Underlying the settlement reached by the State of Texas and tobacco companies is the question of how to allocate the vast sums of money which have been awarded to the state. As the current legislative session progresses, there are numerous issues and options for the legislature to consider.

This In Brief issue will attempt to clarify the legal and fiscal maze which has resulted from numerous agreements between the parties involved. The legislature must decide whether to spend the settlement funds via regular appropriations, or to create special endowment funds with the money as proposed by Article XII of the appropriations bill and others. The brief also summarizes the settlement agreements, the Governor's proposal regarding use of the tobacco settlement funds, other legislation, potential federal action, and the status of other states' actions.

The overall settlement with the tobacco companies and agreements between state and local officials have finally borne fruit, with settlement proceeds finding their way to the state treasury. These proceeds are substantial and, because of the nature and manner in which the money is proposed to be spent, the issues surrounding the money are complicated.

**BACKGROUND & SETTLEMENT:** The suit was filed by Attorney General Dan Morales on March 26, 1996, against the American Tobacco Company, et al. (including Philip Morris, R.J. Reynolds, Brown & Williamson, United States Tobacco, and Lorillard), in the United States District Court, Eastern District of Texas, and settled, via the Comprehensive Settlement Agreement and Release (CSA) on January 16, 1998. A portion of the recovery includes perpetual payments (these payments will not end) from the tobacco companies, which could total over $500 million per year for the State of Texas. The CSA was approved by the court on January 22, 1998. The CSA was then revised by a Stipulation of Amendment on July 24, 1998, based on the Most Favored Nation (MFN) provision of the CSA. The July 24 agreement is known as the MFN agreement.

The MFN provision allowed the State of Texas to revise its agreement to settlement terms at least as favorable as any future more favorable agreement with another state. Based on this provision, the State of Texas was able to improve its settlement, because of the settlement reached on May 8, 1998, between the tobacco companies and the State of Minnesota.
The CSA, as revised by the MFN agreement, stipulates payments to the State of Texas and local governments in four different parts as follows (a more detailed breakdown is depicted on page 4).

- **$725.0 million during 1998 in initial payments from the CSA**;
- **$264.0 million during 1998 for the pilot program aimed at the reduction of the use of tobacco products by children under the age of 18**;
- **$2,275.0 million for the five years beginning in 1999 in supplemental initial payments from the MFN agreement (specifically allocated by the County & Hospital District Agreement summarized below)**; and
- **Annual, perpetual payments beginning in 1998 estimated to be $89 million, increasing to an estimated $580 million per year by 2003. If publicized estimates hold, the state is likely to recoup $14,101.3 million from the first 25 payments beginning in 1998.**

Most of the payments scheduled to be made by the tobacco industry to satisfy the settlement are subject to a formula adjustment based on the Consumer Price Index, tobacco industry profitability, other economic variables, and federal legislation. The adjustments could increase or decrease the total amount due.

Among other provisions, the CSA/MFN also prohibits certain advertising of tobacco products such as the use of billboards and the promotion of cigarettes in a motion picture.

It is important to realize that the agreements described above are agreements between the State of Texas and the tobacco companies. Two other agreements, the Texas Memorandum of Understanding (MOU) and the County & Hospital District Agreement, are agreements between state officials, and state and local officials respectively. These agreements affect the settlement and are summarized below.

### Texas MOU

The Memorandum of Understanding signed by former Attorney General Dan Morales, Senator Bill Ratliff, and Representative Robert Junell, on February 3, 1998, states that all parties agree to use their best efforts to ensure that all future tobacco settlement funds will be utilized for the benefit of children and public health.

The intent of the MOU is to avoid any delay in obtaining the settlement funds and their disbursement, and rather than continue litigation regarding the issue, agree that it is in the best interests of the state, the children, and the public health of the State of Texas to prevent a delay in the implementation of the court order and in the disbursement of the funds. With this spirit of settlement in mind, the MOU sets forth an agreement between the three parties, directing all payments received from the tobacco industry to be deposited in the General Revenue Fund, to facilitate the implementation of the initial phase of the federal Children's Health Insurance Program (CHIP) and pilot programs to reduce underage tobacco use.

