

**COLORADO GENERAL ASSEMBLY
JOINT BUDGET COMMITTEE**



**FY 2014-15 STAFF FIGURE SETTING
TOBACCO SETTLEMENT FUNDED PROGRAMS**

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

**Prepared By:
Amanda Bickel, JBC Staff
February 4, 2013**

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

TABLE OF CONTENTS

Overview: Calculating Tobacco Distributions..... 3
 Tobacco Settlement allocations and appropriations 3
 Appropriations are based on a tobacco settlement revenue forecast 3
The Legislative Council Staff Revenue Forecast..... 5
Appendix: Formula Distributions to Programs..... 8
Appendix: Use of Current and Prior-year Revenue to Support Allocations..... 10
Appendix: Numbers Pages
 FY 2011-12 through FY 2014-15 Forecast Tobacco MSA Distributions.....11

TOBACCO SETTLEMENT FUNDED PROGRAMS

Overview: Calculating Tobacco Distributions

This presentation incorporates a forecast of the amount of tobacco settlement revenue that will be received in April 2014, based on the Legislative Council January 2013 interim forecast. This forecast serves as the basis for the estimated allocation of settlement revenues among settlement-supported programs in FY 2013-14 that is shown in the number pages, an allocation that is driven by statutory rules. Once approved by the Committee, this distribution will be used by other JBC analysts in setting FY 2014-15 appropriations to settlement-supported programs.

Tobacco Settlement allocations and appropriations

- Statute at 24-75-1104.5 (1), C.R.S. specifies that the total tobacco settlement funds allocated to programs be based on the *prior year's* tobacco settlement receipts.
- The distribution of this amount among programs is governed by statute, with the key provisions contained in Section 24-75-1104.5 (1) and (1.5), C.R.S. The Treasury uses these formulas to divide settlement moneys among the various tobacco programs. Additional information on the statutory allocation process is included in the appendix.
- The General Assembly appropriates the allocated funds. Without such appropriations, most programs can't spend the settlement money that they have been allocated.

Appropriations are based on a tobacco settlement revenue forecast

Most of the appropriations in the Long Bill to settlement-supported programs depend upon the amount of settlement revenue received in the prior fiscal year. However, all or most settlement 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 receipts in Legislative Council Staff projections for tobacco settlement revenues used for JBC staff figure setting, with the actual revenue received. As shown, at least in recent years, the variance between projected and actual receipts has been small.

JBC Staff Figure Setting – FY 2014-15
Staff Working Document – Does Not Represent Committee Decision

Receipt Year	Distribution Year	Legislative Council Projection Used for Figure Setting	Actual Funds Received	Actual Above/(Below) Projection	Percent Variance from Projection
FY 08	FY 09	\$106,653,988	\$103,640,385	(\$3,013,603)	-2.8%
FY 09*	FY 10*	103,302,921	105,419,646	2,116,725	2.0%
FY 10	FY 11	96,231,588	94,587,045	(1,644,543)	-1.7%
FY 11	FY 12	90,397,679	89,065,763	(1,331,916)	-1.5%
FY 12	FY 13	89,297,600	90,809,964	1,512,364	1.7%
FY 13	FY 14	90,166,340	90,769,997	603,657	0.7%

*Actual amounts shown in this year exclude \$7.4 million in special payments received related to the non-participating manufacturer's dispute.

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, a JBC bill, which enabled affected programs to carry forward amounts equaling up to five 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.)

The Legislative Council Staff Revenue Forecast

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

Colorado Tobacco Master Settlement Agreement Payments and Disputed Payments 2005 to 2016

Year	Colorado Annual Payment After Withholdings	Disputed Amount Withheld	Release of Prior Withholdings
2005	\$87,367,598	(\$0)	2006 amount withheld due to NPM dispute will be released in April 2014 or after legal proceedings have been resolved.
2006	\$80,367,598	(\$10,942,921)	
2007	\$82,005,568	(\$12,113,579)	
2008	\$103,640,385	(\$7,711,843)	
2009	\$105,419,647	(\$7,062,223)	2007 and subsequent withholdings will be distributed after arbitration if Colorado is found to have complied.
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)	
Forecast			
2014	\$90,616,611	(\$12,341,586)	One time release of \$9,923,353, in a year to be determined.
2015	\$90,467,138	(\$12,321,229)	
2016	\$90,320,774	(\$12,301,295)	

