This document has the following parts:

1. The February 10, 2011, JBC Staff figure setting document for Tobacco Settlement Funded Programs.

2. Two March 16, 2011, comeback memos that renew recommendations contained in the figure setting document.

COLORADO GENERAL ASSEMBLY
JOINT BUDGET COMMITTEE

FY 2011-12 STAFF FIGURE SETTING

TOBACCO SETTLEMENT FUNDED PROGRAMS

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

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FY 2011-12 FIGURE SETTING
PROGRAMS FUNDED WITH TOBACCO SETTLEMENT PAYMENTS

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FY 2011-12 Joint Budget Committee Figure Setting
Tobacco Settlement Funded Programs

	FY 2008-09 Actual Allocation	FY 2009-10 Actual Allocation	FY 2010-11 Projected Allocation	FY 2011-12 Recommended Allocation	% change from FY 10-11 to FY 11-12
This table shows the transfer of tobacco settlement money to settlement supported programs or to the cash funds that support those programs. The appropriations are classified as cash funds, except for the transfer to the Department of Public Health and Environment, which is reappropriated funds.					
OVERSIGHT					
State Auditor's Office	14,126	61,760	112,831	94,587	-16.2%
Public Health and Environment Administration Division - RF	28,000	28,000	28,000	28,000	0.0%
SUBTOTAL - OVERSIGHT	42,126	89,760	140,831	122,587	-13.0%
EDUCATION					
Assistance to Public Schools					
Read-to-achieve Grant Program (Including, in FY 2010-11 and 2011-12, $209,287 for reimbursements to school districts for costs of educating juvenile offenders who are in adult jails.)	5,174,508	4,990,663	4,719,367	4,511,659	-4.4%
HEALTH CARE POLICY AND FINANCING					
Indigent Care Program					
Children's Basic Health Plan Trust	26,674,098	25,705,183	26,983,547	25,663,735	-4.9%
Comprehensive Primary And Preventive Care Fund	5,227,305	3,105,298	0	2,706,995	n/a
Pediatric Specialty Hospital	317,000	283,000	307,000	296,872	-3.3%
Medical Services Premiums					
Children with Autism	726,393	1,000,000	1,000,000	1,000,000	0.0%
SUBTOTAL - HEALTH CARE POLICY AND FINANCING	32,944,796	30,093,481	28,290,547	29,667,602	4.9%

	FY 2008-09 Actual Allocation	FY 2009-10 Actual Allocation	FY 2010-11 Projected Allocation	FY 2011-12 Recommended Allocation	% change from FY 10-11 to FY 11-12
MILITARY AND VETERANS AFFAIRS					
Division of Veterans Affairs					
State Veterans	998,551	998,133	943,873	902,332	-4.4%
PUBLIC HEALTH AND ENVIRONMENT					
Local Public Health Planning and Support					
Local, District and Regional Health Department Distribution	2,421,973	2,450,000	2,245,488	2,078,104	-7.5%
Disease Control and Environmental Epidemiology Division					
Immunizations	1,469,168	1,400,000	1,283,136	1,187,488	-7.5%
AIDS and HIV Prevention Grants (CHAPP)	1,997,101	1,996,265	1,887,747	1,804,664	-4.4%
Prevention Services Division					
Short Term Innovative Health Program Grants (Includes $90	2,203,751	1,000,000	0	1,781,232	n/a
Dental Loan Repayment Program	200,000	200,000	200,000	200,000	0.0%
Nurse Home Visitor Program	12,361,408	12,651,361	13,214,228	13,534,977	2.4%
Tony Grampsas Youth Services Program	4,074,033	3,986,075	3,775,494	3,609,327	-4.4%
Disease Control and Environmental Epidemiology Division					
AIDS Drug Assistance Program (ADAP)	3,400,575	3,493,464	3,303,557	3,158,161	-4.4%
SUBTOTAL - PUBLIC HEALTH AND ENVIRONMENT	24,236,868	27,177,165	25,909,650	27,353,953	5.6%
HIGHER EDUCATION					
Regents of the University of Colorado					
University of Colorado Health Sciences Center	17,997,300	17,150,000	15,718,416	14,546,727	-7.5%

	FY 2008-09 Actual Allocation	FY 2009-10 Actual Allocation	FY 2010-11 Projected Allocation	FY 2011-12 Recommended Allocation	% change from FY 10-11 to FY 11-12
HUMAN SERVICES					
Mental Health and Alcohol and Drug Abuse Services					
Residential Mental Health Treatment for Youth	280,387	300,000	300,000	300,000	0.0%
Treatment, Detoxification, and Prevention Contracts	1,101,875	1,050,000	962,352	890,616	-7.5%
Offender Mental Health Services	4,407,502	4,200,000	3,849,408	3,562,464	-7.5%
SUBTOTAL - HUMAN SERVICES	5,789,764	5,550,000	5,111,760	4,753,080	-7.0%
PERSONNEL AND ADMINISTRATION					
Supplemental State Contribution Fund	1,652,813	1,575,000	1,443,528	1,335,924	-7.5%
CAPITAL CONSTRUCTION					
Department of Higher Education					
Fitzsimons Lease Purchase Payments	8,000,000	8,000,000	7,566,964	7,231,814	-4.4%
TOTAL ALLOCATION TO TOBACCO-SUPPORTED PROGRAMS	71,649,236	95,596,202	89,816,936	90,397,678	0.6%

