SUBJECT: Using the tobacco settlement to establish health-related endowment funds

COMMITTEE: Appropriations — committee substitute recommended

VOTE: 26 ayes — Junell, West, Coleman, Cuellar, Delisi, Eiland, Farrar, Gallego, Giddings, Glaze, Gutierrez, Hartnett, Heflin, Hochberg, Janek, Luna, McReynolds, P. Moreno, Mowery, Pickett, Pitts, Puente, Staples, Tillery, S. Turner, Van de Putte

0 nays

1 absent — Flores

WITNESSES: For — Cindy Antolik, American Cancer Society; Ron Haussecker, Emergency Medical Services Association of Texas; James W. Langford, Craig A. Walker, Texas Organization of Rural and Community Hospitals; John Miller, California Senate Committee on Health; Ruth Parriott, National American Cancer Society; Mary Partridge, American Lung Association

Against — None

On — William R. Archer, Texas Department of Health; Glen Gardner, Texas Coalition of Veterans Organization; Timothy Nix, Center for Health Care Strategy, Texas Tech University

BACKGROUND: On March 28, 1996, Attorney General Dan Morales filed a lawsuit on the behalf of Texas against five major American tobacco companies including R.J. Reynolds, Philip Morris, Lorillard, Brown and Williamson, and U.S. Tobacco. The lawsuit sought the recovery of billions of tax dollars spent to treat Medicaid patients who suffered from tobacco-related illnesses. The industry was accused of violating both state and federal laws, including conspiracy, racketeering, wire fraud, mail fraud, consumer protection, and antitrust laws.

On July 24, 1998, Texas finalized the lawsuit's settlement against the tobacco industry, which awarded the state a total of $17.3 billion over the next 25 years. (*The State of Texas v. The American Tobacco Co., et al.*, No. 5-96CV-91, U.S. District Court, Eastern District of Texas)

In February 1998, a memorandum of understanding was executed among Morales, Senate Finance Committee Chairman Bill Ratliff and House Appropriations Committee Chairman Rob Junell in which Rep. Junell and Sen. Ratliff agreed to introduce legislation necessary to distribute the tobacco settlement receipts to fund the Children's Health Insurance Program (CHIP), a pilot project on tobacco cessation, and endowments and permanent funds for children's health care, M.D. Anderson Cancer Center, medical schools and health-related higher education.

As of January 8, 1999, payments totaling $1.096 billion have been deposited to the state general revenue fund. Up to $1.8 billion in receipts from the state's settlement with the tobacco industry is expected to be available for spending in fiscal 1998-99 and 2000-01.

DIGEST:

CSHB 1676 would establish four endowment funds in the state treasury that would be capitalized with $500 million of state general revenues received from the tobacco settlement. The money in the funds would be outside the general revenue fund. The bill would take effect August 31, 1999, at which time the comptroller would be required to transfer the necessary funds from general revenue.

The funds would be exempt from state laws governing the disposition of state investment interest and the use of dedicated revenues. The endowments also would be authorized to accept other funds transferred at the direction of the Legislature, gifts and grants, and investment interest. The funds also could be used to pay any amount of money that the federal government decided to recoup from states.

The permanent fund for **tobacco education and enforcement** would receive $200 million in general revenue on August 31, 1999. The interest of the fund could be appropriated to the Texas Department of Health for programs to reduce the use of tobacco products in Texas, including smoking cessation, public awareness programs, enforcement of sales and distribution laws, and specific programs for communities traditionally targeted through advertising by the tobacco industry.

TDH would be authorized to contract with other entities to carry out its responsibilities, but would be required to give high priority and preference to existing, effective state programs that do not otherwise receive money from

endowment programs established with tobacco settlement funds.

A permanent fund for **Children and Public Health** would be created by a transfer of $150 million from the general revenue fund. The interest of the fund could be appropriated to TDH to establish a foundation for the purpose of developing and demonstrating cost-effective prevention and intervention strategies for improving health outcomes for children. Local communities may also receive grants to address public health priorities.

A permanent fund for **Emergency Medical Services and Trauma Care** would be established by a transfer of $100 million from the general revenue fund. The interest could be appropriated to TDH to provide emergency medical services and trauma care, either by establishing programs, awarding contracts or grants to other entities or political subdivisions.

CSHB 1676 would establish a permanent fund for **Rural Health Facility Capital Improvement** by a transfer of $50 million from the general revenue fund, and a new rural health facility grant and loan program. In addition to grants, other appropriations and investment interest, this fund could also receive payments of interest and principal on loans made through the new program.

The interest received from the investment of the fund could be appropriated to the Center for Rural Health Initiatives to make grants or low interest loans to a city, county, hospital district, or hospital authority that owns or operates a public hospital in a rural county. The grants or loans could only be used to make capital improvements on existing public health facilities, to construct new public health facilities, or to purchase capital equipment for a public health facility.

The program rules would have to state the factors the center would consider when making grants or loans. The rules would have to allow the center to consider the financial need of the applicant, the health care needs of the rural area, the probability that the applicant would effectively and efficiently use the grant or loan, and the extent to which the loan interest rate should be below market rates.

SUPPORTERS SAY:

CSHB 1676 would create permanent endowments to provide a stable base of funding for long-standing and long-term health care needs in Texas. The creation of these funds, however, would not bind the Legislature to future appropriations. The Legislature could increase or decrease state appropriations to these programs as needed.

