

JOINT BUDGET COMMITTEE



STAFF FIGURE SETTING FY 2018-19

TOBACCO MASTER SETTLEMENT AGREEMENT AND AMENDMENT 35 TOBACCO TAX

JBC WORKING DOCUMENT - SUBJECT TO CHANGE
STAFF RECOMMENDATION DOES NOT REPRESENT COMMITTEE DECISION

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TOBACCO MASTER SETTLEMENT AGREEMENT

The Tobacco Master Settlement Agreement (MSA) provides Colorado with an annual revenue stream distributed via a statutory formula to a variety of programs. Revenue from the MSA is the result of a 1998 legal settlement between tobacco manufacturers and the states who sued to recover Medicaid and other health-related costs incurred by the states as a result of treating smoking related illnesses.

Tobacco Master Settlement Agreement payments are driven by the number of units sold, the inflation adjustment, and the amount of disputed payments withheld by Participating Manufacturers. Payments received in April are based on sales and adjustments from the prior year. For example, the payment received by Colorado in April 2017 was based on the number of units sold in 2016.

House Bill 16-1408 redesigned how revenues are allocated to programs funded with MSA revenue. Prior to FY 2016-17, revenues were distributed according to a two-tier system. Starting in FY 2016-17, revenues are allocated on a percentage basis.

OVERVIEW OF CALCULATING MASTER SETTLEMENT AGREEMENT DISTRIBUTIONS

The Legislative Council January 2018 forecast of Tobacco Master Settlement Agreement revenue serves as the basis for the Long Bill appropriations of MSA revenues in FY 2018-19. The State receives annual MSA payment in April, which is after the Long Bill is sent to the Governor. As a result, even though actual receipts are known by mid-April, appropriations in the Long Bill are based on the January Legislative Council Staff revenue forecast. The allocation percentages are determined by statute and are shown in Appendix A. Once approved by the Committee, JBC analysts use the FY 2018-19 allocations to set appropriations for Tobacco Master Settlement Agreement-supported programs in their respective departments.

The table below compares the total projected revenues used for JBC staff figure setting with the actual revenue received.

VARIANCE BETWEEN PROJECTED AND ACTUAL TOBACCO MASTER SETTLEMENT AGREEMENT REVENUES					
RECEIPT YEAR	DISTRIBUTION YEAR	PROJECTION USED FOR FIGURE SETTING	ACTUAL FUNDS RECEIVED	ACTUAL ABOVE/ (BELOW) PROJECTION	PERCENT VARIANCE FROM PROJECTION
April 2010	FY 2010-11	\$96,231,588	\$94,587,045	(\$1,644,543)	(1.7)
April 2011	FY 2011-12	90,397,679	89,065,763	(1,331,916)	(1.5)
April 2012	FY 2012-13	89,297,600	90,809,964	1,512,364	1.7
April 2013	FY 2013-14	90,166,340	90,769,997	603,657	0.7
April 2014	FY 2014-15	90,616,611	89,037,054	(1,579,557)	(1.7)
April 2015	FY 2015-16	88,562,575	88,079,225	(483,350)	(0.5)
April 2016	FY 2016-17	87,573,562	92,200,153	4,626,591	5.3
April 2017	FY 2017-18	80,378,312*	91,116,849	10,738,537	13.4

*The FY 2017-18 distribution was lowered by \$15.0 million to reduce the accelerated payment prior to the reduction of the April 2018 payment, due to the elimination of the strategic contribution payment.

TOBACCO MASTER SETTLEMENT AGREEMENT ALLOCATIONS AND APPROPRIATIONS

The following statutes govern the allocation of Tobacco Master Settlement Agreement money.

- Section 24-75-1104.5 (1.3) (a), C.R.S., specifies that the total Tobacco Master Settlement Agreement funds allocated to programs will be based on the prior year's Tobacco Master Settlement Agreement receipts.
- Section 24-75-1104.5 (1.3) (a.5) (II), C.R.S., required the FY 2017-18 allocation be reduced by \$15.0 million.
- The distribution across programs is governed by statute, with the key provisions contained in Sections 24-75-1104.5 (1.7), C.R.S. The Treasury uses the formula to allocate this money to programs.
- The General Assembly appropriates the allocated funds in the Long Bill, providing spending authority for programs receiving the allocations.

