Initiative # 315

Legislative Council Staff
Nonpartisan Services for Colorado's Legislature

INITIAL FISCAL IMPACT STATEMENT

Date: April 13, 2020 **Fiscal Analyst:** Matt Bishop (303-866-4796)

LCS TITLE: TOBACCO TAX REVENUE FOR NEW STATE PRESCHOOL PROGRAM

Fiscal Impact Summary		**FY 2021-22**	**FY 2022-23**
Revenue	Preschool Cash Fund	$6.3 million	$6.5 million
Expenditures	General Fund	$58.6 million	$68.1 million
	Preschool Cash Fund	$129.6 million	$203.4 million
	Total	**$188.2 million**	**$271.5 million**
Diversions	General Fund	($23.3 million)	($38.0 million)
	Various Cash Funds	($100.0 million)	($158.9 million)
	Total	**$123.3 million**	**$196.9 million**

Disclaimer. *This initial fiscal impact statement has been prepared for the Title Board. If the initiative is placed on the ballot, Legislative Council Staff may revise this estimate for the ballot information booklet (Blue Book) if new information becomes available.*

Summary of Measure

No later than December 2021, the measure directs the General Assembly to enact legislation enabling the Colorado Department of Education (CDE) to create a new preschool program. At a minimum, the enacting legislation must mandate that the preschool program include elements of parent choice, quality standards, coordination with existing preschool programs, opportunities for family and community engagement, and evaluation of the program on child and family outcomes. Beginning with FY 2021-22, the measure diverts the majority of state revenue from taxes on tobacco products, and from payments received under the Tobacco Master Settlement Agreement, to a new Preschool Cash Fund to fund the preschool program.

Under current law, some municipalities and counties are eligible for state income tax distributions based on the proportion of sales tax collected in those jurisdictions, and the total cigarette tax collected. The measure prohibits local governments that enact bans of tobacco and nicotine products from receiving this distribution, and instead redirects the money any such local government would have received to the Preschool Cash Fund.

Special sales tax on vaping products. Beginning July 1, 2021, the measure imposes a special sales tax at a rate of 10 percent on "tobacco-derived nicotine vapor products" (vaping products), defined as a product that produces a vapor or aerosol for inhalation from the heating of a liquid substance containing tobacco-derived nicotine. The special sales tax is assessed in addition to the state's current 2.9 percent general sales tax and any applicable local taxes. All tax revenue is credited to the Preschool Cash Fund. The measure requires that the General Assembly enact a regulatory structure to facilitate collection of the tax.

State Revenue

The measure is estimated to increase state revenue by $6.3 million in FY 2021-22 and $6.5 million in FY 2022-23, and similar amounts in following years. Revenue is attributable to the special sales tax on vaping products and is credited to the Preschool Cash Fund. Revenue from the new tax is subject to TABOR.

Data and assumptions. Estimates are based on 2018 retail sales data for vaping products. Consumption of vaping products is assumed to increase between 2018 and 2021, when the tax takes effect. Additionally, state revenue estimates consider online sales, which are under-represented in available data. Higher consumer prices as a result of the tax are expected to decrease consumption by about 4 percent.

The available sales data for 2018 are incomplete. Further, the market for vaping products is evolving and difficult to predict. For these reasons, state revenue may be greater or lesser than the estimate in this fiscal impact statement.

State Diversions

Under current law, a variety of programs receive funding from taxes on tobacco products, and from Tobacco Master Settlement revenue. Initiative #315 diverts tobacco revenue from existing programs to the Preschool Cash Fund beginning in FY 2021-22. Table 1 shows the state revenue amounts that are diverted to the new preschool program, totaling $123.3 million in FY 2021-22 and $196.9 million in FY 2022-23.

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Table 1
State Diversions Under Initiative #315
(in millions)

	FY 2021-22	FY 2022-23
Diversions of General Fund Tax Revenue		
Sales Tax	($14.8)	($29.5)
Cigarette Tax	($4.5)	($4.5)
Tobacco Products Tax	($4.0)	($4.0)
General Fund Subtotal	**($23.3)**	**($38.0)**
Diversions of Cash Fund Tax Revenue		
Children's Basic Health Plan and Medicaid	($58.5)	($58.5)
Prevention, Early Detection, and Treatment Fund	($20.4)	($20.4)
Primary Care Fund	($24.2)	($24.2)
Various (see description)	($3.8)	($3.8)
Cash Funds Subtotal	**($106.9)**	**($106.9)**
Tobacco Master Settlement Agreement Diversions		
Colorado Nurse Home Visitor Program	-	($20.5)
CU Health Sciences Center	-	($11.9)
Fitzsimons Trust Fund	-	($6.2)
Tony Grampsas Youth Services Program	-	($5.8)
Drug Assistance Program	-	($3.8)
AIDS and HIV Prevention Program	-	($2.7)
Colorado Immunization Fund	-	($1.9)
Supplemental State Contribution Fund	-	($1.8)
Colorado Autism Treatment Fund	-	($1.5)
Colorado Health Service Corps Fund	-	($0.8)
State Dental Loan Repayment Program	-	($0.8)
Remaining Balance of Tobacco Litigation Settlement Fund	-	($1.2)
Tobacco Master Settlement Agreement Subtotal	**-**	**($58.9)**
Total General Fund Diversions	**($23.3)**	**($38.0)**
Total Cash Funds Diversions	**($106.9)**	**($165.8)**
Preschool Cash Fund	**$123.3**	**$196.9**
Remaining Amount in Tobacco Tax Cash Fund*	**$6.9**	**$6.9**

