COLORADO GENERAL ASSEMBLY
JOINT BUDGET COMMITTEE

FY 2009-10 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 2009-10 FIGURE SETTING
PROGRAMS FUNDED WITH TOBACCO SETTLEMENT PAYMENTS

TABLE OF CONTENTS

	FY 2006-07 Allocation	FY 2007-08 Allocation	FY 2008-09 Allocation	FY 2009-10 Recommendation	% Change
This table shows the transfer of settlement money to program cash funds (when there is a program cash fund).					
If there is no program cash fund, it shows the direct appropriation to the program.					
Unless otherwise indicated, the appropriations are cash funds exempt through FY 2007-08 and cash funds subsequently.					
OVERSIGHT EXPENSES					
State Auditor's Office	87,393	79,958	83,214	103,640	24.5%
Public Health and Environment Adminstration Division /a	28,000	28,000	28,000	28,000	0.0%
SUBTOTAL - OVERSIGHT	115,393	107,958	111,214	131,640	18.4%
EDUCATION					
Assistance to Public Schools					
Read to Achieve Grant Program	4,002,026	4,502,623	5,174,508	4,990,663	-3.6%
HEALTH CARE POLICY AND FINANCING					
Indigent Care Program					
Children's Basic Health Plan Trust	19,209,723	22,481,095	26,679,099	25,705,183	-3.7%
Comprehensive Primary And Preventative Care Fund	2,401,215	4,178,032	6,235,186	5,969,398	-4.3%
Pediatric Speciality Hospital		173,701	368,292	350,000	-5.0%
Other Medical Services					
Children with Autism	395,000	704,597	900,000	1,000,000	11.1%
SUBTOTAL - HEALTH CARE POLICY AND FINANCING	22,005,939	27,537,425	34,182,577	33,024,581	-3.4%
MILITARY AND VETERANS AFFAIRS					
Division of Veterans Affairs					
Colorado State Veterans Trust Fund	800,405	900,525	998,551	998,133	0.0%

	FY 2006-07 Allocation	FY 2007-08 Allocation	FY 2008-09 Allocation	FY 2009-10 Recommendation	% Change
PUBLIC HEALTH AND ENVIRONMENT					
Local Health Services					
Distributions to Local Health Agencies		1,215,906	2,578,043	2,450,000	-5.0%
Disease Control and Environmental Epidemiology Division					
Colorado Immunization Program		694,804	1,473,167	1,400,000	-5.0%
AIDS and HIV Prevention Grants	1,600,810	1,801,049	1,997,101	1,996,265	0.0%
Prevention Services Division					
Short Term Innovative Health Program Grants		1,042,205	2,209,751	2,100,000	-5.0%
Dental Loan Repayment Program	200,000	200,000	200,000	200,000	0.0%
Nurse Home Visitor Program	8,804,456	10,806,295	13,453,722	12,975,724	-3.6%
Tony Grampsas Youth Services Program	3,201,621	3,602,098	4,139,607	3,992,530	-3.6%
Disease Control and Environmental Epidemiology Division					
Ryan White HIV/AIDS Drug Assistance Program	2,801,418	3,151,836	3,622,156	3,493,464	-3.6%
SUBTOTAL - PUBLIC HEALTH AND ENVIRONMENT	16,608,305	22,514,193	29,673,547	28,607,983	-3.6%
HIGHER EDUCATION					
Regents of the University of Colorado					
University of Colorado Health Sciences Center		8,511,345	18,046,300	17,150,000	-5.0%
HUMAN SERVICES					
Mental Health and Alcohol and Drug Abuse Services					
Residential Mental Health Treatment for Youth	300,000	300,000	300,000	300,000	0.0%
Treatment and Detoxification Contracts and Prevention Contracts		521,103	1,104,875	1,050,000	-5.0%
Offender Mental Health Services		2,084,411	4,419,502	4,200,000	-5.0%
SUBTOTAL - HUMAN SERVICES	300,000	2,905,514	5,824,377	5,550,000	-4.7%

	FY 2006-07 Allocation	FY 2007-08 Allocation	FY 2008-09 Allocation	FY 2009-10 Recommendation	% Change
PERSONNEL AND ADMINISTRATION					
State Contribution for Employee Benefit Plans		781,654	1,657,313	1,575,000	-5.0%
CAPITAL CONSTRUCTION					
Department of Higher Education					
Fitzsimons Lease Purchase Payments	6,416,309	7,215,933	8,000,000	8,000,000	0.0%
TOTAL	50,220,377	74,949,170	103,640,387	100,000,000	-3.5%

a/ This appropriation is transferred from the other appropriations and is not included in the total. It is CFE until FY 2007-08 and RF subsequently