The MOU also provides that certain expenditures will be introduced in the General Appropriations bill for the 76th Legislature's review. Those expenditures are itemized in Article XII of the General Appropriations bill and are summarized in a section to follow. An amendment to the MOU dated February 3, 1998, provides that an amount, to be determined at a later date for the purpose of providing funding to qualifying political subdivisions of the state, which is intended to assist those political subdivisions in their mission of providing health care to citizens and residents of Texas, is added.

The MOU further provides that legislation will be introduced to dedicate all remaining 1998 tobacco funds deposited to the General Revenue fund for the following purposes: the Permanent Fund for Children and Public Health and the Permanent Health Fund for Higher Education. These agreements have been introduced as H.B. 1676 and H.B. 1945 respectively, and are summarized in another section of this report.

### County & Hospital District Agreement

Another agreement, the July 18, 1998, Agreement Regarding Disposition of Settlement Proceeds (agreement) between former Attorney General Dan Morales, Senator Bill Ratliff, Representative Robert Junell, certain counties and hospital districts, and the American Tobacco Company, et. al., regarding the Texas tobacco settlement, applies only to an additional $2.275 billion that will be received over the five years from 1999 to 2003 as a result of the MFN provision of the original Texas settlement and the State of Minnesota settlement. The agreement was reached to settle and resolve outstanding issues and controversies relating to the CSA and the disbursement of settlement proceeds. The $2.275 billion is “extra” money, over and above the original Texas settlement, and the agreement does not effect distribution of the funds to be distributed under that settlement.

The agreement sets up two funds to be managed by the Comptroller's Office:

- **The Lump Sum Trust Account**: Will receive a total of $450 million over the three years beginning January 1999. The first $300 million is to be distributed to political subdivisions on a per capita basis. Political subdivisions are hospital districts, political subdivisions maintaining public hospitals, and counties responsible for providing indigent health care. The remaining $150 million will be distributed to such subdivisions on a pro rata basis, based on unreimbursed health care expenses, and
- **The Permanent Trust Account**: Will receive an estimated total of $1.8 billion over the next four years beginning January
2000. The account earnings are to be distributed to the subdivisions named above on a pro rata basis, based on unreimbursed health care expenses. The account shall be placed outside the State Treasury and is not subject to legislative appropriation.

The agreement stipulates that none of the $2.275 billion be spent on the contingent fee agreement with the attorneys for the tobacco settlement. It also provides for proportional reduction of payments to the subdivisions, if federal action lowers the aggregate payments under the settlement. Under the agreement, an advisory board consisting of representatives of the political subdivisions must be created pursuant to enabling legislation for the agreement. The agreement has been introduced as H.B.1161, which is summarized in another section of this report.

PROPOSALS: OPTIONS FOR THE 76TH LEGISLATURE

ARTICLE XII, GENERAL APPROPRIATIONS BILL

Senator Ratliff and Representative Junell filed the appropriations bills, S.B. 2 and H.B. 1 respectively, with Article XII of the bill reserved for proposed budget items to be funded by tobacco settlement funds. The intent of the article is to implement provisions of the Texas MOU, and in fact would fund similar provisions found in other legislation. The pertinent components of the article are as follows:

TOBACCO SETTLEMENT RECEIPTS

From receipts collected pursuant to the Comprehensive Tobacco Settlement Agreement and Release and pursuant to the Memorandum of Understanding executed on February 3, 1998, the 76th Legislature, 1999, makes the following appropriations for the 2000-01 biennium:

<table>
<thead>
<tr>
<th>Tobacco Settlement Receipts (Out of the General Revenue Fund - Dedicated)</th>
<th>Fiscal Year 2000</th>
<th>Fiscal Year 2001</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Permanent Health Fund for Higher Education</td>
<td>$400,000,000</td>
<td>U.B.</td>
</tr>
<tr>
<td>2. Permanent Fund for Children and Public Health</td>
<td>$150,000,000</td>
<td>U.B.</td>
</tr>
<tr>
<td>3. Pilot Project to Reduce Smoking</td>
<td>$200,000,000</td>
<td>U.B.</td>
</tr>
<tr>
<td>4. U.T. Health Science Center at San Antonio Endowment</td>
<td>$200,000,000</td>
<td>U.B.</td>
</tr>
<tr>
<td>5. Children’s Health Insurance Program</td>
<td>$35,800,000</td>
<td>$143,800,000 &amp; U.B.</td>
</tr>
<tr>
<td>6. U.T. M.D. Anderson Cancer Center Endowment</td>
<td>$100,000,000</td>
<td>U.B.</td>
</tr>
<tr>
<td>7. Dept. of Health (EMS/Trauma System Endowment)</td>
<td>$100,000,000</td>
<td>U.B.</td>
</tr>
<tr>
<td>8. Healthcare Facility Capital Fund Endowment</td>
<td>$50,000,000</td>
<td>U.B.</td>
</tr>
<tr>
<td>9. Texas Tech Health Sciences Center (El Paso)</td>
<td>$50,000,000</td>
<td>U.B.</td>
</tr>
<tr>
<td>10. U.T. Southwestern Medical Center at Dallas</td>
<td>$50,000,000</td>
<td>U.B.</td>
</tr>
<tr>
<td>11. Long-Term Health Care For Children (Waiting List)</td>
<td>$50,000,000</td>
<td>U.B.</td>
</tr>
<tr>
<td>12. Department of Health (Hospitals/Facilities)</td>
<td>$35,000,000</td>
<td>U.B.</td>
</tr>
<tr>
<td>13. Dept. of MHMR (New Generation Medications)</td>
<td>$30,500,000</td>
<td>U.B.</td>
</tr>
<tr>
<td>14. Texas Tech Health Sciences Center Endowment</td>
<td>$25,000,000</td>
<td>U.B.</td>
</tr>
<tr>
<td>15. U.T. Medical Branch at Galveston Endowment</td>
<td>$25,000,000</td>
<td>U.B.</td>
</tr>
<tr>
<td>16. U.T. Health Science Center at Houston Endowment</td>
<td>$25,000,000</td>
<td>U.B.</td>
</tr>
<tr>
<td>17. U.T. Health Center at Tyler Endowment</td>
<td>$25,000,000</td>
<td>U.B.</td>
</tr>
<tr>
<td>18. Texas A&amp;M System Health Science Center Endowment</td>
<td>$25,000,000</td>
<td>U.B.</td>
</tr>
<tr>
<td>19. UNT Health Science Center at Fort Worth Endowment</td>
<td>$25,000,000</td>
<td>U.B.</td>
</tr>
<tr>
<td>20. Municipal Employee Group Benefit Risk Pool</td>
<td>$10,000,000</td>
<td>U.B.</td>
</tr>
<tr>
<td>21. Texas Association of School Boards Group Health</td>
<td>$5,000,000</td>
<td>U.B.</td>
</tr>
<tr>
<td>22. Lower Rio Grande Valley Regional Academic Health</td>
<td>$5,000,000</td>
<td>U.B.</td>
</tr>
<tr>
<td>23. Texas Healthy Kids Fund/Corporation</td>
<td>$3,000,000</td>
<td>U.B.</td>
</tr>
<tr>
<td><strong>TOBACCO SETTLEMENT RECEIPTS, Grand Total</strong></td>
<td><strong>$1,624,300,000</strong></td>
<td><strong>$143,800,000</strong></td>
</tr>
</tbody>
</table>

Source: Knight Ridder/Tribune Business News.
once certain expenditures are built into an agency's bill pattern, it is money with two resulting effects: (1) as a matter of general practice, inflate the appropriations bill patterns of those agencies receiving the Appropriations Act as direct appropriations, the Legislature would if the tobacco settlement funds were to be built into the General revenue source which could ultimately be depleted. Put another way, have the added benefit of not only benefit the health and education programs listed, but would.

Adopting Article XII in a fashion proposed by S.B. 2 (as above), would
13, 20, 21, 22, and 23 represent those direct appropriations.

appropriations affecting the named budget bill pattern. Items 5, 11, 2001 $358,590,000 $605,090,000 2002 $471,300,000 $555,090,000 2003 $564,720,000 $209,730,000 2004 $580,000,000 $0 2005 $580,000,000 $0 2006 $580,000,000 $0 2007 $580,000,000 $0 2008 $580,000,000 $0 2009 $580,000,000 $0 Thereafter $580,000,000 $0

to the State Treasury which would provide perpetual sources of funds from those institutions. 12 health-related institutions of higher education listed above would be established as permanent funds in the State Treasury. 13, 20, 21, 22, and 23 represent those direct appropriations.

