ANALYSIS OF THE NEW JERSEY

FISCAL YEAR 1999 - 2000 BUDGET

SPECIAL REPORT: THE TOBACCO SETTLEMENT AGREEMENT

PREPARED BY

OFFICE OF LEGISLATIVE SERVICES

NEW JERSEY LEGISLATURE

MARCH 1999

NEW JERSEY STATE LEGISLATURE

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

Robert E. Littell (R), 24th District (Sussex and parts of Hunterdon and Morris), *Chairman*
Peter A. Inverso (R), 14th District (Parts of Mercer and Middlesex), *Vice Chairman*
Anthony R. Bucco (R), 25th District (Part of Morris)
Walter J. Kavanaugh (R), 16th District (Parts of Morris and Somerset)
Bernard F. Kenny, Jr. (D), 33rd District (Part of Hudson)
Joseph M. Kyrillos, Jr. (R), 13th District (Parts of Middlesex and Monmouth)
Wynona M. Lipman (D), 29th District (Parts of Essex and Union)

GENERAL ASSEMBLY APPROPRIATIONS COMMITTEE

Richard H. Bagger (R), 22nd District (Parts of Middlesex, Morris, Somerset and Union), *Chairman*
Leonard Lance (R), 23rd District (Warren and parts of Hunterdon and Mercer), *Vice Chairman*
Francis J. Blee (R), 2nd District (Part of Atlantic)
Joseph Charles, Jr. (D), 31st District (Part of Hudson)
Steve Corodemus (R), 11th District (Part of Monmouth)
Clare M. Farragher (R), 12th District (Part of Monmouth)
John C. Gibson (R), 1st District (Cape May and parts of Atlantic and Cumberland)
Guy R. Gregg (R), 24th District (Sussex and parts of Hunterdon and Morris)
John V. Kelly (R), 36th District (Parts of Bergen, Essex and Passaic)
Joseph R. Malone, III (R), 30th District (Parts of Burlington, Monmouth and Ocean)
William D. Payne (D), 29th District (Parts of Essex and Union)
Nellie Pou (D), 35th District (Part of Passaic)
Louis A. Romano (D), 33rd District (Part of Hudson)
Joseph Suliga (D), 20th District (Part of Union)
Bonnie Watson Coleman (D), 15th District (Part of Mercer)
Joel M. Weingarten (R), 21st District (Parts of Essex and Union)

OFFICE OF LEGISLATIVE SERVICES

Alan R. Kooney, *Legislative Budget and Finance Officer*
Allan Parry, *Assistant Legislative Budget and Finance Officer*

Glenn E. Moore, III, *Director, Central Staff*
William G. Double, *Section Chief, Law and Public Safety Section*

This report was prepared by the Legislative Budget and Finance Office and the Law and Public Safety Section of the Office of Legislative Services. The primary authors were Alan R. Kooney and William Castner.

Questions or comments may be directed to the Legislative Budget and Finance Office.
(Tel. 609 292-8030)

SPECIAL REPORT: THE TOBACCO SETTLEMENT AGREEMENT

INTRODUCTION

New Jersey initiated legal action against the tobacco industry in September 1996, asserting various claims for monetary and injunctive relief against the nation's largest tobacco companies. New Jersey's action was brought in the wake of a number of lawsuits already filed by other states, some as early as 1994. The claims for monetary damages were based largely on compensation sought for medical costs incurred by states in connection with the treatment of smoking-related illnesses suffered by their residents.

In June 1997, the attorneys general of 41 states, including New Jersey, reached a proposed $358 billion "global settlement" with the industry to be paid over 25 years. This scope of this settlement was such that it required federal ratification; however, the Congress was unable to reach an agreement to enact such legislation in early 1998.

After the Congressional stalemate, the attorneys general of eight states -- Washington, Colorado, North Dakota, Oklahoma, California, New York, Pennsylvania and North Carolina -- entered discussions with the tobacco industry seeking a settlement that would not require congressional ratification. On November 23, 1998, attorneys general from 46 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands agreed to a $206 billion settlement with the largest tobacco manufacturers. Four states -- Florida, Minnesota, Mississippi and Texas -- had previously reached individual settlements for $40 billion.

HOW MUCH MONEY IS NEW JERSEY EXPECTED TO GET?