FY 2011-12 FIGURE SETTING
PROGRAMS FUNDED WITH TOBACCO SETTLEMENT PAYMENTS

Purpose of this document: This presentation will recommend a forecast of the amount of tobacco settlement revenue that will be received during FY 2010-11 and will answer questions that may arise about that forecast. This forecast serves as the basis for the allocation of settlement revenues among settlement-supported programs in FY 2011-12 that is shown in the number pages, an allocation that is driven by statutory rules. Staff will convey the approved allocation of settlement dollars to other analysts who will use it as the basis for their own recommendations for FY 2011-12 appropriations to settlement-supported programs.

This document also recommends

1. A $670,000 transfer from the Supplemental Appropriations and Overexpenditures Account of the Tobacco Litigation Settlement Cash Fund to the General Fund, a transfer that could occur in FY 2010-11 or in FY 2011-12, and

2. A $1.6 million transfer from the Short-term Innovative Health Program Grant Fund to augment FY 2011-12 revenues.

Tobacco Settlement Background

Most appropriations depend on prior-year tobacco-settlement revenue. As described in more detail in the appendix, appropriations of tobacco-settlement moneys to settlement-supported programs are largely governed by statute, with the key provisions contained in Section 24-75-1104.5, C.R.S. A review of these statutory formulas indicates that for most programs, appropriations in a given year depend upon the amount of settlement money that the state receives during the prior year. The Treasury uses these formulas to divide settlement moneys among the various tobacco programs and the General Assembly then appropriates the allocated funds. Without such appropriations, the programs can't spend the settlement money that they have been allocated.

Appropriations must be based on a tobacco-revenue forecast. Because 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, and because all or most of settlement revenue arrives in April, after the Long Bill is written, each year's Long Bill must be based upon a forecast of settlement payments, a forecast that inevitably proves to be at least slightly inaccurate.

Withholding due to the diligent-enforcement dispute adds to forecast uncertainty. The inherent imprecision of the forecasting process has been exacerbated in recent years by the "diligent enforcement" dispute between the states and the tobacco manufacturers who participate in the tobacco Master Settlement Agreement. The participating manufacturers have claimed that the states have not been diligently enforcing their laws governing manufacturers who do not participate in the agreement, and, as described in more detail in the appendix, this dispute has led Reynolds and Lorillard, the country's second and third largest tobacco manufacturers, to withhold a portion of the payments they otherwise would have paid to Colorado and the other states. The withheld payments have been placed in escrow accounts until the dispute is resolved. Philip Morris, the largest manufacturer, has not been withholding, but it asserts that it is entitled to a similar downward adjustment.

Appropriations sometimes require adjustments. Appropriations based on a forecast are invariably incorrect to at least a small extent and the inaccuracy sometimes requires supplemental adjustments during the following session. Staff uses the following guidelines to decide whether to recommend supplemental adjustments for tobacco-settlement-supported programs:

- If actual settlement revenue exceeds the forecast, Staff will recommend supplemental adjustments so programs have sufficient spending authority to expend the available allocations. Some settlement programs cannot carry unexpended allocations forward to subsequent years; without an upward adjustment to spending authority, the extra revenue would be lost to the program.

- If actual settlement revenue is slightly less than the forecast, as happened in April 2010 when revenue was 1.7 percent below the forecast, staff generally will not recommend supplementals because the programs have sufficient spending authority to expend their entire appropriation and the appropriation is in approximate accord with available revenue.

- If actual revenues are significantly less than the forecast, staff will recommend supplemental adjustments to align Long Bill appropriations with the available settlement revenue. Under such circumstances, sufficient spending authority exists to expend the entire appropriation, but the informational value of the appropriation is enhanced by adjusting it so that it is in accord with available settlement revenues.

The Legislative Council Staff Revenue Forecast

Table 1 presents the Legislative Council Staff tobacco-settlement revenue forecast along with actual tobacco-settlement revenues in recent years.

