

**COLORADO GENERAL ASSEMBLY
JOINT BUDGET COMMITTEE**



**FY 2015-16 STAFF FIGURE SETTING
TOBACCO MASTER SETTLEMENT AND
AMENDMENT 35 FUNDED PROGRAMS**

**JBC Working Document - Subject to Change
Staff Recommendation Does Not Represent Committee Decision**

**Prepared By:
Megan Davisson, JBC Staff
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For Further Information Contact:

Joint Budget Committee Staff
200 E. 14th Avenue, 3rd Floor
Denver, Colorado 80203
Telephone: (303) 866-2061
TDD: (303) 866-3472

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PART 1 - TOBACCO MASTER SETTLEMENT FUNDED PROGRAMS

Overview of Calculating Tobacco Distributions

This presentation incorporates a forecast of the amount of Tobacco Master Settlement revenue that will be received in April 2015, based on the Legislative Council January 2015 interim forecast. This forecast serves as the basis for the Long Bill allocation of Tobacco Master Settlement revenues among the Tobacco Master Settlement-supported programs in FY 2015-16. The allocation percentages are driven by statute and shown in Appendix A. Once approved by the Committee, this distribution will be used by other JBC analysts for setting FY 2015-16 appropriations to Tobacco Master Settlement-supported programs in their respective departments.

Tobacco Master Settlement allocations and appropriations

- Section 24-75-1104.5 (1), C.R.S., specifies that the total Tobacco Master Settlement funds allocated to programs will be based on the *prior year's* Tobacco Master Settlement receipts.
- The distribution of this amount across programs is governed by statute, with the key provisions contained in Sections 24-75-1104.5 (1) and (1.5), C.R.S. The Treasury uses these formulas to divide settlement moneys among the various Tobacco Master Settlement-supported programs.
- The General Assembly appropriates the allocated funds in the Long Bill. Without such appropriations, most programs can't spend the settlement money that have been allocated.

Appropriations are based on a tobacco settlement revenue forecast

Most of the appropriations in the Long Bill to Tobacco Master Settlement-supported programs depend upon the amount of Tobacco Master Settlement revenue received in the prior fiscal year. However, almost all the revenue arrives in April, after the Long Bill is written. 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 table below compares, for the last five years, the total projected revenues used for JBC staff figure setting, with the actual revenue received. As shown, the variance between projected and actual receipts has been small.

Variance Between Projected and Actual TMS Revenues					
Receipt Year	Distribution Year	Projection Used for Figure Setting	Actual Funds Received	Actual Above/(Below) Projection	Percent Variance from Projection
FY 09-10	FY 10-11	\$96,231,588	\$94,587,045	(\$1,644,543)	(1.71%)
FY 10-11	FY 11-12	90,397,679	89,065,763	(1,331,916)	(1.47%)
FY 11-12	FY 12-13	89,297,600	90,809,964	1,512,364	1.69%
FY 12-13	FY 13-14	90,166,340	90,769,997	603,657	0.67%
FY 13-14	FY 14-15	90,616,611	89,037,054	(1,579,557)	(1.74%)

In the past, higher-than-projected receipts could lead to supplemental budget requests to enable programs to fully spend all tobacco moneys they received. This problem was addressed by H.B. 13-1181, which enabled affected programs to carry forward amounts equaling up to 5.0 percent of prior year appropriations in program-specific cash funds. These amounts may then be appropriated from the cash funds to the programs in the next fiscal year. (Other tobacco settlement-funded programs already had program-specific cash funds that could be used to carry forward balances.)

→ Department of Law R3 - Tobacco Litigation Legal Assistant

Request: The Department of Law requests \$80,380 cash funds from the Tobacco Settlement Defense Account and 1.0 FTE to enable the Department of Law to continue meeting the demands of the requirements of the Tobacco Master Settlement Agreement and to ensure adequate protection of Colorado's interests with Tobacco Master Settlement Agreement litigations, negotiations, and settlements.

Recommendation: Staff recommends the Committee approve the request, and appropriate an additional \$69,453 cash funds and 1.0 FTE to the Department of Revenue to investigate and respond to Tobacco Master Settlement Agreement manufacture and distribution reporting irregularities identified by the Department of Law. Additionally, staff recommends the Committee sponsor legislation to reduce the Tobacco Master Settlement revenue Tier 1 distribution to the Children's Basic Health Plan by 2.0 percent and add a 2.0 percent distribution to the Tobacco Settlement Defense Account as a Tier 1 distribution. This distribution will pay for the ongoing costs of enforcement and compliance with the terms of the Tobacco Master Settlement Agreement.