FY 2009-10 FIGURE SETTING
PROGRAMS FUNDED WITH TOBACCO SETTLEMENT PAYMENTS

Purpose of this document: This document recommends changes to the current statutory framework for allocating tobacco settlement revenues among the programs, funds, projects, and agencies that are supported by tobacco payments. The decisions that the JBC makes regarding these recommendations will determine the allocation of settlement moneys. This staff member will then communicate the resulting allocations to other staff members who will make figure setting recommendations for appropriations based these allocations.

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 bulk 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 always proves incorrect. Supplementals are then required the following January to correct resulting inaccuracies. As discussed in detail in the appendix, the appropriation for Colorado's autism program is an added source of uncertainty.

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 Master Settlement Agreement. As a consequence of this dispute, some, but not all, of the participating tobacco manufacturers have been withholding a portion of the payments they otherwise would have paid to Colorado.

When the Master Settlement Agreement was signed in 1998, 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 withhold part of their scheduled payments. Prior to the 2003 settlement payment, which was paid 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 set up in the 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 Master Settlement Agreement's payment-reduction process in motion. This process cumulated in 2006 in the decision by Reynolds and Lorillard, the second and third largest tobacco manufacturers, to reduced their April 2006 payment by the amount of the potential 2003 diligent-enforcement adjustment. However 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. When a diligent-enforcement question arises, it is settled by a panel of arbitrators who, according to the Master Settlement Agreement, must decide the issue in a unified national proceeding in which a separate decision will be made on the diligent-enforcement efforts of each participating state. Thus the arbitrators might decide that one state is entitled to a reduced payment because it failed to diligently enforce while another state, which diligently enforced, is entitled to its full payment. It has proved to be exceedingly difficult to get the parties to the Master Settlement Agreement to agree upon ground rules and a date for arbitration. In fact, many states initially rejected arbitration, claiming that the dispute should be heard in their own state courts – a claim that state courts have uniformly, albeit slowly, rejected.

Recent progress toward arbitration will result in approximately $7.2 million of withheld payments being released to Colorado later this month. As of the start of February, the participating states and manufacturers have made significant progress concerning the ground rules for arbitration, and, as a consequence, the manufacturers have authorized the release of a portion of the payments previously withheld, with Colorado's share of the release equal to approximately $7.2 million. Colorado will probably receive the released funds in late February 2009. The released amounts represent withholding from the April 2008 payment. The Department of Law warns that many important details remain to be worked out, so arbitration is still at the earliest a year away, and the arbitration proceeding itself may take another year, which means that Colorado should not expect a further release of disputed payments for two or more years. And it should be remembered that an adverse decision is possible, which would probably result in the loss of amounts withheld and could reduce Colorado's future tobacco-settlement payments, possibly by a substantial amount, possibly for several years.

This year's Legislative Council Staff forecast doesn't reflect the likely release of withheld payments. The 2009 Legislative Council Staff forecast of Master Settlement Agreement revenue for FY 2008-09 through FY 2011-12 was released before Legislative Council Staff or JBC Staff had been informed that a portion of the disputed payments would be released. Thus the forecast does not include this special payment. In addition, the forecast assumes that the same group of manufacturers who have withheld in the past, namely Reynolds and Lorillard plus some smaller manufacturers, will continue withholding this year and next. Thus far, neither Reynolds nor Lorillard has indicated that they will change their past withholding practices. However, the released funds represent the withholding from the April 2008 payment, so the release could signal that Reynolds and Lorillard do not plan further withholding.

The following table presents the Legislative Council Staff Forecast of tobacco-settlement revenues along with actual tobacco-settlement revenues in recent years.

FY Payment is Received	FY Most of Payment is Expended	Full Payment	Amount Withheld	Amount Received	% Change of Amount Received
Actual Payments:					
2003-04	2004-05	$86.1	$0.0	$86.1	
2004-05	2005-06	87.4	0.0	87.4	1.5%
2005-06	2006-07	91.1	(10.9)	80.2	-8.2%
2006-07	2007-08	92.7	(8.8)	83.9	4.6%
2007-08	2008-09	111.4	(7.7)	103.7	23.6%
Legislative Council Staff Forecast:					
2008-09	2009-10	110.2	(6.9)	103.3	-0.4%
2009-10	2010-11	110.4	(7.8)	102.6	-0.7%
2010-11	2011-12	110.9	(7.9)	103.0	0.4%
2011-12	2012-13	112.2	(7.9)	104.3	1.3%

Note that the FY 2007-08 surge in settlement revenues was due to the start of a series of "Strategic Contribution" payments, which manufacturers are required to make for ten years. Also remember that most of the settlement moneys received in a given fiscal year are allocated among programs during the next fiscal year.