Tobacco Settlement Agreement: Projected Annual Payments to New Jersey

Year	Amount
1999	$ 92.8 million
2000	$247.9 million
2001	$267.7 million
2002	$321.5 million
2003	$324.5 million
2004 to 2007	$270.8 million
2008 to 2017	$276.2 million
2018 & annually thereafter	$309.5 million

As announced in the Master Settlement Agreement, New Jersey is expected to receive approximately $7.6 billion in payments through 2025, almost 4 percent of the total settlement payments during that period and the eighth highest share among settling states. Each state's share of the settlement was based on a formula that took into account population, number of Medicaid patients and cigarette sales. The accompanying table summarizes the annual payment schedule for New Jersey.

The State's initial payment of $92.8 million is fixed and will not vary. However, there are a number of factors that will make the actual value of future payments received by New Jersey different from the published figures. Some of these factors are quantifiable while others are in the nature of contingent adjustments that cannot be determined at this time.

☛ *Payments "In Perpetuity"*

The agreement requires industry payments to be made to states "in perpetuity." (MSA Section IX (c)(1)). This means that industry payments to New Jersey will continue for the life of the agreement, not just until 2025.

☛ *Inflation Adjustment*

Under the Master Settlement Agreement, the amounts distributed as annual payments to the states will be indexed for inflation. In the year 2000, the payments will be adjusted by the greater of 3 percent or the actual percentage increase in the Consumer Price Index (CPI). In each year after 2000, the inflation adjustment will be the greater of 3 percent or the actual CPI percentage, applied to the prior year's payments. The compounding effects of the inflation adjustment will significantly increase the nominal value of the settlement for all states through the year 2025 and beyond. Of course, this leaves aside the possibility that future negative adjustments will be made to the payment stream for other reasons specified in the agreement. However, such negative adjustments, assuming they occur, would take place with or without an inflation factor built into the formula.

The master agreement payment schedule does not reflect this inflationary effect, perhaps because it could have been confusing in the absence of knowing what inflation will actually be in the future. However, the difference is important in a budgetary context. Unlike many economic forecasts, budget calculations (e.g., revenue and spending projections) are usually based on current or nominal dollars, rather than constant or discounted ones. In budgeting, it is assumed that the value of inflation, where relevant, is already implicit in the factors driving costs or revenues.

In New Jersey's case, the $7.6 billion in payments through 2025 will actually equal at least $11.6 billion in current dollars, applying only the minimum adjustment factor of 3 percent each year. If inflation exceeds 3 percent, the payments will be still higher. Appendix A shows a hypothetical calculation using the 3 percent minimum inflation factor.

☛ *Strategic Contribution Fund*

In addition to the $7.6 billion the State is expected to receive over the first 25 years of the master settlement agreement, New Jersey has been awarded $216 million as its share of an $8.6 billion Strategic Contribution Fund created as part of the settlement. These funds will be distributed over 10 years, beginning in 2008, and will be subject to many of the same future adjustments as other payments under the agreement.

A three-member appointed panel determined the distribution amounts for each state from the Strategic Contribution Fund, taking a number of factors into consideration. As the name of the fund implies, prominent among them was the relative role each state played in the tobacco industry lawsuit and the negotiations that resulted in the settlement. New Jersey's award was the twelfth highest among the states.

☛ *Volume of Cigarette Sales*

The agreement provides for an annual "volume adjustment" to state payments beginning in 2000, based on the number of cigarettes sold in the United States by participating manufacturers. While the formula is complex, future decreases in cigarette sales volume will result in payments to the states being adjusted downward. The base year for sales volume comparisons is 1997.

Tobacco sales have been decreasing steadily in recent years, and price increases associated with the settlement (45 cents or more per pack) may result in a more rapid decline in sales volume. As discussed later in this report, possible actions by the federal government could further increase the price of cigarettes and decrease consumption. *State Policy Reports*, a publication that tracks state government activities, notes that "[t]he combination of social disapproval, restrictions on where people may smoke, health warnings, competition from nicotine delivery devices other than cigarettes, and rising prices may reduce consumption below levels on which the agreement is predicated." This factor could turn out to have a significant negative effect on payments that New Jersey and other states are anticipating.

☛ *The Possibility of Bankruptcy*

Since settlement payments are largely backed by four major tobacco companies (Phillip Morris; R.J. Reynolds, Brown and Williamson and Lorrillard Tobacco), bankruptcy of any of these companies could reduce payments to the states. Moreover, it is only the domestic manufacturing subsidiaries of these companies who are parties to the Master Settlement Agreement, not their worldwide parent corporations. The solvency of the companies may be influenced by the outcome of certain class actions or individual lawsuits brought against the industry in the upcoming years. The agreement does not prohibit future civil lawsuits by private parties.