Table 1
Tobacco Settlement Revenues

FY Payment Is Received	This Payment Determines Approps in FY:	Full Payment	Amount Withheld	Total Received Before Special Payments	% Change of Total Before Special Payments	Special Payments
Actual Payments:						
2003-04	2004-05	$86.1	$0.0	$86.1		$0.0
2004-05	2005-06	87.4	0.0	87.4	1.5%	0.0
2005-06	2006-07	91.1	(10.9)	80.2	-8.2%	0.0
2006-07	2007-08	92.7	(8.8)	83.9	4.6%	0.0
2007-08	2008-09	111.4	(7.7)	103.7	23.6%	0.0
2008-09	2009-10	112.5	(7.1)	105.4	1.7%	7.4
2009-10	2010-11	103.3	(8.7)	94.6	-10.3%	0.0
Legislative Council Staff Forecast:						
2010-11	2011-12	99.1	(8.7)	90.4	-4.4%	0.0
2011-12	2012-13	98.1	(8.7)	89.5	-1.0%	0.0
2012-13	2013-14	98.0	(7.6)	90.4	1.0%	0.0

Amounts are in millions of dollars.

For actual years FY 2003-04 through FY 2009-10, the column titled "Full payment" shows the amount Colorado should have received had no withholding occurred. The "Special Payments" column shows a one-time distribution from the escrow funds that hold disputed payments. The column labeled "Total Received Before Special Payments" shows the payments Colorado actually received, ignoring the special distribution. For FY 2010-11 and later years, these columns show the corresponding forecasts rather than actual amounts. The boxed forecast in the shaded row is the basis for the recommended FY 2011-12 allocation of settlement revenues shown in the number pages.

A review of the "Total Received Before Special Payments" column in Table 1 shows that tobacco settlement revenues have been volatile. The FY 2005-06 decline was due to the start of withholding by participating manufacturers. The FY 2007-08 surge was due to the start of a series of "Strategic Contribution" payments, which the Master Settlement Agreement requires manufacturers to make for ten years. The decline in FY 2009-10 is due in part to the recession and the 61.6¢ per pack federal excise tax that was placed on cigarettes in April 2009.

FY 2011-12 Figure Setting
Programs Funded with Tobacco Settlement Payments

The Master Settlement Agreement specifies adjustments that determine the amount of settlement revenue that participating manufacturers owe Colorado each year. The amount owed equals the amount owed in the prior year, modified by

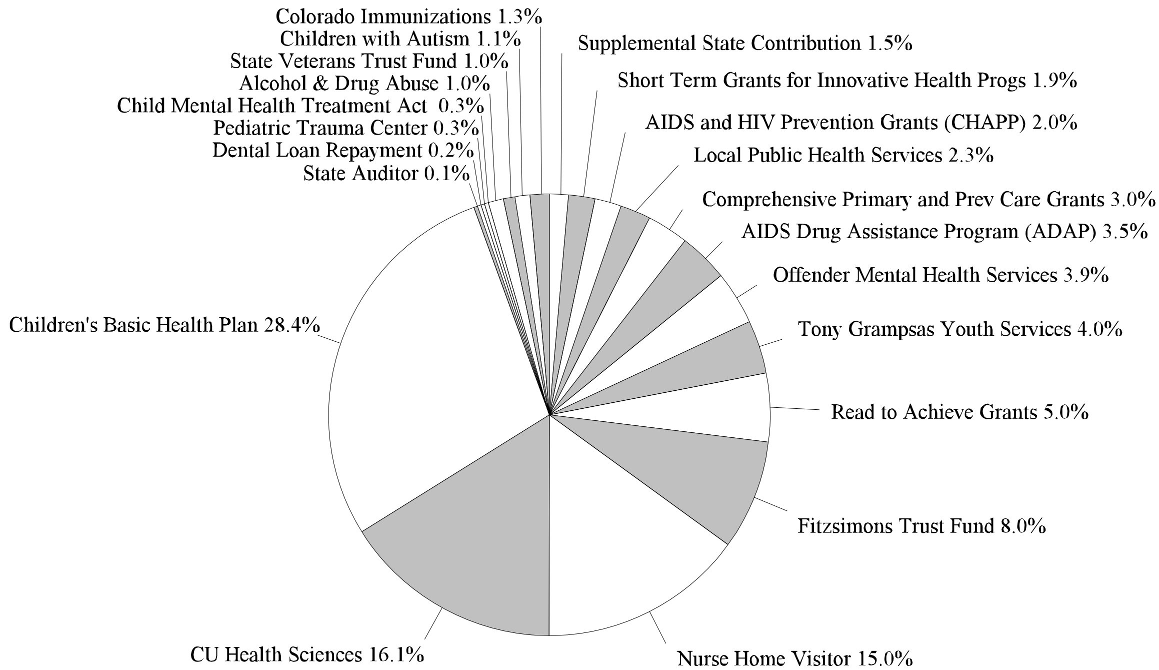
- A volume adjustment, which reflects changes in the volume of cigarettes distributed by participating manufactures nationwide, and,
- An inflation adjustment, which equals the higher of 3% or the actual rate of inflation during the preceding year.