* *The measure requires that $100 million of tobacco tax revenue go to the Preschool Cash Fund. The remainder is assumed to remain in the Tobacco Tax Cash Fund subject to future allocation by the General Assembly.*

The following programs are affected by the diversion of state revenue:

- The Colorado Nurse Home Visitor Program in the Department of Human Services (DHS) provides in-home, visiting nurse services to first-time, low-income mothers during and after their pregnancies.
- The University of Colorado (CU) Health Sciences Center uses appropriated funds to conduct research and support faculty and student scholarships. The measure continues only the portion of the funding dedicated to tobacco-related, in-state cancer research.
- The Tony Grampsas Youth Services Program in the DHS provides funding to local organizations for prevention, intervention, and education programs for children and families designed to prevent crime and violence, marijuana use, and child abuse and neglect.
- The Drug Assistance Program in the Colorado Department of Public Health and Environment (CDPHE) provides assistance with screening, general medical, preventative, and pharmaceutical costs for qualifying individuals with HIV, AIDS, or related conditions.
- The AIDS and HIV Prevention Fund in CDPHE supports various AIDS and HIV prevention and education efforts.
- A portion of the Colorado Immunization Fund supports immunization efforts in the CDPHE.
- The Colorado Autism Treatment Fund in the Department of Health Care Policy and Financing (HCPF) supports home- and community-based health services for children with autism.
- The Primary Care Fund is used by HCPF for increasing access to primary health care via health care providers meeting certain criteria.
- The Prevention, Early Detection, and Treatment Fund supports grants related to cardiovascular and pulmonary diseases, health equity, and breast and cervical cancer screening.
- The Colorado Constitution sets aside three percent of tobacco taxes to be allocated between the General Fund, the Old Age Pension Fund, and local governments to be used for health-related purposes.

State Expenditures

For FY 2021-22 and FY 2022-23, the measure both reallocates existing expenditures and increases state expenditures as described below.

Preschool program. As discussed in the State Diversions section, the measure reduces available funding and expenditures across multiple programs and diverts that revenue for expenditures in the CDE. For FY 2021-22, the measure diverts $123.3 million for the new preschool program. For FY 2022-23, the measure diverts $196.9 million. Including the additional revenue available from the new vaping tax, expenditures will total $129.3 million in FY 2021-22 and $203.4 million in FY 2022-23. Depending on enacting legislation, the CDE will have increased expenditures to administer the program and to distribute funding to local providers of preschool services. Additionally, for FY 2021-22 only, the Department of Revenue has a one-time expenditure increase of $79,655 to adjust internal tax accounting software.

Programs requiring replacement funding. For FY 2021-22, the measure will require General Fund appropriations of $58.5 million to replace funding diverted from tobacco tax revenue. For FY 2022-23, replacement funding is $68.1 million. These programs are listed in Table 2 and described below.

Table 2
Replacement Funding Under Initiative #315
(in millions)

Program Requiring General Fund Replacement	FY 2021-22	FY 2022-23
Children's Basic Health Plan and Medicaid	$58.5	$58.5
Fitzsimons Trust Fund	-	$6.2
Supplemental State Contribution Fund	-	$1.8
Colorado Health Service Corps Fund	-	$0.8
State Dental Loan Repayment Program	-	$0.8
Total	**$58.5**	**$68.1**

- Federal law requires a state contribution to The Children's Basic Health Plan and to expand eligibility under the Colorado Medical Assistance Act.
- A portion of tobacco tax revenue in the Fitzsimons Trust Fund provides lease purchase payments associated with the relocation of the CU Health Sciences Center to the former Fitzsimons Army Base.
- The Supplemental State Contribution Fund is used by the Department of Personnel and Administration to supplement the state contribution for a group benefit plan for eligible state employees with incomes below certain thresholds.
- The Colorado Health Service Corps Fund and the State Dental Loan Repayment Program in the CDPHE offer loan repayment for qualified health professionals serving underserved clients. Even if no new contracts are offered, some continuing funding may be required for monitoring existing contracts for up to two years.

