

JOINT BUDGET COMMITTEE



SUPPLEMENTAL BUDGET REQUESTS FY 2022-23

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT (Administrative and Environmental Divisions)

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

PREPARED BY:
ANDREW FORBES, JBC STAFF
JANUARY 19, 2023

JOINT BUDGET COMMITTEE STAFF
200 E. 14TH AVENUE, 3RD FLOOR • DENVER • COLORADO • 80203
TELEPHONE: (303) 866-2061 • TDD: (303) 866-3472
<https://leg.colorado.gov/agencies/joint-budget-committee>

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DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

DEPARTMENT OVERVIEW

The Department of Public Health and Environment consists of 10 divisions, of which the following five will be covered in this document:

- 1 Administration and Support
- 2 Air Pollution Control Division
 - a. Performs statewide air monitoring, pollutant analysis, and air emission modeling
 - b. Researches the causes and effects of pollution from mobile vehicles and implements strategies aimed at reducing emissions from mobile sources
 - c. Permits, monitors, and inspects factories, power plants, and other commercial air pollutant emitters for compliance with air pollutant emissions standards
- 3 Water Quality Control Division
 - a. Issues waste water discharge permits and, if necessary, takes enforcement action to ensure compliance with water quality standards
 - b. Issues water quality permits for the following sectors: construction, public and private utilities, commerce and industry, pesticides, and water quality certification
 - c. Monitors the pollutant levels in rivers, streams, and other bodies of water
 - d. Conducts surveillance of public and non-public drinking water sources to ensure compliance with federal and state water quality standards
 - e. Reviews designs and specifications of new and/or expanding water treatment facilities
- 4 Hazardous Materials and Waste Management Division
 - a. Regulates the treatment, storage, and disposal of solid and hazardous waste in Colorado
 - b. Performs inspections of solid waste facilities
 - c. Oversees hazardous waste generators, transporters, and storage facilities
 - d. Regulates commercial radioactive materials in Colorado
 - e. Administers the Waste Tire Program
- 5 Division of Environmental Health and Sustainability
 - a. Certifies and inspects wholesale food distributors and dairy processors
 - b. Oversees restaurant, child care facility, and school inspections done by local public health agencies (with a few exceptions where the State is responsible for these inspections)
 - c. Administers the following environmental sustainability programs:
 - i. Environmental Leadership Program
 - ii. Pollution Prevention Program
 - iii. Pharmaceutical Take-Back Program
 - d. Administers the Recycling Resources Opportunity Program
 - e. Administers the Animal Feeding Operations Program

SUMMARY: FY 2022-23 APPROPRIATION AND RECOMMENDATION

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT: RECOMMENDED CHANGES FOR FY 2022-23						
	TOTAL FUNDS	GENERAL FUND	CASH FUNDS	REAPPROPRIATED FUNDS	FEDERAL FUNDS	FTE
FY 2022-23 APPROPRIATION						
Long Bill (H.B. 22-1329)	\$756,286,389	\$156,852,349	\$226,496,227	\$48,494,927	\$324,442,886	1,673.0
Other legislation	157,168,072	42,983,344	85,003,480	29,181,248	0	57.9
CURRENT FY 2022-23 APPROPRIATION:	\$913,454,461	\$199,835,693	\$311,499,707	\$77,676,175	\$324,442,886	1,730.9
RECOMMENDED CHANGES						
Current FY 2022-23 Appropriation	\$913,454,461	199,835,693	\$311,499,707	\$77,676,175	\$324,442,886	1,730.9
S1 Ensuring implementation of HB22-1358	0	0	0	0	0	0.0
S2 HB22-1326 Independent study rollforward	0	0	0	0	0	0.0
S3 Stationary sources rollforward	0	0	0	0	0	0.0
S4 Indirect costs	140,096	0	0	140,096	0	1.5
MPX Public health response	3,347,178	3,347,178	0	0	0	0.0
OIT Real time billing	(1,212,705)	0	0	(1,212,705)	0	0.0
DPA Annual fleet supplemental	(1,700)	0	(1,546)	(154)	0	0.0
CDPHE Legal supplemental	190,332	190,332	0	0	0	0.0
RECOMMENDED FY 2022-23 APPROPRIATION:	\$915,917,662	\$203,373,203	\$311,498,161	\$76,603,412	\$324,442,886	1,732.4
RECOMMENDED INCREASE/(DECREASE)	\$2,463,201	\$3,537,510	(\$1,546)	(\$1,072,763)	\$0	1.5
Percentage Change	0.3%	1.8%	(0.0%)	(1.4%)	0.0%	0.1%
FY 2022-23 EXECUTIVE REQUEST						
Request Above/(Below) Recommendation	\$0	\$0	\$0	\$0	\$0	0.0

*Note: This document only covers the decision items highlighted above. All other requests for the Department of Public Health and Environment will be covered in a separate staff supplemental document presented January 19, 2023 by Abby Magnus.

