

*Good Afternoon Madame Chair and members of the committee:*

Today I would like to offer some policy perspective on behalf of my members , Convenience store operators throughout the state.. on the tobacco Grant Review committee and the policy goals it promotes, how it promotes them and why it relates to SB 185 and the expansion of of Tobacco Tax dollars into “other activities” specifically as it pertains to Section (b) of the bill.

We hope that this perspective will lead the legislature, as this bill moves through the process, to consider that while the term “other activities” can encompass some laudable and entirely appropriate goals, the business community impacted by this Tobacco Grant Committee is asking for specific borders and specific limitations on the use of these grant dollars.

Over the last couple of years our members have reported a push by local communities to license our retailers for the sale of tobacco products. These efforts are the result of “education efforts” where we believe grant dollars are used to coordinate and encourage partnerships with grantees and local groups ...to promote local ordinances and policies that are intended to make it harder for retailers to sell various types of tobacco products on the false premise that we sell to minors. The first handout in your packet is the Departments of Revenue’s information that shows retailers are between 92-96 compliant with thousands of compliance checks done each year by tobacco enforcement.

It is never okay to sell to minors retailers should be held accountable.

*Amo the Lelo*

However looking a little deeper into the ample information on tobacco control strategies, it seems that licensure promotion also conforms to another of this committees strategic goals, which is to increase the price of Tobacco products in Colorado to the top ten in the nation.... That handout is the next one in your packet.....increasing the costs of doing business on retailers unfortunately helps to promote that goal.

Unfortunately these licenses are legislation that create market imbalances between retailers that compete in close proximity. They increase operating costs and in some cases severely restrict the business models that some of our members operate even when the premises is an age restricted store.



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It is our members belief that the intent of these tax dollars and the programs that they fund should be used to educate and even promote policies that enhance the public's understanding about tobacco and in some cases such as secondhand smoking, or policies related to the Colorado clean indoor potentially encourage the adoption of safeguards in a community.

We believe though that the use of some of these dollars by grantees deserves extreme scrutiny by this committee and the legislature as these uses were also highlighted and questioned by the state auditors' report on the grant review committee this last summer.

If you review the tabbed handout you will note that the grant committee has given 1.5 million dollars to various local county health departments in the form of grants. Community outreach education efforts can take many forms and one that is popping up is a model where local department of health grantees are working with High school students in various communities in order to pass licenses and other restrictive measures on the sale use of other tobacco products.

There is an irrefutable nexus between where these grant dollars go ~~tabbed on the next handout in your packet~~ and where retailers now face increased regulation. Including licensure already adopted in Steamboat, Pueblo, Golden, Fountain and Manitou Springs. The press release by local department of health agencies clearly demonstrate the coordination and promotion that result in these ordinances from educational purpose grant dollars, which are the next two handouts in your packet.

The committee should remember that currently in state law a balance exists between the state, retailers, and the local communities where that local communities receive a portion of tobacco excise tax dollars the state collects on the following condition:

*C.R.S. 39-22-623: In order to qualify for distributions of state income tax moneys, units of local government are prohibited from imposing fees, licenses, or taxes on any person as a condition for engaging in the business of selling cigarettes, or from attempting in any manner to impose a tax on cigarettes.*



Committee: These local “other tobacco licenses” are imposed on exactly the same people that are covered under this section of the law. It is clear that great pains were taken in each of these communities to ensure that the license clearly stated it was not for cigarettes but it is the end policy goal that it is the issue.

I included a sample of this license for your review.

These tobacco tax kickback dollars are supposed to be used for enforcement; compliance, and helping the state to checks on retailers...But looking at the justification that local governments are using for these other tobacco products licenses that is the purpose of these licenses and related fees as well.

This while technically is a clever work around... at the minimum we feel violates the intent and spirit of the statute, and as such these communities should be disqualified from the local kickback share of tobacco tax revenue.

In August, the State Auditors report questioned the uses to which this portion of tobacco money was being used for and if it conformed to statutorily set uses....further it recommended that the Department get guidance through either an attorney general’s opinion or a legislative fix to address the auditor’s report.

