, Pharm.D., Diplomate of the American Board of Applied Toxicology; Director, New Mexico Poison and Drug Information Center

- 2:00 p.m. (5) [Indian Affairs Department \(IAD\) Tobacco Cessation and Prevention Programs](#)
 —Suzette Shije, Secretary-Designate, IAD
 —Allie Moore, Keres Consulting, Inc.
- 3:00 p.m. **Public Comment**
- 3:15 p.m. **Adjourn**

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

**August 20, 2018
University of New Mexico
Domenici Center for Health Sciences Education,
West Wing, Room 3010
Albuquerque**

The third meeting of the Tobacco Settlement Revenue Oversight Committee (TSROC) was called to order by Representative Elizabeth "Liz" Thomson, co-chair, on August 20, 2018 at 9:38 a.m. in Room 3010 of the West Wing of the Domenici Center for Health Sciences Education at the University of New Mexico (UNM) in Albuquerque.

Present

Sen. Cisco McSorley, Co-Chair
Rep. Elizabeth "Liz" Thomson, Co-Chair
Rep. Joanne J. Ferrary
Sen. John Arthur Smith
Rep. Monica Youngblood

Absent

Sen. Sander Rue

Advisory Members

Rep. Gail Chasey
Sen. Candace Gould
Sen. Linda M. Lopez
Sen. Mary Kay Papen

Rep. Jim R. Trujillo

Staff

Lenaya Montoya, Staff Attorney, Legislative Council Service (LCS)
Celia Ludi, Staff Attorney, LCS
Kathleen Dexter, Researcher, 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.

Monday, August 20

UNM Health Sciences Center (HSC) Tobacco Settlement Revenue Programs Overview

Richard S. Larson, M.D., Ph.D., executive vice chancellor and vice chancellor for research, UNM HSC, welcomed the committee and provided an overview of programs at the center that are funded with tobacco settlement revenue.

As a health center affiliated with a university, the UNM HSC's charge is not only to deliver health care but also to provide education and conduct research. The HSC's activities are not limited to its Albuquerque location; the center hosts nearly 600 activities, including research and support services, in 246 communities around the state. Tobacco settlement revenue supports three core projects centered on clinical care, education and research into tobacco-related illnesses:

- the New Mexico Poison and Drug Information Center (NMPDIC) — a hotline that receives more than 23,000 calls per year and is the only poison control center in the state;
- the pediatric oncology program — a program that is the only source of tertiary care for children with cancer in the state and that includes numerous clinical trials, which provide treatment for 96 percent of young cancer patients in New Mexico; and
- biomedical research in genomics, biocomputing and environmental health — research efforts that began with pilot funding through tobacco settlement funds and, in many cases, led to additional federal funding, other grant funding and commercialization of technology developed at the HSC.

Since 2007, tobacco settlement revenue has also been used for instruction and general purposes, including specialty trauma and pediatric care education. The funds support additional faculty positions in these fields and supplement faculty compensation rates, which are below the national average.

Dr. Larson noted that the HSC's fiscal year (FY) 2020 funding request from tobacco settlement revenue is \$2.96 million, an increase of \$103,000 over the HSC's FY 2018 appropriation and a return to the level of funding the HSC received in FY 2017.

On questioning, Dr. Larson and committee members addressed the following topics.

Instruction and general purposes funding. The use of tobacco settlement revenue for instruction and general purposes was initially intended, in 2007, to be temporary; it has since become permanent.

Cigarette tax. Smoking rates in the state have declined each time the cigarette tax has increased. Increases in the cigarette tax do not affect the HSC unless money is directed in statute to the center.

Bioscience companies. Some bioscience companies that have developed and marketed technology that originated at the HSC with tobacco settlement money have moved out of state because other locales are more receptive and responsive to their inquiries. The New Mexico Bioscience Authority was created to help keep those companies in the state. Possible initiatives to keep bioscience companies in New Mexico include a locally funded community readiness program; a state co-investment entity; a requirement that companies that receive seed funding through the state remain in the state for a certain length of time; and tax incentives.

Clinical trials. Most of the cancer treatment clinical trials available through the HSC are national trials based elsewhere, though some are based at the HSC.

Medicaid. Managed care organizations are aggressively negotiating to decrease reimbursement rates for Medicaid health care providers. With the federal share about to decrease, the state has to come up with an additional \$600 million to cover the Medicaid program.

Patient-Centered Outcomes Research Institute (PCORI). The HSC receives funding from the PCORI, a federal agency that was established in 2009 and is due for reauthorization in 2019. If it is not reauthorized, the HSC will have to make cuts to its research programs.

Pediatric asthma. New Mexico has the highest incidence of pediatric asthma in the Rocky Mountain region. The HSC has developed a home monitoring device for asthma.

Marijuana. A member noted that an article in the *New England Journal of Medicine* equated the effect of marijuana on the brain to the effect of tobacco on the lungs.

Pediatric Oncology Program; Specialty Education in Pediatrics

John Kuttesch, M.D., Ph.D., division chief, Pediatric Hematology/Oncology, UNM HSC, gave an overview of the HSC's pediatric oncology program, which serves patients from all around the state.

The program's mission is to lessen the burden of childhood cancer for children and families in New Mexico through clinical service, research and education. The program provides a continuum of care, from diagnosis to survivorship, through its combined resources as both a comprehensive children's hospital and a comprehensive cancer center. In FY 2018, the program had 350 active patients who were treated through approximately 5,000 clinic and inpatient visits. Current initiatives in the program include 50 therapeutic trials; 15 studies on cancer control, epidemiology, late effects and pharmacology; and innovative therapies, including immunotherapies, targeted therapies and precision medicine. The program also mentors and educates medical residents and students.

In FY 2019, the program received \$250,000 — nine percent of its budget — from tobacco settlement funds.

On questioning, Dr. Kuttesch and committee members addressed the following topics.

Leukemia. The HSC was the first to gather data on leukemia "hot spots", or clusters of incidence. New Mexico does not have these clusters but does have noticeable ethnic disparities, with Hispanics having the worst outcomes. Outcomes, in general, have improved across all ethnicities over the past 40 years, from five percent positive outcomes in the 1970s to 85 percent positive outcomes currently.

Patients in southern New Mexico. Many children in southern New Mexico who need oncology services go to El Paso, Texas, where a facility is in the process of getting certified as a children's oncology center, or these families go to a facility in Lubbock, Texas. These patients might benefit more from coming to the UNM HSC where they can participate in clinical trials.

Insurance coverage. Approximately 30 percent of patients treated through the pediatric oncology program are covered by private insurance and approximately 70 percent by Medicaid. Both groups receive the same level and quality of care.

Tour: Interprofessional Healthcare Simulation Center (IHSC)

Committee members toured the HSC's IHSC. Tour guides included Beth Mercer, program specialist, IHSC, and Joseph P. Sanchez, Ph.D., program operations director, College of Nursing, UNM HSC.

UNM Comprehensive Cancer Center Update

Cheryl Willman, M.D., director and chief executive officer, UNM Comprehensive Cancer Center, gave an update on the center, which is one of only 49 cancer centers in the U.S. to achieve "comprehensive" status and certification.

The UNM Comprehensive Cancer Center provides personalized state-of-the-art diagnosis and treatment for approximately 65 percent of all cancer patients in New Mexico. More than 12,000 patients receive care each year through the center, which is one of only three cancer centers in the nation that provides treatment regardless of a patient's ability to pay. In addition to treatment available at its facilities at UNM, the center provides treatment through cooperating clinics and providers in all counties of the state.

Research conducted at the cancer center has led to new diagnostics and drugs for several cancers and has earned UNM 136 patents since 2010, with more than 100 additional patents pending. Thirteen new companies have been launched based on biotechnology developed at the center. Los Alamos National Laboratory, Sandia National Laboratories, the Lovelace Respiratory Research Institute and New Mexico State University have all participated in the cancer center's research efforts.

The New Mexico Tumor Registry, which was established in 1966 by the legislature, is managed at the cancer center, as is a similar registry for human papillomavirus and cervical

cancer. The registries have revealed ethnic disparities in cancer incidence and have helped the cancer center focus on cancers that disproportionately affect the state's minority and underserved populations.

The UNM Comprehensive Cancer Center relies on both state and federal funding. A rule change that took effect in January 2018 by executive order concerning the federal 340B prescription drug pricing program effectively cut annual funding to the cancer center by \$9.75 million. Dr. Willman noted that this funding decrease, when added to the \$10 million in annual unreimbursed ambulatory cancer care that the center already provides, leaves a nearly \$20 million funding gap that not only jeopardizes clinical services and research efforts, but also jeopardizes the center's designation as a comprehensive cancer center. The center has petitioned for a one-year extension on its application to renew its comprehensive cancer center designation as it seeks additional funding elsewhere, including from the legislature.

