Joint Budget Committee

Staff Figure Setting FY 2026-27

Tobacco Revenue

Prepared by:
Kelly Shen, JBC Staff
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Joint Budget Committee Staff

200 E. 14th Avenue, 3rd Floor
Denver, Colorado 80203
Telephone: (303) 866-2061
leg.colorado.gov/agencies/joint-budget-committee

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Overview of Tobacco Revenue Streams

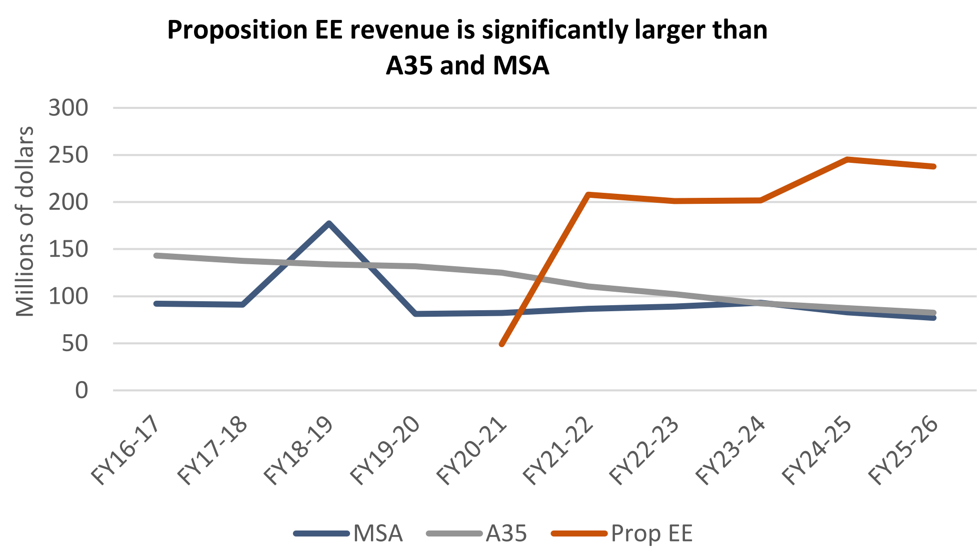
Colorado receives TABOR-exempt tobacco revenue from three sources:

1. Tobacco Master Settlement Agreement (MSA): a 1998 legal settlement between tobacco manufacturers and states that sued manufacturers to recover Medicaid and health-related costs from treating smoking-related illnesses.
2. Amendment 35 (A35): a 2004 constitutional amendment that created tobacco and cigarette taxes.
3. Proposition EE (Prop EE): a tobacco, cigarette, and nicotine product tax approved by voters in November 2020.

This document includes a few high-level questions below, followed by funding recommendations for each of the revenue sources based on the latest Legislative Council Staff (LCS) forecast.

How large are these revenue streams?

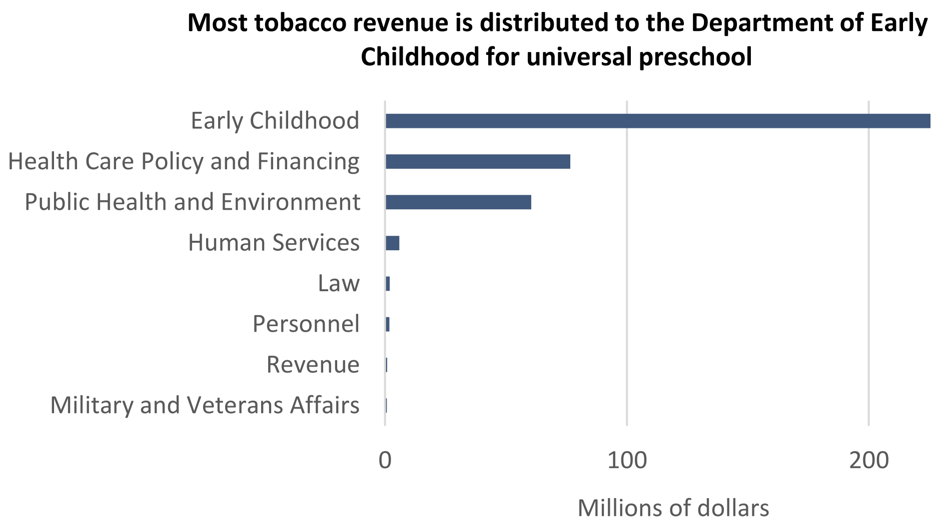
Proposition EE revenue is the newest and largest tobacco revenue source covered in this document. It generates almost $250 million in annual revenue and is projected to remain relatively steady. Amendment 35 and Master Settlement Agreement revenues are projected to continue declining.



