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# Kansas Legislator Briefing Book 2014

## Children and Youth

### D-1 Tobacco/Children's Initiatives Fund

In 1998, Kansas became one of 46 states to accept a tobacco settlement negotiated with four major tobacco companies. (The remaining four states settled individually.) The settlement, called the Master Settlement Agreement, is aimed at reducing the use of tobacco by young persons, settling legal claims by states against the tobacco industry, and reimbursing health care costs for treatment of Medicaid patients whose illnesses were caused by tobacco. Under terms of the agreement, the tobacco industry is prohibited

The tobacco industry is required to make payments to the states in perpetuity. Original estimates were that the industry would pay states \$206 billion through the year 2025. Not all tobacco companies are parties to the settlement. Those that are not are required to put into escrow an amount of money equal to what they would pay under the settlement. This is to level the playing field so that non-participating manufacturers will not have a competitive advantage over participating manufacturers.

from targeting youth in marketing and is subject to restrictions concerning sponsorships, advertising, and tobacco promotions.

The allocation formula is based on each state's smoking-related health care costs, with equal weight given to Medicaid-related and non-Medicaid-related costs. Each state and territory gets the proportion of the settlement that its smoking-related health care costs bear to the total. Kansas' share of the recovery is 0.83 percent, which, based on the original estimate, was expected to exceed \$1.5 billion over the first 25 years of the agreement. Payments are based on the tobacco companies' market share of tobacco product sales and are subject to an annual inflation factor of three percent, or the increase in the Consumer Price Index, whichever is greater.

The Master Settlement Agreement also provides that payments to states could be reduced if tobacco sales go down or if tobacco companies go out of business. It is this latter provision that is causing concern over future payments.

The Master Settlement Agreement does not impose any constraints on how the states may use their tobacco money. In Kansas, the 1999 Legislature enacted legislation that established a trust fund into which tobacco payments are credited and created the Kansas Children’s Cabinet to advise the Governor and the Legislature on programs that will be funded from the tobacco money. The trust fund, named the “Kansas Endowment for Youth (KEY) Fund,” is invested and managed by the Board of Trustees of the Kansas Public Employees Retirement System. The Legislature also created the Children’s Initiatives Fund and provided that transfers would be made from the KEY Fund to the Children’s Initiatives Fund on an annual basis. Transfers from the KEY Fund to the Children’s Initiatives Fund are capped at \$45 million, plus a 2.5 percent annual inflation factor.

**Kansas Tobacco Revenues and Interest Earnings**

|              |               |
|--------------|---------------|
| FY 1999      | \$ 49,705,586 |
| FY 2000      | \$ 52,935,158 |
| FY 2001      | \$ 61,465,211 |
| FY 2002      | \$ 61,511,858 |
| FY 2003      | \$ 52,531,729 |
| FY 2004      | \$ 53,453,765 |
| FY 2005      | \$ 49,463,355 |
| FY 2006      | \$ 47,515,501 |
| FY 2007      | \$ 46,900,000 |
| FY 2008      | \$ 66,347,833 |
| FY 2009      | \$ 72,278,198 |
| FY 2010      | \$ 60,838,465 |
| FY 2011      | \$ 57,091,087 |
| FY 2012      | \$ 57,985,065 |
| FY 2013      | \$ 68,034,311 |
| FY 2014 est. | \$ 55,000,000 |
| FY 2015 est. | \$ 55,000,000 |

Staff Note: FY 2009 revenues included receipts of \$4.5 million from the disputed payments account of the Master Settlement Agreement.

**Tobacco Payments to Kansas**

Kansas received its first tobacco revenues in 1999. In general, payments have been less than originally estimated. In FY 2013, tobacco revenues and interest earnings totaled \$68.0 million. Revenues are estimated to be \$55.0 million in both FY 2014 and FY 2015.

It is important to note that beginning in FY 2008 revenues include funds from the “Strategic Contribution Fund” provisions of the Master Settlement Agreement. These provisions require the tobacco companies to pay, from 2008 through 2017, a total of \$861 million into the Strategic Contribution Fund. Money from the Strategic Contribution Fund is to be allocated to states based on the percentage each state contributed to the original Master Settlement Agreement. Kansas’ share of this amount is 1.85 percent. According to the Kansas Attorney General’s Office, it is unclear how the Strategic Contribution Fund payments will be affected by recent actions of the tobacco companies to withhold payments under the agreement while they are disputing the basis of payments to be made.