On questioning, Dr. Willman and committee members addressed the following topics.

340B program. The new rule under the 340B drug pricing program that cut funding to the UNM Comprehensive Cancer Center did not affect all cancer centers in the country, only those whose patients are primarily low-income. The action will have a disproportionate effect on cancer patients in New Mexico, who are often low-income and from rural areas, and has effectively created two classes of cancer centers pitted against each other. Lawsuits challenging the new rule failed in July on a technicality but will be refiled in September. Legislation to change the rule is stalled in Congress.

Funding streams. More than one-half of the state funding for the cancer center comes from the cigarette tax. Members spoke both in favor of and against earmarked funding streams and of the need to establish long-term funding for the cancer center. Patents are a potentially strong funding stream; New York University holds a patent that generates enough revenue to pay tuition costs for medical students.

Ovarian cancer immunotherapy clinical trial. Patients can enter the clinical trial at any stage of their cancer.

Smokeless tobacco. Members discussed the possibility of imposing a tax on smokeless tobacco products and sending the tax revenue to the Tobacco Settlement Permanent Fund. A member noted that past legislation to increase the cigarette tax included a tax on smokeless tobacco but that the provision was amended out of the bill before it passed.

NMPDIC

Susan Smolinske, Pharm.D., director, NMPDIC, reported on the NMPDIC's work to reduce morbidity and mortality associated with poisoning, adverse drug interactions and medication errors.

In FY 2018, the NMPDIC received more than 23,000 calls, hosted more than 400 poison prevention outreach programs and reached more than one million people through its public education events and public service announcements. A survey conducted by the federal Department of Health and Human Services states that phone calls to poison information centers can save millions of dollars in health care spending each year by reducing emergency room visits for situations that can be monitored and handled at home. In addition, poison information center staff members consult with hospitals that have admitted poison victims; in New Mexico, such consultations shortened inpatient stays by an average of three days in FY 2014, saving nearly \$37 million. With the growing use of medical marijuana and e-cigarettes, calls to the NMPDIC have become more complex, as interactions with these drugs are not yet fully understood.

The NMPDIC received \$590,300 in tobacco settlement funding in FY 2019. If this funding remains flat for FY 2020 and other revenue sources do not increase, the NMPDIC's funding reserves will dip to approximately \$6,500 in FY 2020 if the center continues its current level of services.

On questioning, Dr. Smolinske noted that only 25 percent of the U.S. population is aware of poison control centers and the services that they provide. The NMPDIC sends representatives to rural clinics, senior centers and Women, Infants and Children Program centers to increase awareness of the NMPDIC. In addition, the New Mexico Home Builders Association provided grant funding to place refrigerator magnets with NMPDIC contact information in all new homes.

Indian Affairs Department (IAD) Tobacco Cessation and Prevention Programs

Suzette Shije, secretary-designate, IAD, and Allie Moore, Keres Consulting, Inc., gave a presentation on tobacco cessation and prevention programs for Native American youth that are funded by tobacco settlement revenue.

In the 2015 *New Mexico Youth Risk and Resiliency Survey*, more than one-third of Native American high school students reported having used a tobacco product — cigarette, e-cigarette, hookah, cigar or spit tobacco — in the month preceding their response to the survey. More than one-half of those who had been smoking for a year had also tried to quit. The presenters noted that helping these youth to quit smoking is an important public health intervention.

In FY 2018, the IAD distributed its \$249,300 tobacco settlement revenue appropriation to nine community-based tobacco cessation and prevention programs hosted by the pueblos of Acoma, Nambe and Pojoaque; the Navajo Nation; the Mescalero Apache Tribe; the Albuquerque Area Southwest Tribal Epidemiology Center; the Albuquerque Indian Center; and Keres Consulting, Inc. Program activities ranged from education on the distinction between commercial and traditional tobacco use to poster contests and continuing education unit courses in tobacco intervention skills for health care providers. The activities, which were tailored to each community and audience, reached more than 18,000 youth and adults, reduced commercial tobacco use among Native Americans, strengthened cultural identity and improved health outcomes.

The presenters were joined by Margaret Merrill, executive director, Oso Vista Ranch Project, and Ernest Tsosie of the James and Ernie comedy team. Ms. Merrill and Mr. Tsosie reported on the success of their program, "Know the Truth", which delivers media literacy, suicide prevention and tobacco cessation messages to Navajo youth and adults through standup comedy routines.

In assessing the success of the FY 2018 programs, the presenters found opportunities for improvement in three areas:

- improving the payment process to get funds to communities in a more timely and efficient manner;
- reducing the reversion of funds by monitoring programs and getting all funds expended; and
- improving grantee training and technical assistance.

On questioning, the presenters and committee members addressed the following topics.

Best practices. The IAD programs adhere to best practices developed by the federal Centers for Disease Control and Prevention (CDC) for tobacco cessation and prevention programs. The CDC also requires that programs tailor their strategies to each community served.

Tobacco settlement revenue funding. In FY 2009, the IAD received \$500,000 in tobacco settlement revenue funding for its cessation and prevention programs; in FY 2018, it received only \$249,300.

Cigarette tax. When the state increases its cigarette tax, tribes have agreed to increase their taxes as well.

E-cigarettes. According to the 2015 *New Mexico Youth Risk and Resiliency Survey*, nearly eight percent of middle school students have used traditional tobacco products, such as cigarettes, and 13 percent have used e-cigarettes.

Adjournment

There being no further business before the committee, the third meeting of the TSROC for the 2018 interim adjourned at 5:08 p.m.

Revised: October 30, 2018

**TENTATIVE AGENDA
for the
FOURTH MEETING
of the
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**November 1, 2018
State Capitol, Room 311
Santa Fe**

Thursday, November 1

10:00 a.m. **Welcome and Introductions**
 —Senator Cisco McSorley, Co-Chair
 —Representative Elizabeth "Liz" Thomson, Co-Chair

Action Item: Approval of Minutes of August 13 and August 20 Meetings

10:10 a.m. (1) **Update: Status of Tobacco Settlement Permanent and Program Funds**
 —RubyAnn Esquibel, Principal Analyst, Legislative Finance Committee

10:30 a.m. (2) **Review of Funding Requests and Recommendations to the Legislature
for Fiscal Year 2020**
 —Lenaya Montoya, Staff Attorney, Legislative Council Service
 —Department of Health
 —Human Services Department
 —Indian Affairs Department
 —University of New Mexico Health Sciences Center

Action Item: Recommendations to the Legislature

11:00 a.m. (3) **Consideration of Endorsement of Proposed Legislation for the 2019
Legislative Session**
 —Senator Cisco McSorley, Co-Chair
 • Include E-Cigarettes in the Dee Johnson Clean Indoor Air Act —
 .211194
 • Raise Age of Sales for E-Cigarettes to 21 — .211196
 • Ban Sale of Flavored Tobacco Products — .211198
 • Increase Cigarette Tax and Tobacco Products Tax — .211240
 —Representative Elizabeth "Liz" Thomson, Co-Chair
 • Amending Tobacco Settlement Permanent Fund — .211312

12:00 noon **Public Comment**

12:15 p.m. **Adjourn**

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

**November 1, 2018
State Capitol, Room 311
Santa Fe**

The fourth meeting of the Tobacco Settlement Revenue Oversight Committee (TSROC) was called to order by Representative Elizabeth "Liz" Thomson, co-chair, on November 1, 2018 at 10:03 a.m. in Room 311 of the State Capitol in Santa Fe.

Present

Sen. Cisco McSorley, Co-Chair
Rep. Elizabeth "Liz" Thomson, Co-Chair
Rep. Joanne J. Ferrary
Sen. John Arthur Smith
Rep. Monica Youngblood

Absent

Sen. Sander Rue

Advisory Members

Sen. Candace Gould
Rep. Jim R. Trujillo

Rep. Gail Chasey
Sen. Linda M. Lopez
Sen. Mary Kay Papen

Staff

Lenaya Montoya, Staff Attorney, Legislative Council Service (LCS)
Kathleen Dexter, Researcher, LCS

Minutes Approval

Because the committee will not meet again this year, the minutes for this meeting have not been officially approved by the committee.

Guests

The guest list is in the meeting file.