Finally, And I thank the chair and the committee for their indulgence...we are specifically asking this committee and the sponsor for a consideration of a policy clarification in SB 185. Tax dollars funded grants should be specifically prohibited in SB 185 for purposes resulting in the coordination and promotion of policy ordinances that restrict or ban certain products and impose licenses fees or taxes.

We believe that in light of what these grant dollars are being used for that this policy is warranted and the money is better spent on other activities.

It is hard to put into writing all the appropriate uses that this money could be used for, but in reviewing other current uses for this money including classroom education, establishing quit lines, and helping disproportionately affected communities ~~this bill~~ why shouldn’t these dollars be directed to causes that are statutorily approved. That would be great and we agree that



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the primary purpose of 185 is to justify the use of these grant dollars in this fashion...

But it is clear to us that certain uses are not the intent or at least should not be authorized under SB -185 and that should be clarified as well...if the Tobacco grant review committee wishes to continue to channel money through local health departments that turn high school students into political advocates...then great...but at issue is what they are advocating for and the current result that turns tobacco control communities policy objectives into laws that hurt our responsible retailers.

Thank you again for the time afforded to our members being affected by these grant dollars and I would be happy stand for questions.



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## News Releases

**For Immediate Release - Dec 13, 2010**

**Contact:** Nancy Braden  
Public Health Communications  
Coordinator  
303-239-7137

### Re: Youth Tobacco Prevention is a Golden Opportunity

**CONTACT:**  
Donna Viverette  
Tobacco Prevention Program  
303-275-7555 [dviveret@jeffco.us](mailto:dviveret@jeffco.us)

#### **Youth Tobacco Prevention is a Golden Opportunity** Golden City Council Passes Ordinances Protecting Children from Tobacco

Jefferson County, Colorado – Jefferson County Public Health's Tobacco Prevention Initiative applauds the Golden City Council for passing two ordinances on Thursday, December 9, 2010 that reduce youth access and exposure to tobacco while also helping to promote tobacco free living in the City of Golden. Ordinance No. 1886 amends the Municipal Code to prohibit smoking in retail tobacco establishments and in the vicinity of public playgrounds. This ordinance makes playgrounds smoke-free environments for children's health and safety. Smoking is also prohibited within 25 feet of playgrounds to reduce smoke drift into playground areas. Another provision of the ordinance protects worker and consumer health, by making tobacco retail businesses smoke-free. The second ordinance, Ordinance No. 1889, amends the Municipal Code to regulate the display of tobacco products. This ordinance requires that tobacco retailers keep all tobacco products behind the counter requiring customers to seek clerk assistance to buy tobacco. The ordinances are expected to go into effect later this month.

Before passing the ordinances, Council Members heard from several community members, including students from Golden High School's Breathe Easy (BE Team) who expressed their support for the ordinances. One BE Team member said, "The majority of my friends use tobacco. It is painful to see they have the potential to live with a lifelong disease – what a burden that is for such a fleeting mindset." Another student shared that he supports the ordinance and wants "to help people avoid decisions they will regret for the rest of their life."

Saoirse Charis-Graves, Golden Tobacco Coalition Co-Chair, also spoke to the Council and pointed out the significance of City Council's discussion of tobacco issues on the same day that the U.S. Surgeon General, Regina M. Benjamin released a report asserting that "exposure to tobacco smoke – even occasional smoking or secondhand smoke – causes immediate damage to your body that can lead to serious illness or death." The Surgeon General's Report, *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease* also states, "The chemicals in tobacco smoke reach your lungs quickly every time you inhale causing damage immediately. Inhaling even the smallest amount of tobacco smoke can also damage your DNA, which can lead to cancer."

For the past two years, Golden High Schools' BE Team students have focused on the issue of tobacco and youth access. Members of the BE Team have participated in data collection and presentations to the Golden City Council. As a result of the students' reports and a growing concern about youth tobacco use, the City of Golden began partnering with the Jefferson County Public Health (JCPH) Tobacco Prevention Initiative to advance tobacco prevention efforts in the city.