WHEN WILL THE MONEY BE AVAILABLE?

Settlement funds will not distributed to the states until there is "final approval" of the agreement. Final approval will occur on June 30, 2000 or the date by which "state-specific finality" has been achieved in a sufficient number of settling states, whichever is earlier. **In order for New Jersey to receive funds before June 30, 2000, the following steps must occur:**

☛ *New Jersey Must Achieve "State-Specific Finality"*

A state achieves "state-specific finality" when a state court approves the tobacco agreement and any appeals to the agreement have been dismissed or the time to file an appeal has expired. On December 4, 1998, New Jersey Superior Court Judge Jack J. Lintner approved the agreement, thus dismissing New Jersey's original lawsuit against the manufacturers and replacing it with a judicially enforceable consent decree. The consent decree places extensive restrictions on tobacco advertising, merchandising and lobbying. Although the attorneys general of some states have attempted to use the consent decree as a means to direct the expenditure of settlement funds, the consent decree New Jersey entered into with the tobacco manufacturers contains no provisions governing the use of the funds.

Prior to the trial court's approval of the agreement, a group of attorneys representing individual smokers filed a motion to intervene as co-plaintiffs in the agreement. On January 6, 1999, Judge Lintner entered an order denying the motion to intervene. Approximately two weeks later, counsel for the smokers appealed the judge's order. The Attorney General is seeking summary disposition of this appeal. As of March 1999, both parties were in the process of filing briefs at the appellate level over this matter.

Until the appeal is settled, New Jersey is precluded from attaining "state-specific finality" and participating in the financial and other benefits of the agreement.

☛ *The "80-80" Rule Must be Satisfied*

Even after New Jersey achieves state-specific finality, the so-called "80-80" rule must also be satisfied in order to access the funds before June 30, 2000. Under the "80-80" rule, 80 percent of the settling jurisdictions (or 42 states and territories) comprising at least 80 percent of the total settlement amount must achieve state-specific finality before any individual state can collect its share of the payments. Because the settlement amounts are heavily weighted toward the larger states, approval delays in just a few of those larger states can delay the distribution of initial payments to all states, regardless of their own approval status.

As of mid-March 1999, 37 states or territories, representing 48 percent of the money being allocated, had achieved state-specific finality. In addition to New Jersey, a number of other larger states have yet to achieve state-specific finality, including New York, Pennsylvania, Michigan and California, according to the National Association of Attorneys General (NAAG). It therefore appears that settlement funds will not be available to New Jersey in the current fiscal year.

The master agreement provides that if the "80-80" requirement has not been met by June 30, 2000, then those states that have achieved state-specific finality will be entitled to begin receiving payments at that time. If a state does not achieve state-specific finality by December 31, 2001 (the "settlement termination date"), it will be dropped from the master agreement and will be considered a non-settling state.

ENACTMENT OF "MODEL STATUTE" REQUIRED

Under the industry settlement, states face a strong inducement to enact standardized legislation requiring tobacco manufacturers who were not part of the settlement ("non-participating manufacturers") to make contributions to an escrow fund. These payments would be designed to prevent such manufacturers from gaining a potential pricing advantage over the settling manufacturers and would guarantee a source of compensation for any future judgment or settlement. Enactment of the "model statute" by each participating state is a condition of the state's receiving its full funding under the Master Settlement Agreement negotiated by the industry and the state attorneys general. The "model statute" must remain in full force and effect to ensure against any future payment reductions. In New Jersey, bills (A-2929, S-1713) have been introduced in both Houses of the Legislature to implement the model statute requirement.

TREATMENT OF TOBACCO MONIES IN THE GOVERNOR'S FY 2000 BUDGET PROPOSAL

AS REVENUE

The Governor's FY 2000 budget anticipates the receipt of $92.8 million as New Jersey's share of the initial settlement distribution. The receipt is recorded as General Fund revenue (see page C-13 of the budget document), but not via a direct deposit of the monies into the General Fund. Instead, the Governor recommends the creation of a new Tobacco Settlement Fund, administered by the State Treasurer, that would be established pursuant to language in the annual appropriations act (pages G-7 and G-8).[1] This fund would be the repository for payments made by

[1] Should the Tobacco Settlement Fund or a similar fund be created in the FY 2000 appropriations act, it would expire at the close of the fiscal year and have to be renewed annually. Several bills have been introduced to create a permanent trust fund to receive and hold settlement payments (see Appendix B) but none has been enacted to date.

the tobacco manufacturers under the national settlement. Amounts in the Tobacco Settlement Fund would then be transferred to the General Fund as anticipated revenue and become available for appropriation.