Analysis:

Background

Since the Tobacco Master Settlement was finalized in the early 2000s, the Department of Law has monitored compliance with the numerous requirements and payment obligations under the agreement consistent with the provisions of Section 24-31-402 (1), C.R.S. The Antitrust, Tobacco and Consumer Protection Unit in the Department of Law:

- Monitors the Tobacco Master Settlement Agreement marketing restrictions in Colorado;
- Ensures Colorado's interests are protected in the calculation of Tobacco Master Settlement Agreement payments;
- Enforces state statutes requiring Non-Participating Manufactures to pay into the escrow account the amount, based on their sales, they would have been required to pay under the Tobacco Master Settlement Agreement;

- Reviews each annual report from every licensed cigarette and tobacco distributor on the number of cigarettes, roll-your-own ounces, and sticks converted from roll-your-own tobacco manufactured by Non-Participating Manufacturers that are stamped and distributed for sale in Colorado in that year;
- Reviews the monthly transfer forms submitted by cigarette distributors on the amount of exports or transferred cigarettes manufactured by Non-Participating Manufacturers in Colorado;
- Enforces the State's Certified Brand Directory which lists all cigarette and roll-your-own tobacco brands legal for sale in Colorado; and
- Is the liaison between the outside council representing the State during arbitration hearings and the Department of Law and Attorney General's Office.

The Antitrust, Tobacco and Consumer Protection Unit, along with outside counsel represents Colorado in the arbitration proceedings related to the Non-Participating Manufactures adjustment. This includes representing Colorado at all multi-state meetings and arbitration hearings, negotiating with counsel for Participating Manufacturers, and monitoring all contested state arbitration to prepare for future arbitrations. The Department of Law's efforts are essentially "on trial" before the arbitrators, so attorneys from the Department are likely to be called to testify during the arbitration proceeding, requiring the use of outside counsel.

Every tobacco product manufacturer must file an annual certification with the Unit for review, and several will file additional supplemental certifications throughout the year. In addition, Non-Participating Manufacturers also file certifications verifying compliance with the Escrow Funds Act. Review of more than 45 annual manufacturer certifications and 20 escrow certifications can take months under normal circumstances. With increased demands in other areas, this annual review is often extended for a greater amount of time. The Tobacco Unit (Unit) within the Antitrust, Tobacco and Consumer Protection Unit currently consists of one Assistant Attorney General and occasional support from a legal assistant. In the past, a temporary legal assistant has been engaged to provide short-term assistance in review of certifications and escrow compliance.

The Colorado Department of Revenue (DOR) also has enforcement responsibilities with regard to distributors and tracking "units sold", the measure for determining Non-Participating Manufacture escrow requirements. The Unit works closely with DOR on enforcement, but currently the structure of DOR is such that the enforcement activities are spread among multiple staff in different areas of DOR.

Part 1 - Department Request and Department of Revenue Staff

Based on the Unit's experience with the arbitration process for the 2003 disputed payments, the Unit has determined that an additional legal assistant who can focus on review of the annual and monthly reports and diligent enforcement of the State's Certified Brand Directory will allow the existing lawyer to focus on expanding the working relationship with the Department of Revenue,

the upcoming arbitration for calendar year 2004, and those manufactures and distributors which consistently submit incomplete and/or inaccurate forms.

The Unit, as expanded with one staff, will be able to function most effectively by the addition of one staff in DOR who will coordinate cigarette and tobacco products activities between various sections of DOR and ensure these activities align with the work of the Unit. The additional DOR staff will also investigate discrepancies identified by the Unit through review of the registration process, and ensure all applicable tobacco and cigarette taxes are being paid. Currently the Department of Revenue does not have a single employee dedicated to the above functions. Staff recommends in order to continue Colorado's diligent enforcement of the requirements of the terms of the Tobacco Master Settlement Agreement, **the Committee sponsor legislation to allow the Department of Revenue to receive funds from the Tobacco Settlement Defense Account, and appropriate \$69,453 cash funds from the Tobacco Settlement Defense Account and 1.0 FTE to the Department of Revenue in FY 2015-16.**

Part 2 - Tobacco Settlement Defense Account

Only the Department of Law is authorized by Section 24-22-115 (2) (a), C.R.S., to use the Tobacco Settlement Defense Account (Account) to defend Colorado in lawsuits resulting from the Tobacco Master Settlement. Funds in the Account can also be used for enforcement activities related to the terms of the Tobacco Master Settlement, to defend Colorado in Settlement related litigations, and to resolve any dispute with any participating manufacturer. The staff recommendation in Part 1 would use the Account to fund the two new FTE. There is one catch, the Account was never incorporated into the Tobacco Master Settlement statutory revenue distribution formula. Therefore in H.B. 13-1180 the General Assembly established a four year (FY 2012-13 through FY 2015-16) diversion of revenue from the Nurse Home Visitor Program to the Tobacco Settlement Defense Account to provide a short-term funding solution for Colorado's enforcement and defense activities. The following table summarizes the projected balance of the Account through FY 2017-18 accounting for the Part 1 recommendation.

Tobacco Settlement Defense Account Balance Based on Current Law				
	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
Starting Balance	\$2,355,974	\$1,934,319	\$1,356,204	(\$237,395)
Revenue				
Interest	14,462	11,874	\$8,325.00	\$0.00
HB 13-1180 Transfer	<u>1,000,000</u>	<u>1,000,000</u>	<u>0</u>	<u>0</u>
<i>Total revenue</i>	<i>\$1,014,462</i>	<i>\$1,011,874</i>	<i>\$8,325</i>	<i>\$0</i>
Expenditures				
Consumer Protection Costs	(176,596)	(179,245)	(183,726)	(186,482)
Centrally Appropriated Items	(9,521)	(10,902)	(10,902)	(10,902)
Tobacco Litigation Expenses	(1,250,000)	(1,250,000)	(1,250,000)	(1,250,000)
R3 - Legal Assistant (DOL)	0	(80,389)	(79,159)	(79,159)
R3 - DOR Tobacco Coordinator (DOR)	<u>0</u>	<u>(69,453)</u>	<u>(78,137)</u>	<u>(78,137)</u>
<i>Subtotal Expenditures</i>	<i>(\$1,436,117)</i>	<i>(\$1,589,989)</i>	<i>(\$1,601,924)</i>	<i>(\$1,604,680)</i>
Ending Fund Balance	\$1,934,319	\$1,356,204	(\$237,395)	(\$1,842,075)