→ TOBACCO MASTER SETTLEMENT REVENUE ALLOCATIONS

Staff recommends that the Committee approve the use of allocation of settlement revenue shown in the table below. The recommendation is based on a Legislative Council Staff projection of \$84,000,000 available for programmatic allocation in FY 2018-19.

TOBACCO MASTER SETTLEMENT AGREEMENT REVENUE ALLOCATIONS			
	PERCENTAGE	FY 2017-18 ACTUAL ALLOCATION	FY 2018-19 RECOMMENDATION
Health Care Policy and Financing			
Children's Basic Health Plan Trust	18.00%	\$13,701,033	\$15,120,000
Autism Waiver	2.00%	1,522,337	1,680,000
Subtotal - Health Care Policy and Financing	20.00%	15,223,370	16,800,000
Higher Education			
University of Colorado Health Sciences Center	15.50%	11,798,112	13,020,000
Cancer Program	2.00%	1,522,337	1,680,000
Subtotal - Higher Education	17.50%	13,320,449	14,700,000
Human Services			
Nurse Home Visitor Program	26.70%	20,323,199	22,428,000
Tony Grampas Youth Services Program	7.50%	5,708,764	6,300,000
Subtotal - Human Services	34.20%	26,031,963	28,728,000
Law			
Tobacco Settlement Defense Account	2.50%	1,902,921	2,100,000
Military and Veterans Affairs			
State Veterans Trust Fund	1.00%	761,168	840,000
Personnel			
Supplemental State Contribution Fund	2.30%	1,750,688	1,932,000
Public Health and Environment			
Drug Assistance Program (ADAP; Ryan White)	5.00%	3,805,842	4,200,000
AIDS and HIV Prevention Grants (CHAPP)	3.50%	2,664,090	2,940,000
Immunizations	2.50%	1,902,921	2,100,000
Health Services Corps Fund	1.00%	761,168	840,000
Dental Loan Repayment Program	1.00%	761,168	840,000
Subtotal Public Health and Environment	13.00%	\$9,895,189	\$10,920,000
Capital Construction - Department of Higher Education -			
Fitzsimons Lease Purchase Payments	8.00%	6,089,348	6,720,000
Unallocated Amount	1.50%	1,141,753	1,260,000
TOTAL	100.00%	\$76,116,849	\$84,000,000

Individual staff analysts will recommend FY 2018-19 appropriation amounts for programs in their budget areas that are supported by Tobacco Master Settlement Agreement funds. Staff recommendations will take into consideration this revenue forecast and the balance of tobacco moneys expected to be available in program cash funds.

AMENDMENT 35 TOBACCO TAX REVENUE

Amendment 35 was approved by the voters in 2004 and added the following two cigarette and tobacco taxes to Section 21 of Article X of the Colorado Constitution.

- 1 An additional \$0.64 tax on each pack of cigarettes sold in Colorado (a pack equals twenty cigarettes); and
- 2 A statewide tobacco products tax equal to 20.0 percent of the manufacturer's list price, on the sale, use, consumption, handling, or distribution of tobacco products by distributors.

Amendment 35 was codified in Section 24-22-117, C.R.S., which outlines how revenue from Amendment 35 is distributed to various state agencies including: the Departments of Health Care Policy and Financing, Public Health and Environment, and Human Services. Appendix B summarizes which departments and programs receive Amendment 35 tobacco tax revenue.

→ DISTRIBUTION OF AMENDMENT 35 REVENUE

The December 2017 Legislative Staff revenue forecast projects Amendment 35 revenues will equal **\$143,303,000** in FY 2018-19. The following table summarizes staff's recommendation of the allocation of Amendment 35 dollars for FY 2018-19. The recommendation is based on the Legislative Council December 2017 forecast using allocations to individual programs following the rules outlined in Appendix B. **Staff recommends the Committee approve this distribution and requests permission to adjust the allocations if the March 2018 Legislative Council Amendment 35 forecast is greater than the December 2017 forecast.** Each JBC staff with Amendment 35 funded programs will provide additional information on the use of Amendment 35 dollars during their figure setting presentation.