Continuing tobacco prevention work will include a community assessment process, gathering input from business owners and residents, and engaging in community education campaigns. The Golden BE Team and Golden Tobacco Coalition community members will continue to work with city leaders and the JCPH Tobacco Prevention Initiative to find and implement additional community-level solutions to youth initiation and access to tobacco products.

- If you are interested in participating in the coalition or want to know more about the project, please email or contact Susan Westhof at (303) 271-5705 or [swesthof@jeffco.us](mailto:swesthof@jeffco.us)
- Read the Surgeon General's latest report on tobacco: <http://www.surgeongeneral.gov/>
- View the Golden City Council meeting: <http://www.ci.golden.co.us/Page.asp?NavID=800>

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*Gateway to the Rockies*

# Policy objective goals for the Tobacco Cessation grant review committee: 2020 Goals

## 2020 Goals

- The cessation success gap affecting low SES youth and adult smokers decreases by 50 percent
- A majority of people and health care systems in Colorado recognize and treat tobacco dependence as a chronic condition
- A majority of Coloradans live, learn, work and play in communities that have effective policies and regulations that reduce youth and adult use and access to tobacco
- Tobacco prevalence and initiation among young adults, especially straight-to-work, decreases by 50 percent
- Initiation among youth, especially high burden and low SES populations, decreases by 50 percent
- Exposure to secondhand smoke with an emphasis on low SES populations decreases by 50 percent
- Colorado is among the 10 states with the highest price for tobacco products



2020 GOAL	STRATEGIES	OBJECTIVES
Colorado is among the 10 states with the highest price for tobacco products.	<ul style="list-style-type: none"> <li>• Advocacy</li> <li>• Community Mobilization</li> <li>• Countering the tobacco industry</li> <li>• Media</li> <li>• Policy</li> <li>• Research and Evaluation</li> <li>• Social Marketing</li> </ul>	<ul style="list-style-type: none"> <li>• Define message and program branding using data to reach decision makers, stakeholders and the general public.</li> <li>• Educate the public to build support for price increase campaigns.</li> <li>• Develop innovative policies and strategies to increase price separately from excise tax.</li> <li>• Work with strategic partners for collaboration and coalition building.</li> </ul>

## Implications

### Process and Systems Alignment

The Review Committee, the Colorado Tobacco Education, Prevention and Cessation Program, and grantees will need to realign priorities, funding and activities to reach strategic goals. However, the planning group was clear that this is more than simply informing grantees of new priorities.

This planning process provides an excellent opportunity to share updated data, information and trends to inform and educate those working in tobacco prevention and control. The Colorado Tobacco Education, Prevention and Cessation Program is committed to using this plan as a vehicle to strengthen relationships with partners statewide, and to forge new partnerships.

The Colorado Tobacco Education, Prevention and Cessation Program, with Review Committee approval and support, will share relevant data and information with grantees and potential grantees and develop the systems and processes necessary for a seamless transition toward plan implementation.

This may include, but is not limited to, aligning the grant application process, undertaking necessary research to more clearly define target markets, aligning with the Cancer, Cardiovascular and Pulmonary Disease Review Committee, the Minority Health Advisory Committee, and aligning Colorado Tobacco Education, Prevention and Cessation Program activities and priorities to fully support plan implementation.

### Next Steps

Upon Review Committee approval, the Colorado Tobacco Education, Prevention and Cessation Program will work with partners to introduce the Plan to stakeholders and targeted audiences, and discuss and define implications for tobacco prevention and control efforts. The Colorado Tobacco Education, Prevention and Cessation Program will work with the Review Committee to align future RFA processes to achieve strategic goals.