*JBC Staff Figure Setting – FY 2015-16
Staff Working Document – Does Not Represent Committee Decision*

Since the funds in the Account are used to defend and represent Colorado during litigation and enforcement of the laws that resulted from the Tobacco Master Settlement Agreement, it makes sense to staff that a portion of the revenue Colorado receives from the Tobacco Master Settlement Agreement be used for these purposes. Therefore **staff recommends the Committee sponsor legislation to adjust the Tier 1 distribution of Tobacco Master Settlement revenues by reducing the Children's Basic Health Plan amount by 2.0 percent and adding a new distribution to the Account in the amount of 2.0 percent.** The following table illustrates how the recommendation will impact the Account year-end balance.

Tobacco Defense Account Balance Based on Current Law				
	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
Starting Balance	\$2,355,974	\$1,934,319	\$1,356,204	\$1,522,605
Revenue				
Interest	14,462	11,874	\$8,325.00	\$9,346.00
HB 13-1180 Transfer	1,000,000	1,000,000	0	0
Tier 1 Distribution	<u>n/a</u>	<u>n/a</u>	<u>1,760,000</u>	<u>1,750,000</u>
<i>Total Revenue</i>	<i>\$1,014,462</i>	<i>\$1,011,874</i>	<i>\$1,768,325</i>	<i>\$1,759,346</i>
Expenditures				
Consumer Protection Costs	(176,596)	(179,245)	(183,726)	(186,482)
Centrally Appropriated Items	(9,521)	(10,902)	(10,902)	(10,902)
Tobacco Litigation Expenses	(1,250,000)	(1,250,000)	(1,250,000)	(1,250,000)
R3 - Legal Assistant (DOL)	0	(80,389)	(79,159)	(79,159)
R3 - DOR Tobacco Coordinator (DOR)	<u>0</u>	<u>(69,453)</u>	<u>(78,137)</u>	<u>(78,137)</u>
<i>Subtotal Expenditures</i>	<i>(\$1,436,117)</i>	<i>(\$1,589,989)</i>	<i>(\$1,601,924)</i>	<i>(\$1,604,680)</i>
Ending Fund Balance	\$1,934,319	\$1,356,204	\$1,522,605	\$1,677,271

The reason staff is recommending a reduction to the percent of Tier 1 revenue which goes to the Children's Basic Health Plan is that a provision of the Affordable Care Act adds 23.0 percentage points to the match rate for the Children's Basic Health Plan from October 1, 2015 through September 30, 2019. Due to the change in the federal match rate for the Children's Basic Health Plan, the Department of Health Care Policy and Financing (HCPF) is projected the Children's Basic Health Plan Trust Fund (Trust Fund) which receives the Tobacco Master Settlement revenue will have a FY 2015-16 year-end balance of \$18.1 million (even after the proposed elimination of the General Fund subsidy for the Children's Basic Health Plan for FY 2015-16). HCPF is projecting (assuming federal reauthorization for federal funding) the Trust Fund will have expenditures of \$16.9 million compares to revenues of \$29.8 million, of which \$28.2 million is Tobacco Master Settlement dollars. Therefore it is unlikely the Children's Basic Health Plan will use the full 27.0 percent Tier 1 distribution of Tobacco Master Settlement dollars in FY 2015-16 or FY 2016-17. Additionally, even if in the long run expenditures for the Children's Basic Health Plan increase to a point of exceeding the revenue from the Tobacco Master Settlement Agreement, staff believes it is more appropriate to use General Fund for the

HCPF services than using General Fund for the ongoing legal and enforcement expenses resulting from the terms of the Tobacco Master Settlement Agreement.

Lastly staff recommends the statutory change over a one-time or short-term transfer to the account because staff believes it is in the State's interest to have a sustainable funding source of the work of enforcing cigarette and tobacco laws and ensuring Colorado is adequately represented in all tobacco related litigation.

→ Staff Initiated - Tobacco Master Settlement Annual Report Changes

Request: The Department of Public Health and Environment did not request this change, but State Board of Health recommended Section 25-1-108.5, C.R.S. be repealed in the most recent Tobacco Master Settlement Agreement Annual Report. This statute requires the State Board of Health and Department of Public Health and Environment to monitor and make recommendations on Tobacco Master Settlement funding to the Joint Budget Committee and Health Committees of the House and Senate each year.

Recommendation: Staff recommends the Committee sponsor legislation to repeal Section 25-1-108.5, C.R.S. and add the following requests for information to all Departments which receive Tobacco Master Settlement revenue moneys.