The Legislative Council forecast is based on the following assumptions:

- Volume will decline approximately 4.5% from 2009 to 2010 and will continue to decline in 2011 and 2012.
- Inflation will remain low.
- The same participating manufacturers who have withheld in past years will continue to withhold.
- The diligent enforcement dispute will not be resolved during the forecast period.

The boxed forecast in Table 1 serves as the basis for the recommended allocation of settlement revenues among settlement-supported programs that is shown in the number pages. This allocation is based upon statutory rules that are described in the Appendix. The allocation is based on current statute; it does not take into account Read-to-Achieve legislation that Committee has introduced or any other legislation that may be introduced. These rules leave the Committee with little room for discretion. The following pie chart shows the recommended allocation of settlement revenues.

Allocation of Settlement Payments for Expenditure in FY 2011-12



Staff recommends that the Committee approve the above forecast and the resulting allocation of settlement revenue shown in the numbers pages. Staff will convey this allocation to other analysts who will use it as the basis for their own recommendations for FY 2011-12 appropriations to tobacco-settlement-supported programs. In some cases, an amount indicated in the numbers pages will directly translate into a single Long Bill appropriation. In other cases, an amount in the numbers pages will translate into several appropriations within the Long Bill. In still other cases, a balance in a cash fund that supports a program may supply additional revenues that for the appropriation.

<u>Recommended Transfer #1</u>: **Staff recommends that the JBC sponsor legislation to transfer the remaining balance in the Health Care Supplemental Appropriations and Overexpenditures Account of the Tobacco Litigation Settlement Cash Fund to the General Fund to augment General Fund revenue in either FY 2010-11 or in FY 2011-12.** The resulting transfer will equal approximately $670,000. This transfer could be combined with other transfers in a single bill.

Background and analysis: House Bill 07-1359 diverted $24.4 million of the April 2007 settlement payment into the Health Care Supplemental Appropriations and Overexpenditures Account of the

Tobacco Litigation Settlement Cash Fund. Moneys in the account could be used for overexpenditure appropriations or supplemental appropriations to the Children's Basic Health Plan and to the Colorado Benefits Management System. Pursuant to Section 24-22-115 (4) (a), C.R.S., all *unappropriated* moneys remaining in the account on April 16, 2010 were transferred to the General Fund. The intent of Section 24-22-115 (4) (a), C.R.S., was to transfer all remaining moneys in the account to the General Fund, but due to a drafting oversight, only the unappropriated moneys remaining in the account were transferred; moneys that were previously appropriated but were never expended were not transferred. As a consequence of this lapsed spending authority, the account has a remaining balance of $669,519, an amount that could be transferred to the General Fund in FY 2010-11 or in FY 2011-12.

<u>Recommended Transfer #2</u>: **Staff recommends that the Committee again introduce legislation that transfers the end-of-year balance from the cash fund that supports Short-term Grants for Innovative Health Programs to the General Fund, as it has in each of the past two years.** Staff projects that this transfer, which would augment FY 2011-12 General Fund revenues, would equal $1.7 million.

Background and analysis: Section 25-36-101, C.R.S., gives the Department the authority to make short term grants for innovative health programs ("Innovative" grants). These grants, which may be of no more than one fiscal year in duration, fund innovative health programs that are designed to improve the health of Coloradans. The Short-term Innovative Health Program Grant Fund (the "Innovative" Fund), which supports this program, receives 4 percent of Tier 2 tobacco settlement revenues plus the reversions and income of most other Tier 2 tobacco settlement programs. In addition, Section 22-24-115 (1) (b) requires that all unexpended and unencumbered moneys in the Tobacco Litigation Settlement Cash Fund, which is the main tobacco cash fund, be transferred to the Innovative Fund at the end of each year.

The innovative grant program was established by S.B. 07-97, but was slow getting started. It never hired the 1.0 FTE envisioned in the S.B. 07-97 fiscal note and it made few grants. No grants have been made within the past year. During the 2007 session the Innovative Fund also served as a source of funding for a handful of bills. Only one of the programs established by these bills, the Health Professional Loan Repayment Program in the Department of Public Health and Environment, continues to draw from the Innovative Fund; the Loan Repayment Program will receive $90,070 from the fund in FY 2011-12, after which the Fund will no longer provide support to the program. Staff understands that the Department of Public Health and Environment is exploring the possibility that this program continue to draw upon the Innovative Fund.

The projected transfer from the Innovative Fund to the General Fund based on this recommendation is computed as follows:

	Amount
FY 2011-12 tobacco settlement revenue allocation	$1,781,232
- FY 2011-12 obligations of Innovative Fund to the the Health Professional Loan Repayment Program	(90,070)
= Projected year-end balance **= Projected transfer to the General Fund based on staff recommendation**	**$1,691,162**

The Grant Fund also receives transfers of the following amounts at the end of each fiscal year: (1) income earned during the year by the cash funds that support most of the other tier 2 programs; and (2) moneys that were allocated to some of the other settlement programs but were not expended. Thus it is likely that more than $1.6 million will be available for transfer in April 2011, but the amount cannot be forecast accurately. Staff recommends that the bill sweep the fund balance into the General Fund.

