



**Tobacco Settlement Permanent Trust Account
Administration Advisory Committee Meeting**

Minutes

Thursday, November 02, 2023

The Tobacco Settlement Permanent Trust Account Administration Advisory Committee (Committee) met on Thursday, November 02, 2023, at 3:00 p.m. at the Department of State Health's Bernstein Building conference center, via Microsoft Teams virtual meeting application, and conference call system.

Committee Members Present:

In person: Commissioner Rick Bailey; Commissioner Kelly Traylor; Ms. Keri, Disney-Story; Ms. Sharon R. Clark; Mr. Robert King Hillier (Chair); Ms. Stephanie McDonald and Mr. Ruben Vogt.

Via Microsoft Teams and conference call (cc): Commissioner Mark Beauchamp; Ms. Maegen A. Garner and Mr. Khan Farhan, Tobacco Settlement Program Attorney.

Committee Members Absent:

Commissioner Joe A. Gonzalez; Mr. and Dr. Jonny F. Hipp.

Texas Department of State Health Services (DSHS) Staff Members Present:

Elaine McHard, Director, Funds Coordination and Management Branch (FCMB), Amira Sutton, Tobacco Settlement Distribution Program Coordinator.

Additional Attendees:

None.

Welcoming Remarks

Ms. McHard started the meeting at 3:01 p.m. Ms. McHard introduced herself and Ms. Sutton and thanked the committee members for attending the meeting in person and joining via Microsoft Teams and conference call. Ms. McHard also stated the meeting was open to the public and was being held in accordance with the Open Meetings Act. The link to the webcast was made available to the committee members on the agenda and to the public on the Texas Health and Human Services' website.

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Call to Order

It was noted that Mr. Robert King Hillier has been reappointed to the committee by the Harris County Commissioners Court. Chair, Mr. Robert King Hillier, called the meeting to order at 3:03 p.m.

Roll Call

Roll call was taken by Ms. McHard who noted that a quorum of eight members was needed for voting purposes. At the time of roll call, eight of the above referenced Committee members were present – quorum was met.

Introduction of New Committee Members

Mr. Robert King Hillier indicated there were two new members on the Committee. Mr. Ruben Vogt and Mr. Russell Tippin. Mr. Vogt was appointed by the El Paso County Hospital District located in El Paso, Texas. Mr. Tippin was appointed by the Ector County Hospital Health System, located in Odessa, Texas.

Approval of Meeting Minutes

Mr. Hillier asked if there was a motion to approve the October 20, 2022, minutes as circulated. Commissioner Bailey made a motion to approve the minutes Ms. Sharon Clark proposed and seconded the motion. Commissioner Traylor, Commissioner Beauchamp, Mr. Hillier, Ms. Garner, Ms. Disney-Story and Ms. McDonald provided a motion to approve minutes by voting "Yes." Mr. Vogt abstained his vote due to being absent from the 2022 meeting. No votes were casted in opposition to the motion to approve.

2023 Distribution

Ms. McHard outlined the timeline for the 2023 distribution of tobacco settlement proceeds as follows:

- On December 31, 2022, FCMB staff mailed expenditure statements to all eligible political subdivisions along with information regarding the March 31, 2023, deadline for submission.
- On April 10, 2023, certification of the percentage of the annual distribution used to determine the pro rata share for each political subdivision was provided by FCMB staff to the Texas Comptroller of Public Accounts (Comptroller's office).
- On April 26, 2023, the Comptroller's office issued payment of the pro rata shares to participating political subdivisions.

Ms. McHard referred the Committee members to the 2023 distribution overview on page 16 of the packet. She noted that a total of 301 political

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subdivisions were eligible for a pro rata share of tobacco settlement proceeds. Of those 301, only 296 received a pro rata share, including one city, 156 counties, and 144 hospital districts. The city of Seguin received 0.05% of the distribution. The Committee had a question last year regarding the City of Seguin eligibility. The City of Seguin leases its public health hospital and there is a clause in TAC legislation that allows the city to keep a part of its lease as a requirement to serve the indigent community, therefore they are allowed to submit their expenditures to the Tobacco Settlement Distribution Program. There are 156 counties that received 9.61% of the distribution, and hospital districts received 90.34% of the distribution.