For Departments with a single program funded with Tobacco Master Settlement moneys:

The Department is requested to provide the following information to the Joint Budget Committee by November 1, 2015: the amount of Tobacco Settlement moneys received for the XXX 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; and information evaluating the operation of the program, including the effectiveness of the program in achieving its stated goals.

For Departments with multiple programs funded with Tobacco Master Settlement moneys:

The Department is requested to provide the following information to the Joint Budget Committee by November 1, 2015 for each program funded with Tobacco Master Settlement moneys: the name of the program; the amount of Tobacco Settlement moneys received for 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; and information evaluating the operation of the program, including the effectiveness of the program in achieving its stated goals.

Analysis: The statutory required FY 2013-14 Tobacco Master Settlement Agreement Programs Annual Report (Report) from the Board of Health to the General Assembly, Governor, and Attorney General's Office included the recommendation to discontinue the Report. The report states that the requirement that the Board of Health and Department of Public Health and

Environment monitor and make recommendations concerning Tobacco Master Settlement funding duplicates the performance management and reporting of the other six agencies which administer programs funded with Tobacco Master Settlement revenues. Statute does not provide the Department of Public Health and Environment or the Board of Health with the authority to compel the other agencies to meet performance goals or with mechanisms to address poor performing program. The Report states "upon review of the FY 2013-14 annual report, the Board of Health is unable to identify whether funding should be discontinued for any of the Tobacco Master Settlement-supported programs. As such, the Board of Health recommends that no funding be discontinued.

The staff recommendation to include requests for information for each program funded with Tobacco Master Settlement revenues will improve the accountability and scrutiny each program would be required to go through to justify the amount of Tobacco Master Settlement funding they receive. The responses the JBC would receive would be reviewed and presented by the JBC staff analyst that has the expertise on that specific program during the annual briefing presentations.

The current structure requires the Department of Public Health and Environment to collect information from six different agencies and translate the information into a report. The requests for information will eliminate the middle-man and enable the Departments which operate the programs to communicate information directly with to the General Assembly. Additionally, since JBC staff review and analyze requests for information as part of the annual briefing process, there will be increased oversight of how programs are using Tobacco Master Settlement revenue. Currently the JBC does not specifically review the Tobacco Master Settlement Annual Report because it is not final until mid-January after the Committee has completed briefings.

The recommendation includes two versions of the request for information because six departments have only one program that receives Tobacco Master Settlement moneys and three departments have multiple programs which receive Tobacco Master Settlement moneys. The information requested in the requests for information mirrors that is currently required by statute as shown below:

- The amount of Tobacco Settlement moneys received for the **XXX** program for the preceding fiscal year - *this is the current requirement under Section 25-1-108.5 (2) (a), C.R.S.*;
 - A description of the program including the actual number of persons served and the services provided through the program - *this is the current requirement under Section 25-1-108.5 (2) (b), C.R.S.*; and
 - Information evaluating the operation of the program, including the effectiveness of the program in achieving its stated goals - *this is the current requirement under Section 25-1-108.5 (2) (c), C.R.S.*
-

Tobacco Master Settlement Agreement Moneys FY 2015-16 Recommendation

The Legislative Council Staff Revenue Forecast

The table below reflects the Legislative Council Staff January 2015 Tobacco Master Settlement revenue forecast along with actual tobacco settlement revenues in recent years.

Colorado Tobacco Master Settlement Agreement Payments and Disputed Payments 2007 to 2017			
Year	Colorado Annual Payment After Withholdings	Disputed Amount Withheld	Release of Prior Withholdings
2007	\$82,005,568	(\$12,113,579)	
2008	\$103,640,385	(\$7,711,843)	
2009	\$105,419,647	(\$7,062,223)	\$7,411,531
2010	\$95,709,303	(\$8,714,641)	
2011	\$89,065,763	(\$13,614,015)	
2012	\$90,809,964	(\$11,574,809)	
2013	\$90,769,997	(\$12,362,477)	
2014	\$89,037,053	(\$11,756,684)	\$11,367,403
Forecast 2015	\$88,562,575	(\$11,694,032)	
Forecast 2016	\$88,054,137	(\$11,626,897)	
Forecast 2017	\$87,430,714	(\$11,544,578)	

Tobacco settlement revenue has varied based on a number of factors. Actual allocations owed in any year equals the amount owed in the prior year, modified by:

- A volume adjustment, which reflects changes in the volume of cigarettes distributed by participating manufactures nationwide and the forecast assumes a decrease in cigarette sales;
- An inflation adjustment, which equals the higher of 3.0 percent or the actual rate of inflation during the preceding year. The forecast assumes a 3.0 percent inflation adjustment; and
- Disputed payments adjustments, associated with the legal dispute over whether states are "diligently enforcing" laws concerning tobacco manufacturers who are not part of the settlement agreement. The forecast above assumes the largest cigarette manufactures will continue to withhold payments.

Staff recommends that the Committee approve the above forecast and the resulting allocation of settlement revenue shown in the following table. The detailed staff recommendation in the following table by line item is based on a Legislative Council Staff projection for the April 2015 tobacco settlement revenue of: **\$88,562,575** (unrounded). Staff used this figure to calculate allocations to individual programs following the rules outlined in Appendix A.