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;
- An inflation adjustment, which equals the higher of 3% or the actual rate of inflation during the preceding year; 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 Legislative Council forecast is based on the following assumptions:

- Volume will continue to decline in 2013 and 2014 by slightly more than 3.0 percent per year.
- Inflation will be at the settlement floor of 3.0 percent.
- The combined impact of the two factors above is a slight decrease in total projected revenue of about 0.2 percent per year.
- All of the participating manufacturers will continue to withhold.
- Due to the resolution of the 2003 dispute concerning the non-participating manufacturers adjustment (amounts withheld in 2006), Colorado will receive a payout of \$9,923,353 over the next three years. However, the date of receipt is not certain due to potential legal proceedings. These amounts will be deposited to the General Fund pursuant to current law.
- Because of the slow pace of legal action in this case, there will be no resolution associated with the 2004 non-participating manufacturers’ adjustment (amounts withheld in 2007) until after the forecast period.

Staff recommends that the Committee approve the above forecast and the resulting allocation of settlement revenue shown in the numbers pages. The detailed staff recommendation by line item is based on a Legislative Council Staff projection for the April 2013 tobacco settlement revenue: **\$90,616,611** (unrounded). Staff used this figure to calculate allocations to individual programs following the rules outlined in the appendix to this packet.

- Amounts shown in the numbers pages reflect projected FY 2014-15 allocations based on current law. Staff has rounded figures in the recommendation by one digit to help acknowledge the fact that figures are based on a projection.
- **Individual staff analysts will recommend FY 2014-15 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 2013-14 forecast and actual receipts by affected program. The revenues received in excess of the forecast in FY 2013-14 will be available for appropriation to programs in FY 2014-15.

FY 2013-14 Tobacco MSA - Selected Programs: Difference Between Allocations Based on January 2013 Forecast and April 2013 Actual Receipts			
	FY 2013-14 Projected Allocations based on January 2013 Forecast	FY 2013-14 Allocations based on April 2013 Tobacco Receipts	Difference: Additional Moneys Projected to be in Program Cash Funds for Appropriation in FY 2014-15
Nurse Home Visitor	\$14,328,280	\$14,430,900	\$102,620
Tony Grampas Youth Services	3,606,650	3,630,800	24,150

FY 2013-14 Tobacco MSA - Selected Programs: Difference Between Allocations Based on January 2013 Forecast and April 2013 Actual Receipts			
	FY 2013-14 Projected Allocations based on January 2013 Forecast	FY 2013-14 Allocations based on April 2013 Tobacco Receipts	Difference: Additional Moneys Projected to be in Program Cash Funds for Appropriation in FY 2014-15
AIDS & HIV Prevention Grants	1,803,330	1,815,400	12,070
HIV/AIDS Drug Assistance Program (Ryan White)	3,155,820	3,176,950	21,130
Children's Basic Health Plan Trust	24,344,910	24,507,899	162,989
State Veterans Trust Fund	901,660	907,700	6,040
Early Literacy	4,508,320	4,538,500	30,180
Fitzsimons Trust Fund	7,213,310	7,261,600	48,290
CU Health Sciences	13,623,990	13,720,122	96,132
Offender Mental Health Services	3,336,490	3,360,030	23,540
Alcohol & Drug Abuse	834,120	840,007	5,887
Children's Basic Health Plan Trust	4,031,590	4,060,036	28,446
Supplemental State Contribution	1,251,180	1,260,011	8,831
Local Public Health Agencies	1,946,280	1,960,017	13,737
CO Immunization Fund	1,112,160	1,120,010	7,850

- Program allocations do **not** incorporate payouts the State expects to receive based on the September 2013 ruling on the 2003 non-participating manufacturer’s adjustment (NPM) dispute. The ruling in the state’s favor is anticipated to result in a payout of \$9.9 million, with up to \$3.0 million received during FY 2013-14. Under current law, disputed payments are deposited to the General Fund. A JBC bill, S.B. 14-104, will instead direct these moneys to the Tobacco Litigation Settlement Cash Fund. However, even if this bill is adopted, there will be no associated additional program allocations; instead, the moneys will be used to reduce the amount of current-year tobacco program spending that relies on current year revenues (“accelerated payments”). See the appendix for additional information on accelerated payments. See the staff budget briefing (November 7, 2013) for additional information on the NPM adjustment and the status of litigation.

