



TOBACCO SETTLEMENT RESTRICTED ACCOUNT

SOCIAL SERVICES APPROPRIATIONS SUBCOMMITTEE
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ISSUE BRIEF

SUMMARY

The Analyst estimates a shortfall of \$6,739,300 or 22% in FY 2011 and \$4,987,400 or 18% in FY 2012 in revenue as compared to appropriations from the Tobacco Settlement Restricted Account. The Governor’s Office of Planning and Budget (GOPB) has a more optimistic estimate in FY 2011 by \$1,210,700 and \$1,320,400 in FY 2012. A 22% reduction in total revenues in FY 2011 translates into a 64% reduction in discretionary appropriations. The Legislature has at least five options to respond to this situation, including doing nothing, whereby allowing the six affected agencies to manage the reduction in revenues.

DISCUSSION AND ANALYSIS

What is the Tobacco Settlement Restricted Account?

In April of each year, the Tobacco Settlement Restricted Account receives 60% of annual payments from tobacco companies under the 1998 Master Settlement Agreement (UCA 51-9-201). The other 40% goes to the State Endowment Fund (UCA 51-9-202). UCA 51-9-201 has specific dollar amounts in statute for five purposes and an option of appropriating the settlement account for discretionary purposes. Discretionary appropriations by the Legislature appear last in statute and are the lowest legal priority when there are revenue shortfalls. These discretionary appropriations are reduced first before any of the fixed dollar amounts in statute and are indicated in the “discretionary appropriations” column in the two tables below.

What is the current status of the account?

For FY 2011, the Legislature appropriated \$31,309,200 from the account. The Analyst estimates a shortfall of \$6,739,300 or 22%. GOPB currently estimates a shortfall of \$(5,528,600) or 18%. One method to reduce appropriations in accordance with statute is to proportionally reduce all of the “discretionary appropriations” not specifically detailed in statute, as was done in FY 2010. Because discretionary appropriations would be the first thing to go under this scenario, a 22% reduction in overall Tobacco Settlement revenue means a 64% reduction in discretionary appropriations. The table below shows the original appropriations as well as how a proportional allocation to the “discretionary appropriations” would impact those appropriations:

FY 2011 - Adjustments to Original Appropriations					
Agency	Program/Purpose (From Statute)	Statute UCA 51-9-201	Discretionary Appropriations	Potential Reductions	Net Available
Health	Children’s Health Insurance Program	\$ 10,452,900	\$ 3,643,900	\$ (2,341,000)	\$ 11,755,800
Health	alcohol, tobacco and drug prevention programs	\$ 3,847,100	\$ 2,411,000	\$ (1,548,900)	\$ 4,709,200
Courts ¹	drug court	\$ 193,700	\$ 159,100	\$ (102,200)	\$ 250,600
Human Services ¹	drug court	\$ 2,325,400	\$ -	\$ -	\$ 2,325,400
University of Utah	in-state research, treatment, and educational activities	\$ 4,000,000	\$ -	\$ -	\$ 4,000,000
Health - Medicaid		\$ -	\$ 3,923,200	\$ (2,520,500)	\$ 1,402,700
Attorney General		\$ -	\$ 276,100	\$ (177,400)	\$ 98,700
Tax Commission		\$ -	\$ 76,800	\$ (49,300)	\$ 27,500
Total		\$ 20,819,100	\$ 10,490,100	\$ (6,739,300)	\$ 24,569,887

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For FY 2012, the Legislature appropriated \$27,386,000 from the account. The Analyst estimates a shortfall of \$4,987,400 or 18%. GOPB currently estimates a shortfall of \$(3,667,000) or 13%. One method to reduce appropriations in accordance with statute is to proportionally reduce all of the “discretionary appropriations” not specifically detailed in statute, as was done in FY 2010. Because discretionary appropriations would be the first thing to go under this scenario, an 18% reduction in overall Tobacco Settlement revenue means a 76% reduction in discretionary appropriations for FY 2012. The table below shows the original appropriations as well as how a proportional allocation to the “discretionary appropriations” would impact those appropriations:

FY 2012 - Adjustments to Original Appropriations					
Agency	Program/Purpose (From Statute)	Statute UCA 51-9-201	Discretionary Appropriations	Potential Reductions	Net Available
Health	Children’s Health Insurance Program	\$ 10,452,900	\$ 3,643,900	\$ (2,767,500)	\$ 11,329,300
Health	alcohol, tobacco and drug prevention programs	\$ 3,847,100	\$ 2,411,000	\$ (1,831,100)	\$ 4,427,000
Courts ¹	drug court	\$ 193,700	\$ 159,100	\$ (120,800)	\$ 232,000
Human Services ¹	drug court	\$ 2,325,400	\$ -	\$ -	\$ 2,325,400
University of Utah	in-state research, treatment, and educational activities	\$ 4,000,000	\$ -	\$ -	\$ 4,000,000
Attorney General		\$ -	\$ 276,100	\$ (209,700)	\$ 66,400
Tax Commission		\$ -	\$ 76,800	\$ (58,300)	\$ 18,500
Total		\$ 20,819,100	\$ 6,566,900	\$ (4,987,400)	\$ 22,398,600

How did the shortfall situation occur?

The amount paid by tobacco companies to the states participating in the Master Settlement Agreement is largely based on a company’s sales volume as well as an annual adjustment for inflation. The following issues affected the FY 2011 and FY 2012 tobacco company payments to the Tobacco Settlement Restricted Account:

1. **Increased federal cigarette tax** – The cost of cigarettes increased about 25% nationwide effective March 31, 2009 from the federal government’s increased tax of \$1 per pack. This reduced consumption by about 10%.
2. **Economic downturn** – As personal incomes have decreased, the purchasing of cigarettes also decreased.
3. **Timing of the payment** – Currently the revenue for a fiscal year comes in the last quarter of that fiscal year (i.e. – April 2010 for FY 2010). When shortfalls do occur, this means that programs have about 60 days to make up for the reduced revenues in the current fiscal year.

Is there any hope of revenues coming in higher than current projections?

Based on the current economic outlook for FY 2011, the revenues may go up or down, but probably not significantly. The current shortfall may be offset on a one-time basis if Utah receives some of the estimated \$4,538,100 in disputed payments that was either withheld by tobacco companies or paid into a disputed payments account. If all of the disputed payments are obtained, then the Tobacco Settlement Restricted Account would receive 60% or \$2,722,900, while the State Endowment Fund would receive 40% or \$1,815,200. There is no clear indication when or if the State will prevail in obtaining these disputed payments.

What does the Governor’s Budget do about the shortfall?

The Governor replaced the shortfall with General Fund in the amount of \$5,528,600 for FY 2011 and \$3,667,000 for FY 2012 and made these changes within the Department of Health’s appropriations from the Tobacco Settlement Restricted Account.

LEGISLATIVE ACTION

1. **Do nothing and allow each agency to address the shortfalls** – the ongoing estimated shortfall beginning in FY 2012 is \$3.5 million. This amount may be reduced if payments from tobacco companies increase because consumers chose to buy more tobacco products. If no action is taken, then in FY 2011 affected programs will have to meet the \$(6,739,300) in reductions as shown in the table above.
2. **Prioritize the payments from tobacco companies for the Tobacco Settlement Restricted Account** – instead of the current 60%/40% split in statute, change statute to have all funds first go the restricted account and then the remainder to the State Endowment Fund. In FY 2011 this could provide about \$3.6 million. In FY 2012 and beyond this may be able to solve shortfalls of up to \$14.9 million.
3. **Change the appropriations from the account** – in FY 2011 the money from this account goes to help fund seven programs and one revenue exchange. The Legislature could make changes to the amounts appropriated and/or remove recipients altogether.
4. **Base appropriations on prior year receipts** – currently the revenue for a fiscal year arrives in the last quarter of that fiscal year (i.e. - April 2010 for FY 2010). If the Legislature found a one-time source to replace all the money for one year, then the Legislature could know how much revenue would be available in April for the following fiscal year (i.e. - April 2010 for FY 2011). This may help avoid unanticipated program reductions at the end of the year.
5. **Find another funding source to address the shortfall** – the Legislature may be interested in identifying a source to fund some or all of the shortfall of \$6.7 million in FY 2011 and \$5.0 million in FY 2012. Additionally, there is currently an ongoing shortfall of estimated revenues vs. appropriations of about \$4.0 million beginning in FY 2013.

¹ UCA 78A-5-201(3)(a) requires funds disbursed to a drug court program be allocated 87 percent to the Department of Human Services for testing, treatment, and case management and 13 percent to the Administrative Office of the Courts for increased judicial and court support costs. After the FY 2010 and FY 2011 proportional Tobacco Settlement reductions, allocations will not match this 87/13 split. The Legislature may amend either the 87/13 split statute, or make Courts' discretionary appropriation statutory instead.