What does the revenue fund?

Based on FY 25-26 forecasted amounts, most tobacco revenue covered in this document goes to the Department of Early Childhood to support universal preschool ($202.8 million). This is from Proposition EE revenue. The Department also receives the largest share of MSA revenue – 28.7 percent ($22.7 million) of the MSA distribution goes to the Nurse Home Visitor Program.

The Department of Healthcare Policy and Financing receives the second-highest amount of tobacco revenue ($76.6 million), followed by the Department of Public Health and Environment ($60.5 million). Most of the public health and environment funds are distributed to local entities as grants.



How flexible are the uses of the revenue?

Of the revenue sources discussed, the distribution from Tobacco Master Settlement Agreement revenue is the most flexible since it is directed solely by statute. The funding distributions for Amendment 35 and Proposition EE revenue are outlined in statute, but also in the Constitution and ballot language that create additional constraints.

Staff is not recommending any ongoing changes to the distribution at this time.

Tobacco Master Settlement Agreement

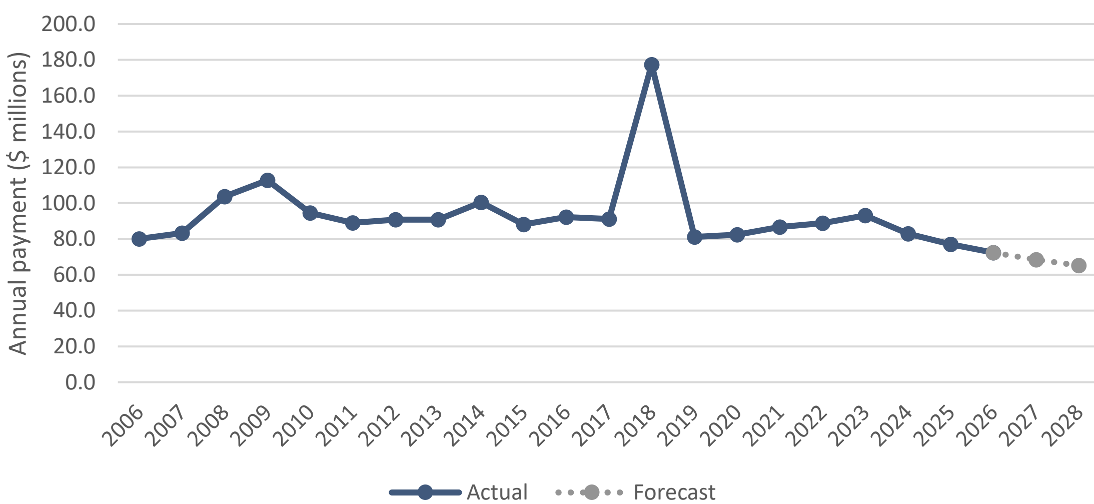
The 1998 Tobacco Master Settlement Agreement (MSA) was the result of legal action to recover expenses that states incurred for the treatment of tobacco-related illnesses. Under the MSA, states and other governments consented to release participating manufacturers from health-related claims associated with tobacco products, and receive perpetual annual payments in return. MSA revenue is exempt from TABOR as a damage award.

Calculating Total MSA Payment

The size of the annual MSA payment is largely determined by (1) U.S. inflation rates, (2) nationwide cigarette consumption, and (3) cigarette manufacturers' income. A base payment of $9.0 billion is annually adjusted by these factors. More information about these adjustments can be found in Appendix A.

