

JOINT BUDGET COMMITTEE



STAFF BUDGET BALANCING FY 2020-21

LIMITED GAMING TAX REVENUE

JBC WORKING DOCUMENT - SUBJECT TO CHANGE
STAFF RECOMMENDATION DOES NOT REPRESENT COMMITTEE DECISION

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HOW TO USE THIS DOCUMENT

This document addresses all programs that receive funds from limited gaming tax revenue. It thus incorporates staff recommendations affecting Department of Higher Education, the Governor’s Office of Economic Development, and the Department of Local Affairs. All recommendations addressed in the document involve statutory changes.

SUMMARY OF RECOMMENDATIONS AND OPTIONS REQUIRING STATUTORY CHANGE

➔ REDIRECT DIRECT GAMING TAX REVENUE TO THE GENERAL FUND; ALLOW AFFECTED PROGRAMS TO RECEIVE GENERAL FUND APPROPRIATIONS

JBC ACTION TO-DATE: Through the figure setting process, the JBC set figures based on existing statutory transfers for gaming revenue. Through the budget balancing process, staff has recommended eliminating statutory transfers and instead directing amounts to the General Fund to the extent allowed by the Constitution. The JBC has thus far acted on one of these programs (in the Department of Higher Education) but has deferred action on five other programs.

RECOMMENDATION: Staff recommends that the Committee introduce a bill to:

- Eliminate all statutory transfers of gaming revenue to funds other than the General Fund, where such transfers are authorized by statute in Section 44-30-701, C.R.S. (as opposed to in the Constitution).
- Add language for the Local Government Limited Gaming Impact Fund indicating that the General Assembly may appropriate funds to this fund. All of the other funds already have statutory authority to receive appropriations. The General Assembly will then be able to direct funding to these programs based on available revenue.
- If desired, the Committee could include appropriations in the bill to backfill some of the transfers (OSPB’s request).

ANALYSIS:

Key Considerations:

- The Committee has received multiple staff recommendations over the last two weeks recommending that various limited gaming transfer provisions be eliminated and that limited gaming revenue instead be deposited to the General Fund.
- Limited gaming revenue received at the end of FY 2019-20 is likely to be severely depressed due to the closure of casinos beginning in March.
- Based on the Legislative Council Staff and OSPB gaming revenue forecasts, the existing statutory provisions that require transfers of particular fixed amounts will be unworkable in FY 2019-20.
- The Governor’s Office has recommended that the General Assembly suspend statutory transfers but has also recommended that, in some cases, the General Assembly make General Fund appropriations in lieu of these transfers.

Additional Background: Article XVIII, Section 9 of the State Constitution, which provides for limited gaming in Central City, Black Hawk, and Cripple Creek, specified that up to 40 percent of the adjusted gross proceeds from gaming, in addition to license fees, shall be paid by each licensee into the Limited Gaming Fund. Excluding changes related to Amendment 50 (discussed below), and after deductions for administrative expenses, the Limited Gaming Fund proceeds are distributed as follows:

- 50 percent to the General Fund or other fund as the General Assembly provides;
- 28 percent to the State Historical Fund;
- 12 percent to Gilpin and Teller counties in proportion to the gaming revenues generated in each;
- 10 percent to the governing bodies of Central City, Black Hawk, and Cripple Creek in proportion to the gaming revenues generated by each.

Amendment 50 to the Constitution, adopted in 2008 by the voters, provided for larger bets and extended hours of operations for the casinos specified that the additional revenues received as a result of these extended gaming provisions would be allocated 78.0 percent to public community colleges, in lieu of the allocations to History Colorado and the General Fund, with the remaining 22.0 percent still going to the gaming cities and counties.

While an increasing share of gaming revenue has been directed to the Amendment 50 recipients, the majority of funds still go to the “original” recipients, including the General Fund or other funds designated in statute by the General Assembly.

The table below summarizes current Constitutional and statutory provisions and the allocation of FY 2018-19 tax revenue (the last actual data available).