Because this bill involves unique tobacco-settlement provisions, it may require a separate bill because it may not fit under the title of a broader bill that transfers moneys from other cash funds to the General Fund.

APPENDIX
Tobacco-settlement Background and Allocation Rules

This appendix provides background information on the allocation of tobacco-settlement revenue, should the Committee need explanations that go beyond those provided in the main text of this document.

Basics of the Master Settlement Agreement

The Master Settlement Agreement (MSA) was signed in 1998 by 52 settling states and territories and the (then) four major U.S. tobacco companies. In the agreement, the participating manufacturers agreed to

1. Abide by a variety of public health restrictions on the advertising and marketing of cigarettes,
2. Create and fund the American Legacy Foundation, which conducts anti-tobacco advertising, and
3. Make specified payments to the settling states *in perpetuity*.

In return, the settling states agreed to release the participating manufacturers from health-related claims by the states and their local governments arising from the use, manufacture and marketing of tobacco products. There is also a separate agreement with smokeless tobacco companies.

A number of smaller tobacco companies subsequently joined the Master Settlement Agreement, agreeing to make payments and abide by its provisions. The tobacco companies that are now parties to the agreement are collectively known as Participating Manufacturers while tobacco companies that have not joined are called Non Participating Manufacturers.

The Diligent-enforcement Dispute

When the Master Settlement Agreement was signed, participants recognized that the extra costs that the settlement imposed on participating manufacturers would place them at a competitive disadvantage when compared with manufacturers who have not joined the agreement. In an effort to level the playing field, the agreement required states to enact "qualifying statutes" that force non participating manufacturers to make payments into escrow accounts that are comparable to what they would have paid had they participated in the agreement. House Bill 99-1208 added the qualifying statute to Colorado law. The Master Settlement Agreement requires states to "diligently enforce" their qualifying statutes. If certain preconditions are met, settlement payments to states that do not diligently enforce are reduced.

In 2006 a diligent-enforcement dispute led manufacturers to begin withholding part of their scheduled payments. Prior to the 2003 settlement payment, which was made in April 2004, participating manufacturers and states handled diligent-enforcement disagreements in an informal fashion and reached negotiated settlements that did not employ the formal arbitration process specified in the Master Settlement Agreement. By 2003, the market share of the major tobacco manufacturers had slipped notably. The participating manufacturers went ahead and made the 2003 payment but they also set the agreement's payment-reduction process in motion. This process cumulated in 2006 in the decision by Reynolds and Lorillard, the county's second and third largest tobacco manufacturers, to reduced their April 2006 payment by the amount of the potential 2003 diligent-enforcement adjustment. The largest tobacco manufacturer, Philip Morris, did not withhold, though it asserts that it is also entitled to the adjustment.

Arbitrators must now decide whether the states diligently enforced. Diligent-enforcement questions are settled by a panel of three arbitrators who must decide the issue in a unified national proceeding in which a separate decision is made on the diligent-enforcement efforts of each participating state. Thus the arbitrators might decide that one state should receive a reduced payment because it failed to diligently enforce while another state, which diligently enforced, is entitled to its full payment.

In February 2009, during negotiations over ground rules for the arbitration proceeding, the tobacco manufacturers authorized the release of a portion of the payments previously withheld, with Colorado's share of the release equal to approximately $7.4 million. This one-time payment is not expected to be repeated.

The arbitration proceeding, which began last summer, is likely to last through 2012. If Colorado prevails, disputed payments are unlikely to be released for at least a couple of years after the case concludes. If the manufacturers prevail, Colorado will probably lose amounts already withheld and could lose much more, possibly resulting in substantially lower payments for several years.

Statutory Rules for Allocating Settlement Revenues

The three categories of settlement payments: Colorado began receiving master-settlement payments in 1999. These receipts are exempt from TABOR since they result from a damage award. The settlement payments that Colorado has received and will receive in the future are the sum of three components:

1. A series of initial payments, which ended in 2003.
2. A *perpetual* stream of "base" payments, which began in 2000 and are adjusted each year.
3. A series of "strategic contribution" payments, which began in April 2008 and will continue until 2017. These payments are to be allocated among the states based on each state’s contribution to the MSA litigation. Colorado receives a disproportionate share of these payments because of its significant contribution to the litigation effort.

FY 2011-12 Figure Setting
Programs Funded with Tobacco Settlement Payments

The settlement payments for a given calendar year are due the following April 15th, but the exact amount of each year's payment is often subject to dispute. Disputed amounts are directed into disputed payments accounts and are only sent to Colorado when the disagreement is resolved. As a consequence, Colorado has sometimes received two or more settlement payments in the course of a fiscal year, but the vast majority of the payments always arrive in mid April.