JBC Staff Figure Setting – FY 2015-16
Staff Working Document – Does Not Represent Committee Decision

Tobacco Master Settlement Allocations			
	FY 14-15 Actual	FY 2015-16 Appropriation	Change from FY 2014-15 Actual
Education - Early Literacy Grant Program	\$4,451,853	\$4,428,129	(23,724)
Health Care Policy and Financing			
Children's Basic Health Plan Trust	\$27,889,272	\$27,611,075	(\$278,197)
Children with Autism	1,000,000	1,000,000	0
<i>Subtotal - Health Care Policy and Financing</i>	<i>\$28,889,272</i>	<i>\$28,611,075</i>	<i>(\$278,197)</i>
Higher Education - University of Colorado Health Sciences Center	\$13,007,869	\$12,500,677	(\$507,192)
Human Services			
Nurse Home Visitor Program	\$15,026,670	\$15,826,889	\$800,219
Tony Grampas Youth Services Program	3,561,482	3,542,503	(18,979)
Offender Mental Health Services Treatment, Detoxification, and Prevention	3,185,601	3,061,390	(124,211)
Contracts	796,400	765,348	(31,052)
Residential Mental Health Treatment for Youth	300,000	300,000	0
<i>Subtotal - Human Services</i>	<i>\$22,870,153</i>	<i>\$23,496,130</i>	<i>\$625,977</i>
Law - Tobacco Settlement Defense Account	\$1,000,000	\$1,000,000	\$0
Legislature - Office of the State Auditor	\$89,000	\$89,000	\$0
Military and Veterans Affairs - State Veterans Trust Fund	\$890,371	\$885,626	(\$4,745)
Personnel - Supplemental State Contribution Fund	\$1,194,600	\$1,148,021	(\$46,579)
Public Health and Environment			
AIDS Drug Assistance Program (ADAP; Ryan White)	\$3,116,297	\$3,099,690	(\$16,607)
Local Public Health Agencies	1,858,267	1,785,811	(72,456)
AIDS and HIV Prevention Grants (CHAPP)	1,780,741	1,771,252	(9,489)
Immunizations	1,061,867	1,020,463	(41,404)
Health Services Corps Fund	250,000	250,000	0
Dental Loan Repayment Program	200,000	200,000	0
<i>Subtotal Public Health and Environment</i>	<i>\$8,267,172</i>	<i>\$8,127,216</i>	<i>(\$139,956)</i>
Capital Construction - Department of Higher Education - Fitzsimons Lease Purchase Payments	\$7,122,964	\$7,085,006	(\$37,958)
Amounts not allocated - used to reduce accelerated payments	\$1,253,799	\$1,191,695	(\$62,104)
Total Allocations to Tobacco-Supported Programs	\$89,037,053	\$88,562,575	(\$474,478)

Note on the above table: Amounts shown represent actual and anticipated allocations to program cash funds supported with Tobacco Settlement Revenue based on statutory formulas and settlement payments received in April 2015. Appropriations for individual programs from program cash funds typically differ from these amounts for various reasons, including because actual revenue is not known at the time appropriations are enacted. Program spending is limited by the lesser of total funds available in program cash funds or appropriated amounts. However, with limited exceptions, programs are authorized to carry forward revenue that exceeds their appropriation into the next fiscal year.

Individual staff analysts will recommend FY 2015-16 appropriation amounts for programs in their budget areas that are supported by tobacco settlement funds, taking into consideration the tobacco revenue forecast and the balance of tobacco moneys expected to be available in program cash funds. To support this effort, staff has also prepared a table reflecting the difference between the FY 2014-15 forecast and actual receipts by affected program.

JBC Staff Figure Setting – FY 2015-16
Staff Working Document – Does Not Represent Committee Decision

Tobacco Master Settlement Allocations			
	FY 2014-15 Projection	FY 14-15 Actual	Actual Over/(Under) Projection
Education - Early Literacy Grant Program	\$4,530,830	\$4,451,853	(\$78,977)
Health Care Policy and Financing			
Children's Basic Health Plan Trust	\$28,387,890	\$27,889,272	(\$498,618)
Children with Autism	1,000,000	1,000,000	0
<i>Subtotal - Health Care Policy and Financing</i>	<i>\$29,387,890</i>	<i>\$28,889,272</i>	<i>(\$498,618)</i>
Higher Education - University of Colorado Health Sciences Center	\$13,251,670	\$13,007,869	(\$243,801)
Human Services			
Nurse Home Visitor Program	\$15,310,990	\$15,026,670	(\$284,320)
Tony Grampas Youth Services Program	3,624,660	3,561,482	(63,178)
Offender Mental Health Services Treatment, Detoxification, and Prevention Contracts	3,245,310	3,185,601	(59,709)
Residential Mental Health Treatment for Youth	811,330	796,400	(14,930)
Residential Mental Health Treatment for Youth	300,000	300,000	0
<i>Subtotal - Human Services</i>	<i>\$23,292,290</i>	<i>\$22,870,153</i>	<i>(\$422,137)</i>
Law - Tobacco Settlement Defense Account	\$1,000,000	\$1,000,000	\$0
Legislature - Office of the State Auditor	\$89,000	\$89,000	\$0
Military and Veterans Affairs - State Veterans Trust Fund	\$906,170	\$890,371	(\$15,799)
Personnel - Supplemental State Contribution Fund	\$1,216,990	\$1,194,600	(\$22,390)
Public Health and Environment			
AIDS Drug Assistance Program (ADAP; Ryan White)	\$3,171,580	\$3,116,297	(\$55,283)
Local Public Health Agencies	1,893,100	1,858,267	(34,833)
AIDS and HIV Prevention Grants (CHAPP)	1,812,330	1,780,741	(31,589)
Immunizations	1,081,770	1,061,867	(19,903)
Health Services Corps Fund	250,000	250,000	0
Dental Loan Repayment Program	200,000	200,000	0
<i>Subtotal Public Health and Environment</i>	<i>\$8,408,780</i>	<i>\$8,267,172</i>	<i>(\$141,608)</i>
Capital Construction - Department of Higher Education - Fitzsimons Lease Purchase Payments	\$7,249,330	\$7,122,964	(\$126,366)
Amounts not allocated - used to reduce accelerated payments	\$1,283,650	\$1,253,799	(\$29,851)
Total Allocations to Tobacco-Supported Programs	\$90,616,600	\$89,037,053	(\$1,579,547)