New Jersey is scheduled to receive a second payment of $247.9 million in FY 2000 under the distribution formula in the tobacco settlement agreement. The funds will be paid to the escrow agent in January and April of 2000 and the State will be able to draw them down no later than June 30, 2000 (assuming New Jersey has achieved state specific finality by then, which is highly probable). Should the requisite number of other states also achieve final approval (the "80-80" rule) before June 30, 2000, New Jersey could receive this $247.9 million payment earlier in the year. In either case, the funds will be effectively received in FY 2000 for budgeting purposes.

The Governor's FY 2000 budget does not account for the receipt of this second payment. The language proposed by the Governor to establish the Tobacco Settlement Fund simply states that "If receipts [to the Fund] are more than anticipated, such sums shall be appropriated at a later date." Under this language, the additional $247.9 million would be retained "off budget" in the Tobacco Settlement Fund until a decision were made on whether and how to spend it. At such time, the funds would presumably be transferred to the General Fund, recorded as State revenue, and appropriated by the Legislature in accordance with determined spending priorities.

The Legislature should be aware of the likely availability of these additional monies while the FY 2000 budget is still under consideration. However, the issue of whether or not to anticipate them in the budget is a matter of budgetary policy. It is possible, for reasons discussed elsewhere, that the amount New Jersey receives in FY 2000 will be more or less than the $247.9 million estimate published by NAAG. For instance, the April portion of the 2000 payment will be indexed by an inflation factor that should slightly increase the amount. On the other hand, if the volume of cigarettes sold nationally has declined, the Master Settlement Agreement provides for a reduction in industry payments (the "volume adjustment"). There is also a chance, albeit a slight one, that actions of the federal government to recoup a portion of state payments, or to otherwise legislate or litigate in this area, could impact FY 2000 amounts. (See discussion on federal involvement on page 6.) Finally, in an unlikely but worst-case scenario, New Jersey could fail to achieve state-specific finality by June 30, 2000, delaying payments until the following fiscal year.

All things considered, the "volatility factor" with regard to the receipt and amount of this additional tobacco industry payment in FY 2000 is probably no greater than it is for any of the large State tax sources that are annually assumed as anticipated revenues. Nevertheless, the Legislature may want to consider the risks and benefits of budgeting these funds in advance as opposed to waiting until they are actually received in FY 2000 to take such action.

AS RECOMMENDED APPROPRIATIONS

It was noted earlier that the Master Settlement Agreement imposes no restrictions on a state's use of tobacco industry payments. Although health-related uses in general, and anti-smoking campaigns in particular, are proposed in almost all states, tobacco monies are also likely to be used for purposes as varied as highway and prison construction, education, tax relief, debt reduction and as a source of general undesignated revenue.

In New Jersey, Governor Whitman has proposed spending all of the first $92.8 million on programs that are directly or indirectly related to health care and maintenance. One-half of the settlement money would go for new or expanded programs, including $18.6 million (20 percent) for anti-smoking initiatives. The remaining one-half would be applied to existing programs with the single largest proposed expenditure being $36.4 million for State employee health benefits (out of a total health benefits cost of $473.4 million). Appendix C shows the breakdown of the Governor's first-year proposal.

As discussed above, the budget makes no recommendation for appropriating the additional $247.9 million the State is scheduled to receive in FY 2000, leaving that decision for a later date.

THE PROSPECTS FOR FEDERAL INVOLVEMENT

RECOUPMENT

The U. S. Department of Health and Human Services has consistently maintained that, under the Medicaid provisions of the Social Security Act (Section 1903(d)), it is entitled to recoup its share of third party payments which each state has recovered (and has an obligation to recover) on behalf of Medicaid clients. The federal share is the Medicaid matching percentage, which in New Jersey's case is 50 percent. The state obligation is described in federal regulations (42 CFR 433.140(c)) as follows: "If the State receives [federal financial participation] in Medicaid payments for which it receives third party reimbursement, the State must pay the Federal government a portion of the reimbursement determined in accordance with the [federal medical assistance percentage] for the State."

Since many of the original state lawsuits against the tobacco industry were based on the premise that the states had incurred additional Medicaid costs for treatment of smoking-related illnesses, the federal government regards the tobacco settlement payments as the equivalent of third-party Medicaid recoveries for costs that the federal government shared. In fact, the President's FY 2000 Budget includes $18.9 billion in revenue over five years, beginning in 2001, from withholding payments to states for unspecified programs. Due to the delayed implementation date, many observers see this as a negotiating tactic, and the Director of the federal Office of Management and Budget was quoted in February as saying "It's our way of getting that dialogue going."