Handouts

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

Thursday, November 1

Tobacco Settlement Funds Status

RubyAnn Esquibel, principal analyst, Legislative Finance Committee (LFC), provided a status report on the Tobacco Settlement Permanent Fund (Permanent Fund) and Tobacco

Settlement Program Fund (Program Fund) as well as the LFC's recommendations for appropriations from the Program Fund for fiscal year (FY) 2020.

New Mexico received approximately \$36 million in tobacco settlement revenue for FY 2019, the same amount the state received in the prior year. After a transfer of \$18 million to the Program Fund and investment gains of just over \$10 million, the FY 2019 ending balance in the Permanent Fund is projected to be \$186.8 million. Settlement revenue for FY 2020 is projected at \$35 million and gains projected at slightly more than \$12 million, for an FY 2020 projected ending fund balance of \$216.4 million.

The \$18 million deposited to the Program Fund for FY 2019 was subsequently appropriated to the Indian Affairs Department (IAD), Human Services Department (HSD), Department of Health (DOH) and University of New Mexico (UNM) Health Sciences Center for tobacco use cessation and prevention programs and for programs in research and treatment of tobacco-related illnesses. The LFC recommends that FY 2019 funding levels continue in FY 2020 for all of these programs except those in the Instruction and General Purposes and Research in Genomics and Environmental Health categories, which would receive a five percent funding increase.

The LFC recommendations also include a \$5.85 million appropriation for the UNM Comprehensive Cancer Center to make up for a funding shortfall caused by changes made last winter in the federal 340B Drug Pricing Program. On the invitation of the chair, Richard S. Larson, M.D., Ph.D., executive vice chancellor and vice chancellor for research, UNM Health Sciences Center, joined Ms. Esquibel to clarify that: 1) the Health Sciences Center has recently decided not to pursue tobacco settlement funds to cover this shortfall and that he will meet with LFC staff on other possible funding streams; and 2) the Health Sciences Center's tobacco settlement funding request for FY 2020 represents a return to the funding levels provided in FY 2016.

On questioning, committee members, Ms. Esquibel, Dr. Larson and Dawn Iglesias, economist, LFC, addressed the following topics.

Revenue projections. A member noted that many programs are asking for funding; however, oil prices are now \$10.00 per barrel lower than the projections originally used for the FY 2020 budget, and some economists predict a recession by 2021.

340B Drug Pricing Program. The \$8 million to \$10 million shortfall caused by changes to the 340B Drug Pricing Program represents the overall shortfall for the entire UNM Health Sciences Center, not just the Comprehensive Cancer Center.

Instruction and General Purposes funding. Since 2007, tobacco settlement revenue has been allocated to the Instruction and General Purposes category to boost UNM Health Sciences Center faculty salaries, which have yet to exceed 35 percent of the national average.

Cigarette and e-cigarette sales. The projected decrease in tobacco settlement revenue for FY 2020 is due to a decrease in cigarette sales. While cigarette sales are decreasing, e-cigarette sales are increasing; however, e-cigarette sales are not subject to the Master Settlement Agreement.

Minutes

On a motion duly made, seconded and unanimously adopted, the committee approved the minutes from its August 13, 2018 and August 20, 2018 meetings.

Funding Requests and Recommendations for FY 2020

Ms. Montoya presented funding requests submitted by the DOH, HSD, IAD and UNM Health Sciences Center for FY 2020. Ms. Montoya noted that the increased funding request for the DOH Hepatitis and Harm Reduction Program is due to rising demand and need for services.

On a motion duly made and seconded, the committee unanimously approved the funding requests for recommendation to the Senate Finance Committee.

Endorsement of Proposed Legislation

211194.1 — Include E-Cigarettes in Dee Johnson Clean Indoor Air Act

Senator McSorley noted that the bill is a duplicate of one that passed the legislature in the 2017 regular session but was pocket-vetoed by the governor. On invitation of the chair, Sandra Adondakis, M.S., New Mexico government relations director, American Cancer Action Network, noted that New Mexico has one of the highest rates of e-cigarette use among high-school-age minors and that an ordinance in Santa Fe prohibits e-cigarette use in restaurants and bars. On a motion duly made and seconded, the committee unanimously voted to endorse the bill.

211196.1 — Prohibit Sales of E-Cigarettes to Persons Under 21 Years of Age

Senator McSorley noted that the bill aligns the age for purchasing e-cigarettes with the age for purchasing tobacco and that the same exception provided for tobacco purchases made by active-duty military members applies to e-cigarette purchases. On a motion duly made and seconded, the committee unanimously voted to endorse the bill.

211198.1 — Ban Sale, Purchase or Provision of Free Flavored Tobacco Product Samples

Senator McSorley cited studies showing that the flavors for e-cigarette liquids are aimed at minors. On a motion duly made and seconded, the committee unanimously voted to endorse the bill.

211240.1 — Increase Cigarette Tax, Impose Tax on E-Cigarettes and Distribute the New Revenue to the Public School Fund for the State Equalization Guarantee Distribution

Ms. Adondakis cited a survey showing that 82 percent of New Mexico residents favor a \$1.50 increase in the cigarette tax. Members debated the effectiveness of the tax increase in reducing smoking rates, expressed concerns about the effect on low-income smokers and their families and questioned whether the state should increase its control over tobacco use at the same

time it considers legalizing recreational marijuana use. On a motion duly made and seconded, the committee voted to endorse the bill, with Representative Youngblood voting no.

211312.1 — Remove Designation of Permanent Fund as a Reserve Fund

A member noted that a constitutional amendment is necessary to change the Permanent Fund to an endowment fund. On a motion duly made and seconded, the committee unanimously voted to endorse the bill.

Adjournment

There being no further business before the committee, the fourth meeting of the TSROC for the 2018 interim adjourned at 12:09 p.m.

ENDORSED LEGISLATION

TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE
FY2020 RECOMMENDATIONS
(thousands of dollars)

AGENCY AND PROGRAM	FY2019 Program Funded	FY2020 Program Requests	2020 TSROC Recommendations
(609) Indian Affairs Department			
Tobacco cessation programs	\$249.3	\$249.3	\$249.3
Total Indian Affairs Department	\$249.3	\$249.3	\$249.3
(630) Human Services Department			
Medicaid -- Breast & cervical cancer treatment	1,255.4	\$1,255.4	\$1,255.4
Medicaid	7,063.9	\$8,319.4	\$8,319.4
Medicaid, contingent on legislation	\$0.0	\$0.0	
Total Human Services Department	\$8,319.3	\$9,574.8	\$9,574.8
(665) Department of Health			
Tobacco Use Prevention and Control Program (TUPAC)	\$5,435.2	\$6,435.2	\$6,435.2
Diabetes prevention and control	\$715.5	\$715.5	\$715.5
Hepatitis and harm reduction	\$293.0	\$443.0	\$443.0
Breast and cervical cancer screening	\$128.6	\$128.6	\$128.6
Total Department of Health	\$6,572.3	\$7,722.3	\$7,722.3
(952) University of New Mexico HSC			
Instruction and general purposes	\$581.5	\$607.9	\$607.9
Research in genomics and environmental health	\$937.4	\$937.4	\$937.4
Poison control center	\$590.2	\$590.2	\$590.2
Pediatric oncology program	\$250.0	\$261.4	\$261.4
Specialty education in trauma	\$250.0	\$261.4	\$261.4
Specialty education in pediatrics	\$250.0	\$261.4	\$261.4
UNM Comprehensive Cancer Center	\$0.0	\$5,850.0	\$5,850.0
Total University of New Mexico	\$2,859.1	\$8,769.7	\$8,769.7
TOTAL:	\$18,000.0	\$26,316.1	\$26,316.1

SENATE BILL

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE
AND THE TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

AN ACT

RELATING TO PUBLIC HEALTH; AMENDING THE DEE JOHNSON CLEAN
INDOOR AIR ACT TO INCLUDE E-CIGARETTES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 24-16-3 NMSA 1978 (being Laws 1985,
Chapter 85, Section 3, as amended) is amended to read:

"24-16-3. DEFINITIONS.--As used in the Dee Johnson Clean
Indoor Air Act:

A. "bar" means an establishment that is devoted to
the selling or serving of alcoholic beverages for consumption
by patrons on the premises and in which the serving of food is
only incidental to the consumption of those beverages,
including taverns, nightclubs, cocktail lounges and cabarets;