Staff Recommendations

Recommendation 1: Staff recommends that the JBC introduce legislation that directs all disputed settlement payments received in FY 2008-09 through FY 2010-11, plus any interest that may be received with those distributions, into a new cash fund whose balance will not be allocated among settlement programs. This account will probably receive $7.2 million in late February 2009, meaning that it could be used to support the General Fund in either FY 2008-09 or in FY 2009-10. It may receive further distributions in future years.

Staff notes that if no change is made to statute, then the February 2009 disputed-payment distribution will be treated just like any other settlement revenue received during FY 2008-09; it will be allocated among settlement programs according to existing statutory formulas. Staff also notes that the Children's Basic Health Plan's (CBHP) status as a recipient of about 25.7 percent of tobacco settlement revenues means that the net benefit to the General Fund of a $7.2 million diversion of tobacco settlement moneys will only equal 74.3 percent of the amount diverted because the 25.7 percent that would have gone to CBHP would have freed an exactly equal amount of General Fund for other purposes.

This $7.2 million, one time blip in settlement revenues will follow the $19.8 million revenue surge that occurred last year, meaning that over the course of two years settlement programs will have seen their revenues grow by 32.2 percent from $83.9 to $110.9 million, followed by a likely decline to $102.6 million in FY 2010-11. Surges in program spending that are driven by external factors rather than by program need are not generally a good way to fund a program. In addition, a one-time surge in program expenditures, such as that which would occur if the disputed settlement payment is distributed to programs in FY 2008-09, is also generally not a smart way to fund a program. A transient windfall seems particularly inappropriate when programs elsewhere in state government are being cut and this revenue could be used to cushion some of the reductions.

Recommendation 2: Staff recommends that the JBC introduce legislation that allocates a maximum of $100 million of tobacco revenue to settlement programs in FY 2009-10, rather than the $103.3 million envisioned in the Legislative Council Staff forecast. The expected $3.3 million of unused settlement revenue would be directed into a cash fund, possibly the cash fund established for Recommendation 1. Approximately 85 percent of the diverted settlement revenue would arrive in April 2009 and would be available to support General Fund appropriations in either FY 2008-09 or FY 2009-10. The remaining 15 percent would arrive in April 2010 and would be available to support the General Fund in FY 2009-10. As with Recommendation 1, the fact that the Children's Basic Health Plan receives a quarter of tobacco settlement revenues reduces the net benefit of this diversion to the General Fund by approximately a quarter.

This recommendation would result in an overall 3.2 percent reduction in funding for settlement programs, relative to the forecast, however, the reductions would not be equally distributed. The following programs would not experience any reduction in their allocations, either because their allocation is fixed or because their allocation has already reached a statutory ceiling:

- Fitzsimons Trust Fund

- Dental Loan Repayment
- Child Mental Health Treatment Act
- State Veterans Trust Fund
- AIDS and HIV Prevention Grants.
- Children with Autism Program

The remaining Tier 1 settlement programs would experience a 3.2 percent funding reduction relative to their allocation under the forecast, but the Tier 2 programs would experience a 4.3 percent reduction. Following upon the heals of a 23.6 percent surge in settlement revenues last year, declines of this magnitude are modest and align with reductions elsewhere in the state budget.

In addition, if Reynolds and Lorillard decide not to withhold in April 2009, as now seems more likely, given their decision to release the amounts that they withheld last year, the result would be a projected $6.9 million of extra settlement revenues that would be divided among settlement programs according to the formulas in statute. The $100 million allocation ceiling on settlement revenue allocations to programs would capture these extra payments, increasing the amount available to support the General Fund and preventing an appropriations surge for settlement-supported programs.