The states have pointed out that the final settlement with the tobacco manufacturers does not mention Medicaid, but more importantly, they note that the settlement came about entirely through the efforts of the states with no help or participation from the federal government. The federal government's own failure to enact a tobacco settlement stands in stark contrast to the efforts of the attorneys general of the four states that settled individually and the other 46 that signed the master settlement.

As things now stand, federal legislation is necessary to ensure a prohibition against federal recoupment of state tobacco settlement monies. Several bills have been introduced in Congress that would do so (see Appendix D, letter from North Carolina State Representative Dan Blue, President of NCSL, to U.S. Representative Michael Bilirakis in support of H.R. 351). The most active initiative at this time is the prohibition against recoupment contained in S. 544, an otherwise unrelated federal emergency supplemental appropriations bill. After tabling an amendment on March 18 that would have traded the prohibition for a restriction on states' abilities to spend the tobacco funds as they determine, the Senate sent the bill, with the no-seizure provision intact, to a House-Senate conference committee, where its prospects are uncertain.

FEDERAL RESTRICTIONS ON USE OF STATE FUNDS

It is possible that the federal government will, through a formal agreement with the states or through a law, seek to ensure that a percentage of the funds are used for health-related purposes as a *quid pro quo* for not seeking to recoup a portion of the states' settlement payments. Variations on this theme would give the Secretary of Health and Human Services the power to review and approve proposed state appropriations of tobacco settlement monies. As noted above, such an attempt was recently made in the U.S. Senate as a proposed amendment to an emergency supplemental appropriations bill for federal FY 1999 that contains a provision prohibiting the Secretary of Health and Human Services from seizing state tobacco settlement funds. The restrictive amendment was tabled in a March 18 Senate vote.

Not surprisingly, in the absence of any federal settlement with the tobacco industry, the Congress is receiving intensive lobbying by groups and government agencies seeking to ensure that all states spend a portion of their tobacco payments for specific purposes. For instance, the national organization Campaign for Tobacco-Free Kids is advocating a mandatory 25 percent set aside in each state for youth access and tobacco prevention/cessation activities as a condition for state retention of all settlement funds. And the Deputy Administrator of the Health Care Financing Administration, the agency that operates the Medicaid and Medicare programs, told a Senate appropriations subcommittee that "The administration proposes that states keep 100 percent of the tobacco settlement funds in exchange for a commitment to use a portion of the proceeds to reduce youth smoking, protect tobacco farmers, improve public health and assist children."

While most, if not all states have expressed an intention to use some amount of their tobacco payments for health programs in general, and anti-smoking campaigns in particular, the position of the states as expressed by NCSL and the National Governors' Association is that federal intervention in this matter is an inappropriate intrusion on state powers, made all the more onerous in light of the federal government's non-involvement in negotiating the 1998 tobacco settlement.

A FEDERAL LAWSUIT?

In his January 1999 State of the Union speech, President Clinton announced plans to file a federal lawsuit against the tobacco industry to recover costs for treatment of smokers under Medicare and other federal health programs such as military and veterans' health care. Some estimates placed the potential liability for which damages would be sought "in the hundreds of billions of dollars." The U.S. Justice Department is currently researching the issue and forming a task force to direct any legal activity. However, it may be months before a decision is actually made on how to proceed.

There are two aspects of a federal lawsuit that could potentially affect the state tobacco settlement. First, the state-industry Master Settlement Agreement contains a provision that if federal legislation is enacted (prior to December 1, 2002) that requires tobacco companies to make payments to the federal government, and if a portion of the federal money is then distributed to states with health-care restrictions placed on its use, then these federal payments would be offset by lower industry payments to the states under the existing agreement. In the case of the announced plans for a federal lawsuit based on 100 percent federal programs, subsequent legislation of this nature may not become a factor. However, it bears watching.

Second, a successful federal lawsuit or a negotiated settlement between the tobacco industry and the federal government could have the effect of reducing tobacco company sales, thereby bringing the "volume adjustment" clause of the state settlement agreement into play. This adjustment is to be calculated each year against the state payments based on the volume of cigarettes shipped for sale within the United States. If the industry pays for a federal settlement with higher prices, as they did with the state settlement, the volume of cigarettes sold may decrease significantly, impacting the operating income of the tobacco companies.