Appendix: Formula Distributions to Programs

Section 24-75-1104.5, C.R.S., divides tobacco-settlement 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 settlement 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 Grampsas 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 2014-15
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 Allocations by Size	Department	FY 2014-15	Percentage
Children's Basic Health Plan Trust	HCPF	28,387,890	31.3%
Nurse Home Visitor	HUM	15,310,990	16.9%
CU Health Sciences	HED	13,251,670	14.6%
Fitzsimons Trust Fund	HED	7,249,330	8.0%
Early Literacy Program	EDU	4,530,830	5.0%
Tony Grampas Youth Services	HUM	3,624,660	4.0%
Offender Mental Health Services	HUM	3,245,310	3.6%
HIV/AIDS Drug Assistance Program (Ryan White)	PHE	3,171,580	3.5%
Local Public Health Agencies	PHE	1,893,100	2.1%
AIDS & HIV Prevention Grants	PHE	1,812,330	2.0%
Retained in Tobacco Fund	n/a	1,283,650	1.4%
Supplemental State Contribution	PER	1,216,990	1.3%
CO Immunization Fund	PHE	1,081,770	1.2%
Defense Account	LAW	1,000,000	1.1%
Autism Treatment	HCPF	1,000,000	1.1%
State Veterans	MIL	906,170	1.0%
Alcohol & Drug Abuse	HUM	811,330	0.9%
Child Mental Health Treatment Act	HUM	300,000	0.3%
Health Services Corps	PHE	250,000	0.3%
Dental Loan Repayment	PHE	200,000	0.2%
State Auditor's Office	LEG	89,000	0.1%
Total		90,616,600	

Appendix: Use of Current and Prior-year Revenue to Support Allocations

Since FY 2008-09, distributions during a given year have been a combination of current-year and prior-year revenue. Prior to FY 2007-08, all distributions were based on revenue received in the prior year. Pursuant to H.B. 07-1359, for FY 2008-09, the General Assembly began to rely on current year receipts of Strategic Contribution Fund payments to support current year allocations, which allowed it to redirect one-time funds of \$15.4 million to other purposes without reducing support for tobacco MSA programs. Pursuant to S.B. 09-269, for FY 2010-11, the General Assembly expanded the use of current year revenue, using this mechanism to access \$65.0 million in one-time funding without reducing support for tobacco MSA programs. Because of these bills, tobacco MSA programs operate for ten months of each fiscal year before the majority of their tobacco settlement revenue arrives. To do so, the programs receive General Fund advances from the Treasury, which are repaid in April.

House Bill 12-1247 began to gradually reduce the use of such advances from the Treasury by reducing the use of current year revenue and increasing the use of prior year revenue for tobacco MSA allocations. Pursuant to the bill, the spending from current year revenue (\$80.4 million as of FY 2011-12) is reduced each year by any unallocated Tobacco Settlement funds and other residual funds in the Tobacco Litigation Settlement Cash Fund (approximately \$1.4 million per year total, but varies by year). Allocations from reserves in the Tobacco Litigation Settlement Cash Fund compensate for the decline in spending from current year revenue, so that programs supported by Tobacco MSA revenue receive no less than they would have under the previous formula. In FY 2014-15, it is estimated that \$75.6 million of total tobacco allocations will be based on moneys received in April 2015. If S.B. 14-104 is adopted, the \$75.6 million will be reduced by any disputed payments received in FY 2013-14 and FY 2014-15.