Statutory formulas control appropriations and leave little room for discretion. Appropriations for tobacco-settlement-supported programs are controlled by formulas that are scattered through statute. The core rules are contained in Sections 24-22-115 through 24-22-116, C.R.S., and in Sections 24-75-1101 through 24-75-1105, C.R.S., with Section 25-75-1104.5, C.R.S., containing the most important formulas. These formulas leave the JBC and the General Assembly with little discretion regarding the amounts appropriated in the Long Bill.

The funding rules in Section 24-75-1104.5, C.R.S., create the following allocation process:

1. *Determine the total allocation to tobacco settlement programs, i.e. the total amount of tobacco-settlement revenue to allocate among all settlement programs during the fiscal year.* In most fiscal years, the total allocation equals the total settlement payments received by the State during the prior year, though the dollars distributed are a combination of moneys received during the prior fiscal year and the current fiscal year. However, in several fiscal years, the amount distributed may be less than the prior year's revenues.

2. *Determine the amount of settlement revenue to allocate to individual tobacco-settlement programs.* Settlement programs are divided into two tiers. Most tier 1 programs receive a statutorily established percentage of the total allocation, but several receive a fixed amount. After tier 1 programs have received their share of the total, the remainder is allocated among tier 2 programs, with each tier 2 program receiving a statutorily established percentage of the remainder.

3. *Adjust the allocations determined in step 2.* For some years, statute contains temporary adjustments that decrease or increase the amount of settlement money allocated to certain settlement programs in specified years.

4. *Determine the appropriation to individual settlement programs.* Steps 1, 2 and 3 determine the amount *allocated* to settlement programs, however, most programs cannot spend their allocation without an appropriation. In most cases the appropriation is equal to the allocation but in some cases the relationship is more complex.

Details concerning these allocation rules are as follows:

FY 2011-12 FIGURE SETTING
PROGRAMS FUNDED WITH TOBACCO SETTLEMENT PAYMENTS

1. Determine the total amount of tobacco-settlement revenue to allocate among all settlement programs. Table 1 presents the formulas that determine the total amount of settlement revenue allocated to tobacco-settlement programs in FY 2010-11 and subsequent years. It shows that the moneys distributed during a given year are a combination of current-year and prior-year revenue.

Table 1

Fiscal Year	Total Allocation to Tobacco-Settlement Programs
2010-11 to 2016-17	Payments received during the prior year, excluding $80.4 million + $80.4 million of the payments received during the current year
2017-18	Payments received during FY 2016-17, excluding $80.4 million + $65.0 million of the payments received during the current year (The mismatch between the $80.4 million exclusion from the FY 2016-17 payment and the $65.0 million inclusion from the FY 2017-18 payment reflects the ending of Strategic Contribution Payments.)
2017-18 and later	Payments received during the prior year, excluding $65 million + $65.0 million of the payments received during the current year

The funding arrangement in Table 1, under which the settlement dollars distributed to programs in a given fiscal year are a combination of dollars received during the prior year and dollars received during the current year, began with the FY 2007-08 distributions to settlement programs. It followed the decision by tobacco manufacturers to withhold disputed amounts from the April 2007 payment. Prior to FY 2007-08, the settlement dollars distributed to programs came entirely from prior year settlement revenues. Knowing that strategic contribution payments would begin in April 2008 and wanting to minimize the impact of the withholding upon settlement programs, the General Assembly enacted H.B. 07-1359, which distributed $15.4 million of the April 2008 strategic contribution payment to programs in FY 2007-08 rather than FY 2008-09 and continued to annually "accelerate" the use of $15.4 million of strategic contribution payments until the payments ended in April 2017. During the 2009 legislative session, the General Assembly enacted S.B. 09-269 which accelerated the use of another $65.0 million dollars of settlement payments during FY 2009-10 and transferred the accelerated moneys to the General Fund. This acceleration will continue indefinitely.

2. Determine the amount of settlement revenue to allocate to individual tobacco-settlement 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 and the remainder is then allocated among the tier 2 programs. Table 2 lists the Tier 1 settlement programs and provides an overview of each program's statutory funding rule:

Table 2

Tier 1 Program	Portion of the Total Allocation
Children's Basic Health Plan	24%, not to exceed $30 million and not less than $17.5 million.
Nurse Home Visitor Program	15% FY 2011-12, 16% in FY 2012-13, rising 1% annually to 19% in FY 2015-16, not to exceed $19 million.
Fitzsimons lease purchase	8%, not to exceed $8 million
Read-to-achieve Grant Program, Reading Assistance Grant Program (Section 22-88-102, C.R.S.), and Reimbursements to school districts for costs of educating juvenile offenders in adult detention facilities (Section 22-32-141, C.R.S.)	5%, not to exceed $8 million
Tony Grampsas Youth Services Program	4%, not to exceed $5 million
HIV/AIDS Drug Assistance Program	3.5%, not to exceed $5 million
Comprehensive Primary and Preventive Care Grant Program	3%, not to exceed $5 million
HIV and AIDS Prevention Grant Program	2%, not to exceed $2 million
State Veterans	1%, not to exceed $1 million. (10% of the State Veterans allocation is retained in the State Veterans Trust Fund and the remaining 90%, plus interest earned by the trust, is expended. See H.B. 09-1329.)
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)

For simplicity, Table 2 excludes the allocation to the Office of the State Auditor, for auditing settlement programs, which equals 0.1 percent of the settlement payment received in the prior calendar year and is subtracted proportionately from the allocations to most tier 1 programs.

Tobacco-settlement revenue that is not allocated to tier 1 programs (the "remainder") is allocated among tier 2 programs in the percentages detailed in Table 3:

Table 3

Tier 2 Program	Percentage of Remainder
University of Colorado Health Sciences Center	49.0%
Mental health services for juvenile and adult offenders	12.0%
Local public health services	7.0%
Children's Basic Health Plan	13.5%

Tier 2 Program	Percentage of Remainder
Supplemental state contribution for group benefit plans	4.5%
Colorado Immunization Program	4.0%
Alcohol and drug abuse and treatment programs	3.0%
Short-term Grants for Innovative Health Programs	6.0%
Medicaid Shortfalls at Children's Hospital	1.0%
Total	**100.0%**

Note that the one percent annual increase of the share allocated to the Nurse Home Visitor program means that tier two programs will receive a share of settlement revenues that declines by one percent annually until FY 2015-16. Also note that the cash fund that supports Short-term Grants for Innovative Health Programs receives income from other sources; at the end of each year it receives the income earned during the year by the cash funds that support most of the other tier 2 programs and moneys that were allocated to some of the other settlement programs but were not expended.

3. Adjust the allocations determined in step 2. To help deal with the current economic downturn, several bills have altered the allocations resulting from Tables 2 and 3. In some cases the adjustment is a temporarily fixed allocation to a program, with the savings transferred to the General Fund. In other cases the adjustment is a specified transfer to the General Fund. Table 4 summarizes the FY 2010-11 adjustments and the resulting impact on the General Fund. No bills with similar adjustments have been introduced to alter allocations in FY 2011-12.

Table 4

Adjustment	Resulting FY 10-11 Transfer to GF
Senate Bill 09-264:	
Replaces the FY 2010-11 Tier 2 allocations for Medicaid Shortfalls at Children's Hospital with a fixed allocations of$307,000, transferring the savings to the GF.	$13,784
House Bill 10-1323:	
Eliminates the FY 2010-11 allocation for Comprehensive Primary and Preventive Care Grants, transferring the savings to the General Fund.	2,831,620
Transfers the end-of-FY 2010-11 balance of the Short-term Innovative Health Program Grant Fund to the General Fund. In coordination with this transfer, the 2009-10 Long Bill appropriated nothing to the related grant program.	1,600,000
Total Transfers to the General Fund	**$4,445,404**

In addition to the adjustments listed in Table 4, several bills enacted during the 2007 legislative session diverted tobacco-settlement moneys from Short-term Innovative Health Program Grants to other programs. Table 5 shows the amounts diverted by these bills in FY 2010-11 and 2011-12, after which the diversions stop.

Table 5

Diversions from Short-term Innovative Health Program Grants		
Department **Bill** **Citation**	**Amount Diverted**	
	FY 2010-11	**FY 2011-12**
Department of Human Services and Department of Public Safety H.B. 07-1057, Juvenile Justice Family Advocate Program Sections 26-22-103 and 25-36-101 (3), C.R.S.	$221,717	$0
Department of Public Health and Environment S.B. 07-232 and H.B. 09-1111 Health Care Professional Loan Repayment Program Sections 25-20.5-706 and 25-36-101 (10), C.R.S.	90,070	90,070
Total	**$311,787**	**$90,070**

4. Determine the appropriation to individual settlement programs. Steps 1, 2, and 3 determine the *allocation* of settlement moneys to programs. In many cases the program's appropriation equals the program's allocation, but for tier 1 programs with cash funds, the appropriation may diverge from the allocation because: (1) the program's cash fund can earn income that can be expended in subsequent years; or (2) the program's cash fund can carry unexpended appropriations forward to be appropriated again in subsequent years. Annual appropriations corresponding to forecasts of the above allocations must be enacted into law several months before the end of the prior fiscal year. Supplemental appropriations enacted during the following legislative session align appropriations with the settlement payments that Colorado actually receives, though tier 1 programs with cash funds can sometimes use the cash funds to avoid supplemental adjustments.