# STATE OF COLORADO

John W. Hickenlooper, Governor  
Christopher E. Urbina, MD, MPH  
Executive Director and Chief Medical Officer

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Colorado Department  
of Public Health  
and Environment

## **Tobacco Education, Prevention and Cessation Grant Program**

Grant Awards for the period July 1, 2011 through June 30, 2012  
(Approved April 20, 2011 by the Colorado Board of Health)

Twenty-four (24) awards totaling approximately \$5.2 million are described herein. A summary table is provided. All grant award totals are “not to exceed” totals. The grantee may receive less than the total listed as recommended by the Review Committee and approved by the Colorado Board of Health.

**For additional information on any of the projects listed below, please contact:  
Jennifer Snyder, Director, Outgoing Grants and Contracts  
303-692-2527  
[jennifer.snyder@state.co.us](mailto:jennifer.snyder@state.co.us)**

**Tobacco Education, Prevention and Cessation Grant Program  
Grant Awards for Fiscal Year 2011-12**

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## Summary Table

<b>Tobacco Education, Prevention &amp; Cessation Grant Program Summary of Funding Recommendations for FY2011-2012</b>			
<b>Community Based Initiatives</b>	<b>FY11-12 Changes</b>	<b>Proposed FY11-12 Budget</b>	<b>% Reduction from prior year</b>
<input type="checkbox"/> Tobacco-free Colorado Communities Initiative	* Continuation funding for 18 TFCCI projects that commenced October, 2010.	\$ 2,661,002	13.0%
<input type="checkbox"/> Technical Assistance	*Continuation funding for one grantee.	\$ 300,000	25.0%
<input type="checkbox"/> Community Engagement *Eight organizations were provided small grants (~\$3,700 each) for a period of 5 months to assist TFCCI projects.		\$ -	100.0%
<b>Subtotal Community Initiatives</b>		<b>\$ 2,861,002</b>	<b>15.2%</b>
<b>Cessation Media &amp; Public Relations</b>			
<input type="checkbox"/> Media promoting cessation services	*Cessation media driving QuitLine usage.	\$ 339,200	44.4%
<input type="checkbox"/> Public Relations & Media Placement Technical Assistance	*Continuation funding to one grantee.  (12 month term)	\$ 150,156	49.5%
<b>Subtotal Media</b>		<b>\$ 489,356</b>	<b>46.0%</b>
<b>Cessation</b>			
<input type="checkbox"/> Colorado Quitline	*Continuation funding for one grantee.	\$ 1,646,000	22.4%
<input type="checkbox"/> Youth Cessation	*Continuation funding for one grantee.	\$ 100,000	0.0%
<b>Subtotal Cessation</b>		<b>\$ 1,746,000</b>	<b>21.4%</b>
<b>Evaluation</b>			
<input type="checkbox"/> Grant Program Outcome Evaluation	*Continuation funding for one grantee.	\$ 100,000	80.0%
<b>Subtotal Evaluation</b>		<b>\$ 100,000</b>	<b>80.0%</b>
		<b>\$ 5,196,358</b>	<b>25.8%</b>

## Tobacco-Free Colorado Communities Initiative

### Requests for Programs Reducing Illegal Sales of Tobacco Products to Minors and Minimizing Youth Exposure to Tobacco Advertising

**Funding Category:** Community-Based Initiatives

**Purpose:** Youth access policies prevent youth from obtaining tobacco products and limit the tobacco industry from reaching children and youth. Studies show that youth access policies increase the delay in onset of tobacco use, slow the progression from experimentation to regular use, and reduce consumption of tobacco products. These policies also function to de-normalize tobacco use. There is an increased perception by youth that it is easier to buy tobacco in a store with tobacco clearly present at the point of sale. Finally, the proximity of tobacco next to staple consumer items creates a “friendly familiarity” impression of tobacco because these products are not sold in the same manner as other potentially dangerous legal products, such as medication or alcohol.