In addition, a $100 million ceiling on allocations to settlement-supported programs reduces the likelihood that supplementals will be required for settlement programs in January 2010; as long as settlement revenues exceed $100 million, appropriations will not need to be changed. Past experience has shown that both positive and negative supplemental adjustments for settlement-support programs can be difficult for the programs to handle. Last year, for example, a modest positive supplemental led the JBC to write a letter to the Tony Grampsas Youth Services Program, urging it to spend the extra appropriation on programs rather than training. At least one other analyst who deals with tobacco programs has also spoken to the Committee about the difficulties that programs face when their funding changes upward or downward by a few percentage points midway through the fiscal year.

If further reductions to settlement programs prove necessary next session, this modest reduction could reduce the size of the next-session cuts. During the last economic downturn, the JBC found it necessary to cut appropriations to tobacco-settlement support programs, but it delayed these cuts until supplementals during the second year of the downturn. The 20 percent appropriation reductions that it approved at that time had to be absorbed over the remainder of the year and were thus the equivalent of 40 percent-plus reductions over the remainder of the year. Had the JBC recommended modest reductions for the entire second year of the downturn, the mid-session reductions would have been less severe.

Recommendation 3: Staff recommends that the Committee introduce legislation to delay for one year the annual one percentage point increment in the allocation of settlement revenues to the Nurse Home Visitor Program that is currently required by statute.

Background on the Nurse Home Visitor Program: The Nurse Home Visitor Program, which was established by S.B. 00-71, operates through contractors who provide health education and counseling services by specially trained nurse home visitors to low-income, first-time mothers beginning in pregnancy and lasting until their child's second birthday. Participants can earn up to 200% of the Federal Poverty Level. The program was developed and is monitored by the National Center for Children, Families and Communities at the CU Health Sciences Center. The program originally received 3 percent of settlement revenues, with the percentage increasing 2 percentage points per year until it reached 19 percent in FY 2008-09. Senate Bill 03-282, a JBC bill enacted during the last economic downturn, temporarily cut Nurse Home Visitor Program spending by almost a tenth and H.B. 04-1421, another JBC bill, stopped the growth of the program for one year and slowed subsequent growth to 1 percentage point annually, which delayed the date when the program would reach the 19 percent cap from 2008-09 to 2014-15. As the Nurse Home Visitor Program's resources have expanded, its reach around the state has grown. Currently, it has programs in all but 8 counties and plans to expand to all counties in FY 2010-11. Recommendation 3 would delay expansion plans by one year.

Staff recommends that the annual one percentage point increment in the allocation be suspended for two reasons:

1. Expansion of the Nurse Home Visitor program comes at the expense of Tier 2 programs. A one percent increase in the allocation of tobacco moneys to the Nurse Home Visitor Program reduces the amount available to Tier 2 programs by approximately $1.0 million. Delaying program growth by one year will thus cushion the impact of Recommendation 2 on Tier 2 programs and will more fairly distribute the impact of the reduction among tobacco-settlement programs.

2. Staff believes that it is inappropriate to expand this program when state expenditures and revenues are falling and programs elsewhere are contracting.

Recommendation 4: Staff recommends that the Committee introduce legislation to permanently abolish several tobacco programs and use the resulting savings to create a modest rainy day fund that would only be used in the event of a recession. During the current economic downturn this fund would support General Fund. After the recession ends it will accumulate settlement dollars and interest until the next recession.

Staff presented this recommendation during supplementals for tobacco-settlement supported programs. Staff suggested that the following criteria be used to select among programs.

1. Does the program contribute to the health of Coloradans?
2. Does the program reduce tobacco use?
3. Does the program draw a federal match?
4. Will a cut to the program require a dollar-for-dollar back fill with state funds?
5. Will a cut to the program increase appropriations elsewhere?

Application of these criteria led staff to recommend that the Read-to-Achieve Grant Program, the Tony-Grampsas Youth Services Program, and Mental Health Services for Juvenile and Adult Offenders no longer receive funding from tobacco settlement revenues. Staff also recommended that the Committee add Short-term Grants for Innovative Health Programs to this list, largely because it is now operating at a low level and has made few grants.

The following table shows the projected reduction in FY 2009-10 allocations to settlement programs under current law. These savings would, during the current recession, support the General Fund and, after the recession, would be allowed to accumulate until the next economic downturn.

