F I S C A L   I M P A C T   R E P O R T

SPONSOR Aragon **DATE TYPED** 1/1/04 **HB**

SHORT TITLE Tobacco Settlement Appeal Bond Amounts **SB** 176

ANALYST Neel

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY04	FY05			
		See Narrative		

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to:

HB 59, Increase Tobacco Products Tax
HB 86, Tobacco Stamp Procedure Changes
HB 220, Tobacco Settlement Revenue Appropriation
SB 192, Smart Moves Smoking Cessation Program Funding
HM 1, Promote Cigarette Taxation Parity

SOURCES OF INFORMATION
LFC Files

Responses Received From:

Attorney General's Office (AGO)
Department of Health (DOH)

SUMMARY

Synopsis of Bill

Senate Bill 176 proposes to establish a maximum bond amount ($25 million) during the pendency of all appeals or review in a civil action by signatories of the Tobacco Master Settlement Agreement (MSA), regardless of the value of the judgment. This maximum bond amount, however, would not apply if it were proven by a preponderance of evidence by the appellee, that the appellant is dissipating assets outside the normal course of business in order to avoid payment of the judgment. SB 176 has an emergency clause.

Significant Issues

DOH makes the following observations:

The maximum limitation of $25 million for a bond may be too small given the size of the major tobacco companies. For example, Altria, the parent company of Phillip Morris USA, had total net revenues of $80.4 billion with net profits of $11.1 billion in 2002 (*US Securities & Exchange Commission, 2002 10-K report, March 27, 2003*). A maximum bond of $25 million for a company such as Altria amounts to 0.2% (one-fifth of one percent) of their annual net profits and 0.03% of their annual net revenues.

A May, 2000, the Wall Street Journal reported that Brown & Williamson cigarette advertising in magazines with large youth readership increased by more than 70% since Brown & Williamson signed the Master Settlement Agreement (MSA), prohibiting marketing to youth. The Federal Trade Commission's latest report (2001) shows that the tobacco industry has increased its marketing expenditures by 66% in the three years after the MSA was reached. This amounts to a record $11.45 billion per year, or $31.4 million per day. Based on these figures, it is estimated that the tobacco industry spends about $74 million annually on advertising in New Mexico.

FISCAL IMPLICATIONS

The current estimate for tobacco settlement revenue is $34.7 million Part of this figure may be at risk if companies such as Altria are force into bankruptcy through litigation.

OTHER SUBSTANTIVE ISSUES

Since the Master Settlement Agreement (MSA) was signed in November 1998, the cigarette industry has been forced to raise prices to cover the costs associated with the settlement. The agreement between the attorneys general from 46 States and the major cigarette companies was intended primarily to reimburse States for expenses related to the treatment of smoking-related illnesses. Cigarette companies have boosted prices as a result of payments required by the settlement. Higher prices have curtailed consumption, although not as much as originally expected. The long-term decline in cigarette consumption due to non-economic factors continues as well. Domestic consumption was expected to slide by more than 2% in 2003. Fourteen states were expected to increase excise tax in 2003 ranging from $ .17 to $1.50 in New Jersey. The consumption-weighted average State cigarette excise tax is 57.3 cents per pack of 20 cigarettes. (Source: Economic Research Service –US Department of Agriculture

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