Colorado receives 1.4 percent of the annual payment, which has generally ranged from $80.0 to $93.0 million per year over the last ten years. This payment is projected to decline in future years, largely due to declining cigarette consumption. The large payment in 2018 was a result of the Non-Participating Manufacturer Adjustment Settlement Agreement discussed in Appendix A.

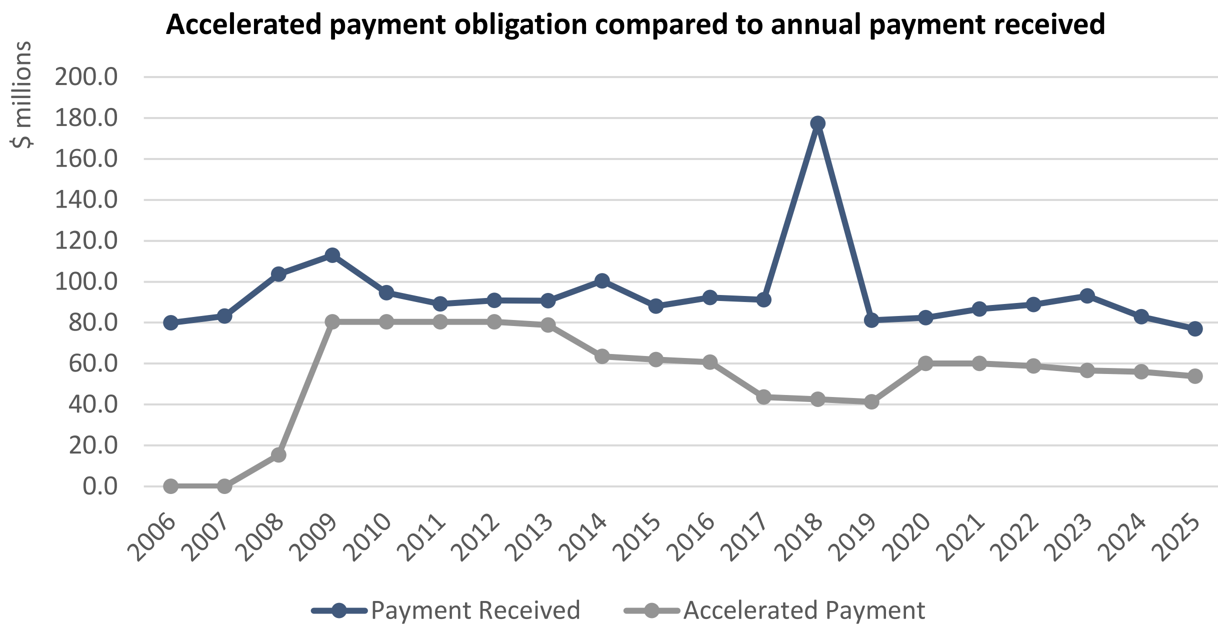
20-Year History of MSA payments to Colorado



Accelerated Payments

During the 2009 recession, the General Assembly created an "accelerated payment" by borrowing against the MSA payment to increase the available General Fund at the time.

The size of the accelerated payment is a concern if there is a possibility that the April payment will be significantly lower than the amount that was used to set the appropriation. This would result in General Fund that has been spent and cannot be paid back with MSA money. This was not an issue in FY 2024-25 because the remaining accelerated payment was $53.8 million compared to $83.0 million received in April 2025.



The General Assembly took steps to reduce the size of this obligation prior to 2020. However, the General Assembly increased the accelerated payment as a budget-balancing measure during the pandemic-induced recession. Since then, the General Assembly has been slowly paying down the accelerated payment every year. Current annual payments are approximately 1.5 percent of the annual distribution, projected to be $1.2 million in FY 2025-26. At the current rate, fully paying off the accelerated payment will take decades.

MSA Distribution in Colorado

Long Bill appropriations are based on forecasted amounts. This is because annual payments are received in mid-April every year, after the Long Bill has passed the General Assembly.