Tobacco use and its impact on the health of Texans most likely will be a long-term problem. Establishing an endowment, which is expected to generate about $11.2 million in interest per year, is the best use of the tobacco windfall for tobacco-cessation and education activities. It will create a source of permanent funding instead of a single “blitz” over the next four years.

Smoking cessation and prevention campaigns can be tested at the local level, then, if effective, expanded to other areas of the state. To appropriate $200 million for a statewide campaign over the next four years, as advocated by the American Cancer Society and others, would amount to over 200 percent more funding than TDH has ever spent on these kinds of activities. This funding increase would be too large. Spending might not be handled wisely and smoking might not be reduced enough to justify expenditures. Television advertising is costly, especially with viewing increasingly diffused among the many different alternatives offered by cable television, so this may not be the most effective way to reach young people.

Tobacco education and cessation efforts would not be limited to endowment expenditures. All state medical schools currently have smoking cessation programs. The federal government in its settlement with the tobacco industry has prohibited youth-targeted advertising and marketing efforts by the industry and will establish both a foundation and a $1.45 billion national endowment to support public education efforts.

There is no shortage of health service needs for children and public health. By creating a permanent fund that would endow both, the state also would be given the opportunity to make an important investment in preventive services. These include public education, health screenings, and other measures that can prevent, reduce, or forestall the occurrence of disease outbreaks that impede a child’s growth, happiness, and ability to learn.

This permanent fund is expected to generate $8.4 million per year in interest.

It would keep Texas from having to choose between paying for preventive services or for direct health care services. Long-term funding also would allow for the benefits of preventive services to be realized, which usually requires a time period that spans more than one or two legislative budget cycles.

CSHB 1676 would establish a permanent source of funding, about $5.6 million per year in interest, for EMS and trauma services, which have never adequately been funded to meet statewide needs. Although 22 Regional Advisory Councils have been established around the state, 20 of them have not developed a trauma response system. More than half of Texas counties lack a trauma facility.

All Texans would benefit from an improved trauma system — especially one that fills in the gaps of services in rural areas. In 1998, the highest morbidity for trauma in Texas was in its rural and frontier areas. Accidents can happen anywhere. People traveling through or living in rural areas need the same level and quality of response as demanded by those living in urban areas.

A permanent fund for rural health care facilities, which is expected to generate about $2.8 million per year in interest, would greatly improve health care in rural communities. Most of rural facilities were built in the late 1950's-1960's with federal Hill-Burton funds. They require considerable updating and improvements to keep up with the evolving health care market and the aging of the population. However, these small facilities do not have sufficient revenues or other resources to improve their facilities and equipment and fully meet modern licensing standards. Without modern and appropriate hospital-based services, rural communities will lose their doctors and citizens will be forced to travel long distances to receive the care they need.

OPPONENTS SAY:

At least $200 million of the tobacco settlement receipts should be used to pay for a statewide tobacco prevention campaign over the next four years. This campaign was specially designed by a coalition of experts, and its expense is partially related to the high cost of reaching children through television.

A statewide campaign is needed to demonstrably reduce smoking rates among children and adults. Pilot projects that focus on single areas or populations would not be as successful as a statewide campaign, due to the pervasive use

and advertising of tobacco in our culture. It is only fair and right that a sizeable portion of this biennium's tobacco receipts go toward funding tobacco cessation and prevention programs. The state's case in the tobacco lawsuit was based on the state's expense in treating diseases caused by tobacco use.

OTHER OPPONENTS SAY:

CSHB 1676 would leave a lot of important details, such as the distribution by TDH and the Center for Rural Health Initiatives of grants, loans and other program funding, without specific legislative direction. This may result in an unfair or unintended distribution of fund earnings.

NOTES:

Major changes made by the committee substitute include:

- TDH contracts for tobacco education related activities were required to give priority to state programs that otherwise did not receive tobacco endowment money, and directed to focus on programs for communities traditionally targeted by tobacco advertisers;
- TDH was authorized to establish a foundation for demonstrating cost-effective prevention and intervention strategies for improving public and children's health;
- provisions were removed from the original bill prohibiting political subdivisions and hospitals from receiving health care facility grants and loans if they had already received a distribution of tobacco settlement funds;
- the fund accounts were authorized to be used to pay for any federal recoupment amounts; and
- the effective date was changed to August 31, 1999.

Also on the calendar for today are two other bills that would create permanent funds out of tobacco settlement receipts received in fiscal 1998-99. HB 1161 by Junell, et al. would create a permanent fund and advisory committees to handle the investment, management and distribution of tobacco settlement receipts specifically earmarked for reimbursing counties and public hospitals for indigent health care. HB 1945 by Junell and Cuellar would establish permanent funds for higher education.

The House-passed version of the general appropriations act, HB 1 by Junell, contains an Article 12, which earmarks spending of almost $1.8 million in tobacco settlement receipts, about 82.5 percent of which is expected to be appropriated in fiscal 1998-99 to establish permanent endowment funds for

health care and health-related higher education, including:

- $400 million for a permanent fund for higher education (HB 1945);
- $200 million for a pilot project to reduce smoking;
- $150 million for a permanent fund for Children and Public Health;
- $100 million for EMS and trauma care;
- $50 million for health care facility capital funds; and
- and about $600 million for funds for M.D. Anderson Cancer Center and health-related institutions of higher education.