Ms. McHard further noted that three political subdivisions (i.e., Grapeland Hospital District, Chillicothe Hospital District and Texoma Hospital District) chose not to submit expenditure statements. Of the political subdivisions, two (i.e., Armstrong County and King County) reported zero expenditures. Ms. McHard stated that the annual distribution amount for 2023 was \$85,195,988.00. The largest pro rata distribution, \$17,271,926.96, was paid to Harris County Hospital District and the smallest pro rata distribution, \$2.83, was paid to Camp County. Ms. McHard indicated the packet included an itemized list of each political subdivision's expenditures reported, pro rata share received, and an analysis reflecting the total distribution and expenditures reported over the life of the Tobacco Settlement Distribution Program.

Ms. McHard referred the committee members to page 23 that provided information pertaining to the history of contributions, distributions, and expenditures reported since the inception of the program. Ms. McHard noted that expenditures reported over the years totaled to \$63,620,812,410.93 and total distributions made from the trust account were \$1,795,378,436.82.

No other questions or comments were posed by the Committee.

2023 Audit Analysis

Ms. McHard referred the Committee members to page 24 of the meeting packet for information pertaining to the 2023 audits. Ms. McHard revisited the new audit selection process. The new method involved sorting the list of participating political subdivisions by expenditures reported and then dividing the list into ten groups approximately equal in size. Ms. McHard explained that FCMB staff then randomly selected one political subdivision to audit from each of those ten groups.

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Ms. McHard referred to the 2023 Table of Audited Entities. Ms. McHard noted that two political subdivisions were found to have overclaimed expenditures, Gaines County and Pecos County. Therefore, a recoupment would be made during the 2024 pro rata share distribution.

No other questions or comments were posed by the Committee regarding the 2023 audits.

2023 Program Rules 25-Texas Administrative Code

Ms. McHard stated that by statute the Program Rules review should be done every four years. Ms. McHard recommended to committee members to turn to page 31 for a copy of Tobacco Distribution Settlement Program Rules 25-Texas Administrative Code document followed by the Rules Timeline documents. Ms. McHard turned meeting to Chairperson Mr. Hillier.

Mr. Hillier asked Ms. McHard if anyone had inquired about the Tobacco Distribution Settlement program rules during the past year. Ms. McHard mentioned that through the years, the Tobacco Settlement Distribution program received several questions regarding the Tobacco program eligibility but none regarding the Texas Administrative Code (TAC) rule. Ms. McHard added that the Tobacco Settlement Distribution Program website has over 200 answers to technical review questions. Ms. McHard mention that she recalled that Commissioner Bailey had a question last year regarding the jail expenditures.

Commissioner Bailey stated that even in the special legislative session House Bill (HB)4 Senate Bill (SB)6 is dealing with some of the jail expenditures. There was a \$10 million settlement originally put into bills, but the money has been expended. The Senate is letting taxpayers determine how to pay for the services in the rural areas of Texas. The discussion was about the border jail backlogs, there was a study on transportation costs for jails, including hospitalization cost. The rural county jails have 45 days to provide services. Commissioner Bailey stated that the jails are pertinent issues, and we have a backlog on jails, nonetheless mental health patients and space for those individuals is where we need the most help. The population continues to grow at the more rapid pace than what the rural communities can keep up with. Commissioner Bailey continues: "I do not know how these tobacco dollars can be redistributed or reallocated to help with that. It goes even deeper; the smaller rural counties have a very good chance for hospitals to fail without getting some assistance." Commissioner Bailey stated that this is an opportunity to further a discussion on what the Committee can do on rural urban counties. The large hospital districts have a larger taxbase and

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for that they are better off in comparison to small rural urban communities. Mental health issues are a rising problem in rural hospitals. We are looking into hospital costs and starting a conversation to justify the ask. The smaller municipal communities cannot afford it, yet we are constantly growing in population and more people are in need. The state will reimburse smaller counties' hospitals for indigent care, smaller than 100,000 people at the rate of \$100,000.00. The portion Tobacco vendors get from the Tobacco distribution is appreciated, but when you look at the dollar amount for a non-district hospital that has this much growth, with that much need we need to think about helping our small communities.