PART 2 - AMENDMENT 35 FUNDED PROGRAMS

Amendment 35 Figure Setting

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. The graphic in Appendix B illustrates which departments and programs receive Amendment 35 tobacco tax 20.0 percent of the manufacturer's list price dollars.

The Legislative Council Staff projection of FY 2014-15 Amendment 35 revenues was \$141.2 million in December 2013 and was reduced to \$141.0 million in the December 2014 forecast. This reduction of FY 2014-15 impacts all the programs which receive Amendment 35 dollars but does not require supplemental adjustments because the Department's will show a reversion of spending authority. Appendix C provides a summary of the FY 2014-15 funding adjustments for all the programs funded with Amendment 35 dollars based on the revised revenue projection. It is not clear what is causing the reduction of Amendment 35 revenue and possible causes include the economy, the legalization of marijuana, and/or an increase in the purchase of electronic cigarettes.

Based on the December 2014 Legislative Council forecast of **\$142,531,000** FY 2015-16 Amendment 35 revenues, the following table summarizes staff's recommendation of the distribution of Amendment 35 dollars for FY 2014-15. **Staff recommends the Committee approve this distribution, and requests permission to adjust the allocation if the March 2015 Amendment 35 forecast is greater than the December 2014 forecast.** Each JBC staff will provide additional information on the use of Amendment 35 dollars within each applicable Department during that Department's figure setting presentation.

JBC Staff Figure Setting – FY 2015-16
Staff Working Document – Does Not Represent Committee Decision

FY 2015-16 Distribution of Amendment 35 Moneys				
Dept.	Program and/or Fund	Percent	FY 2015-16 Recommended Appropriation	Change from FY 14- 15 Appropriation
HCPF	Health Care Expansion Fund, to provide funding to the Children's Basic Health Plan and Medicaid.	46.0%	\$65,564,260	\$612,260
HCPF	Primary Care Fund, to provide funding to clinics and hospitals that offer health care services to the uninsured or medically indigent.	19.0%	27,080,890	\$252,890
DPHE	Tobacco Education Programs Fund, to support grants for tobacco education, prevention and cessation.	16.0%	22,804,960	\$212,960
DPHE	Prevention, Early Detection and Treatment Fund	16.0%	22,804,960	\$212,960
	20.0% for CDPHE and HCPF for the Breast and Cervical Cancer Program (up to \$5.0 million)*	3.2% of 16.0%	4,560,992	\$42,592
	15.0% to Health Disparities Program Fund	2.4% of 16.0%	3,420,744	\$31,944
	Money to the Center for Health and Environmental Information	dollar amount	283,884	\$0
	<i>Remains in the Prevention, Early Detection and Treatment Fund for grants for cancer, cardiovascular and pulmonary disease.</i>		<i>\$14,539,340</i>	<i>\$138,424</i>
DHS	Old Age Pension Fund	1.5%	2,137,965	\$19,965
DOR	Local governments, to compensate for lost revenue from tobacco taxes	0.9%	1,282,779	\$11,979
DPHE	Immunizations performed by small local public health agencies.	0.3%	427,593	\$3,993
HCPF	Children's Basic Health Plan	0.3%	427,593	\$3,993
Total Distributions		100.0%	\$142,531,000	\$1,331,000
Department Summary				
Health Care Policy and Financing Total Amendment 35 Moneys			\$93,072,743	\$869,143
Department of Public Health and Environment Total Amendment 35 Moneys			46,037,513	429,913
Department of Human Services Total Amendment 35 Moneys			2,137,965	19,965
Department of Revenue Total Amendment 35 Moneys			1,282,779	11,979

Appendix A - Tobacco Master Settlement Allocation Percentages

Section 24-75-1104.5, C.R.S., divides Tobacco Master Settlement-supported programs into two tiers. Settlement moneys are first allocated among the tier 1 programs, which will use approximately two thirds of the total. The remainder is allocated among the tier 2 programs. The tables below list the tier 1 and tier 2 programs and provide an overview of each program's statutory funding rule. Note that the Children's Basic Health Plan receives allocations from both tier 1 and tier 2.

