

STATE
CONDITIONAL FISCAL IMPACT

Drafting Number: LLS 13-0947
Prime Sponsor(s): Rep. Gerou; Levy
Sen. Steadman

Date: April 17, 2013
Bill Status: House Finance
Fiscal Analyst: Kerry White (303-866-3469)

TITLE: CONCERNING LIMITED AUTHORIZATION FOR THE GOVERNOR TO ORDER MONEYS TO BE TRANSFERRED FROM THE GENERAL FUND TO THE TOBACCO LITIGATION SETTLEMENT CASH FUND IF ANY PAYMENT OF TOBACCO LITIGATION SETTLEMENT MONEYS TO BE MADE TO THE STATE IS REDUCED DUE TO A FINDING BY AN ARBITRATION PANEL THAT THE STATE MUST REPAY DISPUTED PAYMENTS OF TOBACCO LITIGATION SETTLEMENT MONEYS ALREADY MADE TO THE STATE.

Fiscal Impact Summary	FY 2013-2014	FY 2014-2015
State Revenue		
State Expenditures General Fund	up to \$40 million	up to \$40 million
FTE Position Change		
Effective Date: Upon signature of the Governor, or upon becoming law without his signature.		
Appropriation Summary for FY 2013-2014: None required.		
Local Government Impact: None.		

Summary of Legislation

Recommended by the Joint Budget Committee, this bill authorizes the Governor to order the State Treasurer to transfer up to \$40 million from the General Fund to the Tobacco Litigation Settlement Cash Fund, if tobacco litigation settlement moneys are reduced as a result of pending arbitration. The Attorney General is required to provide notification to specified state officials and the transfer may only occur in a given fiscal year if:

- at the time of notification, the General Assembly is not in session;
- the notification indicates that the next scheduled payment is at least \$35 million less than the most recent Legislative Council Staff (LCS) forecast made when the General Assembly was in session;
- the amount of the shortfall was previously expected to be paid within 12 months; and
- the amount of the transfer follows certain guidelines, including that the amount be sufficient to allow programs to continue to meet critical state obligations through the end of the following January.

Background

Pursuant to the Tobacco Master Settlement Agreement (MSA) reached between participating states and tobacco manufacturers in the late 1990s, Colorado receives an annual allocation of tobacco settlement funds. This amount has fluctuated from \$80 million to \$105 million per year over the last 10 years, mostly due to withholdings by participating manufacturers (PMs) over what are termed "disputed payments." Tobacco MSA moneys are typically received in April and credited to the Tobacco Litigation Settlement Cash Fund. This fund makes transfers to other cash funds according to statutory funding allocations, such as to the Children's Basic Health Plan Trust and CU Health Sciences Center, among many others.

In April 2013, the state received \$90.8 million, which will be distributed in FY 2013-14. However, as discussed below, amounts received in FY 2013-14 and future years could be reduced as a result of pending arbitration. House Bill 13-1305 is intended to allow affected state programs to continue to operate during a given fiscal year in the event that tobacco settlement moneys are reduced while the General Assembly is not in session.

Disputed payments. As part of the Tobacco MSA, participating states each adopted model legislation requiring escrow payments by non-participating manufacturers (NPM). The Tobacco MSA allows the PMs to reduce annual payments through a NPM adjustment if the market share of the PMs decreases by more than 2 percent, an independent economic consultant finds that the Tobacco MSA significantly contributed to this decrease, and an arbitrator finds that a participating state failed to enforce its NPM law. Based on the findings of an independent economic consultant, the PMs and Colorado, and other states, are participating in arbitration to determine whether the PMs are eligible for a NPM adjustment. The PMs propose that the adjustment should begin as of 2003 and affect subsequent years. For 2003, Colorado's share of the amount of the disputed payments withheld by the PMs is approximately \$10.9 million.

Potential outcomes. If the arbitration panel finds that one or more states subject to arbitration have failed to enforce NPM statutes, the NPM adjustment is proportionally allocated among those states. If only one state is found to have failed to enforce its NPM law, it can be held financially responsible for the PMs loss of market share nationwide, up to the total amount of tobacco settlement funds the state received for the applicable year. Arbitration hearings for 2003 payments began in June 2012, and are expected to be resolved in FY 2013-14. Colorado, as well as any other states that do not reach a settlement agreement with the PMs, will be subject to the arbitration findings.

Depending on the outcome of arbitration, for FY 2013-14, Colorado could be required to refund up to \$86.1 million to the PMs, which is the amount of its 2003 allocation. If the arbitration panel finds in the state's favor, Colorado could receive an additional \$10.9 million (the state's share of the amount withheld by the PMs). Based on the assumption that the PMs will continue to dispute withheld payments for 2004 and future years and that arbitration will be ongoing, the state may receive additional moneys or be required to return moneys in future fiscal years.

State Expenditures

Overall, this bill could increase state General Fund expenditures by up to \$40 million per year, beginning in FY 2013-14. As discussed above, the amount of any General Fund transfer to the Tobacco Litigation Settlement Cash Fund is contingent upon an arbitration panel ruling against the state for its enforcement of its NPM law, the amount of a required refund (assumed to be withheld from the state's allocation, thus reducing the amount available in the cash fund for other statutory distributions) and whether the reduction is at least \$35 million less than the relevant LCS forecast. This analysis assumes that if a transfer from the General Fund is made to the Tobacco Litigation Settlement Cash Fund, other transfers from the cash fund will occur according to the statutory formula.

Departments Contacted

Governor's Office
Higher Education
Law
Treasury

Health Care Policy and Financing
Joint Budget Committee Staff
Public Health and Environment