	Projected FY 2009-10 Allocation of Settlement Revenues
Read-to-Achieve Grant Program	$5,517,835
Tony-Grampsas Youth Services Program	4,414,268
Mental Health Services for Juvenile and Adult Offenders	4,668,192
Short-term Grants for Innovative Health Programs	2,334,096
Total	$16,936,400

The Allocation of Settlement Moneys Under Current Law and Under Two Different Combinations of Recommendations

The following tables show the allocation of projected settlement revenues among Tier 1 and Tier 2 settlement programs in FY 2009-10 if the Committee adopts:

1. Recommendation 1 alone (divert the February disputed-payment distribution to a cash fund);
2. Recommendations 1, 2 and 3 (1 = divert the February payment, 2 = $100 million ceiling on allocations, 3 = slow Nurse Home Visitor growth) ; and
3. Current law, which means the JBC chooses to do nothing.

Because of space considerations, these tables do not cover all possible combinations of recommendations. Most notable is the omission of Recommendation 4, which has the straightforward effect of zeroing the allocation for any program that the Committee wishes to eliminate.

Allocations to Tier 1 Programs

Department / Program	Recomm. 1 only	Recomm. 1, 2, and 3	Current law
Department of Education			
Read-to-achieve Grant Program	**$5,155,959**	**$4,990,663**	**$5,517,835**
Department of Health Care Policy and Financing			
Comprehensive Primary and Preventive Care Grants Program	3,093,575	2,994,398	3,310,701
Children's Basic Health Plan Trust	24,748,602	23,955,183	26,485,608
State share of funding required for Children with Autism Act	1,000,000	1,000,000	1,000,000
Subtotal - HCPF	**28,842,177**	**27,949,581**	**30,796,309**
Department of Higher Education			
Fitzsimons Lease Purchase (Capital)	**8,000,000**	**8,000,000**	**8,000,000**
Department of Military and Veterans Affairs			
State Veterans Trust Fund	**998,221**	**998,133**	**998,332**
Department of Human Services			
Child Mental Health Treatment Act Program	**300,000**	**300,000**	**300,000**
Legislative Department			
State Auditor's Office	**103,640**	**103,640**	**103,640**
Department of Public Health and Environment			
Dental Loan Repayment Program	200,000	200,000	200,000
AIDS and HIV Prevention Grant Program	1,996,443	1,996,265	1,996,664
Nurse Home Visitor Program	14,436,684	12,975,724	15,449,938
Ryan White AIDS Drug Assistance Program	3,609,171	3,493,464	3,862,485
Tony Grampsas Youth Services Program	4,124,767	3,992,530	4,414,268
Subtotal - CDPHE	**24,367,065**	**22,657,983**	**25,923,355**
Total of both columns	**$67,767,062**	**$65,000,000**	**$71,639,471**

Allocations to Tier 2 Programs

Department	Recomm. 1 only	Recomm. 1, 2, and 3	Current law
Department of Higher Education			
University of Colorado, Health Sciences Center	**$17,412,571**	**$17,150,000**	**$19,061,783**
Department of Health Care Policy and Financing			
Children's Basic Health Plan Trust	1,776,793	1,750,000	1,945,080
Comprehensive Primary and Preventive Care Grants Program	3,020,548	2,975,000	3,306,636
Medicaid shortfalls at Children's Hospital	355,359	350,000	389,016
Subtotal - Department of Health Care Policy and Financing	**5,152,700**	**5,075,000**	**5,640,732**
Department of Human Services			
Offender Mental Health Services	4,264,303	4,200,000	4,668,192
Alcohol and Drug Abuse	1,066,076	1,050,000	1,167,048
Subtotal - Department of Human Services	**5,330,379**	**5,250,000**	**5,835,240**
Department of Personnel and Administration			
Supplemental State Heath and Dental Contribution	1,599,114	1,575,000	1,750,572
Department of Public Health and Environment			
Colorado Immunization Program	1,421,434	1,400,000	1,556,064
Distributions to Local Health Agencies	2,487,510	2,450,000	2,723,112
Short-term Innovative Health Program Grants	2,132,151	2,100,000	2,334,096
Subtotal - Department of Public Health and Environment	**6,041,095**	**5,950,000**	**6,613,272**
Total	**$35,535,859**	**$35,000,000**	**$38,901,599**