B. "cigar bar" means an establishment that:

(1) is a bar as defined in Subsection A of

1 this section; and

2 (2) is engaged in the business of selling
3 cigars for consumption by patrons on the premises and generates
4 ten percent or more of its total annual gross revenue or at
5 least ten thousand dollars (\$10,000) in annual sales from the
6 sale of cigars, not including any sales from vending machines.
7 A cigar bar that fails to generate at least ten percent of its
8 total annual sales from the sale of cigars in the calendar year
9 after December 31, 2006, not including sales from vending
10 machines, shall not be defined as a cigar bar and shall not
11 thereafter be known as such regardless of sales figures. A
12 cigar bar shall agree to provide adequate information to
13 demonstrate to the state's satisfaction compliance with this
14 definition;

15 C. "department" means the department of health;

16 D. "designated outdoor smoking area" means an area
17 where smoking may be permitted, designated by an employer or
18 manager, outside an indoor workplace or indoor public place;
19 provided that the following conditions are maintained:

20 (1) smoking shall not be permitted near any
21 building entrance, including a door, window or ventilation
22 system of any facility where smoking is prohibited under the
23 provisions of the Dee Johnson Clean Indoor Air Act, so as to
24 prevent secondhand smoke from entering the indoor workplace or
25 indoor public place; and

.211194.1

1 (2) employees or members of the general public
2 are not required to walk through the smoking area to gain
3 entrance to the indoor workplace or indoor public place;

4 E. "e-cigarette" means a product containing or
5 delivering nicotine or another substance intended for human
6 consumption that can be used by a person in any manner for the
7 purpose of inhaling vapor or aerosol from the product,
8 including a device, whether manufactured, distributed, marketed
9 or sold as an e-cigarette, e-cigar, e-pipe, e-hookah or vape
10 pen or under another product name or descriptor;

11 [~~E.~~] F. "employer" means an individual, a
12 partnership, a corporation or the state or a political
13 subdivision of the state that employs the services of one or
14 more individuals;

15 [~~F.~~] G. "enclosed" means [~~any~~] an interior space
16 predominantly or totally bounded on all sides and above by
17 physical barriers, regardless of whether such barriers consist
18 of or include uncovered openings, screened or otherwise
19 partially covered openings or open or closed windows;

20 [~~G.~~] H. "indoor public place" means the enclosed
21 area within [~~any~~] a governmental or nongovernmental place to
22 which the public is invited or in which the public is permitted
23 regardless of whether work or public business, meetings or
24 hearings occur at any given time;

25 [~~H.~~] I. "indoor workplace" means [~~any~~] an enclosed

1 place where one or more persons engage in work, including
2 lobbies, reception areas, offices, conference and meeting
3 rooms, employee cafeterias and lunchrooms, break rooms and
4 employee lounges, classrooms, auditoriums, hallways, stairways,
5 waiting areas, elevators and restrooms and includes all indoor
6 workplaces and enclosed parts regardless of whether work occurs
7 at any given time;

8 ~~[F.]~~ J. "private club" means an organization,
9 whether incorporated or not, that is the owner, lessee or
10 occupant of a building or portion ~~[thereof]~~ of that building
11 used exclusively for the organization's purposes at all times,
12 that is operated solely for recreational, fraternal, social,
13 patriotic, political, benevolent or athletic purposes, but not
14 for pecuniary gain, and that only sells alcoholic beverages
15 incidental to its operation. The organization shall have
16 bylaws or a constitution to govern its activities and shall
17 have been granted an exemption as a club under the provisions
18 of Section 501 of the Internal Revenue Code of 1986, as
19 amended;

20 ~~[J.]~~ K. "restaurant" means a coffee shop,
21 cafeteria, private or public school cafeteria or eating
22 establishment and any other eating establishment that gives or
23 offers for sale food to the public, patrons or employees,
24 including kitchens and catering facilities in which food is
25 prepared on the premises for serving elsewhere or a bar area

1 within or attached to the premises;

2 [K.] L. "retail tobacco store" means a retail store
3 used primarily for the sale of tobacco products and accessories
4 and in which the sale of other products is merely incidental,
5 including smoke shops, cigar shops, e-cigarette shops or hookah
6 lounges, and does not include establishments that offer for
7 sale alcoholic beverages for consumption by patrons on the
8 premises;

9 [L.] M. "secondhand smoke" means [~~smoke emitted~~
10 ~~from lighted, smoldering or burning tobacco when the smoker is~~
11 ~~not inhaling, smoke emitted at the mouthpiece during puff~~
12 ~~drawing and smoke exhaled by the smoker~~]:

13 (1) smoke emitted from inhaling from, exhaling
14 from, burning, carrying or holding:

15 (a) a lighted or heated cigar,
16 cigarette, hookah or pipe; or

17 (b) any other lighted or heated tobacco
18 or plant product intended for inhalation, including marijuana,
19 whether natural or synthetic; or

20 (2) the aerosol or vapor emitted from inhaling
21 or exhaling or any other use of an e-cigarette;

22 [M.] N. "smokefree area" means [~~any~~] a building or
23 other enclosed space where smoking is prohibited;

24 [N.] O. "smoking" means:

25 (1) inhaling from, exhaling from, burning,

1 carrying or holding [~~any~~]:

2 (a) a lighted or heated cigar,
3 cigarette, hookah or pipe; or

4 (b) any other lighted or heated tobacco
5 or plant product [~~including all types of cigarettes, cigars and~~
6 ~~pipes and any other lighted tobacco product~~ intended for
7 inhalation, including marijuana, whether natural or synthetic;
8 or

9 (2) any use of an e-cigarette that creates an
10 aerosol or vapor; and

11 [~~0-~~] P. "smoking-permitted area" means [~~any~~] a
12 building or other enclosed space where smoking may be
13 permitted; provided that secondhand smoke does not infiltrate
14 any area where smoking is prohibited pursuant to the Dee
15 Johnson Clean Indoor Air Act."

16 SECTION 2. Section 24-16-12 NMSA 1978 (being Laws 2007,
17 Chapter 20, Section 4) is amended to read:

18 "24-16-12. SMOKING-PERMITTED AREAS.--Notwithstanding any
19 other provision of the Dee Johnson Clean Indoor Air Act,
20 smoking-permitted areas include the following:

21 A. a private residence, except during hours of
22 business operation while it is being used commercially to
23 provide child care, adult care or health care or any
24 combination of those activities;

25 B. a retail tobacco store;

.211194.1

1 C. a cigar bar;

2 D. the facilities of a tobacco manufacturing
3 company licensed by the United States to manufacture tobacco
4 products that are operated by the company in its own name and
5 that are used exclusively by the company in its business of
6 manufacturing, marketing or distributing its tobacco products;
7 provided that secondhand smoke does not infiltrate other indoor
8 workplaces or other indoor public places where smoking is
9 otherwise prohibited under the Dee Johnson Clean Indoor Air
10 Act;

11 E. a state-licensed gaming facility, casino or
12 bingo parlor;

13 F. an indoor workplace to the extent that [~~tobacco~~]
14 smoking is an integral part of a smoking cessation program that
15 is approved by the department or of medical or scientific
16 research that is conducted in the indoor workplace and in which
17 each room of the indoor workplace in which [~~tobacco~~] smoking is
18 permitted complies with signage requirements;

19 G. designated outdoor smoking areas;

20 H. private clubs;

21 I. a limousine under private hire;

22 J. hotel and motel rooms that are rented to guests
23 and are designated as smoking-permitted rooms; provided that
24 not more than twenty-five percent of rooms rented to guests in
25 a hotel or motel may be so designated;

1 K. enclosed areas within restaurants, bars, hotel
2 and motel conference or meeting rooms while these places are
3 being used for private functions; provided that none of these
4 areas are open to the general public while the private
5 functions are occurring and provided that secondhand smoke
6 does not infiltrate other indoor workplaces or indoor public
7 places where smoking is otherwise prohibited under the Dee
8 Johnson Clean Indoor Air Act;

9 L. a site that is being used in connection with the
10 practice of cultural or ceremonial activities by Native
11 Americans and that is in accordance with the federal American
12 Indian Religious Freedom Act, 42 U.S.C. 1996 and 1996a;

13 M. a business of a sole proprietor or a business
14 with fewer than two employees that is not commonly accessible
15 to the public; provided that:

16 (1) the business is not a restaurant or bar;

17 (2) the employer or manager of such business
18 shall provide a [~~smoke-free~~] smokefree work environment for
19 each employee requesting a [~~smoke-free~~] smokefree work
20 environment; and

21 (3) [~~cigarette~~] secondhand smoke does not
22 infiltrate other [~~smoke-free~~] smokefree work environments as
23 provided for in the Dee Johnson Clean Indoor Air Act; and

24 N. a theatrical stage or a motion picture or
25 television production set when it is necessary for performers

1 to smoke as part of the production."