The permanent funds and endowments for institutions of higher education listed above would be established as permanent funds in the State Treasury which would provide perpetual sources of funds from the interest earned by the funds, prohibiting the use of the corpus of the funds for any purpose. All other line items would be direct appropriations affecting the named budget bill pattern. Items 5, 11, 13, 20, 21, 22, and 23 represent those direct appropriations.

Adopting Article XII in a fashion proposed by S.B. 2 (as above), would not only benefit the health and education programs listed, but would have the added benefit of not creating new appropriations from a revenue source which could ultimately be depleted. Put another way, if the tobacco settlement funds were to be built into the General Appropriations Act as direct appropriations, the Legislature would inflate the appropriations bill patterns of those agencies receiving the money with two resulting effects: (1) as a matter of general practice, once certain expenditures are built into an agency's bill pattern, it is difficult for future legislatures to remove those appropriations; and (2) when the source of that revenue comes to an end, the legislature will be in the unenviable position of deciding to remove those budget items already determined to be worthy of funding, or to make up the funding by cannibalizing other parts of the budget.

**House Appropriations Committee Action:** The committee passed its version of Article XII with $1.814 billion in proposed spending. Among other changes, the committee adopted an additional $46 million item, Item 24, funding the endowment for the General Academic Institutions Nursing and Allied Health Programs. Funding the endowment was made possible by interest earned by tobacco receipts already deposited to the State Treasury. H.B. 1945, discussed below, would create the permanent fund.

**Senate Finance Committee Action:** The committee passed its version of Article XII by deleting the $400 million line item (Item 1) for the Permanent Health Fund for Higher Education, and replacing it with a $290 million appropriation to the Teacher Retirement System, $40 million to the Department of Criminal Justice, $30 million to the Pilot Project to reduce smoking (this would be an additional lump sum payment), and $10 million to the Rural Health Care Initiative. Other changes included increasing the MHMR appropriation for new generation medications to $80 million, increasing the M.D. Anderson Cancer Center Endowment to $150 million, and reducing the U.T. Health Science Center at San Antonio Endowment to $150 million. With all the changes considered, the committee's version of Article XII, funded by tobacco settlement proceeds, totals $1.811 billion. The committee appropriated an additional $35 million from other revenue sources for Article XII items.

**Other Legislation**

H.B. 1945 by Junell, provides a vehicle to implement the Texas MOU and the County & Hospital District Agreement by:

- Creating the Permanent Health Fund for Higher Education (fund), to be held outside the General Revenue Fund, administered by the University of Texas System Board of Regents (board) and authorizing the board to manage the fund on behalf of 10 health-related institutions of higher education. Sixty percent of fund earnings would be distributed in equal amounts to each institution with the remaining 40 percent distributed in equal amounts based on three funding criteria: instructional expenditures, research expenditures, and unsponsored charity care. The bill would transfer $400 million to the fund on the effective date of the bill from the Tobacco Settlement Temporary Hold Account of the General Revenue Fund.

- Creating separate permanent endowment funds for the benefit of 12 health-related institutions of higher education, to be held

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**Texas Tobacco Settlement Funds**

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>State Totals</th>
<th>Local County &amp; Hospital Districts</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>1999</td>
<td>$1,120,108,452</td>
<td>$300,000,000</td>
</tr>
<tr>
<td>2000</td>
<td>$332,375,000</td>
<td>$605,090,000</td>
</tr>
<tr>
<td>2001</td>
<td>$358,590,000</td>
<td>$605,090,000</td>
</tr>
<tr>
<td>2002</td>
<td>$471,300,000</td>
<td>$555,090,000</td>
</tr>
<tr>
<td>2003</td>
<td>$564,720,000</td>
<td>$209,730,000</td>
</tr>
<tr>
<td>2004</td>
<td>$580,000,000</td>
<td>$0</td>
</tr>
<tr>
<td>2005</td>
<td>$580,000,000</td>
<td>$0</td>
</tr>
<tr>
<td>2006</td>
<td>$580,000,000</td>
<td>$0</td>
</tr>
<tr>
<td>2007</td>
<td>$580,000,000</td>
<td>$0</td>
</tr>
<tr>
<td>2008</td>
<td>$580,000,000</td>
<td>$0</td>
</tr>
<tr>
<td>2009</td>
<td>$580,000,000</td>
<td>$0</td>
</tr>
<tr>
<td>Thereafter</td>
<td>$580,000,000</td>
<td>$0</td>
</tr>
</tbody>
</table>

**Notes on Table:** The State Totals column above includes all money received from the tobacco settlement and the net effect of interest earned, taxes paid, attorney's fees, and money loaned from and repaid to the State Treasury. The amount available to the legislature for 2000-01 appropriations is the sum of the state totals for fiscal years 1999, 2000, and 2001, all equaling $1.8 billion.