GAMING TAX CONSTITUTIONAL AND STATUTORY DISTRIBUTIONS

RECIPIENT	SOURCE OF AUTHORITY	CONSTITUTIONAL/STATUTORY REQUIREMENT	FY 2018-19 DISTRIBUTION	% OF FY 2018-19 GAMING REVENUE	% OF FY 19 DISTRIBUTIONS (EXCLUDING ADMINISTRATION)
Colorado Historical Society	Constitution - Original Recipient	28.0 percent of original recipient distributions	\$26,278,173	20.7%	
Gaming Cities and Counties	Constitution - Original Recipient	22.0 percent of original recipient distribution in total	20,647,136	16.2%	
General Fund or Other Fund Designated by the General Assembly	Constitution - Original Recipient	50.0 percent of original recipient distribution in total			
<i>Local Affairs</i>					
Local Gov't Limited Gaming Impact Fund	Statute	\$5.0 million + % increase in state share	5,398,346		
<i>Governor's Office of Economic Development</i>					
Creative Industries Cash Fund	Statute	\$2.0 million fixed	2,000,000		
Colorado Travel and Tourism Promotion Fund	Statute	\$15.0 million fixed	15,000,000		
Colorado Office of Film, TV, and Media Cash Fund	Statute	\$0.5 million fixed	500,000		
Advanced Industries Acceleration Cash Fund	Statute	\$5.5 million fixed	5,500,000		
<i>Higher Education</i>					
Innovative Higher Education Research Fund	Statute	\$2.1 million fixed	2,100,000		
<i>Other</i>					
General Fund (Balance)	Constitution/statute	balance of funds after amounts above	16,426,964		
Subtotal - General Fund or Other Fund Designated by the General Assembly	(Section 44-30-701, C.R.S.)		46,925,310	36.9%	
Total - Distributed to Original Recipients			\$93,850,620		84.0%
EXTENDED GAMING RECIPIENTS (ADDED IN 2008 AMENDMENT 50)					
Gaming Cities and Counties	Constitution - Extended Recipient	22.0 percent of extended gaming recipient distribution in total	3,944,993	3.1%	
Community Colleges/Other public institutions with 2 year mission	Constitution - Extended Recipient	78.0 percent of extended gaming recipient distribution in total	13,986,794	11.0%	

GAMING TAX CONSTITUTIONAL AND STATUTORY DISTRIBUTIONS					
RECIPIENT	SOURCE OF AUTHORITY	CONSTITUTIONAL/STATUTORY REQUIREMENT	FY 2018-19 DISTRIBUTION	% OF FY 2018-19 GAMING REVENUE	% OF FY 19 DISTRIBUTIONS (EXCLUDING ADMINISTRATION)
Total - Distributed to Extended Gaming Recipients			17,931,787		16.0%
Total Gaming Tax Distributions			\$111,782,407		
Total Administration	Constitution	Determined by Gaming Commission	<u>15,425,237</u>	12.1%	
Total Gaming Revenue			\$127,207,644	100.0%	

FY 2019-20 gaming revenue is projected to be sharply lower than FY 2018-19 due to the closure of casinos due to COVID-19. The Department of Revenue does not anticipate that casinos will reopen until mid-June, and this is reflected in the Legislative Council Staff gaming revenue projection shown below. Note that figures shown below are Legislative Council staff projections and JBC staff estimates, since the Department of Revenue has not provided its estimate of final allocations, including the amount that will be used for administration, which is “off the top”.