Tax administration. Expenditures for tax administration at the Department of Revenue will increase by an indeterminate amount beginning in FY 2020-21. The amount by which expenditures will increase will depend on the regulatory structure enacted by the General Assembly. Appropriations for administration will be included in the implementing legislation that creates the tax regime.

TABOR refunds. Under the March 2020 LCS forecast, the state is not expected to collect revenue above the TABOR limit in FY 2021-22, and a refund obligation is not anticipated for that year. This initiative does not change this expectation concerning refunds to taxpayers. A forecast of state revenue subject to TABOR is unavailable beyond FY 2021-22.

Local Government Impact

Local governments that are otherwise eligible for income tax redistribution based on cigarette tax revenue and that have enacted bans on tobacco and nicotine products as of December 31, 2021, will experience a reduction in revenue. As the total revenue redistributed is $8.8 million annually, the amount of revenue diverted from local governments to the Preschool Cash Fund is up to $8.8 million.

Technical Note

The measure adds a statutory provision requiring the General Assembly to create a regulatory structure for the vaping product special sales tax no later than December 31, 2020. Based on the measure's effective date, this provision requires the General Assembly to act in November or December 2020, when it may not be in session. It is assumed that the measure does not require that a special session be convened, and that the regulatory structure will be enacted in the 2021 legislative session if the General Assembly is not in session in November or December. If the measure is interpreted to require that a special session be convened, additional expenditures for the Legislative Department and potentially other agencies will be required.

Economic Impacts

The measure may impact the state economy in three ways. First, the development of additional resources for preschools will increase employment opportunities for individuals in early childhood education careers. Second, many of the programs from which funds were diverted will be reduced in scope or eliminated if alternative funds are not secured, eliminating positions and corresponding economic activity. Third, the new tax on vaping products will reduce sales of those products and decrease the amounts available for consumers to spend elsewhere in the economy, or to save.

Taxpayer Impacts

The measure is expected to increases taxes paid by an average of $1 per Colorado resident in 2022. The direct tax impact in the measure applies only to individuals who consume vaping products. Based on survey data from the Centers for Disease Control and Prevention, it is estimated that 2.8 percent of Colorado adults use vaping products. If this percentage remains constant, the measure is expected to increase taxes paid by vaping product consumers by an average of $48 in 2022.

Effective Date

If approved by voters at the 2020 general election, this measure takes effect upon proclamation of the Governor, no later than 30 days after the official canvass of the vote is completed.

State and Local Government Contacts

Counties	Education
Health Care Policy and Financing	Higher Education
Human Services	Law
Military Affairs	Municipalities
Personnel	Public Health and Environment
Revenue	Treasury

Abstract of Initiative 315: TOBACCO TAX REVENUE FOR NEW STATE PRESCHOOL PROGRAM

The abstract includes estimates of the fiscal impact of the proposed initiative. If this initiative is to be placed on the ballot, Legislative Council Staff will prepare new estimates as part of a fiscal impact statement, which includes an abstract of that information. All fiscal impact statements are available at www.ColoradoBlueBook.com and the abstract will be included in the ballot information booklet that is prepared for the initiative.

This initial fiscal estimate, prepared by the nonpartisan Director of Research of the Legislative Council as of April 13, 2020, identifies the following impacts:

State revenue. The measure increases state revenue by $6.3 million in FY 2021-22 and $6.5 million in FY 2022-23 by imposing a new tax on vaping products. This revenue is set aside for a new preschool program.

State diversions and expenditures. For FY 2021-22, the measure diverts $123.3 million in tax revenue for a new preschool program. For FY 2022-23, tax revenue diversions for the preschool program are $196.9 million. The measure will require replacement funding for a portion of the tax revenue diverted from existing programs to the new preschool program. For FY 2021-22, replacement funding increases expenditures by $58.5 million. For FY 2022-23, replacement funding increases expenditures by $68.1 million.

Local government impact. The measure reduces funding for local governments which have enacted a ban on tobacco and nicotine products as of December 31, 2021. This revenue loss is estimated at up to $4.4 million in FY 2021-22 and up to $8.8 million in FY 2022-23.

Economic impacts. The development of additional resources for preschools will increase employment opportunities for individuals in early childhood education careers. Conversely, many of the programs from which funds were diverted will be reduced in scope or eliminated if alternative funds are not secured, eliminating positions and corresponding economic activity. In addition, the new tax on vaping products will decrease the amounts available for consumers of these products to spend elsewhere in the economy, or to save.

Taxpayer impacts. The measure is expected to increase taxes paid by an average of $1 per Colorado resident in 2022. The direct tax impact of the measure applies only to individuals who consume vaping products. The measure is expected to increase taxes paid by vaping product consumers by an average of $48 in 2022.