DISTRIBUTION OF AMENDMENT 35 MONEYS					
DEPT.	PROGRAM AND/OR FUND	PERCENT	FY 2016-17 ACTUAL	FY 2017-18 APPROPRIATION	FY 2018-19 RECOMMENDATION
HCPF	Health Care Expansion Fund	46.0	\$65,848,104	\$67,518,800	\$65,919,380
HCPF	Primary Care Fund	19.0	27,198,130	27,888,200	27,227,570
DPHE	Tobacco Education Programs Fund	16.0	22,903,688	23,484,800	22,928,480
DPHE	Prevention, Early Detection and Treatment Fund	16.0	22,903,688	23,484,800	22,928,480
HCPF	Old Age Pension Fund	1.5	2,147,221	2,201,700	2,149,545
REV	Local governments to compensate for lost revenue from tobacco taxes	0.9	1,288,332	1,321,020	1,289,727
DPHE	Immunizations performed by small local public health agencies	0.3	429,444	440,340	429,909
HCPF	Children's Basic Health Plan	0.3	429,444	440,340	429,909
Total Distributions		100.0	\$143,148,053	\$146,780,000	\$143,303,000

Money that is credited to the Prevention Early Detection and Treatment Fund is further divided among three programs: Breast and Cervical Cancer Program, Health Disparities Program Fund, and

Center for Health and Environmental Information. The following table summarizes how the total funds credited to the Prevention, Early Detection and Treatment Fund is further allocated.

BREAKDOWN OF MONEY CREDITED TO THE PREVENTION, EARLY DETECTION, AND TREATMENT FUND				
TREATMENT FUND	PERCENT	FY 2017-18	FY 2018-19	CHANGE
Total Amount Credited to the PEDT Fund		\$23,071,466	\$22,928,480	(\$142,986)
Breast and Cervical Cancer Program	20.0%	4,614,293	4,585,696	(28,597)
Health Disparities Program Fund	15.0%	3,460,720	3,439,272	(21,448)
Center for Health and Environmental Information	Fixed \$	283,884	116,942	(166,942)
<i>Remains in the Prevention, Early Detection and Treatment Fund</i>		<i>\$14,712,569</i>	<i>\$14,786,570</i>	<i>\$74,001</i>

The following table shows the Amendment 35 Tobacco Tax money distribution by Department for FYs 2016-17, 2017-18, and 2018-19.

AMENDMENT 35 TOBACCO TAX FY 2018-19 RECOMMENDED DISTRIBUTION BY DEPARTMENT			
DEPARTMENT	FY 2016-17	FY 2017-18	FY 2018-19
Department of Health Care Policy and Financing (HCPF)	\$95,622,899	\$98,049,040	\$95,726,404
Department of Public Health and Environment (PHE)	46,236,821	47,409,940	46,286,869
Department of Revenue (REV)	1,288,332	1,321,020	1,289,727

LONG BILL FOOTNOTES AND REQUESTS FOR INFORMATION

REQUEST FOR INFORMATION

Staff recommends **CONTINUING AND MODIFYING** the following request for information:

- 1 Department of Health Care Policy and Financing, Medical Services Premiums; Indigent Care Program, Children's Basic Health Plan Medical and Dental Costs; Department of Higher Education, Colorado Commission on Higher Education, Special Purpose, University of Colorado, Lease Purchase of Academic Facilities at Fitzsimons; Governing Boards, Regents of the University of Colorado; Department of Human Services, Division of Child Welfare, Tony Grampas Youth Services Program; Office of Early Childhood, Division of Community and Family Support, Nurse Home Visitor Program; Department of Military and Veterans Affairs, Division of Veterans Affairs, Colorado State Veterans Trust Fund Expenditures; Department of Personnel, Division of Human Resources, Employee Benefits Services, H.B. 07-1335 Supplemental State Contribution Fund; Department of Public Health and Environment, Disease Control and Environmental Epidemiology Division, Administration, General Disease Control, and Surveillance, Immunization Operating Expenses; Special Purpose Disease Control Programs, Sexually Transmitted Infections, HIV and AIDS Operating Expenses, and Ryan White Act Operating Expenses; Prevention Services Division, Chronic Disease Prevention Programs, Oral Health Programs; Primary Care Office -- Each Department is requested to provide the following information to the Joint Budget Committee by November 1, 2017 2018, for each program funded with Tobacco Master Settlement Agreement money: the name of the program; the amount of Tobacco Master Settlement Agreement money received and expended by the program for the preceding fiscal year; a description of the program including the actual number of persons served and the services provided through the program; information evaluating the operation of the program, including the effectiveness of the program in achieving its stated goals.