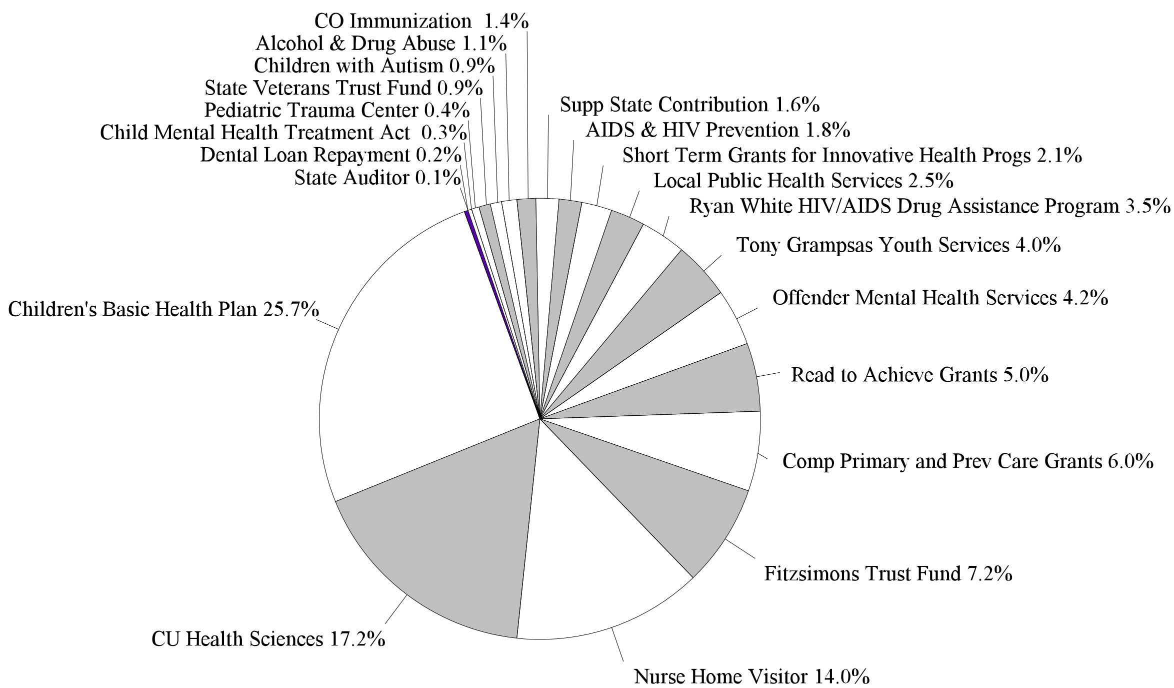
The following table shows the projected amounts that will be diverted to the new tobacco-settlement cash fund by the combinations of recommendations in the corresponding columns of the above tables.

	Recomm. 1 only	Recomm. 1, 2, and 3	Current law
Amount diverted to a special cash fund	**$7,238,148**	**$10,541,069**	**$0**

Depending upon the choices that the Committee makes, this staff member will communicate the selected allocations of settlement revenues to other staff members who will use this information as an input when they make figure setting recommendations for tobacco-settlement programs in their departments.

The following pie chart shows the allocation of settlement revenues under current law.

Allocation of Settlement Payments for Expenditure in FY 2009-10



APPENDIX

Tobacco-settlement Background and Allocation Rules

This appendix provides background information concerning the allocation of tobacco-settlement moneys, should the Committee need explanations that go beyond those provided in the main text of this document. This appendix begins with a slightly simplified overview of the tobacco-settlement appropriation process, focusing on the most important rules and excluding details that can obscure understanding. The second part of the appendix takes an in-depth look at the funding rules governing each settlement-supported program.

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 related to the use, manufacture and marketing of tobacco products. There is also a separate agreement with smokeless tobacco companies.

A number of smaller tobacco companies have joined the Master Settlement Agreement since it was signed in 1998, agreeing to abide by its provisions. The tobacco companies that were original parties to the agreement and those that subsequently joined are collectively known as Participating Manufacturers (PM's). Tobacco companies that have not joined are called Non Participating Manufacturers (NPM's).

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 strong contribution to the litigation effort.

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 typically receives two or more settlement payments in the course of a fiscal year, with the vast majority of the payments arriving 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 relatively little discretion regarding the amounts appropriated in the Long Bill.

Tier 1 and Tier 2 programs. Section 24-75-1104.5, C.R.S., divides settlement-supported programs into two categories which are often referred to as "Tier 1" and "Tier 2" programs. The amount allocated to most Tier 1 programs in a given fiscal year depends upon the "Tier 1 Amount" for that year, which, for fiscal years after 2007-08, equals the base payment received in the *prior* fiscal year, plus $15.4 million of the strategic contribution payments received in the *current* fiscal year, plus strategic contribution payments in excess of $15.4 million received in the *prior* fiscal year. Since it doesn't matter whether the $15.4 million component comes from current year settlement revenues or from prior year revenues, the Tier 1 Amount effectively equals total settlement payments received during the prior fiscal year, as the following calculation of the amount available for spending in FY 2008-09 shows.