Tier 1 Programs	
Recipient	Portion of the Total Amount Distributed
Children's Basic Health Plan	27.0%, not to exceed \$33.0 million and not less than \$17.5 million
Nurse Home Visitor (NHV) Program and the General Fund (GF)	\$12.7 million in FY 2012-13, 17.0% less \$1.0 million in FY 2013-14, 18.0% less \$1.0 million in FY 2014-15, 19.0% less \$1.0 million in FY 2015-16, and 19.0% in FY 2016-17 and thereafter, not to exceed \$19.0 million in any year
Fitzsimons lease purchase	8.0%, not to exceed \$8.0 million or the actual lease purchase payment
Early Literacy Program (H.B. 12-1238)	5.0%, not to exceed \$8.0 million
Tony Gramscas Youth Services Program	4.0%, not to exceed \$5.0 million
HIV/AIDS Drug Assistance Program	3.5%, not to exceed \$5.0 million
HIV and AIDS Prevention Grant Program	2.0%, not to exceed \$2.0 million
State Veterans Trust Fund	1.0%, not to exceed \$1.0 million (10.0% of the state veterans allocation is retained in the State Veterans Trust Fund and the remaining 90.0%, plus interest earned by the trust, is expended)
Litigation Settlement Defense Account	\$1.8 million in FY 2012-13, \$1.0 million in FY 2013-14, \$1.0 million in FY 2014-15, and \$1.0 million in FY 2015-16
Autism Treatment Fund	\$1,000,000 annually (fixed)
Child Mental Health Treatment Act	\$300,000 annually (fixed)
Dental Loan Repayment Program	\$200,000 annually (fixed)

JBC Staff Figure Setting – FY 2015-16
Staff Working Document – Does Not Represent Committee Decision

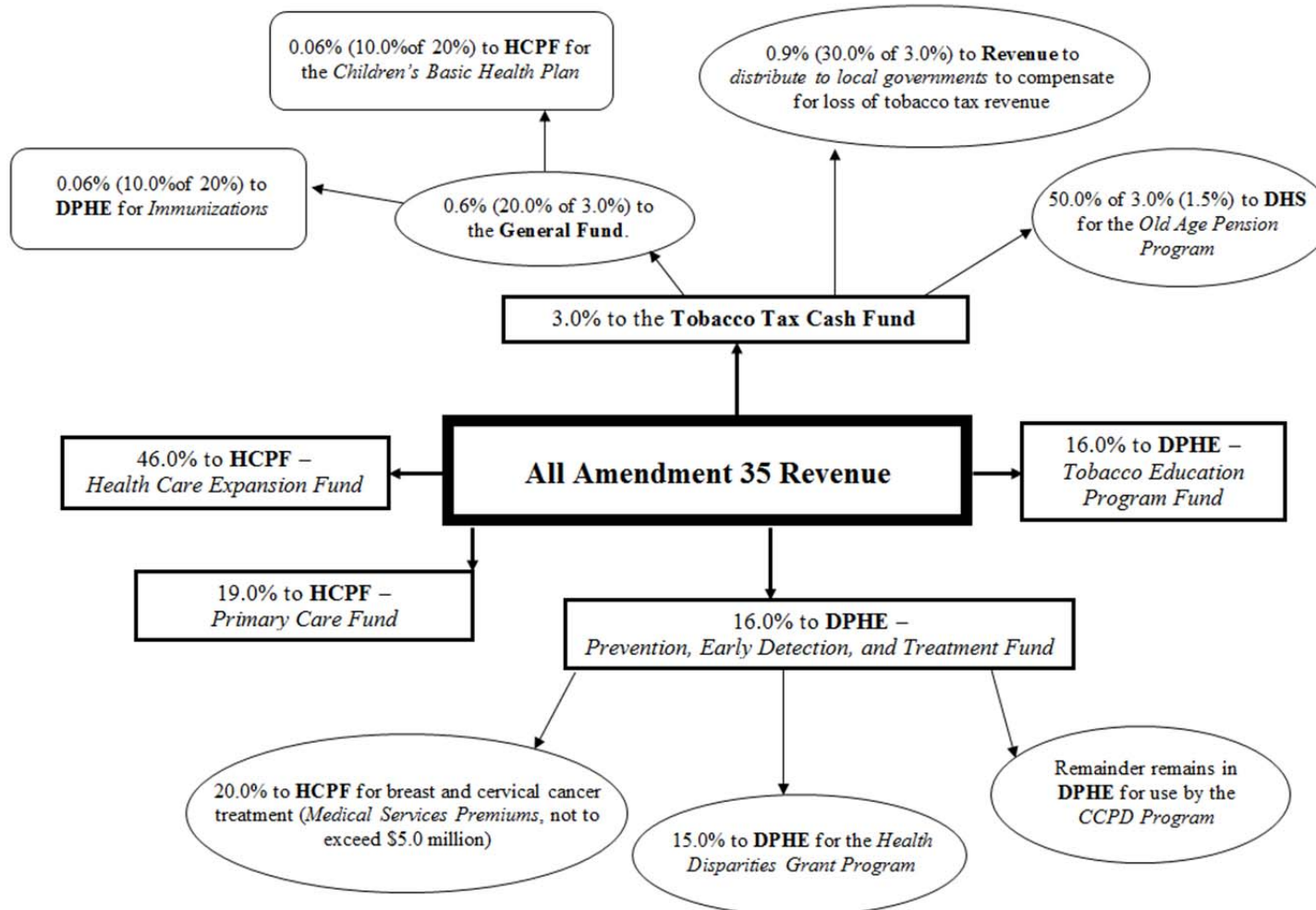
Tier 2 Programs	
Recipient	Portion of the Residual Distributed after Tier 1 Program Allocations
University of Colorado Health Sciences Center	49.0%
Children's Basic Health Plan	14.5%
Mental health services for juvenile and adult offenders	12.0%
Local public health services	7.0%
Supplemental state contribution for state employee group benefit plans	4.5%
Colorado Immunization Program	4.0%
Alcohol and drug abuse and treatment programs	3.0%
Health Services Corps (Health Care Professional Loan Forgiveness Program)	\$250,000 (fixed)
State Auditor's Office	\$89,000 (fixed)
Retained in Tobacco Litigation Settlement Cash Fund	6.0% less fixed Tier 2 allocations
Total	100.0%