GAMING TAX DISTRIBUTIONS - ACTUAL V. FORECAST/ESTIMATED			
RECIPIENT	FY 2018-19 DISTRIBUTION (ACTUAL)	FY 2019-20 LCS FORECAST/JBC STAFF ESTIMATE*	% DECLINE FY 2018-19 TO FY 2019- 20
Colorado Historical Society	\$26,278,173	\$15,127,634	-42.43%
Gaming Cities and Counties	20,647,136	11,885,998	-42.43%
General Fund or Other Fund Designated by the General Assembly			
Flat Distributions Required by Statute	30,498,346	30,498,346	
Amount estimated to be available		27,013,632	
Estimated Shortfall		(3,484,714)	
General Fund (Balance)	16,426,964	0	
General Fund or Other Fund Designated by the General Assembly	46,925,310	27,013,632	-42.43%
Administration to original recipients (Actual/JBC Staff Estimate)	13,166,970	11,850,273	-10.00%
Total - Original Recipients including admin (Actual/LCS Forecast)	\$107,017,590	\$65,877,536	-38.44%
Extended Gaming Recipients (Added 2008 Amendment 50)			
Gaming Cities and Counties	3,944,993	2,224,392	-43.61%
Community Colleges/Other public institutions with 2 year mission	13,986,794	7,886,481	-43.61%
Administration to extended recipients (Actual/JBC Staff Estimate)	2,258,267	2,032,440	-10.00%
Total - Extended Gaming Recipients including admin (Actual/LCS Forecast)	17,931,787	12,143,313	-32.28%
Total Gaming Tax Distributions	\$111,782,407	\$64,138,136.06	-42.62%
Total Administration (Actual/JBC Staff Estimate)	<u>15,425,237</u>	<u>13,882,713</u>	-10.00%
Total Gaming Revenue	\$127,207,644	\$78,020,849	-38.67%

*Based on the Department of Revenue’s previous methodology for allocating funds, staff would have expected the share of funds to the original recipients could be significantly lower for FY 2019-20; however, LCS staff indicates that the allocation shown is based on information from the DOR.

As shown in this table:

- FY 2019-20 distributions are estimated to be \$3.5 million *below* the fixed distributions required by statute for economic development and other programs. The exact discrepancy will vary based both on the accuracy of the forecast and the actual expenditures for administration.
- While in FY 2018-19, the General Fund received \$16.4 million from this source, it is projected to receive \$0 under current law.
- The Committee has thus far voted to sponsor legislation to strike the appropriation for the Innovative Higher Education Research Fund (\$2.1 million). OSPB did not “come back” on this action.
- There are four economic development programs funded through statutory gaming transfers. Staff recommended eliminating these transfers, but the Committee has not yet taken action on these recommendations. In its presentation dated May 11, 2020, the Office of State Planning and Budgeting supported striking the transfers but proposed that, in lieu of the \$23.0 million in statutory transfers for OEDIT, the General Assembly should appropriate \$12.15 million General Fund as follows:
 - Colorado Tourism Office: \$10M
 - Advanced Industries Program: \$0.5M
 - Colorado Creative Industries: \$1.3M
 - Colorado Office of Film, Television & Media: \$0.35M
- There is one program in the Department of Local Affairs funded through statutory gaming transfers to the Local Government Limited Gaming Impact Fund (\$5.4 million). Staff recommended eliminating this transfer, but the Committee has not yet taken action on this proposal. In its presentation dated May 11, 2020, the Office of State Planning and Budgeting proposed that the transfer should be struck but that in lieu of the \$5.4 million statutory transfer, the General Assembly should appropriate \$1,875,000 General Fund for the program.
- The table below summarizes what staff would expect to be the approximate net General Fund impact of the staff recommendation versus OSPB proposal using the LCS Gaming Revenue forecast for FY 2019-20. *Note that depending upon the allocation of funds between the original and extended gaming recipients, as well as other forecast uncertainties, the amounts for FY 2019-20 (used in FY 2020-21) could be several million lower.*

SUMMARY OF ACTUAL AND ESTIMATED IMPACT OF PROPOSED CHANGES TO DISTRIBUTION OF GAMING REVENUE			
	FY 2018-19 (MILLION \$S)	JBC STAFF ORIGINAL REC. (MILLION \$S)	OSPB COMEBACK (MILLION \$S)
Local Gov't Limited Gaming Impact	\$5.4	\$0.0	\$1.875
Tourism Office	15.0	0.0	10.0
Advanced industries	5.5	0.0	0.5
Creative Industries	2.0	0.0	1.3
Film, Television, Media	0.5	0.0	0.35
Innovative Higher Ed Research	2.1	0.0	0.0
General Fund (net GF impact after appropriations)	16.4	27.0	12.975
Total Gaming Revenue to GF or Other Fund	\$46.9	\$27.0	\$27.0

Legislative Council staff forecast projects that gaming tax revenues will increase by 13.4 percent in FY 2020-21 (revenue used in FY 2021-22) and 10.8 percent in FY 2021-22 (used in FY 2022-23) but will not recover to their FY 2018-19 level during the forecast period.