2 SECTION 3. Section 24-16-13 NMSA 1978 (being Laws 2007,
3 Chapter 20, Section 5) is amended to read:

4 "24-16-13. PROHIBITION OF SMOKING NEAR ENTRANCES, WINDOWS
5 AND VENTILATION SYSTEMS.--Smoking is prohibited near entrances,
6 windows and ventilation systems of all workplaces and public
7 places where smoking is prohibited by the Dee Johnson Clean
8 Indoor Air Act. An individual who owns, manages, operates or
9 otherwise controls the use of ~~[any]~~ a premises subject to the
10 provisions of the Dee Johnson Clean Indoor Air Act shall
11 establish a smokefree area that extends a reasonable distance
12 from any entrances, windows and ventilation systems to any
13 enclosed areas where smoking is prohibited. The reasonable
14 distance shall be a distance sufficient to ensure that persons
15 entering or leaving the building or facility shall not be
16 subjected to breathing ~~[tobacco]~~ secondhand smoke and to ensure
17 that ~~[tobacco]~~ secondhand smoke does not enter the building or
18 facility through entrances, windows, ventilation systems or any
19 other means."

SENATE BILL

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE
AND THE TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

AN ACT

RELATING TO PUBLIC HEALTH; AMENDING THE TOBACCO PRODUCTS, E-
CIGARETTE AND NICOTINE LIQUID CONTAINER ACT TO BAN THE SALE OF
TOBACCO PRODUCTS, E-CIGARETTES OR NICOTINE LIQUID CONTAINERS TO
PERSONS UNDER TWENTY-ONE YEARS OF AGE, WITH CERTAIN EXCEPTIONS;
DEFINING "TOBACCO PRODUCTS".

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 30-49-2 NMSA 1978 (being Laws 1993,
Chapter 244, Section 2, as amended) is amended to read:

"30-49-2. DEFINITIONS.--As used in the Tobacco Products,
E-Cigarette and Nicotine Liquid Container Act:

A. "child-resistant" means a package or container
that is designed or constructed to be significantly difficult
for children under five years of age to open or obtain a toxic
or harmful amount of the substance contained therein within a

1 reasonable time and not difficult for normal adults to use
2 properly, but does not mean a package or container that all
3 such children cannot open or obtain a toxic or harmful amount
4 within a reasonable time;

5 B. "e-cigarette":

6 (1) means any electronic oral device, whether
7 composed of a heating element and battery or an electronic
8 circuit, that provides a vapor of nicotine or any other
9 substances the use or inhalation of which simulates smoking;
10 and

11 (2) includes any such device, or any part
12 thereof, whether manufactured, distributed, marketed or sold as
13 an e-cigarette, e-cigar, e-pipe or any other product, name or
14 descriptor; but

15 (3) does not include any product regulated as
16 a drug or device by the United States food and drug
17 administration under the Federal Food, Drug, and Cosmetic Act
18 [~~21 U.S.C. Section 301 et seq.~~];

19 C. "minor" means an individual who is less than
20 [~~eighteen~~] twenty-one years of age [~~and~~]. "Minor" does not
21 include an active duty military member who is eighteen years of
22 age or older who presents an identification card issued by the
23 United States armed forces as proof of age for this purpose or
24 an individual who is eighteen to twenty-one years of age on
25 July 1, 2019;

1 D. "nicotine liquid container" means a bottle or
2 other container of any substance containing nicotine where the
3 substance is sold, marketed or intended for use in an e-
4 cigarette; and

5 E. "tobacco product" means:

6 (1) a product made of or derived from tobacco
7 or nicotine that is intended for human consumption, whether
8 smoked, heated, chewed, absorbed, dissolved, inhaled, snorted,
9 sniffed or ingested by any other means, including cigars,
10 cigarettes, chewing tobacco, e-cigarettes, pipe tobacco or
11 snuff; and

12 (2) a component, part or accessory used to
13 consume tobacco, but does not include a product approved by the
14 United States food and drug administration for sale as a
15 tobacco cessation product or for another therapeutic purpose,
16 where the product is marketed and sold solely for that use, as
17 approved by the United States food and drug administration."

18 SECTION 2. Section 30-49-5 NMSA 1978 (being Laws 1993,
19 Chapter 244, Section 5, as amended) is amended to read:

20 "30-49-5. REFUSAL TO SELL TOBACCO PRODUCTS, E-CIGARETTES
21 OR NICOTINE LIQUID CONTAINERS TO A PERSON UNABLE TO PRODUCE
22 IDENTITY CARD.--A person selling goods at retail or wholesale
23 may refuse to sell tobacco products, e-cigarettes or nicotine
24 liquid containers to a person who is unable to produce an
25 identity card as evidence that the person is ~~[eighteen years of~~

1 ~~age or over~~] not prohibited from purchasing tobacco products,
2 e-cigarettes or nicotine liquid containers."

3 SECTION 3. Section 30-49-9 NMSA 1978 (being Laws 1993,
4 Chapter 244, Section 9, as amended) is amended to read:

5 "30-49-9. SIGNS--POINT OF SALE.--A person, firm,
6 corporation, partnership or other entity engaged in the sale at
7 retail of tobacco products, e-cigarettes or nicotine liquid
8 containers shall prominently display in the place where tobacco
9 products, e-cigarettes or nicotine liquid containers are sold
10 and where a tobacco product, e-cigarette or nicotine liquid
11 container vending machine is located a printed sign or decal
12 that reads as follows:

13 "A PERSON LESS THAN [~~18~~] 21 YEARS OF AGE WHO PURCHASES A
14 TOBACCO PRODUCT, AN E-CIGARETTE OR A NICOTINE LIQUID CONTAINER
15 [~~15~~] MAY BE SUBJECT TO A FINE OF UP TO \$100 OR UP TO 48 HOURS
16 OF COMMUNITY SERVICE.

17 A PERSON WHO SELLS A TOBACCO PRODUCT, AN E-CIGARETTE OR A
18 NICOTINE LIQUID CONTAINER TO A PERSON LESS THAN [~~18~~] 21 YEARS
19 OF AGE [~~15~~] MAY BE SUBJECT TO A FINE OF UP TO \$1,000 AND IS
20 GUILTY OF A CRIMINAL MISDEMEANOR."

underscored material = new
[bracketed material] = delete

SENATE BILL

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE
AND THE TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

AN ACT

RELATING TO PUBLIC HEALTH; BANNING THE SALE, PURCHASE OR
PROVISION OF FREE SAMPLES OF FLAVORED TOBACCO PRODUCTS;
DEFINING "FLAVORED TOBACCO PRODUCTS"; DEFINING "TOBACCO
PRODUCTS"; PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Tobacco Products, E-
Cigarette and Nicotine Liquid Container Act is enacted to read:

"[NEW MATERIAL] PROHIBITED SALE OF FLAVORED TOBACCO
PRODUCTS.--

A. It is unlawful to knowingly sell, offer to sell,
barter or give a flavored tobacco product to a person.

B. It is unlawful to procure or attempt to procure
any flavored tobacco product."

SECTION 2. Section 30-49-2 NMSA 1978 (being Laws 1993,
.211198.1

Chapter 244, Section 2, as amended) is amended to read:

"30-49-2. DEFINITIONS.--As used in the Tobacco Products,
E-Cigarette and Nicotine Liquid Container Act:

A. "characterizing flavor" means a distinguishable
taste or aroma or both, other than the taste or aroma of
tobacco, imparted by a tobacco product or any byproduct
produced by the tobacco product. A tobacco product shall not
be determined to have a characterizing flavor solely because of
the use of additives or flavorings or the provision of
ingredient information;

~~[A.]~~ B. "child-resistant" means a package or
container that is designed or constructed to be significantly
difficult for children under five years of age to open or
obtain a toxic or harmful amount of the substance contained
therein within a reasonable time and not difficult for normal
adults to use properly, but does not mean a package or
container that all such children cannot open or obtain a toxic
or harmful amount within a reasonable time;

~~[B.]~~ C. "e-cigarette":
(1) means any electronic oral device, whether
composed of a heating element and battery or an electronic
circuit, that provides a vapor of nicotine or any other
substances the use or inhalation of which simulates smoking;
and

(2) includes any such device, or any part

1 thereof, whether manufactured, distributed, marketed or sold as
2 an e-cigarette, e-cigar, e-pipe or any other product, name or
3 descriptor; but

4 (3) does not include any product regulated as
5 a drug or device by the United States food and drug
6 administration under the Federal Food, Drug, and Cosmetic Act,
7 21 U.S.C. Section 301 et seq.;

8 D. "flavored tobacco product" means any tobacco
9 product that contains any ingredient, substance, chemical or
10 compound, other than tobacco, water or reconstituted tobacco
11 sheet that is added by the manufacturer to a tobacco product
12 during the processing, manufacture or packing of a tobacco
13 product, that imparts a characterizing flavor;

14 [~~E.~~] E. "minor" means an individual who is less
15 than eighteen years of age; [~~and~~

16 [~~D.~~] F. "nicotine liquid container" means a bottle
17 or other container of any substance containing nicotine where
18 the substance is sold, marketed or intended for use in an e-
19 cigarette; and

20 G. "tobacco product" means a:

21 (1) product that is made of or derived from
22 tobacco or nicotine and that is intended for human consumption,
23 whether smoked, heated, chewed, absorbed, dissolved, inhaled,
24 snorted, sniffed or ingested by any other means, and includes
25 cigars, cigarettes, chewing tobacco, e-cigarettes, pipe tobacco

1 or snuff; and

2 (2) component, part or accessory used to
3 consume tobacco, but does not include a product approved by the
4 United States food and drug administration for sale as a
5 tobacco-cessation product or for another therapeutic purpose,
6 where the product is marketed and sold solely for that use, as
7 approved by the United States food and drug administration."