The MSA itself does not have language that dictates how the payments to states may be used. States made these decisions through Consent Orders filed in individual state courts. Colorado's Consent Order stated that the use of funds would be directed by the State Legislature. As such, the MSA distribution is dictated by statute.[1]

MSA revenues are first placed in the Tobacco Litigation Settlement Fund and then distributed to programs by the Treasury. Section 24-75-1103, C.R.S., outlines an overall state policy for the use of tobacco settlement funds. A majority of the funds received shall be "dedicated to improving the health of the citizens of Colorado, including tobacco use prevention, education, and cessation programs and related health programs". The statute also lists activities for which a portion of settlement funds shall be used:

- statewide and local public health programs;
- addressing tobacco-related health problems;
- tobacco-related in-state research; and
- improving childhood literacy through reading programs implemented by public schools.

[1] Section 24-75-1104.5 (1.7), C.R.S.

Limited Budget Reduction Options

Individual JBC staff will make adjustments for their programs in department figure setting presentations. These include a few opportunities for one-time budget savings within individual departments.

At this time, staff has not identified sustainable, long-term budget savings. For example, one long-term option could be to adjust the distribution to offset General Fund in programs that receive both General Fund and MSA revenue. This includes:

- the Children's Basic Health Plan Trust or CHP+ (about $60 million GF, $206 million federal funds)
- Tony Grampsas Youth Services Program (about $2 million GF and $2 million Marijuana Tax Cash Fund)
- University of Colorado Fitzsimons Lease Purchase Payments (about $1 million GF)

However, given that MSA revenue is projected to continue declining, staff does not see this as a sustainable budget option. Programs that depend solely on MSA revenue are already expected to see programmatic reductions as revenue declines. Reducing their MSA allocation would accelerate these programmatic limitations.

Distribution of Tobacco MSA Revenue

The January 2026 LCS forecast for Tobacco MSA revenue projects a FY 2026-27 payment of $72.3 million. This is less than the payment in FY 2025-26 ($77.0 million) and FY 2024-25 ($83.0 million).

Recommendation

Staff recommends that the Committee approve the MSA distribution shown below. Appropriations of more/less than the full forecast amount will be discussed during the respective department's figure setting presentation.

Tobacco Master Settlement Agreement Revenue Allocations

Department	Program	Percent	FY 2026-27 Forecast
Early Childhood	Nurse Home Visitor Program	28.7%	$20,762,275
Health Care Policy and Financing	Children's Basic Health Plan Trust (CHP+)	18.0%	13,021,636
Higher Education	University of Colorado Health Sciences Center [1]	17.5%	12,659,924
Higher Education	Capital Construction - Fitzsimons Lease Purchase	8.0%	5,787,394
Human Services	Tony Grampsas Youth Services Program	7.5%	5,425,682
Law	Tobacco Settlement Defense Account	2.5%	1,808,561
Military and Veterans Affairs	State Veterans Trust Fund	1.0%	723,424
Personnel	Supplemental State Contribution Fund	2.3%	1,663,876
Public Health and Environment	Drug Assistance Program (Ryan White)	5.0%	3,617,121
Public Health and Environment	AIDS and HIV Prevention Grants	3.5%	2,531,985
Public Health and Environment	Immunizations	2.5%	1,808,561
Public Health and Environment	Health Services Corps Fund	1.0%	723,424
Public Health and Environment	Dental Loan Repayment Program	1.0%	723,424
n/a	Unallocated Amount	1.5%	1,085,136
	Total	100.0%	$72,342,423

[1] Of this share, 2.0 percent must be expended for tobacco-related in-state cancer research.

Proposition EE

Proposition EE was a ballot measure created by H.B. 20-1427 (Cigarette, Tobacco, and Nicotine Products Tax) and approved by voters in November 2020. The measure raised taxes on cigarettes and other tobacco products, as indicated in the table below, and created a tax on nicotine products such as vaping devices.