**Grant Period:** July 1, 2011 – June 30, 2012

**Funds Requested:** Not to exceed a total of \$1,496,817 for 10 grantees

Agency	Jurisdiction Served	Jurisdiction Population	Funds Recommended (not to exceed)	Approximate FTE Funded
Bacchus Network	City of Aurora	314,326	\$234,224	1.5
Boulder County Public Health	City of Longmont	86,303	\$191,483	2.6
El Paso County Public Health	City of Fountain	19,669	\$167,449	2.0
El Paso County Public Health	City of Manitou Springs, Green Mountain Falls	Manitou Springs: 5,161; Green Mt. Falls: 803	\$89,544	1.0
Jefferson County Public Health	City of Golden	17,835	\$141,352	1.5
Montezuma County Public Health	City of Cortez	8,985	\$113,614	1.5
Northwest Colorado Visiting Nurse Association	City of Steamboat Springs	11,939	\$124,644	0.7
Otero County Health Department	City of La Junta	7,568	\$123,263	1.5
Pueblo City-County Health Department	Pueblo County	51,738	\$126,358	2.0
Summit Prevention Alliance	Summit County	29,626	\$184,885	1.7

## Tobacco-Free Colorado Communities Initiative

### Requests for Programs to Protect Individuals from Secondhand Smoke by Strengthening and Enforcing the Provisions of the Colorado Clean Indoor Air Act (CCIAA)

**Funding Category:** Community-Based Initiatives

**Purpose:** Cities, states and counties have passed smoke-free laws and smoking bans in response to clear scientific evidence of the harms of secondhand smoke and evidence that smoke-free policies reduce secondhand smoke exposure and improve public health. In 2006, the Colorado General Assembly passed the Colorado Clean Indoor Air Act (CCIAA) to eliminate smoking in indoor workplaces, including restaurants and bars, and to preserve and improve the health of all Coloradans. Policies that are more comprehensive and provide more protection are known to result in greater health benefits. Local communities work to strengthen and enforce the CCIAA by removing exemptions - such as the allowance of secondhand smoke in outdoor dining areas and within tobacco retail establishments like hookah lounges and cigar bars; increasing the perimeter of secondhand smoke protection from all building entryways; prohibiting secondhand smoke on sidewalks around hospitals; and monitoring compliance and enforcement of existing provisions.

**Grant Period:** July 1, 2011 – June 30, 2012

**Funds Requested:** Not to exceed a total of \$632,920 for 4 grantees

Agency	Jurisdiction Served	Jurisdiction Population	Funds Recommended (not to exceed)	Approximate FTE Funded
Jefferson County Public Health	City of Lakewood	144,382	\$165,852	2.0
Jefferson County Public Health	Unincorporated Jefferson County	190,440	\$186,099	2.0
Jefferson County Public Health	City of Wheat Ridge	31,650	\$155,691	1.5
San Juan Basin Health Department	City of Durango	15,878	\$125,278	1.5

## Tobacco-Free Colorado Communities Initiative

### Requests for Programs to Protect Individuals from Secondhand Smoke in Multi-Unit Housing

**Funding Category:** Community-Based Initiatives

**Purpose:** Public warnings about the dangers of secondhand smoke exposure and policies to protect people from secondhand smoke in workplace settings have led to a trend toward smoke-free multi-unit housing. The Housing and Urban Development (HUD) Office of Public and Indian Housing issued a notice in July 2009 to strongly encourage public housing authorities to implement non-smoking policies in some or all public housing units. The HUD notice states that children and the elderly are especially vulnerable to the adverse effects of secondhand smoke exposure.

**Grant Period:** July 1, 2011 – June 30, 2012

**Funds Requested:** Not to exceed a total of \$431,265 for 4 grantees

Agency	Jurisdiction Served	Jurisdiction Population	Funds Recommended (not to exceed)	Approximate FTE Funded
Delta County Department of Health and Human Services	Delta County Housing Authority	1,098	\$70,844	1.0
Denver Health and Hospital Authority	Housing Authority of the City and County of Denver	25,000	\$135,589	2.0
Mesa County Health – Grand Junction Housing Authority	Grand Junction Housing Authority	1,700	\$101,951	1.0
University of Colorado Denver Behavioral Health	Mental Health Center of Denver	240	\$122,881	1.5



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From DOR Tobacco Enforcement Website:

### Tobacco Enforcement



Beginning July 1, 1998 the Liquor Enforcement Division received tobacco enforcement duties. Federal mandate requires each state to have a tobacco enforcement program and a designated enforcement agency. States that do not have a program in place are in jeopardy of losing federal substance abuse and treatment grants. For Colorado, approximately 8 million dollars, annually, is at risk.