8 SECTION 3. Section 30-49-7 NMSA 1978 (being Laws 1993,
9 Chapter 244, Section 7, as amended) is amended to read:

10 "30-49-7. VENDING MACHINES--RESTRICTIONS ON SALES OF
11 TOBACCO PRODUCTS, E-CIGARETTES AND NICOTINE LIQUID
12 CONTAINERS.--

13 A. Except as provided in Subsections B and C of
14 this section:

15 (1) a person shall not sell tobacco products,
16 e-cigarettes or nicotine liquid containers at a retail location
17 in New Mexico by any means other than a direct, face-to-face
18 exchange between the customer and the seller or the seller's
19 employee; and

20 (2) a person selling goods at a retail
21 location in New Mexico shall not use a self-service display for
22 tobacco products, e-cigarettes or nicotine liquid containers.
23 As used in this subsection, "self-service display" means a
24 display to which the public has access without the assistance
25 of the seller or the seller's employee.

.211198.1

1 B. Tobacco products, e-cigarettes and nicotine
2 liquid containers may be sold by vending machines only:

3 (1) in age-controlled locations where minors
4 are not permitted; and

5 (2) if the tobacco products are not flavored
6 tobacco products.

7 C. The provisions of this section do not apply to
8 written, telephonic or electronic sales of tobacco products."

9 SECTION 4. Section 30-49-8 NMSA 1978 (being Laws 1993,
10 Chapter 244, Section 8, as amended) is amended to read:

11 "30-49-8. DISTRIBUTION OF TOBACCO PRODUCTS, FLAVORED
12 TOBACCO PRODUCTS, E-CIGARETTES OR NICOTINE LIQUID CONTAINERS AS
13 FREE SAMPLES PROHIBITED--EXCEPTION.--

14 A. ~~[A person shall not]~~ It is unlawful to provide
15 free samples of tobacco products, e-cigarettes or nicotine
16 liquid containers to a minor.

17 B. It is unlawful to provide free samples of
18 flavored tobacco products to a person.

19 ~~[B-]~~ C. The provisions of ~~[Subsection]~~ Subsections
20 A and B of this section shall not apply to an individual who
21 provides free samples of tobacco products, flavored tobacco
22 products, e-cigarettes or nicotine liquid containers in
23 connection with the practice of cultural or ceremonial
24 activities in accordance with the federal American Indian
25 Religious Freedom Act, 42 U.S.C. 1996 and 1996a or its

.211198.1

1 successor act."

2 SECTION 5. Section 30-49-9 NMSA 1978 (being Laws 1993,
3 Chapter 244, Section 9, as amended) is amended to read:

4 "30-49-9. SIGNS--POINT OF SALE.--A person, firm,
5 corporation, partnership or other entity engaged in the sale at
6 retail of tobacco products, e-cigarettes or nicotine liquid
7 containers shall prominently display in the place where tobacco
8 products, e-cigarettes or nicotine liquid containers are sold
9 and where a tobacco product, e-cigarette or nicotine liquid
10 container vending machine is located a printed sign or decal
11 that reads as follows:

12 "A PERSON LESS THAN 18 YEARS OF AGE WHO PURCHASES A
13 TOBACCO PRODUCT, AN E-CIGARETTE OR A NICOTINE LIQUID CONTAINER
14 OR ANY PERSON WHO PURCHASES A FLAVORED TOBACCO PRODUCT IS
15 SUBJECT TO A FINE OF UP TO \$100.

16 A PERSON WHO SELLS A TOBACCO PRODUCT, AN E-CIGARETTE OR A
17 NICOTINE LIQUID CONTAINER TO A PERSON LESS THAN 18 YEARS OF AGE
18 OR WHO SELLS A FLAVORED TOBACCO PRODUCT IS SUBJECT TO A FINE OF
19 UP TO \$1,000."."

20 SECTION 6. Section 30-49-12 NMSA 1978 (being Laws 1993,
21 Chapter 244, Section 12, as amended) is amended to read:

22 "30-49-12. PENALTY.--

23 A. Any person who violates any provision of
24 Subsection A, D or E of Section 30-49-3 NMSA 1978 [~~or~~], Section
25 30-49-7, 30-49-8 or 30-49-9 NMSA 1978 or Subsection A of

.211198.1

1 Section 1 of this 2019 act is guilty of a misdemeanor and shall
2 be sentenced pursuant to the provisions of Section 31-19-1 NMSA
3 1978. Each violation is a separate and distinct offense.

4 B. Any minor who violates any provision of
5 Subsection B of Section 30-49-3 NMSA 1978 or Section 30-49-6
6 NMSA 1978 or Subsection B of Section 1 of this 2019 act shall
7 be punished by a fine not to exceed one hundred dollars (\$100)
8 or forty-eight hours of community service."

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underscored material = new
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SENATE BILL

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE
AND THE TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

AN ACT

RELATING TO TAXATION; INCREASING THE CIGARETTE TAX RATES;
INCREASING THE TOBACCO PRODUCTS TAX RATE; INCLUDING E-
CIGARETTES IN THE DEFINITION OF "TOBACCO PRODUCTS" IN THE
TOBACCO PRODUCTS TAX ACT; DISTRIBUTING THE NEW REVENUE FROM THE
INCREASES IN THE CIGARETTE TAX AND THE TOBACCO PRODUCTS TAX TO
THE PUBLIC SCHOOL FUND FOR THE STATE EQUALIZATION GUARANTEE
DISTRIBUTION; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 7-1-6.11 NMSA 1978 (being Laws 1983,
Chapter 211, Section 16, as amended by Laws 2017, Chapter 34,
Section 2 and by Laws 2017, Chapter 63, Section 9) is amended
to read:

"7-1-6.11. DISTRIBUTIONS OF CIGARETTE TAXES.--

A. A distribution pursuant to Section 7-1-6.1 NMSA

.211240.1

1 1978 shall be made to the comprehensive cancer center at the
2 university of New Mexico health sciences center in an amount
3 equal to ~~[eighty-three]~~ forty-six hundredths percent of the net
4 receipts, exclusive of penalties and interest, attributable to
5 the cigarette tax.

6 B. A distribution pursuant to Section 7-1-6.1 NMSA
7 1978 in an amount equal to ~~[eight and eighty-nine]~~ four and
8 eighty-three hundredths percent of the net receipts, exclusive
9 of penalties and interest, attributable to the cigarette tax,
10 shall be made, on behalf of and for the benefit of the
11 university of New Mexico health sciences center, to the New
12 Mexico finance authority.

13 C. A distribution pursuant to Section 7-1-6.1 NMSA
14 1978 in an amount equal to ~~[three and seventy-four]~~ two and
15 four-hundredths percent of the net receipts, exclusive of
16 penalties and interest, attributable to the cigarette tax shall
17 be made to the New Mexico finance authority for land
18 acquisition and the planning, designing, construction and
19 equipping of department of health facilities or improvements to
20 such facilities.

21 D. A distribution pursuant to Section 7-1-6.1 NMSA
22 1978 in an amount equal to ~~[nine and seventy-seven hundredths]~~
23 five and three-tenths percent of the net receipts, exclusive of
24 penalties and interest, attributable to the cigarette tax shall
25 be made to the New Mexico finance authority for deposit in the

.211240.1

1 credit enhancement account created in the authority.