Incremental tax increases for cigarettes, tobacco, and nicotine

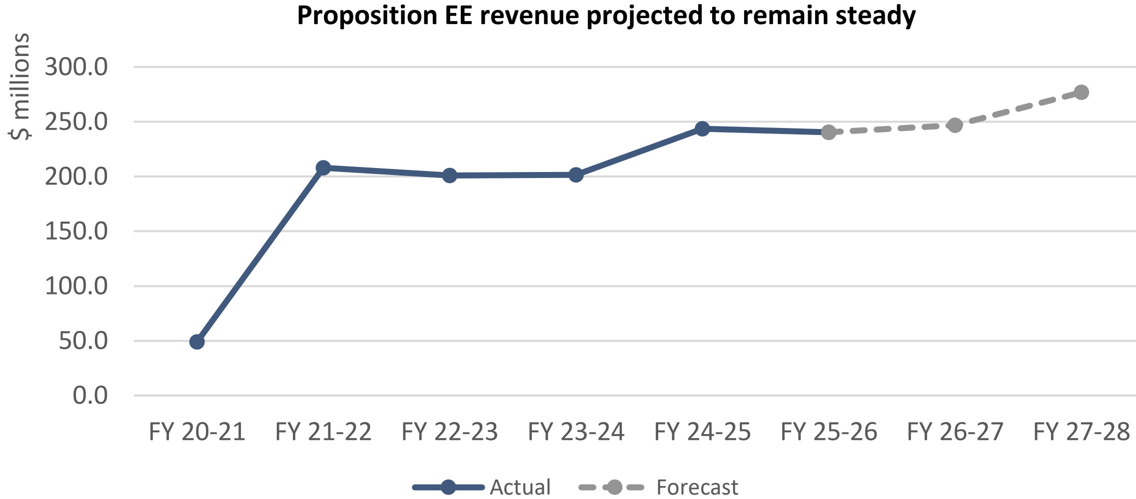
Product	Timing	Jan 2021 - Jun 2024	Jul 2024 - Jun 2027	Jul 2027 onwards
Cigarettes	Before Jan 1, 2021	$0.84	$0.84	$0.84
Cigarettes	Prop EE/II Tax Increase	$1.10	$1.40	$1.80
	Total cigarette tax	$1.94	$2.24	$2.64
Tobacco	Before Jan 1, 2021	40%	40%	40%
Tobacco	Prop EE/II Tax Increase	10%	16%	22%
	Total tobacco tax	50%	56%	62%
Nicotine	Before Jan 1, 2021	0%	0%	0%
Nicotine	Prop EE/II Tax Increase	50%	56%	62%
	Total nicotine tax	50%	56%	62%

Revenue from the increased taxes on cigarettes, tobacco, and nicotine products totaled $208.0 million in FY 2021-22, exceeding the $186.5 million estimate in the 2020 Blue Book. In order to retain the excess revenue, Proposition II was referred by the General Assembly and approved by voters in November 2023.

Revenue Projection

As a result of the tax increases implemented in July 2024 (see table above), projected revenue for Proposition EE increased by about 15.0 percent in FY 2024-25. Revenue is anticipated to remain relatively steady before another tax rate and revenue increase in FY 2027-28.

Proposition EE revenue projected to remain steady



Revenue Distribution

Tax revenue from Proposition EE is deposited in the 2020 Tax Withholding Fund and distributed on an ongoing basis throughout the year. Currently, distributions are made to:

- the General Fund ($4.1 million);
- the Tobacco Education Programs Fund ($20.0 million); and
- the Tobacco Tax Cash Fund ($11.0 million), which gets further distributed to Amendment 35 programs across state agencies. More information can be found in the “Amendment 35” section starting on page 8.

After these distributions are made, the remaining revenue is then deposited into the Preschool Programs Cash Fund. If revenue is insufficient to cover initial obligations, dollars are dispersed on a proportional basis.

4-Year Proposition EE Distribution [1]

Program/Fund	FY 24-25 Actual	FY 25-26 Forecast	FY 26-27 Forecast	FY 27-28 Forecast
General Fund	$4,050,000	$4,050,000	$4,050,000	$4,050,000
Tobacco Education Programs Fund	20,000,000	20,000,000	20,000,000	30,000,000
Tobacco Tax Cash Fund	10,950,000	10,950,000	10,950,000	10,950,000
Preschool Programs Cash Fund	210,182,036	203,898,129	205,451,498	226,962,819
Total	$245,182,036	$238,898,129	$240,451,498	$271,962,819

[1] Prop EE revenue is forecasted on an accrual basis, however, distributions are made on a cash basis which may lead to discrepancies between total revenue and total distributions. This table is based on the December 2025 LCS forecast.