**Concern Over Future Payments**

The amount of tobacco money the states will receive is affected by several factors, including an overall decrease in tobacco consumption, which results in diminished sales of tobacco products and lower payments to states. The market share of tobacco companies that are participating in the settlement also is being reduced by sales of nonparticipating manufacturers, and the possibility exists that one or more of the major participating manufacturers could declare bankruptcy. The most immediate and direct threat to the tobacco revenue stream is a clause in the Master Settlement Agreement that permits participating manufacturers to seek refund of money paid to the states when there is a drop in their market share below a threshold established in 1997.

That threshold was triggered in 2003, and 2006 was the first year for which revenues were affected. In 2006, R. J. Reynolds Tobacco Company and

Lorillard Tobacco Company withheld all or part of their payments to the states, contending that under the Master Settlement Agreement, the payments were not due because of declining market shares. The National Association of Attorneys General, which has played a leadership role among the states with regard to the tobacco settlement, takes the position that the tobacco companies owe the states the full payment until the industry can demonstrate that the states have failed to exercise due diligence in enforcing the tobacco settlement. (The Settlement is complicated, and there is disagreement between the industry and the states as to exactly how the downward adjustment clause should be interpreted or applied.) In June 2007, the state received \$394,424 in funding from the disputed payments account. In March 2009, the state received \$4.5 million from the disputed payments account.

### Summary of Arbitration

In December 2012, through an arbitrated “settlement in principal”, Kansas agreed to receive 54.0 percent, approximately \$46.0 million, of the money remaining in the disputed payments account and the tobacco manufacturers received the other 46.0 percent of the money. The arbitration panel found the “settlement in principal” to be sufficient and issued an award to that effect. If the “settlement in principal” is allowed to stand, Kansas’ liability for past allegations of failure to diligently enforce its obligation will be eliminated. A

final agreement has not been signed, and several states have filed lawsuits seeking to set aside the “settlement in principal”. If a final agreement is signed it will resolve the disputes for enforcement years 2003 to 2012.

### Children’s Initiatives Fund

The 1999 Legislature created the Children’s Initiatives Fund to fund programs promoting the health and welfare of Kansas children. The Children’s Initiatives Fund is administered by the Children’s Cabinet, a 15-member committee consisting of appointees of the Governor and Legislature and *ex officio* members. The Cabinet is responsible for initiating audits and reviews of the programs receiving Children’s Initiatives Fund money. Expenditures from the Children’s Initiatives Fund are requested by the Children’s Cabinet through the Department for Children and Families, recommended by the Governor, and approved by the Legislature.

The Kansas tobacco settlement is the revenue source for the Children’s Initiatives Fund. The settlement payments are placed in the KEY Fund. In general, the KEY Fund has not served as the endowment fund that was envisioned. This is because of a combination of less tobacco payment revenue than expected and shortfalls to the State General Fund, which have resulted in transferring balances in the KEY Fund to the State General Fund rather than allowing them to accumulate.