A Federal Tax Increase?

In February, President Clinton proposed raising $8 billion in revenue through a 55 cents per pack increase in the federal excise tax on cigarettes, which is currently 24 cents. He also proposed that an already scheduled increase in the federal tax to 39 cents in 2002, be advanced to 2000. These proposals were part of the President's FY 2000 budget submission.

The prospects would appear doubtful for a cigarette tax increase being approved by the Congress at a time when the federal government is projecting a $117 billion surplus and tobacco farmers are seeking relief. Nevertheless, an increase in the price of cigarettes leading to a corresponding reduction in sales volume would have a negative impact on state settlement payments through the volume adjustment discussed previously.

For Additional Information

The National Association of Attorneys General (NAAG) played a pivotal role in coordinating the tobacco settlement and will play a continuing role in its implementation and enforcement acting on behalf of the participating states. NAAG determined the amounts earmarked for each state and appointed the three-member panel of judges that decided the distribution of the $8.6 billion Strategic Contribution Fund. The NAAG website (www.naag.org) contains the full text of the Master Settlement Agreement as well as other related documents and news briefs. The National Conference of State Legislatures (NCSL) has prepared a detailed analysis of the settlement entitled *NCSL Summary: The Master Settlement Agreement.* This document, which was last updated on March 12, 1999, is included as Appendix E to this report. NCSL also maintains an active website (reached from www.ncsl.org) devoted to the status of the tobacco settlement and related activities in Washington, D.C. and in each state. An organization called Tobacco BBS has a continuously updated website (www.tobacco.org) with daily and archived news summaries from around the nation on all aspects of tobacco and smoking news, including state governments' plans for spending tobacco settlement payments.

APPENDIX CONTENTS

Appendix A

TOBACCO SETTLEMENT PAYMENTS TO NEW JERSEY
UNADJUSTED AND INFLATION ADJUSTED

CY RECEIVED	ANNOUNCED TOBACCO SETTLEMENT PAYMENT	TOBACCO SETTLEMENT PAYMENT INDEXED FOR 3% INFLATION*
1999	$92,807,911	$92,807,911
2000	$247,942,134	$252,512,631
2001	$267,737,675	$278,047,362
2002	$321,474,801	$341,878,765
2003	$324,517,212	$352,142,732
2004	$270,844,420	$313,982,914
2005	$270,844,420	$323,402,402
2006	$270,844,420	$333,104,474
2007	$270,844,420	$343,097,608
2008	$276,219,545	$360,403,855
2009	$276,219,545	$371,215,971
2010	$276,219,545	$382,352,450
2011	$276,219,545	$393,823,023
2012	$276,219,545	$405,637,714
2013	$276,219,545	$417,806,846
2014	$276,219,545	$430,341,051
2015	$276,219,545	$443,251,282
2016	$276,219,545	$456,548,821
2017	$276,219,545	$470,245,286
2018	$309,514,383	$542,735,344
2019	$309,514,383	$559,017,404
2020	$309,514,383	$575,787,927
2021	$309,514,383	$593,061,564
2022	$309,514,383	$610,853,411
2023	$309,514,383	$629,179,014
2024	$309,514,383	$648,054,384
2025	$309,514,383	$667,496,016
TOTAL	$7,576,167,927	$11,588,788,162

*CY 2000-2003, only "annual payment" portion of state allocation adjusted.

TOBACCO LEGISLATION IN THE NEW JERSEY LEGISLATURE

Because of the temporary nature of the annual appropriations act, it is not an ideal vehicle for establishing and maintaining a permanent fund, assuming the Legislature would wish to create one. The existence in statute of a special permanent fund or account would help to promote accountability for the receipt and management of the tobacco settlement payments. It in no way precludes the Legislature from exercising its budgetary prerogative to appropriate (or not appropriate) the settlement proceeds on an annual basis.

Bills and resolutions have been introduced in the Legislature to make permanent dedications of tobacco settlement funds, some of which are general in nature with regard to health-related purposes and others more specific in addressing health needs (e.g., tobacco prevention and cessation, hospital charity care, low-income health insurance coverage, cancer research). One bill would use the settlement funds for refundable property tax credits under the Gross Income Tax act. Other introduced legislation would enact the required "Model State Statute" or memorialize the Congress. The following introduction list was current as of March 18, 1999.