Distribution of Proposition EE Revenue

The LCS December 2025 forecast projects that the FY 2026-27 Proposition EE distribution will be $240.5 million.

Recommendation

Staff recommends that the Committee approve the FY 2026-27 Proposition EE distribution and:

- Allow permission to change appropriations to align with the forecast. Distributions of more/less than the forecasted amount will be discussed during the respective department’s figure setting presentation.
- Allow permission to adjust the distribution to align with the March 2026 LCS or OSPB forecast, depending on which forecast the committee chooses to balance the budget to.

FY 26-27 Proposition EE Distribution

Program/Fund	FY 26-27 Forecast
General Fund	$4,050,000
Tobacco Education Programs Fund	20,000,000
Tobacco Tax Cash Fund	10,950,000
Preschool Programs Cash Fund [1]	205,451,498
Total	$240,451,498

Amendment 35

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

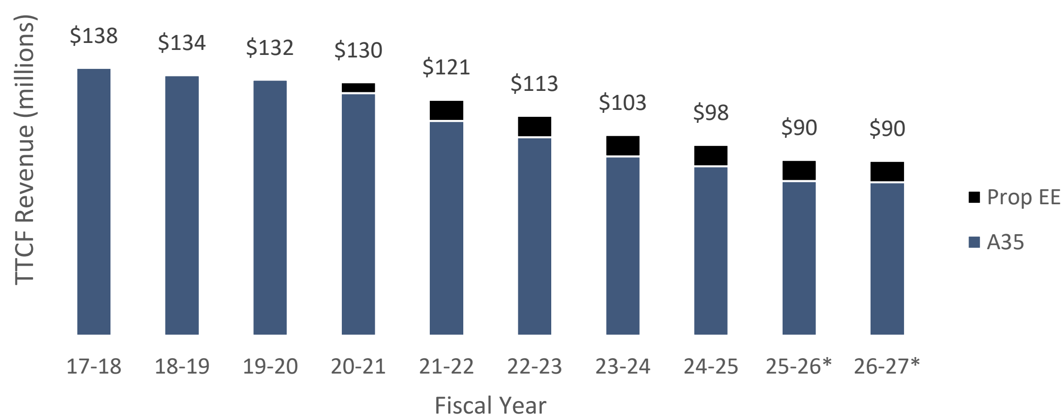
- An additional $0.64 tax on each pack of cigarettes sold in Colorado; and
- A statewide tobacco products tax equal to 20.0 percent of the manufacturer's list price, on the sale, use, consumption, handling, or distribution of tobacco products by distributors.

Revenue Projection

Amendment 35 revenues have been declining over time, as shown below, mainly due to decreasing cigarette consumption in Colorado.

The revenue decline has been slightly offset by increased revenue from Proposition EE taxes, which transferred $5.5 million into the Tobacco Tax Cash Fund (TTCF) in FY 2020-21 and $11.0 million in FY 2021-22 and ongoing.

Amendment 35 revenue continues declining, partially offset by Proposition EE revenue



Revenue Distribution

Revenue from Amendment 35 is first deposited into the Tobacco Tax Cash Fund before being distributed to programs on a monthly basis.

Revenue distribution is dictated by very specific language in the 2004 constitutional amendment and is codified in Section 24-22-117, C.R.S. The revenue is distributed to various state agencies including the Departments of Health Care Policy and Financing, Public Health and Environment, and Revenue.