	Total	Prior year revenue	Current year revenue	Reduce use of current-year revenue based on H.B. 12-1247	Percent Total from Current year revenue
FY 2010-11	\$94,333,586	\$14,187,045	\$80,146,541		85.0%
FY 2011-12	89,319,222	8,919,222	80,400,000		90.0%
FY 2012-13	90,809,964	12,331,836	78,478,128	(1,921,872)	86.4%
FY 2013-14	90,769,997	13,861,284	76,908,713	(1,569,415)	84.7%
FY 2014-15*	90,616,611	15,048,913	75,567,698	(1,341,015)	83.4%

*Forecast

TOBACCO SETTLEMENT ALLOCATIONS -FY 2012-13 AND FY 2013-14 /1				
	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
EDUCATION				
Early Literacy Grant Program	4,457,736	4,540,498	4,538,500	4,530,830
HEALTH CARE POLICY AND FINANCING				
Children's Basic Health Plan Trust	28,322,469	28,712,284	28,567,935	28,387,890
Children with Autism	1,000,000	1,000,000	1,000,000	1,000,000
SUBTOTAL - HEALTH CARE POLICY AND FINANCING	29,322,469	29,712,284	29,567,935	29,387,890
HIGHER EDUCATION				
University of Colorado Health Sciences Center	14,364,414	14,171,456	13,720,122	13,251,670
HUMAN SERVICES				
Nurse Home Visitor Program (Transferred from DPHE in FY 13-14)	0	0	14,430,900	15,310,990
Tony Gramscas Youth Services Program (transferred from DPHE in FY 2013-14)	0	0	3,630,800	3,624,660
Child Mental Health Treatment Act/ Residential Treatment for Youth Treatment, Detoxification, and Prevention Contracts	300,000	300,000	300,000	300,000
Offender Mental Health Services	879,454	867,640	840,007	811,330
	3,517,816	3,470,561	3,360,030	3,245,310
SUBTOTAL - HUMAN SERVICES	4,697,270	4,638,201	22,561,737	23,292,290
LAW				
Defense Account of the Tobacco Litigation Settlement Cash Fund	0	1,792,244	1,000,000	1,000,000
LEGISLATURE				
Office of the State Auditor	94,587	89,000	89,000	89,000
MILITARY AND VETERANS AFFAIRS				
State Veterans Trust Fund	891,547	908,100	907,700	906,170
PERSONNEL				
Supplemental State Contribution Fund	1,319,181	1,301,460	1,260,011	1,216,990
PUBLIC HEALTH AND ENVIRONMENT				
Local, District and Regional Health Department Distributions	2,052,059	2,024,494	1,960,017	1,893,100
Immunizations	1,172,605	1,156,854	1,120,010	1,081,770
AIDS and HIV Prevention Grants (CHAPP)	1,783,094	1,816,199	1,815,400	1,812,330
Short Term Innovative Health Programs Grants /2	1,508,908	0	0	0
Health Services Corps Fund	250,000	250,000	250,000	250,000
Dental Loan Repayment Program	200,000	200,000	200,000	200,000
Nurse Home Visitor Program (transferred to DHS in FY 2013-14)	12,737,350	12,737,350	0	0
Tony Gramscas Youth Services Program (transferred to DHS in FY 2013-14)	3,566,189	3,632,399	0	0
AIDS Drug Assistance Program (ADAP; Ryan White)	3,120,415	3,178,349	3,176,950	3,171,580
SUBTOTAL - PUBLIC HEALTH AND ENVIRONMENT	26,390,620	24,995,645	8,522,377	8,408,780
CAPITAL CONSTRUCTION				
Department of Higher Education - Fitzsimons Lease Purchase Payments	7,145,538	7,264,797	7,261,600	7,249,330
OTHER				
Diversion to General Fund	635,858	0	0	0
Amount not allocated (used to reduce accelerated payments)	0	1,396,279	1,341,015	1,283,650
TOTAL ALLOCATION TO TOBACCO-SUPPORTED PROGRAMS	89,319,220	90,809,964	90,769,997	90,616,600
1/ 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 2012 and April 2013. 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. With limited exceptions, programs are authorized to carry forward revenue that exceeds their appropriation into the next fiscal year.				
2/ Amounts in the Short Term Innovative Health Programs Grant Fund were transferred to the General Fund in FY 2011-12.				