→ MODIFY STATUTE TO ENSURE EQUITABLE DISTRIBUTION OF FUTURE GAMING TAX REVENUE BETWEEN THE ORIGINAL LIMITED GAMING RECIPIENTS, INCLUDING THE GENERAL FUND AND HISTORY COLORADO, AND THE NEW RECIPIENTS, INCLUDING THE TWO-YEAR HIGHER EDUCATION INSTITUTIONS

JBC ACTION TO DATE: The JBC authorized staff to draft a bill with two options for addressing how revenue will be apportioned between the original gaming recipients and extended gaming recipients in the coming years.

RECOMMENDATION:

- Staff recommends that a bill specify that the FY 2018-19 revenue split (84.0 percent for original recipients and 16.0 percent for extended gaming recipients), net of administration, be used beginning in FY 2019-20 until such time as total revenue returns to the FY 2018-19 level. *Although the Legislative Council Staff forecast reflects this same split in FY 2019-20, staff is uncertain how closely this will match the actual allocation for FY 2019-20 without a change in law.*
- An alternative proposed by the Governor’s Office, the Community College System and History Colorado will follow current law in apportioning FY 2019-20 revenue and would then rebuild revenue for the limited and extended gaming recipients based on the amount each declined from FY 2018-19. Any increase above the FY 2019-20 total gaming level would be split between the Limited Gaming Pot and the Extended Gaming Pot in proportion to the relative gaps between each pot and the 2019 levels. Thus, the entities would return to an 84.0 percent/16.0 percent split by the time funding returns to the FY 2018-19 level. *The analysis by the community college system, History Colorado and OSPB suggests that current law, as well as their proposed model, will result in a shift in revenue to the extended gaming recipients in FY 2019-20 and for several additional years, though, by the time revenue recovers, the two models provide the same result.*

Staff continues to believe the staff approach is preferable insofar as it provides more assistance to the General Fund when this is most needed. It is also simpler. However, either approach is an improvement over the status quo.

ANALYSIS:

Key Considerations: Under current law, gaming tax revenue directed to “original” gaming recipients (entities that received limited gaming tax revenue before the passage of Amendment 50 in 2008) cannot increase annually by more than 3.0 percent in most circumstances. This provision has allowed for more rapid growth in revenue to the new “extended gaming” recipients (community colleges) that were supposed to benefit from the longer hours and higher bets allowed by Amendment 50. However, this statutory provision never envisioned the casino closures and sharp revenue declines caused by the COVID-19 pandemic. If the statute is not changed to allow a “time out” while gaming tax revenue rebuilds, revenue to the original recipients, including the General Fund and History Colorado, will be permanently suppressed.

Additional Background: When Colorado voters first approved limited stakes gambling in 1990, the Constitutional provision adopted specified that the revenue would go to the General Fund, the Historical Society, and the gaming cities and counties. Amendment 50 to the Colorado Constitution, adopted in 2008, promised that if new extended hours and bets were permitted for Colorado casinos, the resulting increase in revenue would be directed to the community college system as well as gaming counties and cities.

Although Amendment 50 implied that the revenue from extended betting provisions could be determined, this was not discernable from the available data. The Constitution included a provision to assure that the original recipients would benefit if gaming revenue growth exceeded 6.0 percent, but was otherwise silent on how to separate the “new” and “old” funding streams. In light of this, General Assembly established statutory provisions, now located at Sections 44-30-702 (3) and (4), C.R.S., which outlined a formula for how the Department of Revenue’s Division of Gaming should allocate funds between new and old recipients. One component of this is to cap revenue growth for “old” recipients at 3.0 percent, except if total revenue growth exceeds 6.0 percent. Other provisions require adjustments that move funds between the “new” and “old” recipients in ways that are generally designed to benefit the new recipients.