4-Year Tobacco Tax Cash Fund Distribution (A35 & Prop EE revenue)

Dept.	Program	Percent	FY 24-25 Actual	FY 25-26 Forecast	FY 26-27 Forecast	FY 27-28 Forecast
HCPF	Health Care Expansion Fund – Medicaid expansion	46.0%	$45,138,312	$41,603,430	$41,362,171	$38,909,919
HCPF	Primary Care Fund - provider reimbursement in underserved areas	19.0%	18,644,085	17,184,026	17,084,375	16,071,488
CDPHE	Tobacco Education Programs Fund - Tobacco Education, Prevention, and Cessation Grant Program	16.0%	15,700,282	14,470,758	14,386,842	13,533,885
CDPHE	Prevention, Early Detection and Treatment Fund - multiple prevention programs, including health disparities grants	16.0%	15,700,282	14,470,758	14,386,842	13,533,885
HCPF	Old Age Pension Fund - medical care for qualifying individuals 60+	1.5%	1,471,901	1,356,634	1,348,766	1,268,802
DOR	Local government compensation for lost revenue from tobacco taxes	0.9%	883,141	813,980	809,260	761,281
CDPHE	Immunizations performed by small local public health agencies	0.3%	294,380	271,327	269,753	253,760
HCPF	Children's Basic Health Plan (CHP+)	0.3%	294,380	271,327	269,753	253,760
	Total	100.0%	$98,126,765	$90,442,240	$89,917,763	$84,586,780

Funds credited to the Prevention, Early Detection, and Treatment Fund within the Department of Public Health and Environment are further distributed as follows. The amounts listed are based on FY 26-27 estimated revenue.

- 20.0 percent ($2.9 million) to the Breast and Cervical Cancer Program;
- 15.0 percent ($2.2 million) to the Health Disparities Grant Program;
- $116,942 for the Center for Health and Environmental Data; and
- The remainder of funds ($9.2 million) for the Cancer, Cardiovascular, and Pulmonary Disease Grant Program.

Distribution of Amendment 35 Revenue

The LCS December 2025 forecast projects that Tobacco Tax Cash Fund distributions will be $89.9 million ($79.0 million from Amendment 35 and $11.0 million from Proposition EE).

Recommendation

Staff recommends that the Committee approve the distribution of Amendment 35 and Proposition EE revenue allocated to the Tobacco Tax Cash Fund as shown below, and:

1. Allow permission to change appropriations to align with the forecast. Distributions of more/less than the forecasted amount will be discussed during the respective department's figure setting presentation.
2. Allow permission to adjust the distribution to align with the March 2026 LCS or OSPB forecast, depending on which forecast the committee chooses to balance the budget to.

Tobacco Tax Cash Fund Distribution (A35 & Prop EE revenue)

Department	Program	Percent	FY 26-27 A35	FY 26-27 Prop EE	Total
Health Care Policy and Financing	Health Care Expansion Fund	46.0%	$36,325,171	$5,037,000	$41,362,171
Health Care Policy and Financing	Primary Care Fund - provider reimbursement in underserved areas	19.0%	15,003,875	2,080,500	17,084,375
Public Health and Environment	Tobacco Education Programs Fund - supports Tobacco Education, Prevention, and Cessation Grant Program	16.0%	12,634,842	1,752,000	14,386,842
Public Health and Environment	Prevention, Early Detection and Treatment Fund - prevention programs, including health disparities grants	16.0%	12,634,842	1,752,000	14,386,842
Health Care Policy and Financing	Old Age Pension Fund - medical care for qualifying individuals 60+	1.5%	1,184,516	164,250	1,348,766
Revenue	Local government compensation for lost revenue from tobacco taxes	0.9%	710,710	98,550	809,260
Public Health and Environment	Immunizations performed by small local public health agencies	0.3%	236,903	32,850	269,753
Health Care Policy and Financing	Children's Basic Health Plan (CHP+)	0.3%	236,903	32,850	269,753
	Total	100.0%	$78,967,763	$10,950,000	$89,917,763

Long Bill Footnotes and Requests for Information

Long Bill Footnotes

Department-specific footnotes will be discussed during figure setting presentations for each individual department.