COMMENT: This request for information was added in FY 2015-16 and replaced a statutory report from the Department of Public Health and Environment and the State Board of Health. The request for information was added to improve the accountability of each program that receives Tobacco Master Settlement Agreement funding. The responses to the request for information are reviewed by the JBC staff analyst during the Tobacco Master Settlement Agreement briefing.

APPENDIX A: TOBACCO MASTER SETTLEMENT AGREEMENT ALLOCATION PERCENTAGES

TOBACCO MASTER SETTLEMENT AGREEMENT MONEY ALLOCATION PERCENTAGES		
DEPARTMENT	PROGRAM	PERCENTAGE
Human Services	Nurse Home Visitor	26.70%
Health Care Policy and Financing	Children's Basic Health Plan Trust	18.00%
Higher Ed	CU Health Sciences	15.50%
Capital Construction	Fitzsimons Trust Fund	8.00%
Human Services	Tony Gramscas Youth Services	7.50%
Public Health and Environment	Drug Assistance Program	5.00%
Public Health and Environment	AIDS & HIV Prevention Grants	3.50%
Public Health and Environment	CO Immunization Fund	2.50%
Law	Tobacco Litigation Settlement Cash Fund	2.50%
Personnel	Supplemental State Contribution	2.30%
Higher Ed	Cancer Program	2.00%
Unallocated Amount - used to reduce size of the accelerated payment		2.00%
Health Care Policy and Financing	Autism Treatment	1.50%
Military and Veterans Affairs	State Veterans	1.00%
Public Health and Environment	Dental Loan Repayment	1.00%
Public Health and Environment	Health Services Corps (Loan Repayment)	1.00%

APPENDIX B: ALLOCATION OF AMENDMENT 35 TOBACCO TAX REVENUE

ALLOCATION OF AMENDMENT 35 TOBACCO TAX REVENUE		
DEPT.	PROGRAM AND/OR FUND	PERCENT
HCPF	Health Care Expansion Fund, to provide funding to the Children's Basic Health Plan and Medicaid.	46.0%
HCPF	Primary Care Fund, to provide funding to clinics and hospitals that offer health care services to the uninsured or medically indigent.	19.0%
DPHE	Tobacco Education Programs Fund, to support grants for tobacco education, prevention and cessation.	16.0%
DPHE	Prevention, Early Detection and Treatment Fund (PEDT Fund)	16.0%
DHS	Old Age Pension Fund	1.5%
DOR	Local governments, to compensate for lost revenue from tobacco taxes	0.9%
DPHE	Immunizations performed by small local public health agencies.	0.3%
HCPF	Children's Basic Health Plan	0.3%
Total Distributions		100.0%

ALLOCATION OF MONEY CREDITED TO THE PREVENTION, EARLY DETECTION AND TREATMENT FUND	
	ALLOCATION
Prevention, Early Detection and Treatment Fund (PEDT Fund)	16% of Amendment 35 Money
Breast and Cervical Cancer Screening Program (up to \$5.0 million)	20% of 16.0% allocated to the PEDT Fund
Health Disparities Program Fund	15% of 16.0% allocated to the PEDT Fund
Center for Health and Environmental Information	<u>fixed dollar amount</u>
Remains in the PEDT Fund for cancer, cardiovascular and pulmonary disease prevention, detection and treatment grants.	16.0% less amounts credited to three above purposes.



JBC Staff FY 2018-19 Figure Setting Tobacco Master Settlement Agreement and Amendment 35

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February 6, 2018**

Included in Staff Figure Setting Document

**Tobacco Master
Settlement Agreement**
(Page 1)

**Amendment 35
Tobacco Tax Revenue**
(Page 3)

Staff Recommendation
\$84.0 million total funds

Staff Recommendation
\$143.3 million total funds

Tobacco Master Settlement Agreement (p.1)

Staff Recommendation

- Tobacco Master Settlement Revenue Allocations (p. 2)

Amendment 35 Tobacco Tax Revenue (p.3)

Staff Recommendation

- Distribution of Amendment 35 Revenue (p. 3)

Long Bill Footnotes and RFIs (p.5)

Long Bill Footnotes

None.

Requests for Information

- One Recommendation (p. 5)



JBC Staff FY 2018-19 Figure Setting Tobacco Master Settlement Agreement and Amendment 35

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