**Children's Initiatives Fund  
FY 2012 - FY 2015**

|  | Actual<br>FY 2012           | Final<br>Approved<br>FY 2013 | Final<br>Approved<br>FY 2014 | Final<br>Approved<br>FY 2015 |
|--|-----------------------------|------------------------------|------------------------------|------------------------------|
| <b>Department of Health and Environment</b>            |                             |                              |                              |                              |
| Healthy Start/Home Visitor                             | \$ 237,914                  | \$ 237,914                   | \$ 237,914                   | \$ 237,914                   |
| Infants and Toddlers Program (Tiny K)                  | 5,700,000                   | 5,700,000                    | 5,700,000                    | 5,700,000                    |
| Smoking Cessation/Prevention Program Grants            | 1,001,960                   | 1,000,000                    | 946,671                      | 946,671                      |
| Newborn Hearing Aid Loaner Program                     | 47,868                      | 47,238                       | 47,161                       | 47,161                       |
| SIDS Network Grant                                     | 71,374                      | 96,374                       | 96,374                       | 96,374                       |
| Newborn Screening                                      | 2,137,186                   | 1,420,499                    | -                            | -                            |
| <i>Subtotal - KDHE</i>                                 | <u>\$ 9,196,302</u>         | <u>\$ 8,502,025</u>          | <u>\$ 7,028,120</u>          | <u>\$ 7,028,120</u>          |
| <b>Department for Aging and Disability Services</b>    |                             |                              |                              |                              |
| Children's Mental Health Initiative                    | \$ -                        | \$ 3,800,000                 | \$ 3,800,000                 | \$ 3,800,000                 |
| Family Centered System of Care                         | -                           | 4,750,000                    | -                            | -                            |
| <i>Subtotal - KDADS</i>                                | <u>\$ -</u>                 | <u>\$ 8,550,000</u>          | <u>\$ 3,800,000</u>          | <u>\$ 3,800,000</u>          |
| <b>Department for Children and Families</b>            |                             |                              |                              |                              |
| Children's Cabinet Accountability Fund                 | \$ 492,736                  | \$ 519,325                   | \$ 400,000                   | \$ 400,000                   |
| Children's Mental Health Initiative                    | 3,800,000                   | -                            | -                            | -                            |
| Family Centered System of Care                         | 4,750,000                   | -                            | -                            | -                            |
| Child Care Services                                    | 5,033,679                   | 5,033,679                    | 5,033,679                    | 5,033,679                    |
| Reading Roadmap (Kansas Reads to Succeed)              | 918,201                     | 256,637                      | 6,000,000 <sup>^</sup>       | 6,000,000 <sup>^</sup>       |
| Kansas Reads to Succeed Incentive                      | -                           | -                            | -                            | -                            |
| Smart Start Kansas - Children's Cabinet                | 7,158,474                   | -                            | -                            | -                            |
| Family Preservation                                    | 3,106,605                   | 2,154,357                    | 2,154,357                    | 2,154,357                    |
| Early Childhood Block Grants                           | 10,563,966                  | -                            | -                            | -                            |
| Combined Block Grant (Early Childhood and Smart Start) | -                           | 18,132,248                   | 18,129,484                   | 18,129,179                   |
| Early Childhood Block Grants - Autism                  | 48,179                      | 47,036                       | 50,000                       | 50,000                       |
| Early Head Start                                       | 62,211                      | 66,584                       | 70,000                       | 70,000                       |
| Child Care Quality Initiative                          | 479,257                     | 500,000                      | 500,000                      | 500,000                      |
| <i>Subtotal - DCF</i>                                  | <u>\$ 36,413,308</u>        | <u>\$ 26,709,866</u>         | <u>\$ 32,337,520</u>         | <u>\$ 32,337,215</u>         |
| <b>Department of Corrections</b>                       |                             |                              |                              |                              |
| Judge Riddel Reimbursement Rate                        | \$ -                        | \$ -                         | \$ 750,000                   | \$ -                         |
| <b>Department of Education</b>                         |                             |                              |                              |                              |
| Parents as Teachers                                    | \$ 7,237,635                | \$ 7,237,635                 | \$ 7,237,635                 | \$ 7,237,635                 |
| Pre-K Pilot  | 4,799,812                   | 4,799,812                    | 4,799,812                    | 4,799,812                    |
| <i>Subtotal - Dept. of Ed.</i>                         | <u>\$ 12,037,447</u>        | <u>\$ 12,037,447</u>         | <u>12,037,447</u>            | <u>\$ 12,037,447</u>         |
| <b>TOTAL</b>   | <u><b>\$ 57,647,057</b></u> | <u><b>\$ 55,799,338</b></u>  | <u><b>\$ 55,953,087</b></u>  | <u><b>\$ 55,202,782</b></u>  |

<sup>^</sup> Includes language requiring the funding be used to implement Lexia Reading Core5 if Kansas Reads to Succeed is not enacted into law.

Staff Note: The FY 2013 budget includes a transfer of \$485,000 from the Kansas Endowment for Youth Fund to the Attorney General. In addition, it transfers \$9.5 million from the KEY Fund to the State General Fund in FY 2013. The FY 2014 and FY 2015 budget includes a transfer from the KEY fund to the Attorney General of \$460,000. In addition, it transfers \$25,000 from the KEY fund to the Sexually Violent Predator Fund in the Attorney General's Office for FY 2014 and FY 2015

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