A 1007 (Vandervalk/Wisniewski) -- Establishes the New Jersey Tobacco Settlement Trust Fund as a special, nonlapsing dedicated fund within the General Fund, which will be comprised of money the state receives from the national tobacco settlement. A minimum of 5 percent of the balance in the fund as of June 30 of each year will be dedicated to fund cancer research and an additional 5 percent will be dedicated to fund tobacco prevention and education services for children and adolescents. The rest of the money will be expended only upon appropriation by the Legislature and solely for the purpose of providing funding for health care and smoking prevention programs.

A 2720 (Wisniewski) -- Creates the State Tobacco Monies Trust Fund as the depository for monies received by the state from the tobacco settlement. The money in the trust fund will be dedicated to funding programs to provide or promote health care and prevention or cessation of tobacco use among state residents.

A 2745 (Carroll/Talarico) -- Creates the New Jersey Tobacco Settlement Monies Property Tax Relief account within the Property Tax Relief Fund. All settlement funds will be used to provide refundable property tax credits under the Gross Income Tax.

A 2836 (Caraballo/Conaway,Jr.) -- Establishes the State Tobacco Settlement Monies Trust Fund as a special, nonlapsing fund into which all money received from the national tobacco settlement will be deposited. The money in the trust fund will be annually appropriated by the Legislature as follows:

- 50 percent to the Health Care Subsidy Fund to fund charity care subsidy payments.
- 25 percent to the New Jersey State Commission on Cancer Research to fund approved research projects by qualified research institutions.
- 15 percent to the Health Care Subsidy Fund to fund subsidies for health benefits coverage under the Health Access New Jersey program.
- 10 percent to the Department of Health and Senior Services to fund tobacco prevention and education services for children and adolescents.

A-2910 (LeFevre) -- Establishes the "Health Care Investment Trust Fund" as depository for monies received from the tobacco settlement agreement. Dedicates 75 percent of balances to Health Care Subsidy Fund for hospital charity care; 12.5 percent to NJ Commission on Cancer Research for approved cancer research projects; and 12.5 percent to Department of Health and Senior Services for cancer screening, education and treatment services. Requires annual appropriation of Trust Fund balances.

A 2929 (Vandervalk/Russo); S 1713 (Sinagra) -- Requires tobacco product manufacturers who did not participate in the national tobacco settlement to pay into a reserve fund in order to guarantee a source of compensation for any future judgment or settlement. Enactment of this model state statute" required under terms of Master Settlement Agreement between state attorneys general and tobacco industry as a condition of each state's receipt of full funding under the agreement.

ACR 148 (Weinberg/Quigley) -- Proposes to dedicate tobacco settlement monies to health care and smoking prevention programs. A constitutional amendment will be placed on the ballot for voters to approve or reject that will outline how the funds will be deposited and disbursed.

S 437 (Bassano) -- Ensures that the Health Access New Jersey health insurance subsidy program will, beginning in FY 1999 and in each subsequent fiscal year, receive at least $50 million from tobacco settlement funds.

S 769 (Sinagra) -- Creates the Tobacco Damages Recovery Fund, a nonlapsing fund that will be credited with any monies received by the state from the tobacco settlement. The legislature will annually appropriate the money from the fund for health-related purposes, which will include 5 percent to fund cancer research and 1 percent to fund tobacco prevention and education services for children and adolescents.

S 1666 (Littell/Inverso) -- Establishes the New Jersey Tobacco Settlement Trust Fund as an independent, nonlapsing, dedicated fund in the State treasury into which will be deposited all money received from the national tobacco settlement. The money in the Trust Fund will be disbursed as follows: 25 percent of the amounts received annually will be credited to a perpetual reserve account and invested; and 75 percent plus the investment earnings on the 25 percent shall be appropriated for health care programs, health related research, support of the State government, and reducing State debt.

SCR 95 (Turner) -- Proposes an amendment to the constitution that would create a special account in the state treasury to deposit revenues from the tobacco settlement. The amendment would be submitted to the voters to approve or reject.

SCR 107 (DiFrancesco/Codey); ACR 166 (Collins/Doria) -- Memorializes Congress to pass, and the President to sign, H.R. 351 or similar legislation which would ensure that the federal government will not seek to recoup any money recovered by the states from the tobacco companies as a result of the national tobacco settlement or individual state settlements.

SR 76 (Bassano/Sinagra) -- Memorializes Congress to enact legislation to limit attorneys' fees in the tobacco settlement.