2 E. A distribution pursuant to Section 7-1-6.1 NMSA
3 1978 in an amount equal to ~~[sixty-two]~~ thirty-five hundredths
4 percent of the net receipts, exclusive of penalties and
5 interest, attributable to the cigarette tax shall be made, on
6 behalf of and for the benefit of the rural county cancer
7 treatment fund, to the New Mexico finance authority.

8 F. A distribution pursuant to Section 7-1-6.1 NMSA
9 1978 in an amount equal to forty-five and fifty-six hundredths
10 percent of the net receipts, exclusive of penalties and
11 interest, attributable to the cigarette tax shall be made to
12 the public school fund for the state equalization guarantee
13 distribution."

14 SECTION 2. A new section of the Tax Administration Act is
15 enacted to read:

16 "[NEW MATERIAL] DISTRIBUTION--TOBACCO PRODUCTS TAX TO THE
17 PUBLIC SCHOOL FUND FOR THE STATE EQUALIZATION GUARANTEE
18 DISTRIBUTION.--A distribution pursuant to Section 7-1-6.1 NMSA
19 1978 in an amount equal to sixty percent of the net receipts,
20 exclusive of penalties and interest, attributable to the
21 tobacco products tax shall be made to the public school fund
22 for the state equalization guarantee distribution."

23 SECTION 3. Section 7-12-2 NMSA 1978 (being Laws 1971,
24 Chapter 77, Section 2, as amended) is amended to read:

25 "7-12-2. DEFINITIONS.--As used in the Cigarette Tax Act:

.211240.1

1 A. "cigarette" means:

2 (1) any roll of tobacco or any substitute for
3 tobacco wrapped in paper or in any substance not containing
4 tobacco;

5 (2) any roll of tobacco that is wrapped in any
6 substance containing tobacco, other than one hundred percent
7 natural leaf tobacco, which, because of its appearance, the
8 type of tobacco used in the filler, its packaging and labeling,
9 or its marketing and advertising, is likely to be offered to,
10 or purchased by, consumers as a cigarette, as described in
11 Paragraph (1) of this subsection;

12 (3) bidis and kreteks; or

13 (4) any other roll of tobacco that is defined
14 as a "cigarette" in Subsection D of Section 6-4-12 NMSA 1978;

15 B. "close of business" means that time when a
16 business ceases to operate for the remainder of the day or
17 12:00 a.m., if the business is open and conducting business at
18 12:00 a.m.;

19 C. "contraband cigarettes" means cigarette packages
20 with counterfeit stamps, counterfeit cigarettes, cigarettes
21 that have false or fraudulent manufacturing labels, cigarettes
22 not sold in packages of five, ten, twenty or twenty-five,
23 cigarette packages without the tax, tax-credit or tax-exempt
24 stamps required by the Cigarette Tax Act and cigarettes
25 produced by a manufacturer or in a brand family not included in

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1 the directory;

2 D. "department" means the taxation and revenue
3 department, the secretary of taxation and revenue or any
4 employee of the department exercising authority lawfully
5 delegated to that employee;

6 E. "directory" means a listing of tobacco product
7 manufacturers and brand families that is developed, maintained
8 and published by the attorney general under the Tobacco Escrow
9 Fund Act;

10 F. "distributor" means a person licensed pursuant
11 to the Cigarette Tax Act to sell or distribute cigarettes in
12 New Mexico. "Distributor" does not include:

13 (1) a retailer;

14 (2) a cigarette manufacturer, export warehouse
15 proprietor or importer with a valid permit pursuant to 26
16 U.S.C. 5713, if that person sells cigarettes in New Mexico only
17 to distributors that hold valid licenses under the laws of a
18 state or sells to an export warehouse proprietor or to another
19 manufacturer; or

20 (3) a common or contract carrier transporting
21 cigarettes pursuant to a bill of lading or freight bill, or a
22 person who ships cigarettes through the state by a common or
23 contract carrier pursuant to a bill of lading or freight bill;

24 G. "license" means a license granted pursuant to
25 the Cigarette Tax Act that authorizes the holder to conduct

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1 business as a manufacturer or distributor of cigarettes;

2 H. "manufacturer" means a person that manufactures,
3 fabricates, assembles, processes or labels a cigarette or that
4 imports from outside the United States, directly or indirectly,
5 a finished cigarette for sale or distribution in the United
6 States;

7 I. "master settlement agreement" means the
8 settlement agreement and related documents entered into on
9 November 23, 1998 by the state and leading United States
10 tobacco product manufacturers;

11 J. "package" means an individual pack, box or other
12 container; "package" does not include a container that itself
13 contains other containers, such as a carton of cigarettes;

14 K. "qualifying tribal cigarette tax" means an
15 excise, privilege or similar tax at a minimum rate of:

16 (1) [~~three and seventy-five hundredths cents~~
17 ~~(\$.0375)~~] eleven and one-fourth cents (\$.1125) per cigarette if
18 the cigarettes are packaged in lots of twenty or twenty-five;

19 (2) [~~seven and one-half cents (\$.075)~~] twenty-
20 two and one-half cents (\$.225) per cigarette if the cigarettes
21 are packaged in lots of ten; or

22 (3) [~~fifteen cents (\$.15)~~] forty-five cents
23 (\$.45) per cigarette if the cigarettes are packaged in lots of
24 five;

25 L. "retailer" means a person, whether located

1 within or outside of New Mexico, that sells cigarettes at
2 retail to a consumer in New Mexico and the sale is not for
3 resale;

4 M. "stamp" means an adhesive label issued and
5 authorized by the department to be affixed to cigarette
6 packages for excise tax purposes and upon which is printed a
7 serial number and the words "State of New Mexico" and "tobacco
8 tax";

9 N. "tax stamp" means a stamp that has a specific
10 cigarette tax value pursuant to the Cigarette Tax Act;

11 O. "tax-credit stamp" means a stamp that indicates
12 the cigarette package bearing the stamp is to be or has been
13 sold by a retailer located on land of a tribe that has imposed
14 a qualifying tribal cigarette tax;

15 P. "tax-exempt stamp" means a stamp that indicates
16 a tax-exempt status pursuant to the Cigarette Tax Act;

17 Q. "tribal member" means a person who is recognized
18 by the governing body of an Indian tribe to be an enrolled
19 member of that Indian tribe;

20 R. "tribe" means a federally recognized Indian
21 nation, tribe or pueblo located wholly or partially in New
22 Mexico, including:

23 (1) a political subdivision, agency or
24 department of a tribe;

25 (2) an incorporated or unincorporated

1 enterprise of a tribe, one or more tribes or a political
2 subdivision of a tribe; or

3 (3) a corporation considered to be an Indian
4 or a tribe by the federal government or the state; and

5 S. "tribe's land" means the reservation, pueblo
6 grant or trust land of a tribe and property held by the United
7 States in trust jointly for the nineteen New Mexico Indian
8 pueblos pursuant to Public Law 95-232."

9 SECTION 4. Section 7-12-3 NMSA 1978 (being Laws 1971,
10 Chapter 77, Section 3, as amended) is amended to read:

11 "7-12-3. EXCISE TAX ON CIGARETTES--RATES.--

12 A. For the privilege of selling, giving or
13 consuming cigarettes in New Mexico, there is levied an excise
14 tax at the following rates for each cigarette sold, given or
15 consumed in this state:

16 (1) [~~eight and three-tenths cents (\$.083)~~]
17 fifteen and eight-tenths cents (\$.158) if the cigarettes are
18 packaged in lots of twenty or twenty-five;

19 (2) [~~sixteen and six-tenths cents (\$.166)~~]
20 thirty-one and six-tenths cents (\$.316) if the cigarettes are
21 packaged in lots of ten; or

22 (3) [~~thirty-three and two-tenths cents~~
23 ~~(\$.332)~~] sixty-three and two-tenths cents (\$.632) if the
24 cigarettes are packaged in lots of five.

25 B. The tax imposed by this section shall be

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1 referred to as the "cigarette tax".