The Local County and Hospital Districts column represents those funds received by certain counties and hospital districts via the July 18, 1998, Agreement Regarding Disposition of Settlement Proceeds, and the net effect of money borrowed from and repaid to the State Treasury.

Source: Comptroller of Public Accounts

Philip Morris alone had over $56 billion in revenues in 1997.

Creating the Permanent Fund for Tobacco Education and Health Programs, to be held outside the General Revenue Fund, administered by the Comptroller or any of the eligible institutions' governing boards. Investment returns of the fund may be appropriated to programs that offer upper-level academic instruction and training in the field of nursing or allied health education. The bill would transfer $46 million to the funds on the effective date of the bill from the Tobacco Settlement Temporary Hold Account of the General Revenue Fund.

Each new fund would consist of money transferred at the direction of the legislature, gifts and grants contributed to the fund, and the interest received from investment of money in the fund. Money in each of the new funds could be appropriated to pay any amount of money the federal government determines that the state should repay to the federal government, or that the federal government should recoup from the state in the event of national tobacco legislation.

As of the printing of this document, the House Appropriations Committee had reported a committee substitute for H.B. 1945 favorably from committee, but the bill has yet to have a second reading on the House floor.

H.B. 1676 by Junell provides a vehicle to implement the Texas MOU and the County & Hospital District Agreement by:

Creating the Permanent Fund for Tobacco Education and Enforcement, to be held outside the General Revenue Fund and administered by the Comptroller. Investment returns of the fund may be appropriated to the Texas Department of Health (TDH) for certain programs to reduce the use of cigarettes and tobacco products. The bill would transfer $200 million to the fund on the effective date of the bill from the Tobacco Settlement Temporary Hold Account of the General Revenue Fund.

Creating the Permanent Fund for Children and Public Health, to be held outside the General Revenue Fund and administered by the Comptroller. Investment returns of the fund may be appropriated to the Texas Department of Health to improve children's health care and for grants to local communities to address public health priorities. The bill would transfer $150 million to the fund on the effective date of the bill from the Tobacco Settlement Temporary Hold Account of the General Revenue Fund.

Creating the Permanent Fund for Emergency Medical Services and Trauma Care, to be held outside the General Revenue Fund, administered by the Comptroller. Investment returns of the fund may be appropriated to the Texas Department of Health for programs to provide emergency medical services and trauma care. The bill would transfer $100 million to the fund on the effective date of the bill from the Tobacco Settlement Temporary Hold Account of the General Revenue Fund.

Creating the Permanent Fund for Rural Health Facility Capital Improvement, to be held outside the General Revenue Fund, administered by the Comptroller. Investment returns of the fund may be appropriated to the Center for Rural Health Initiatives for programs and duties related to rural health care. The bill would transfer $50 million to the fund on the effective date of the bill from the Tobacco Settlement Temporary Hold Account of the General Revenue Fund. The bill would also add language to the Health and Safety Code to enable the Center for Rural Health Initiatives to implement these provisions.

Each new fund would consist of money transferred at the direction of the legislature, gifts and grants contributed to the fund, and the interest received from investment of money in the fund. Money in each of the new funds could be appropriated to pay any amount of money the federal government determines that the state should repay to the federal government, or that the federal government should recoup from the state in the event of national tobacco legislation.

As of the printing of this document, the House Appropriations Committee had reported a committee substitute for H.B. 1676 favorably from committee, but the bill has yet to have a second reading on the House floor.

H.B. 1161 by Junell provides a vehicle to implement the Texas MOU and the County & Hospital District Agreement by:

Implementing a plan to distribute funds under the state's Agreement Regarding Disposition of Settlement Proceeds (otherwise known as the County & Hospital District Agreement). The funds would be used exclusively by political subdivisions of the state defined in the bill with legal responsibility for providing indigent health care services.