Ms. McDonald will participate, but she does not want to force a deadline simply because we all are busy people. Ms. McDonald would like to be part of the discussion but suggested that they should understand the process before we have discussion on how to distribute it. Commissioner Traylor asked Ms. McDonald if she would be willing to hear more on how to distribute it. Ms. McDonald suggested that if we are going to be in a situation that there is no more money next year, then maybe we should not invest into cutting the money. Ms. McDonald suggested to possibly bring a motion to form a working committee to evaluate a fiscal impact, and possibly involve the Investment Advisory Committee (IAC). Chairperson Mr. Hillier suggested that it would be good to get a motion on the table today to start.

Commissioner Traylor clarified that the AAC committee sets the formula for distributions. However, the IAC committee sets the dollar amount. Is our formula, the percentage of the formula something we should investigate. The second issue is then to explore the IAC committee to increase allocated money to 10 %.

Chairperson Mr. Hillier noted that these are two separate motions. One would be to bring the motion to the IAC committee to increase the allocation. The entire AAC committee agreed that it is time to look at the current Pro Rata Share formula.

Ms. McHard wanted to mention that the formula that state has the use to calculate on your behalf is: total expenditures submitted by 303 eligible Tobacco program political subdivisions. It is based on how many dollars each political subdivision individual area asks for by category (whether that be jail, transportation, mental health, etc.), and there are lots of categories that you are allowed to submit on your expenditure. Those expenditures are then totaled, and they come to, for example, at \$63 billion of the total allowable expenditures on the state for the year on the indigent healthcare, and then the allocated distribution amount that we have available from the IAC

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finance committee provide us with, we then divide those amounts to get the pro rata share.

The Pro Rata percent calculated this value by dividing the distribution amount by the total from the Total Allowable Expenditures column. This value will be identical for all political subdivisions.

Commissioner Traylor suggested seeking advice from the state council and to form a committee to examine the current formula to discuss the details and bring it back to this committee. There would be no voting on anything, the AAC formed group will bring back recommendations to the AAC board for a possible vote.

Tobacco Settlement Distribution program attorney Mr. Khan agreed that the administration advisory committee can form a group to further discuss an issue at hand. Mr. Kahn suggested for the committee not to have a constituted quorum. The formed workgroup needs to have less than eight members.

Mr. Vogt added a suggestion for a workgroup regarding participants such as two people from this group, two people from the IAC committee. Ms. Disney-Story recommended that this workgroup be created with the AAC members only.

Ms. Disney-Story is trying to form the motions that were carried out through the committee rule discussion. Ms. Disney-Story recommends forming a workgroup to explore a possibility of change in allocation.

Ms. Disney-Story mentioned that we could prepare it for when it is a larger distribution, and it would be good that the committee have these conversations prior to that event. Mr. Hillier mentioned he would like to see this workgroup created so as issues arise, they can be addressed.

Ms. Garner stated that she represents a rural hospital district and will be willing to participate.

The motion was voted on and approved.

General Items

Ms. McHard mentioned that the Investment Advisory Committee (IAC) was meeting the following day, November 03, 2023, in person only. Ms. McHard referred the Committee members to the email previously distributed by Ms. Sutton that included a meeting agenda and the map to the IAC meeting.

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Ms. McHard referred the Committee members to a 2024 planning calendar on page 27 of the meeting packet. She proposed a tentative date of Thursday, October 26, 2024, for the next annual Committee meeting and indicated that FCMB staff was open to working with the Committee members' schedules. Ms. McHard said FCMB staff would send out a poll to determine a convenient time to meet for next year's meeting. No motion to oppose the tentative meeting date was noted.

Ms. McHard reminded the Committee members that page 30 of the meeting packet comprised a screenshot of the Tobacco Settlement Distribution Program website, which can be accessed for a history of tobacco settlement distributions, Committee membership information, frequently asked questions, and program rules.

There were no comments or questions from the public.

Adjourn

Chairperson R. King Hillier adjourned the meeting at 4:38 p.m.