Total settlement payments received in FY 2007-08 (= base payments + strategic contribution payments received in FY 2007-08)	$103,640,385
- First $15.4 million of FY 2007-08 strategic contribution payment is used in FY 2007-08	(15,400,000)
+ First $15.4 million of FY 2008-09 strategic contribution payment is used in FY 2008-09	15,400,000
= Total to be allocated among programs in FY 2008-09 = Tier 1 Amount	$103,640,385

Note that the $15.4 million terms would not offset in this fashion if strategic contribution payments decline below $15.4 million, which is unlikely before FY 2017-18, when strategic contribution payments will end. However, to simplify the subsequent presentation, the "Tier 1 Amount" will usually be called the "prior-year settlement payment", usage that parallels Section 24-75-1104.5 (3), C.R.S., which says that, for purposes of many of the allocation rules in statute, strategic contribution moneys received and allocated in the current fiscal year shall be referred to as moneys received in the prior fiscal year.

Table A1 lists the Tier 1 settlement programs and provides a slightly simplified summary of each program's statutory funding rules:

Table A1

Tier 1 Program	Portion of the prior-year settlement payment (the "Tier 1 Amount") allocated to the program or to the program's cash fund
Read-to-achieve Grant Program	5%, up to a maximum of $8 million
Comprehensive Primary and Preventive Care Grant Program	3%, up to a maximum of $5 million
Children's Basic Health Plan	24%, up to a maximum of $30 million
Fitzsimons Lease Purchase	8%, up to a maximum of $8 million
State Veterans Trust Fund	1%, up to a maximum of $1 million, is allocated to the Trust Fund. A statutorily established portion of this allocation is then expended by the Department of Military and Veterans Affairs
Child Mental Health Treatment Act Program	$300,000 annually (not tied to the Tier 1 amount)
Dental Loan Repayment Program	$200,000 annually (not tied to the Tier 1 amount)
HIV and AIDS Prevention Grant Program	2%, up to a maximum of $2 million
Ryan White HIV/AIDS Drug Assistance Program	3.5%, up to a maximum of $5 million
Tony Grampsas Youth Services Program	4%, up to a maximum of $5 million
Nurse Home Visitor Program	13% in FY 2008-09 up to a maximum of $19 million. The percentage rises to 14% in FY 2009-10, 15% in FY 2010-11, etc., topping out at 19% in FY 2014-15.
State share of funding required for Home- and Community-based Services for Children with Autism Act	Enough to fund program needs, up to $1 million (not tied to the Tier 1 amount)

Actual appropriations of settlement moneys to Tier 1 programs closely track the allocation of settlement dollars prescribed in the above table, though these appropriations sometimes deviate modestly due to the presence of a cash fund that supports a program. These cash funds, which serve as buffers between the allocation and the appropriation, will be discussed in more detail later.

The final appropriation in the above table is the "autism" appropriation. It is separated by a double line from the other appropriations because it is unique among tobacco-settlement programs in its dependence upon program need. We will return to this appropriation after examining the Tier 2 programs.

The allocations in Table A1 do not utilize 100 percent of the prior-year settlement payment. The remainder, which is sometimes called the "Tier 2 Amount", is allocated among Tier 2 programs in the following percentages:

Table A2

Tier 2 Program	Percentage
University of Colorado Health Sciences Center	49.0%
Mental Health Services for Juvenile and Adult Offenders	12.0%
Comprehensive Primary and Preventive Care Grant Program	8.5%
Local Public Health Services	7.0%
Increase Children's Basic Health Plan Eligibility from 200% to 205% of the Federal Poverty Level	5.0%
Supplemental State Contribution for Group Benefit Plans	4.5%
Colorado Immunization Program	4.0%
Alcohol and Drug Abuse	3.0%
Short-term Grants for Innovative Health Programs	6.0%
Medicaid Shortfalls at Children's Hospital	1.0%
Total	**100.0%**

Note that these allocations utilize 100 percent of the remaining settlement payments. For reasons that will be discussed later, appropriations to most of these Tier 2 programs track the above allocations dollar-for-dollar. Also note that Tables A1 and A2 have ignored small appropriations to the State Auditor's Office and to the Department of Public Health and Environment's Administration division. These appropriations will also be discussed later.