The table below summarizes projected distributions in order of size of allocation.

Tobacco Master Settlement Programs Order By Total Percent Allocation		
Program	Department	Total Percent Allocation
Children's Basic Health Plan Trust	HCPF	31.3%
Nurse Home Visitor	HUM	16.9%
CU Health Sciences	HED	14.6%
Fitzsimons Trust Fund	HED	8.0%
Early Literacy Program	EDU	5.0%
Tony Grampsas Youth Services	HUM	4.0%
Offender Mental Health Services	HUM	3.6%
HIV/AIDS Drug Assistance Program (Ryan White)	PHE	3.5%
Local Public Health Agencies	PHE	2.1%
AIDS & HIV Prevention Grants	PHE	2.0%
Retained in Tobacco Fund	n/a	1.4%
Supplemental State Contribution	PER	1.3%
CO Immunization Fund	PHE	1.2%
Defense Account	LAW	1.1%
Autism Treatment	HCPF	1.1%
State Veterans	MIL	1.0%
Alcohol & Drug Abuse	HUM	0.9%
Child Mental Health Treatment Act	HUM	0.3%
Health Services Corps	PHE	0.3%
Dental Loan Repayment	PHE	0.2%
State Auditor's Office	LEG	0.1%

Appendix B - Amendment 35 Revenue Allocations

Distribution of Amendment 35 Moneys Pursuant to Section 24-22-117, C.R.S.



Appendix C - FY 2014-15 Revised Amendment 35 Revenue Projections

FY 2014-15 Appropriation vs FY 2014-15 Projected Amounts Based on December 2014 Forecast of Amendment 35 Moneys					
Dept.	Program and/or Fund	Percent	FY 2014-15 Appropriation	FY 2014-15 Projected Amounts	Over/(Under) Appropriation
HCPF	Health Care Expansion Fund, to provide funding to the Children's Basic Health Plan and Medicaid.	46.0%	\$64,952,000	\$64,846,184	(\$105,816)
HCPF	Primary Care Fund, to provide funding to clinics and hospitals that offer health care services to the uninsured or medically indigent.	19.0%	26,828,000	26,784,294	(\$43,706)
DPHE	Tobacco Education Programs Fund, to support grants for tobacco education, prevention and cessation.	16.0%	22,592,000	22,555,195	(\$36,805)
DPHE	Prevention, Early Detection and Treatment Fund	16.0%	22,592,000	22,555,195	(\$36,805)
	20.0% for CDPHE and HCPF for the Breast and Cervical Cancer Program (up to \$5.0 million)*	3.2% of 16.0%	4,518,400	4,511,039	(\$7,361)
	15.0% to Health Disparities Program Fund	2.4% of 16.0%	3,388,800	3,383,279	(\$5,521)
	Money to the Center for Health and Environmental Information	dollar amount	283,884	283,884	\$0
	<i>Remains in the Prevention, Early Detection and Treatment Fund for grants for cancer, cardiovascular and pulmonary disease.</i>		<i>\$14,400,916</i>	<i>\$14,376,993</i>	<i>(\$23,923)</i>
DHS	Old Age Pension Fund	1.5%	2,118,000	2,114,549	(\$3,451)
DOR	Local governments, to compensate for lost revenue from tobacco taxes	0.9%	1,270,800	1,268,730	(\$2,070)
DPHE	Immunizations performed by small local public health agencies.	0.3%	423,600	422,910	(\$690)
HCPF	Children's Basic Health Plan	0.3%	423,600	422,910	(\$690)
Total Distributions			\$141,200,000	\$140,969,967	(\$230,033)
					\$0
Health Care Policy and Financing Total Amendment 35 Moneys			\$92,203,600	\$92,053,388	(\$150,212)
Department of Public Health and Environment Total Amendment 35 Moneys			45,607,600	45,533,300	(\$74,300)
Department of Human Services Total Amendment 35 Moneys			2,118,000	2,114,549	(\$3,451)
Department of Revenue Total Amendment 35 Moneys			1,270,800	1,268,730	(\$2,070)