The Division coordinates its enforcement activities with the Colorado Departments of Human Services and Health. The Division responds to complaints about tobacco sales to minors and conducts unannounced retailer compliance checks (stings) to determine retailer compliance.

The Division conducts approximately 3,200 tobacco retailer compliance checks. Retailers who sell to minors during a compliance check will be issued a warning and targeted for future compliance checks. If continuing violations occur, a retailer can receive administrative fines ranging from \$250 to \$15,000.

On an annual basis the Division will work with the Department of Human Services to develop a federal report concerning the effectiveness of Colorado's enforcement program. Federal mandates require Colorado to achieve and maintain an 80% retailer compliance rate to avoid endangering federal grant monies. **Colorado's current compliance rate ranges from 92-96%.**



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November 18, 2011

NEWS RELEASE

### **Ordinance Unanimously Passes to Keep Tobacco Out of Teens' Hands**

**El Paso County, Colo.** – Manitou Springs and Fountain are among the first communities in Colorado to pass a tobacco licensing ordinance aimed at reducing underage tobacco use.

Manitou Springs City Council unanimously approved a new city ordinance Tuesday, Nov. 15, that allows stricter enforcement for the illegal sales of tobacco to minors. Fountain's city council unanimously passed a similar ordinance Oct. 11. Steamboat Springs passed an ordinance in July.

The new laws will become effective Jan. 1, 2012 and require non-cigarette tobacco retailers to obtain an annual retail license. Non-cigarette tobacco products include chew or spit tobacco, cigars, snus, sticks, orbs, strips, electronic cigarettes, and hookah.

Both communities adopted the following additional provisions:

- Minors younger than 18 are not permitted to sell, stock or handle non-cigarette tobacco products.
- Self-service displays of any non-cigarette tobacco products are prohibited.
- If a retailer receives four violations within one year, their license to sell non-cigarette tobacco may be suspended or revoked.

"We're proud of Fountain and Manitou Springs to be among the first communities to further restrict youth access to non-cigarette tobacco products," said Kiti Hall, the Tobacco Education and Prevention Partnership (TEPP) supervisor at El Paso County Public Health. "Tobacco retailer licensing is an effective method to help reduce youth access to tobacco products and hold retailers accountable for selling tobacco products to minors."

Despite an existing law prohibiting the sale of tobacco to minors, a 2008 Healthy Kids Colorado Survey found that more than 60 percent of Colorado youth under the age of 18 who attempted to purchase tobacco reported being able to do so, and nearly half of the kids who purchased tobacco illegally say they were not asked to show any proof of age. This ordinance is intended to lower these statistics.

"It was a real pleasure to work on this effort," said Marc Snyder, mayor of Manitou Springs. "I was especially impressed by the many outstanding high school students who advocated so passionately for the adoption of these ordinances."

Tobacco use remains the leading cause of preventable death. More than 4,300 Coloradans die each year from smoking-related illnesses. Nearly 90 percent of adult smokers become addicted to tobacco before the age of 18.

“My hope is that this ordinance will contribute to overall prevention efforts aimed at helping youth resist tobacco use and potentially negative health consequences,” said Fountain Mayor Jeri Howells.

The local ordinances were introduced by the Tobacco Education and Prevention Partnership at El Paso County Public Health, Fountain Valley Community Activity and Nutrition group, Partners for Healthy Choices, and students and teachers of Fountain-Fort Carson and Manitou Springs school districts.