2 SECTION 5. Section 7-12A-2 NMSA 1978 (being Laws 1986,
3 Chapter 112, Section 3, as amended) is amended to read:

4 "7-12A-2. DEFINITIONS.--As used in the Tobacco Products
5 Tax Act:

6 A. "department" means the taxation and revenue
7 department, the secretary or any employee of the department
8 exercising authority lawfully delegated to that employee by the
9 secretary;

10 B. "distribute" means to sell or to give;

11 C. "e-cigarette":

12 (1) means any electronic oral device that can
13 be used to provide a vapor or aerosol of nicotine or any other
14 substance to the person inhaling from the device; and

15 (2) includes any such device, or any part
16 thereof, whether manufactured, distributed, marketed or sold as
17 an e-cigarette, e-cigar, e-pipe or any other product name or
18 descriptor;

19 ~~[G-]~~ D. "engaging in business" means carrying on or
20 causing to be carried on any activity with the purpose of
21 direct or indirect benefit;

22 ~~[D-]~~ E. "first purchaser" means a person engaging
23 in business in New Mexico ~~[who]~~ that manufactures tobacco
24 products or ~~[who]~~ that purchases or receives on consignment
25 tobacco products from any person outside of New Mexico, which

.211240.1

1 tobacco products are to be distributed in New Mexico in the
2 ordinary course of business;

3 ~~[E-]~~ F. "person" means any individual, estate,
4 trust, receiver, cooperative association, club, corporation,
5 company, firm, partnership, joint venture, syndicate, limited
6 liability company, limited liability partnership, other
7 association or gas, water or electric utility owned or operated
8 by a county or municipality or other entity of the state;
9 "person" also means, to the extent permitted by law, a federal,
10 state or other governmental unit or subdivision or an agency,
11 department or instrumentality;

12 ~~[F-]~~ G. "product value" means the amount paid, net
13 of any discounts taken and allowed, for tobacco products or, in
14 the case of tobacco products received on consignment, the value
15 of the tobacco products received or, in the case of tobacco
16 products manufactured and sold in New Mexico, the proceeds from
17 the sale by the manufacturer of the tobacco products; and

18 ~~[G-]~~ H. "tobacco product" means:

19 (1) any product, other than cigarettes, made
20 of or derived from [or containing] tobacco or nicotine that is
21 intended for human consumption, whether smoked, heated, chewed,
22 absorbed, dissolved, inhaled, snorted, sniffed or ingested by
23 any other means, including cigars, chewing tobacco, e-
24 cigarettes, pipe tobacco or snuff; and

25 (2) any component, part or accessory used to

1 consume tobacco but does not include any product that has been
2 approved by the United States food and drug administration for
3 sale as a tobacco cessation product or for other therapeutic
4 purposes where such product is marketed and sold solely for
5 such an approved use."

6 SECTION 6. Section 7-12A-3 NMSA 1978 (being Laws 1986,
7 Chapter 112, Section 4, as amended) is amended to read:

8 "7-12A-3. IMPOSITION AND RATE OF TAX--DENOMINATION AS
9 "TOBACCO PRODUCTS TAX"--DATE PAYMENT OF TAX DUE.--

10 A. For the privilege of engaging in business to
11 manufacture [~~or acquisition of~~], acquire or distribute tobacco
12 products [~~in New Mexico to be distributed~~] in the ordinary
13 course of business and for the [~~consumption of~~] privilege of
14 consuming tobacco products in New Mexico, there is imposed an
15 excise tax at the rate of [~~twenty-five~~] seventy-six percent of
16 the product value of the tobacco products.

17 B. The tax imposed by Subsection A of this section
18 may be referred to as the "tobacco products tax".

19 C. The tobacco products tax shall be paid by the
20 first purchaser on or before the twenty-fifth day of the month
21 following the month in which the taxable event occurs."

22 SECTION 7. EFFECTIVE DATE.--The effective date of the
23 provisions of this act is July 1, 2019.

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HOUSE BILL
54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019
INTRODUCED BY

FOR THE TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

AN ACT
RELATING TO PUBLIC FINANCES; REMOVING THE DESIGNATION OF THE
TOBACCO SETTLEMENT PERMANENT FUND AS A RESERVE FUND.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 6-4-9 NMSA 1978 (being Laws 1999,
Chapter 207, Section 1, as amended by Laws 2017, Chapter 2,
Section 6 and by Laws 2017, Chapter 80, Section 1) is amended
to read:

"6-4-9. TOBACCO SETTLEMENT PERMANENT FUND--INVESTMENT--
DISTRIBUTION.--

A. The "tobacco settlement permanent fund" is
created in the state treasury. The fund shall consist of money
distributed to the state pursuant to the master settlement
agreement entered into between tobacco product manufacturers
and various states, including New Mexico, and executed November

1 23, 1998 or any money released to the state from a qualified
2 escrow fund or otherwise paid to the state as authorized by
3 Section 6-4-13 NMSA 1978, enacted pursuant to the master
4 settlement agreement or as otherwise authorized by law. Money
5 in the fund shall be invested by the state investment officer
6 in accordance with the limitations in Article 12, Section 7 of
7 the constitution of New Mexico. Income from investment of the
8 fund shall be credited to the fund. Money in the fund shall
9 not be expended for any purpose, except as provided in this
10 section.

11 B. In fiscal year 2007 and in each fiscal year
12 thereafter, an annual distribution shall be made from the
13 tobacco settlement permanent fund to the tobacco settlement
14 program fund of an amount equal to fifty percent of the total
15 amount of money distributed to the tobacco settlement permanent
16 fund in that fiscal year until that amount is less than an
17 amount equal to four and seven-tenths percent of the average of
18 the year-end market values of the tobacco settlement permanent
19 fund for the immediately preceding five calendar years.
20 Thereafter, the amount of the annual distribution shall be four
21 and seven-tenths percent of the average of the year-end market
22 values of the tobacco settlement permanent fund for the
23 immediately preceding five calendar years. In the event that
24 the actual amount distributed to the tobacco settlement program
25 fund in a fiscal year is insufficient to meet appropriations

1 from that fund for that fiscal year, the secretary of finance
2 and administration shall proportionately reduce each
3 appropriation accordingly.

4 ~~[G. In addition to the distribution made pursuant~~
5 ~~to Subsection B of this section, in fiscal years 2009 through~~
6 ~~2013, 2016 and 2018, the remaining fifty percent of the total~~
7 ~~amount of money distributed to the tobacco settlement permanent~~
8 ~~fund in that fiscal year shall be distributed from the tobacco~~
9 ~~settlement permanent fund to the tobacco settlement program~~
10 ~~fund.~~

11 ~~D. In addition to the distribution made pursuant to~~
12 ~~Subsections B and E of this section, in fiscal year 2014,~~
13 ~~twenty-five percent of the total amount of money distributed~~
14 ~~pursuant to the master settlement agreement to the tobacco~~
15 ~~settlement permanent fund in that fiscal year shall be~~
16 ~~distributed from the tobacco settlement permanent fund to the~~
17 ~~lottery tuition fund.~~

18 ~~E. In addition to the distribution made pursuant to~~
19 ~~Subsections B and D of this section, in fiscal year 2014,~~
20 ~~twenty-five percent of the total amount of money distributed to~~
21 ~~the tobacco settlement permanent fund in that fiscal year shall~~
22 ~~be distributed from the tobacco settlement permanent fund to~~
23 ~~the tobacco settlement program fund for appropriation for~~
24 ~~direct services provided by early childhood care and education~~
25 ~~programs administered by the children, youth and families~~

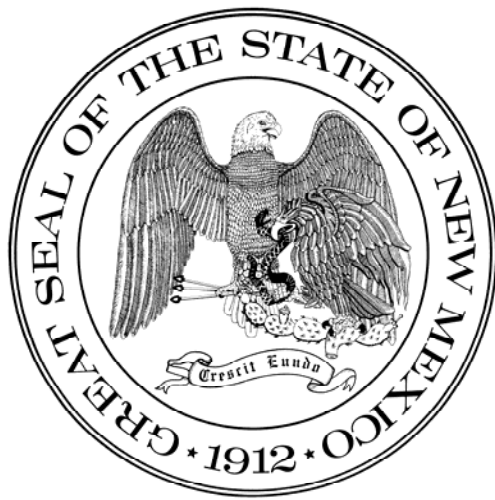
department.

F. ~~The tobacco settlement permanent fund is a reserve fund of the state. Money in the tobacco settlement permanent fund may be expended:~~

~~(1) in the event that general fund balances, including all authorized revenues and transfers to the general fund and balances in the general fund operating reserve, the appropriation contingency fund and the tax stabilization reserve, will not meet the level of appropriations authorized from the general fund for a fiscal year. In that event, in order to avoid an unconstitutional deficit, the legislature may authorize a transfer from the tobacco settlement permanent fund to the general fund but only in an amount necessary to meet general fund appropriations; or~~

~~(2) as provided in Laws 2016 (2nd S.S.), Chapter 4, Section 2 and in Section 7 of this 2017 act.]"~~

SECTION 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2019.



LEGISLATIVE COUNCIL SERVICE
SANTA FE, NEW MEXICO