While this does not appear to be an appropriate time to renegotiate the formula permanently; many key parties have agreed that a temporary change to address the unexpected revenue decline is reasonable.

JBC Staff is recommending that the relative shares for the old and new recipients simply be fixed at the FY 2018-19 level 84.0 percent/16.0 percent until revenue recovers. History Colorado and the State Community College system have negotiated an agreement that would allow the existing formula to apply in FY 2019-20 and would then rebuild revenue for both the limited gaming and the extended gaming recipients based on the amount each declined, so that the entities would return to an 84.0 percent/16.0 percent split by the time funding returns to the FY 2018-19 level.

The model below, developed by a member of History Colorado’s board, compares the results of the status quo, the staff proposal, and the negotiated agreement. Staff has adjusted total revenue figures based on the Legislative Council Staff forecast. Staff believes the estimates are plausible, but it’s important to note that this is a model that is currently being refined and that final results will differ. As shown, based on this model, Option 1 (the staff recommendation) would provide an estimated \$4.6 million more to the General Fund and History Colorado than Option 2. *While the two will ultimately align, Option 1 is more helpful in the near term in the current fiscal crisis.*

There is a discrepancy between how History Colorado has assumed the DOR will calculate the allocation between the original recipients and the extended gaming recipients under current law and estimates provided by DOR to Legislative Council Staff for purposes of the forecast. In addition, History Colorado has assumed greater administrative expenditures than JBC staff; as a result, the total revenue assumed in the comparisons below is lower than the figures in table above. *Both JBC and Legislative Council Staff have requested that DOR provide additional detail on its anticipated allocations for FY 2019-20. Staff will provide additional information as it becomes available.* Staff continues to believe that the Staff recommendation, Option 1, will be more favorable to the General Fund in the near term than either the base scenario or Option 2 but is still working to refine the difference.

HISTORY COLORADO MODEL - PRELIMINARY ESTIMATED IMPACT OF PROPOSED STATUTORY CHANGE OPTIONS V. STATUS QUO*										
	FY 2019	FY 2020			FY 2021			FY 2022		
		NO CHANGE	OPTION 1	OPTION 2	NO CHANGE	OPTION 1	OPTION 2	NO CHANGE	OPTION 1	OPTION 2
Total Distribution of Extended Gaming Funds to 2-Year Colleges	\$13,962,174	\$11,395,353	\$6,408,192	\$11,395,353	\$12,796,188	\$7,697,863	\$12,038,211	\$17,646,985	\$8,656,062	\$12,484,175
Community College System	11,619,321	9,483,212	5,332,897	9,483,212	10,648,987	6,406,162	10,018,199	14,685,820	7,203,574	10,389,330
Adams State University	4,189	3,419	1,922	3,419	3,839	2,309	3,611	5,294	2,597	3,745
Colorado Mesa University	681,355	556,094	312,720	556,094	624,454	375,656	587,465	861,173	422,416	609,228
Colorado Mountain College	741,392	605,093	340,275	605,093	679,478	408,757	639,229	937,055	459,637	662,910
Aims Community College	915,919	747,535	420,378	747,535	839,430	504,980	789,707	1,157,643	567,838	818,962
Total Distribution of Limited Gaming Funds to General Fund and History Colorado	\$67,947,850	\$33,823,447	\$38,452,555	\$33,823,447	\$41,666,324	\$46,398,615	\$42,369,882	\$43,506,566	\$51,851,987	\$48,298,712
General Fund	46,925,310	23,358,734	26,555,632	23,358,734	28,775,085	32,043,242	29,260,968	30,045,971	35,809,383	33,355,464
History Colorado	21,022,539	10,464,713	11,896,923	10,464,713	12,891,238	14,355,373	13,108,914	13,460,595	16,042,604	14,943,248
General Fund & History CO - Option 1 & 2 above/(below) making No Change			\$4,629,108	\$0		\$4,732,291	\$703,558		\$8,345,421	\$4,792,147

*Note that this is preliminary and there are some discrepancies between certain assumptions in this model and in the Legislative Council Staff model.