For more information, contact:

**Fountain:**

Fountain Mayor Jeri Howells, (719) 322-2007 office; (719) 477-3292 cell  
Jennifer Lange, Community Health Coordinator, El Paso County Public Health, (719) 578-3287

**Manitou Springs:**

Joy Clark, Community Health Coordinator, El Paso County Public Health, (719) 578-3265  
Laurie Z. Wood, Director, Partners for Healthy Choices, (719) 685-2004 office;  
(719) 306-5908 cell

####



# AMENDMENT 35 TOBACCO TAX FUNDED GRANT PROGRAMS

## Performance Audit, July 2012 Report Highlights



Dianne E. Ray, CPA  
State Auditor

Department of Public Health and Environment

### PURPOSE

Evaluate grant-making processes and determine whether grant monies funded with Amendment 35 tobacco tax revenues are being used for their intended purposes.

### BACKGROUND

- In Fiscal Year 2005, Amendment 35 raised the tax per package of cigarettes to \$0.84 and increased the tax on all other tobacco products to 40 percent of the manufacturer's list price. In Fiscal Year 2011, the State collected about \$145 million in Amendment 35 tobacco taxes.
- Statute requires that 16 percent of Amendment 35 tobacco tax revenues be used to fund school, community-based, and statewide tobacco education programs to reduce initiation of tobacco use by children and youth, promote cessation of tobacco use, and reduce exposure to secondhand smoke.
- Another 16 percent of Amendment 35 tobacco tax revenues are to be used to fund the prevention, early detection, and treatment of cancer, cardiovascular disease, and chronic pulmonary disease.

### OUR RECOMMENDATIONS

The Department should:

- Seek an Attorney General's opinion on whether statute and the State Constitution allow the Tobacco Prevention Program to use grants to fund policy initiatives to help pass local laws and ordinances prohibiting smoking.
- Improve processes for assessing the risk and capacity of grant applicants.
- Implement internal controls to ensure grant contracts are accurate and complete.
- Strengthen procedures for ensuring grantee reimbursements are allowable and comply with grant contracts.
- Improve data management.

The Department disagreed with the first recommendation and agreed with the other recommendations.

### AUDIT CONCERN

The Department should ensure its grants for the Tobacco Education, Prevention, and Cessation (Tobacco Prevention) Program and the Cancer, Cardiovascular Disease, and Chronic Pulmonary Disease Prevention, Early Detection, and Treatment (CCPD) Program comply with Colorado constitutional and statutory requirements, and improve its processes for selecting, managing, and tracking grants.

### KEY FACTS AND FINDINGS

- In Fiscal Years 2010 and 2011, the Tobacco Prevention Program awarded 140 grantees a total of about \$5.2 million in funding to conduct policy initiatives to help pass local government laws and organizational policies related to tobacco use, such as prohibiting smoking in areas not banned by Colorado's Clean Indoor Air Act. It is unclear whether the State Constitution and statute allow these grant funds to be used to fund policy initiatives.
- The Tobacco Prevention and CCPD Programs awarded grants without sufficient consideration of applicants' past performance or financial risk. For example, one grantee in our sample was approved for continued grant funding although it had been issued an order to stop work on a previous grant due to performance problems.
- The Department's financial risk assessment tool includes rating factors that appear to conflict and may not accurately capture risk. The Department also does not conduct financial risk assessments on all applicants and grantees.
- We found problems with the accuracy and completeness of the contracts for nine out of 17 sampled grantees. Errors included budgets for timeframes that exceeded the contract period, budget miscalculations, and missing budget information. These errors resulted in the State overpaying grantees a total of about \$8,400.
- We identified questionable grant reimbursements for nine out of 17 sampled grantees totaling about \$69,500 (about 3 percent) out of the \$2.3 million in reimbursements we reviewed in Fiscal Years 2010 and 2011. Most reimbursements we reviewed were paid without proof of how the funds were used.
- The Department does not maintain a comprehensive, accurate database of grant information. For 57 out of the 211 grants in Fiscal Years 2010 and 2011, the information provided by the Department included errors such as incorrect entities that received grants, incorrect expenditure amounts, and incorrect grant award amounts.