As noted above, the autism appropriation depends upon program need. If this appropriation is below the $1 million ceiling and program need change by the time of supplementals, the resulting supplemental adjustment to the appropriation will change the amount available to Tier 2 programs, which in turn will drive supplemental adjustments to the appropriations to nine of the ten Tier 2 appropriations. The timing of these supplemental appropriations is troublesome because the information on which the autism supplemental should be based does not become available until mid February, after the supplemental bills for the various agencies of state government have been introduced. Note that this late-arriving information was not a problem when S.B. 04-177 added the appropriation to statute because there were, at that time, no Tier 2 programs; tobacco-settlement revenues that were not allocated to Tier 1 programs at that time flowed to the General Fund.

FY 2009-10 Figure Setting
Programs Funded with Tobacco Settlement Payments

Long Bill appropriations are based on settlement-revenue forecasts. Once actual payments are known, a supplemental is often needed. 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 the April payment is not known at the time the Long Bill is written and approved, each year's Long Bill must be based upon a forecast of settlement payments, a forecast that almost always proves incorrect. Supplementals are then required the following January to correct resulting inaccuracies.

The following time line for FY 2009-10 appropriations to tobacco-settlement programs shows the sources of the uncertainty and highlights the things that must be forecast:

Nov. 2008	• **First forecast of FY 2009-10 autism needs.** The first of four forecasts of the FY 2009-10 tobacco-settlement funding needs of the Home and Community Based Services for Children with Autism program becomes available. The FY 2009-10 autism appropriation depends on the program's needs and affects appropriations to all Tier 2 programs.
Jan. 2009	• **FY 2008-09 settlement revenues forecast by Legislative Council Staff.** FY 2009-10 Long Bill appropriations to most tobacco-settlement programs depend on this forecast.
Feb 2009	• **Figure Setting** for tobacco-settlement programs. • **Revised forecast of FY 2009-10 autism needs.** Usually this estimate arrives too late for tobacco-settlement figure setting.
Mar 2009	• **FY 2009-10 Long Bill introduced;** it contains the FY 2009-10 appropriations to tobacco-settlement programs .
Mid Apr 2009	• **Bulk of FY 2008-09 tobacco-settlement revenue received.** Though FY 2008-09 is not yet finished and more revenue could still be received, a much more accurate settlement revenue forecast was now possible since the vast majority of revenues arrive in April. In most years, it is too late to amend the FY 2009-10 Long Bill.
May-Jun 2009	• **More FY 2008-09 settlement revenue can arrive in May or June,** though it usually does not.
Jul 1, 2009	• FY 2009-10 starts. • **FY 2008-09 settlement revenues are known exactly.** This amount was $2.8 million less than the forecast. • **January 2010 supplementals to all Tier 1 programs except autism can be computed precisely.** • **January 2010 supplementals to Tier 2 programs cannot be computed yet**. • In theory a settlement program's managers could compute their program's January 2010 supplementals exactly or more accurately – the unknown being autism – but few programs understand the tobacco-settlement appropriation process sufficiently well to do such computations. There would also be uncertainty: "Will the General Assembly really appropriate this amount?"

Jul-Dec 2009	• **Settlement programs spend based on their FY 2009-10 appropriation,** possibly taking into account likely January 2010 supplemental changes. 1. If a program expects a *negative* January supplemental of an exact or approximate amount the program could reduce spending in accord with this expectation. If the program expends its appropriation through contracts, it could contract for the amount it expected to receive. 2. If the program expected a *positive* January supplemental of an exact or an approximate amount, the program's ability to increase spending in expectation of the increase is limited. The state controller's rules prevent programs from contracting for more than their appropriation, even if they have a strong expectation of a positive supplemental. 3. (The usual situation) The program has no knowledge of its likely January supplemental and does nothing in anticipation. The exception is the Supplemental State Contribution for Group Benefits Plans, which is continuously appropriated.
Nov 2009	• **Revised forecast of FY 2009-10 autism needs** available.
Jan 2010	• **Supplementals presented to JBC.** Supplementals for Tier 1 programs are known exactly, but supplemental adjustments for Tier 2 programs must be based on estimates of autism program need.
Feb 2010	• **Final forecast of FY 2009-10 autism needs.** This estimate arrives too late for January supplementals.
Feb-Mar 2010	• Programs know their supplemental-adjusted appropriations and adjust spending accordingly.