Sources:
Texas Department of Health; Action on Smoking and Health.

Tobacco use is the No. 1 preventable cause of death and disease in the U.S., killing more Americans than AIDS, crack, heroin, cocaine, alcohol, car accidents, fire, and murder combined.
Creating the Tobacco Settlement Permanent Trust Account, which would be composed of funds received in accordance with the agreement’s provisions, assets purchased with that money, the earnings of the account, and other contributions, and would not be a part of the general funds of the state. At the direction of the Texas Department of Health (TDH), the Comptroller would make annual distributions of the net earnings from the account to eligible political subdivisions as defined in the bill.

Creating two new advisory committees, one which would advise the Comptroller on managing the assets of the account; the other would advise the Board of Health on implementing the bill’s provisions. TDH would provide administrative support and resources to the Board of Health’s advisory committee.

As of the printing of this document, the House Appropriations Committee had reported the bill favorably from committee, but the bill has yet to have a second reading on the House floor.

S.B. 1695/S.J.R. 42 by Brown is a departure from the agreements and proposals made by Representative Junell and Senator Ratliff, and the only proposal to provide tobacco settlement funds to non-health-related programs. The committee substitute would create the Texas Vital Infrastructure Program, allowing the Texas Department of Health, and certain institutions of higher education affiliated with a health sciences center or medical school, to propose programs designed to provide infrastructure for health care service delivery and medical research; and the Texas Water Development Board to propose programs designed to provide or improve water or wastewater infrastructure. Proposed programs are approved by the governor and the Legislative Budget Board (LBB).

The Texas Public Finance Authority would then prepare a plan to issue bonds to pay for the approved infrastructure program. If the financing plan is approved by the Bond Review Board, the bonds would then be issued to finance the approved infrastructure program, to be paid for by money generated by an approved “vital infrastructure program” and money received by the state under the tobacco agreement.

The bill requires the Comptroller to transfer certain tobacco settlement funds into a separate Vital Infrastructure Program Account in the General Revenue Fund.

The provisions of the bill would not take effect unless the constitutional amendment proposed by S.J.R. 42 is passed by the voters of Texas. Committee substitutes for the bill and resolution have been considered in the Senate Finance Committee, and as of the printing of this document, remain pending before the committee.

**Governor’s Proposal**

The Governor’s proposed budget for the 2000-01 biennium includes using a portion of the estimated tobacco settlement funds. The proposal totals $265.6 million in tobacco settlement proceeds and includes $63.2 million to purchase new generation medications at the Department of Mental Health and Mental Retardation and $154.4 million in tobacco settlement funds for the Children’s Health Insurance Program (CHIP). The remaining items include:

- Rural Community Health System $20.0 million;
- Healthy Kids Corporation System $3.0 million;
- and
- Texas Tech University Border Health Initiative $25.0 million.

**Federal Action**

According to the Office of State-Federal Relations, the Health Care Financing Administration has stated that a portion of state tobacco settlement dollars should be considered Medicaid overpayments and thus be subject to recoupment by the federal government.
Though it has not yet adopted tobacco settlement legislation, the 106th Congress, First Session, has a number of proposals before it. Among the proposals is S. 346 filed by Senator Kay Bailey Hutchison of Texas on February 3, 1999. The bill would amend Title XIX of the Social Security Act to prohibit the recoupment of funds recovered by states from one or more tobacco manufacturers, and thus would insure that states’ settlement funds are protected from seizure and remain within the state to use as state legislatures see fit.

S. 346 has been read twice and referred to the Committee on Finance, although the bill’s language has been included as an amendment to the FY 1999 supplemental appropriations bill (S544) during full committee markup on March 4, 1999. That bill is currently being debated on the floor of the Senate and thus far that language remains intact.

Other legislation includes:

- HR 351 by Congressman Mike Bilirakis of Florida, which has similar provisions as Senator Hutchison’s bill;
- S 584 by Senator Edward Kennedy, which would mandate how states spend 50 percent of their total settlement, with at least 35 percent spent on a list of tobacco use prevention programs and the remainder spent on health care and early learning programs; and
- HR 610 by Congressman Bob Weygand, which would require that states seek a waiver from the Secretary of HHS, which must outline how the “federal share” of the settlement will be spent on tobacco control efforts and other programs to improve public health. Both S. 584 and HR 610 contain language intended to ensure that the federal share is used to supplement, not supplant, existing funding streams for health care programs.