**RECOMMENDATION LOCATOR**  
**Agency Addressed: Department of Public Health and Environment**

Rec. No.	Page No.	Recommendation Summary	Agency Response
1	23	Seek a written Attorney General opinion on whether awarding Tobacco Prevention Program grant funds for policy initiatives complies with the intent of the State Constitution and statute. If these initiatives are determined to be outside the scope of the Constitution and statute, the Department should either discontinue its practice of funding policy initiatives or work with the General Assembly to seek the statutory authority to use grant funds for this purpose.	Disagree
2	30	Improve the process for assessing the risk and capacity of grant applicants during the grant selection process for the Tobacco Prevention and CCPD Programs by: (a) adopting Review Committee policies and processes for assessing grant applicants' past performance and financial capacity to administer grants, discussing grantee performance in Committee meetings, and providing training on the policies and procedures to Committee members and applicable Department staff; (b) providing the financial risk questionnaires and assessments to the Review Committees; and (c) reporting to the Review Committees information on grantee performance.	Agree
3	39	Improve processes for assessing the financial risk of applicants for the Tobacco Prevention and CCPD Programs' grants by: (a) revising the financial risk assessment factors and points assigned to each based on the concerns identified in this audit and revising the financial risk questionnaire to ensure it collects adequate information needed to conduct the assessment; and (b) ensuring there is a process for assessing the financial risk of all applicants and periodically reassessing the financial risk of grantees whose grants are renewed.	Agree
4	43	Implement internal controls to ensure grant contracts for the Tobacco Prevention and CCPD Programs comply with the State Procurement Manual and the Department's <i>Guide to Best Practices in Contract Management</i> by: (a) improving contract drafting and review policies and procedures to ensure contracts accurately reflect the contract period and are reviewed by fiscal staff for completeness and accuracy; and (b) providing written guidance and training to applicable staff on the policies and procedures developed in part a., including processes for ensuring contracts are accurate and complete before they are executed.	Agree

## Department of Public Health and Environment

Response:

Disagree.

State statute at Section 25-3.5-805(6), C.R.S., requires the Department, through the State Board of Health, to award the majority of its Tobacco 24 Amendment 35 Tobacco Tax Funded Grant

### Programs Performance Audit - July 2012

Prevention Program grant funds for “evidence-based programs and programs that prevent and reduce tobacco use among youth and young adults.” While statute does not define evidence-based programs, subject matter experts in the field of tobacco control and prevention, including the Centers for Disease Control and Prevention (CDC), the Institute of Medicine, and the National Institutes of Health, all agree that evidence-based practices in tobacco prevention and control include increasing the price of tobacco, implementing smoking bans and restrictions, reducing the availability of tobacco products to youth, providing cessation services, and targeting specific and high-risk populations through mass media campaigns. Specifically, the CDC best practices for tobacco prevention state that “state and community interventions include supporting and implementing programs and policies to influence societal organizations, systems, and networks that encourage and support individuals to make behavior choices consistent with tobacco-free norms.” Seeking a legal opinion is unwarranted as the use of Tobacco Prevention Program grant funds to support activities associated with policies to change societal norms is entirely consistent with the statutory mandates for expenditure of these funds on evidence-based programs

### Auditor’s Addendum:

We recognize that statute [Section 25-3.5-805(6), C.R.S.] states that “the majority of moneys annually awarded to grantees that qualify pursuant to (Section 25-3.5-805, C.R.S.)...shall be for evidence-based programs and programs that prevent and reduce tobacco use among youth and young adults.” However, it is unclear whether the policy initiatives funded by the Tobacco Prevention Program comply with statute Section 25-3.5-805(1), C.R.S., which specifies that grantees shall use the funds for at least one of the areas outlined in statute, such as education programs, counseling, and treatment. Statutes related to the Tobacco Prevention Program do not specify that the Department may use grants to fund policy initiatives, such as those that create and strengthen laws or ordinances prohibiting smoking. Therefore, we believe that a legal opinion from the Attorney General is warranted to clarify whether the State Constitution and statute allow the use of these grants to fund policy initiatives.