Requests For Information

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

1 Department of Health Care Policy and Financing, Indigent Care Program, Children's Basic Health Plan Medical and Dental Costs; Department of Higher Education, Colorado Commission on Higher Education, Special Purpose, Lease Purchase Payments and Capital-related Outlays, University of Colorado Lease Purchase of Academic Facilities at Fitzsimons; Governing Boards, Regents of the University of Colorado; Department of Human Services, Division of Community Programs, Tony Grampsas Youth Services Program; Department of Early Childhood, Community and Family Support, Home Visiting; Department of Military and Veterans Affairs, Division of Veterans Affairs, Colorado State Veterans Trust Fund Expenditures; Department of Personnel, Division of Human Resources, Employee Benefits Services, H.B. 07-1335 Supplemental State Contribution Fund; Department of Public Health and Environment, Disease Control and Public Health Response; Office of HIV, Viral Hepatitis and STI's; Prevention Services Division – **Each Department is requested to provide the following information to the Joint Budget Committee by October 1 of each year for each program funded with Tobacco Master Settlement Agreement money: the name of the program; the amount of Tobacco Master Settlement Agreement money received and expended by the program for the preceding fiscal year; a description of the program including the actual number of persons served and the services provided through the program; information evaluating the operation of the program, including the effectiveness of the program in achieving its stated goals.**

Comment: This request for information was added in FY 2015-16 and replaced a statutory report from the Department of Public Health and Environment and State Board of Health. The request for information was added to improve program accountability and the responses are reviewed by JBC staff during the tobacco revenue briefing every fall.

The only changes recommended this year are to update line item names to match the Long Bill.

Appendix A: MSA Payment Calculation

The size of the annual MSA payment is largely determined by (1) U.S. inflation rates, (2) nationwide cigarette consumption and manufacturer income, and (3) disputed payments. The annual base payment is adjusted by the factors below:

Inflation Adjustment

The inflation adjustment is equal to either 3.0 percent or the U.S. Consumer Price Index (CPI-U) percentage change for the calendar year used to determine the payment, whichever is greater. The Independent Auditor for the MSA, Price Waterhouse Coopers, calculates the inflation adjustment using CPI-U across the nation. Of the 25 years since the inception of the MSA, there have been seven years when CPI was greater than 3.0 percent, including in 2021 (7.0 percent), 2022 (6.5 percent), and 2023 (3.4 percent).

U.S. Cigarette Consumption and Manufacturer Income (Volume and Profit Adjustments)

The volume adjustment is based on the aggregate number of cigarettes shipped in or to the U.S. by the MSA's original participating manufacturers. The Legislative Council Staff forecast uses a proxy measure that has data available monthly – excise taxes collected on containers of roll-your-own tobacco and on packs of cigarettes bearing state excise tax stamps. With the exception of during the pandemic, in which demand temporarily increased, cigarette sales in the U.S. have declined for decades and are projected to continue declining.

When income collected by cigarette manufacturers in a given year exceeds an inflation-adjusted threshold, the profit adjustment is applied to the volume adjustment and MSA payments are increased. In recent years, the largest manufacturers that participate in the MSA have begun moving towards higher-priced premium products and non-cigarette tobacco products, and away from lower-cost products, resulting in higher incomes for tobacco manufacturers.

Disputed Payments, Arbitration, and Settlements

Participating manufacturers used to withhold portions of Colorado's MSA payments based on a "non-participating manufacturer (NPM) adjustment" clause within the MSA. In 2018, the NPM Adjustment Settlement Agreement (NPMASA) changed this for the state by:

- releasing all disputed payments withheld from Colorado for 2004 through 2017;
- ending NPM adjustment withholding from future annual payments; and
- determining percentage splits/credits for the no-longer-withheld, but disputed NPM adjustment amounts.

The original clause intended to ensure that significant losses of market share do not occur for participating manufacturers as a result of the MSA. However, per the MSA, resolving NPM adjustment disputes requires states and participating manufacturers to enter into a lengthy arbitration process. For the 2003 NPM adjustment dispute – the process to define the multi-state arbitration began in 2006, actual arbitration began in 2010, and ended in 2013.

In order to avoid arbitration processes, many states and the participating manufacturers entered into the NPMASA. As a result, Colorado's payment received increased in 2018 by approximately $113.3 million. This one-time revenue was credited to the General Fund per Section 24-75-1104.5 (5) C.R.S. The agreement is currently extended through 2027. Without another extension or agreement, 2028 is the next sales year for which an NPM adjustment arbitration could occur.