Also, according to the Office of State-Federal Relations, the President has stated that current law requires the Health Care Financing Administration to seek recovery of the federal portion of reimbursements for Medicaid that may be a part of any state tobacco settlement. Additionally, the President has included the federal recoupment of approximately $18.9 billion over five years in his FY 2000 budget. However, the administration appears willing to forego the federal share so long as it is able to mandate how states spend a portion of the money (i.e. for shared priorities which reduce youth smoking, protect tobacco farmers, assist children and promote public health).

**OTHER STATES**

According to the National Conference of State Legislatures’ Health Policy Tracking Service, on November 23, 1998, the attorneys general of 46 states, Puerto Rico, the U.S. Virgin Islands, the Northern Mariana Islands, Guam and the District of Columbia, signed an agreement ending four years of litigation between the states and the tobacco industry. The legal battle that started in 1994 when Mississippi became the first state to file suit culminated with the settlement reached with the five largest tobacco manufacturers:

- Brown & Williamson Tobacco Corporation;
- Lorillard Tobacco Company;
- Philip Morris Incorporated;
- R.J. Reynolds Tobacco Company; and
- Ligget & Myers.

Over the next 25 years, the 46 states will receive over $206 billion from the settlement, but funds will not be available to the states until June, 2000. Under the provisions of the agreement, the states had to begin implementing the settlement immediately after signing it. States that had outstanding suits against the tobacco industry had to settle them and get the consent decree implementing the settlement agreement filed by December 11, 1998. The other states had to file the necessary paperwork by December 23, 1998. That began the process of obtaining State Specific Finality, the trigger for access to the state funds. Over the next several months, state courts will review the consent decrees and address any challenges to the implementation of the settlement in the state.

The most immediate task for state legislatures is the consideration and enactment of the “model statute” included in the agreement. This model statute is designed to provide a level playing field between states.
participating and non-participating tobacco manufacturers. Failure to enact the model statute will result in a significant reduction in a state's allotment. The state legislatures also have to decide how and where to spend the tobacco settlement funds.

The four states not included in the Master Settlement Agreement above are Florida, Minnesota, Mississippi, and Texas, which had previously settled with tobacco manufacturers for $40 billion.

Virginia: A Different Perspective

Consider a place that has had more at stake in the tobacco lawsuits than most others—a place that must consider both sides of the issue and its effects. Virginia is such a place.

In Virginia, Governor Jim Gilmore announced the creation of the Commission on the Economic Development Protection and Growth of Virginia's Tobacco Dependent Communities. The 20-member commission will advise the Governor on the uses and distribution of funds received from the Master Settlement Agreement and the National Tobacco Community Trust Fund.

The members of the commission will also devise a plan to increase employment and economic opportunity in tobacco dependent communities.

Governor Gilmore says that tobacco remains the financial lifeblood of many of the Commonwealth's communities and working people, many of whose livelihoods depend on tobacco—especially the tobacco growers.

The Governor has proposed to set aside half of the settlement's funds for economic and agricultural development and target assistance for growers and workers hurt by the settlement. The other half would be used for a health fund for children, community-based treatment for mental illness, long-term care, youth anti-smoking programs, and a fund that will address critical transportation and education infrastructure needs.

There are 8,400 tobacco farmers in Virginia. Tobacco accounts for between $160 and $190 million of direct farm income annually. Virginia ranks fifth among tobacco-producing states, second in tobacco manufacturing, and first in export volume through her ports. Virginia exports 47.5 percent of all U.S. tobacco represented in dollars.

In closing, we should realize that the tobacco settlement funds are a windfall for the State of Texas which will allow the creation or expansion of programs to benefit all Texans. The perpetual payments, in effect, represent a new tax on tobacco which will significantly increase state revenue. Although there seems to be general consensus on the use of the tobacco settlement funds, Senator Brown's bill indicates at least one alternate view as to how these funds might be spent.

The legislature, however, should approach the expenditure of this new revenue on the side of caution to avoid not building new appropriations into the system which may not be sustainable in the future.

— by Richard P. Sanchez, SRC