Where this year's tobacco settlement money would go

NEW AND EXPANDED PROGRAMS	DOLLARS	PERCENT*
Anti-smoking initiatives	$18.6 million	20%
Breakdown of anti-smoking initiatives		
Anti-tobacco media campaign aimed at youth	$7.2 million	39%
Community-based anti-tobacco programs	$4.8 million	26%
Programs to help smokers quit	$2.6 million	14%
School-based anti-tobacco programs	$2.2 million	12%
Research, surveillance and evaluation	$1.7 million	9%
Alternatives to nursing homes	$10.5 million	11%
Psychiatric care for prisoners	$9.7 million	10%
Substance abuse programs	$3.2 million	3%
Early cancer screening	$2.7 million	3%
Programs to keep people well	$1.7 million	2%
Total for new and expanded programs	**$46.4 million**	**50%**
EXISTING PROGRAMS		
Health benefits for state workers	$36.4 million	39%
Prescription drugs for elderly & disabled	$8.7 million	9%
Medical care for welfare recipients	$1.3 million	1%
Total increases in existing programs	**$46.4 million**	**50%**
Total from tobacco settlement	**$92.8 million**	

*Discrepancies in percentage totals are due to rounding

SOURCES: Governor's Office, Treasury and Department of Health and Senior Services

Appendix D

NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

January 27, 1999

The Honorable Michael Bilirakis
United States House of Representatives
2367 Rayburn House Office Building
Washington, D.C. 20515

Dear Representative Bilirakis:

On behalf of the National Conference of State Legislatures (NCSL), I write in support of H.R. 351, legislation that you recently introduced that will ensure that states retain all of their tobacco settlement funds. NCSL has made this legislation its top priority for 1999. NCSL is very appreciative of the leadership you provided on this issue during the 105th Congress that led to strong bipartisan cosponsorhip of your previous bill and its near enactment. I am grateful for your willingness to lead the way again in 1999. The nation's state legislators will work steadfastly with you and all of your House colleagues to ensure that H.R. 351 is enacted.

It is through the sole efforts of states that the historic settlement of November 23, 1998 and four prior individual state settlements were finalized. States initiated the suits that led to the settlements without any assistance from the federal government. States consumed their own resources and accepted all of the risks with their suits. Additionally, the November 23, 1998 agreement makes no mention of Medicaid, which is the program cited by those who want to establish a basis for seizing state tobacco settlement funds. It is clear to me that the federal government has no claim to these funds. I fully appreciate, however, the need for clarification that H.R. 351 would provide.

As you well know, states are now finalizing the settlement, carrying out the terms of the accord and making initial fiscal determinations about how to most responsibly apply settlement funds to public health and other needs. Threats of recoupment and related uncertainties only compromise our ability to progress with finalizing the settlement and working to reduce youth smoking, abating youth access to tobacco products and addressing the economic impact of anticipated reduced demand for tobacco products. Enactment of H.R. 351 would eliminate these threats and permit states to move forward.

I look forward to working closely with you to a successful and mutually acceptable resolution of this issue.

Sincerely,

Daniel T. Blue, Jr.

Representative Dan Blue
North Carolina House of Representatives
President, NCSL

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services provides nonpartisan assistance to the State Legislature in the areas of legal, fiscal, research, bill drafting, committee staffing and administrative services. It operates under the jurisdiction of the Legislative Services Commission, a bipartisan body consisting of eight members of each House. The Executive Director supervises and directs the Office of Legislative Services.

The Legislative Budget and Finance Officer is the chief fiscal officer for the Legislature. The Legislative Budget and Finance Officer collects and presents fiscal information for the Legislature; serves as Secretary to the Joint Budget Oversight Committee; attends upon the Appropriations Committees during review of the Governor's Budget recommendations; reports on such matters as the committees or Legislature may direct; administers the fiscal note process and has statutory responsibilities for the review of appropriations transfers and other State fiscal transactions.

The Office of Legislative Services Central Staff provides a variety of legal, fiscal, research and administrative services to individual legislators, legislative officers, legislative committees and commissions, and partisan staff. The central staff is organized under the Central Staff Management Unit into ten subject area sections. Each section, under a section chief, includes legal, fiscal, and research staff for the standing reference committees of the Legislature and, upon request, to special commissions created by the Legislature. The central staff assists the Legislative Budget and Finance Officer in providing services to the Appropriations Committees during the budget review process.

Individuals wishing information and committee schedules on the FY 2000 budget are encouraged to contact:

Legislative Budget and Finance Office
State House Annex
Room 140 PO Box 068
Trenton, NJ 08625

(609) 292-8030 Fax (609) 777-2442