The Supplemental Appropriations and Overexpenditures Account

House Bill 07-1359 diverted $24.4 million of the April 2007 settlement payment into the Health Care Supplemental Appropriations and Overexpenditures Account of the Tobacco Litigation Settlement Cash Fund. Moneys in the account could be used for overexpenditures or supplemental appropriations to the Children's Basic Health Plan and the Colorado Benefits Management System. Pursuant to Section 24-22-115 (4) (a), C.R.S., all unappropriated moneys remaining in the account on April 16, 2010 were transferred to the General Fund. The intent of Section 24-22-115 (4) (a), C.R.S., was to transfer all remaining moneys in the account to the General Fund to support the General , but due to a drafting error, only the *unappropriated* moneys remaining in the account were transferred; moneys that were appropriated but not expended were not transferred to the General Fund. As a consequence of this lapsed spending authority, the account has a remaining balance of $669,519.

M E M O R A N D U M

TO: Members of the Joint Budget Committee

FROM: Steve Allen, JBC Staff

SUBJECT: Recommended transfer from the Health Care Supplemental Appropriations and Overexpenditures Account of the Tobacco Litigation Settlement Cash Fund to the General Fund

DATE: March 17, 2011

During figure setting for tobacco settlement funded programs, the absence of a Committee member prevented the JBC from considering the following Staff recommendation, which Staff now renews:

<u>Recommended Transfer #1</u>: **Staff recommends that the JBC sponsor legislation to transfer the remaining balance in the Health Care Supplemental Appropriations and Overexpenditures Account of the Tobacco Litigation Settlement Cash Fund to the General Fund to augment General Fund revenue in either FY 2010-11 or in FY 2011-12.** The resulting transfer will equal approximately $670,000. This transfer could be combined with other transfers in a single bill.

Background and analysis: House Bill 07-1359 diverted $24.4 million of the April 2007 settlement payment into the Health Care Supplemental Appropriations and Overexpenditures Account of the Tobacco Litigation Settlement Cash Fund. Moneys in the account could be used for overexpenditure appropriations or supplemental appropriations to the Children's Basic Health Plan and to the Colorado Benefits Management System. Pursuant to Section 24-22-115 (4) (a), C.R.S., all *unappropriated* moneys remaining in the account on April 16, 2010 were transferred to the General Fund. The intent of Section 24-22-115 (4) (a), C.R.S., was to transfer all remaining moneys in the account to the General Fund, but due to a drafting oversight, only the unappropriated moneys remaining in the account were transferred; moneys that were previously appropriated but were never expended were not transferred. As a consequence of this lapsed spending authority, the account has a remaining balance of $669,519, an amount that could be transferred to the General Fund in FY 2010-11 or in FY 2011-12.

M E M O R A N D U M

TO: Members of the Joint Budget Committee

FROM: Steve Allen, JBC Staff

SUBJECT: Recommended transfer from Short-term Grants for Innovative Health Programs to the General Fund

DATE: March 17, 2011

During figure setting for tobacco settlement funded programs, the absence of a Committee member prevented the JBC from considering the following Staff recommendation, which Staff now renews:

<u>Recommended Transfer</u>: **Staff recommends that the Committee introduce legislation that transfers the end-of-year balance from the cash fund that supports Short-term Grants for Innovative Health Programs to the General Fund, as it has in each of the past two years.** Staff projects that this transfer, which would augment FY 2011-12 General Fund revenues, would equal $1.7 million. This cash fund receives its revenue from tobacco settlement payments.

Background and analysis: Section 25-36-101, C.R.S., gives the Department the authority to make short term grants for innovative health programs ("Innovative" grants). These grants, which may be of no more than one fiscal year in duration, fund innovative health programs that are designed to improve the health of Coloradans. The Short-term Innovative Health Program Grant Fund (the "Innovative" Fund), which supports this program, receives 4 percent of Tier 2 tobacco settlement revenues plus the reversions and income of most other Tier 2 tobacco settlement programs. In addition, Section 22-24-115 (1) (b) requires that all unexpended and unencumbered moneys in the Tobacco Litigation Settlement Cash Fund, which is the main tobacco cash fund, be transferred to the Innovative Fund at the end of each year. The projected transfer from the Innovative Fund to the General Fund based on this recommendation is computed as follows:

	Amount
FY 2011-12 tobacco settlement revenue allocation	$1,781,232
- FY 2011-12 obligations of Innovative Fund to the Health Professional Loan Repayment Program	(90,070)
= Projected year-end balance **= Projected transfer to the General Fund based on staff recommendation**	**$1,691,162**

Because of the year-end transfers into this fund, it is likely that more than $1.6 million will be available for transfer in April 2011, but the amount cannot be forecast accurately.

Please note that H.B. 11-1281 would extend the transfer from the Innovative Fund to the Health Professional Loan Repayment Program and increase it to $250,000.