REQUEST/RECOMMENDATION DESCRIPTIONS

S1 ENSURING IMPLEMENTATION OF H.B. 22-1358: The Department requests that the Committee sponsor legislation to make the School and Child Care Clean Drinking Water Fund continuously appropriated to fix a technical error in H.B. 22-1358 (Clean Water in Schools and Child Care Centers). The request also includes a General Fund roll-forward for \$2.6 million for technical assistance to schools that will not be performed in FY 22-23. Staff recommends that the Committee provide rollforward authority for both appropriations, rather than sponsoring legislation that would create a continuous appropriation.

S3 STATIONARY SOURCES ROLLFORWARD: The request includes an rollforward of \$3.0 million General Fund from the Department's FY 22-23 R1 Air Quality Transformation request for supply chain issues in purchasing air quality monitoring equipment. Staff recommends approval of the request.

S4 INDIRECT COSTS: The Department requests several actions by the Joint Budget Committee to stabilize the Administrative Division's funding streams through the process of collecting indirect cost recoveries from various sources including an appropriation of \$140,096 reappropriated funds and 1.5 FTE in FY 2022-23. Staff recommends partial approval of the request.

OIT REAL TIME BILLING: The request includes a decrease of \$1,212,705 reappropriated funds for a decision item related to the Governor’s Office of Information Technology. This request item will be addressed in a separate staff supplemental presentation for the Governor’s Office. Staff will incorporate the Committee’s action into the supplemental bill for the Department of Public Health and Environment. Note, the dollar amount in the summary table above represents the requested appropriation change.

DPA ANNUAL FLEET SUPPLEMENTAL: The request includes a decrease of \$1,700 total funds for an adjustment to the Department’s share of expenses related to leasing fleet vehicles through the Department of Personnel. Staff’s recommendation is pending. This request item will be addressed in a separate staff supplemental presentation for the Department of Personnel. Staff will incorporate the Committee’s action into the supplemental bill for the Department of Public Health and Environment. Note, the dollar amount in the summary table above represents the requested appropriation change.

CDPHE LEGAL SUPPLEMENTAL: The request includes an increase of \$190,332 General Fund to then reappropriate to the Department of Law for increased legal expenses. This request item will be addressed in a separate staff supplemental presentation for the Department of Law. Staff will incorporate the Committee’s action into the supplemental bill for the Department of Public Health and Environment. Note, the dollar amount in the summary table above represents the requested appropriation change.

PRIORITIZED SUPPLEMENTAL REQUESTS

S1 ENSURING IMPLEMENTATION OF H.B. 22-1358

	REQUEST	RECOMMENDATION	
TOTAL		\$0	\$0
FTE		0.0	0.0
General Fund		0	0
Cash Funds		0	0
Federal Funds		0	0

Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? **YES**
 [An emergency or act of God; a technical error in calculating the original appropriation; data that was not available when the original appropriation was made; or an unforeseen contingency.]

Explanation: JBC staff and the Department agree that this request is the result of a technical error in the language of H.B. 22-1358.

DEPARTMENT REQUEST: The Department requests that the Committee sponsor legislation to make the School and Child Care Clean Drinking Water Fund (SCCCDWF) continuously appropriated to align with the intent of H.B. 22-1358. The request also includes a General Fund roll-forward for \$2.6 million for technical assistance to schools that will not be performed in FY22-23.

STAFF RECOMMENDATION: Staff recommends that the Committee does not run legislation to make the SCCCDFW continuously appropriated and instead change the appropriations clause of H.B. 22-1358 to state that the appropriation is available until the end of FY 2025-26. Staff recommends approval of the General Fund rollforward portion request.

STAFF ANALYSIS: House Bill 22-1358 requires that all eligible schools, child care centers, and family child care homes test for the presence of lead in drinking water by May 1, 2023. Eligible schools that serve grades 6-8, must test drinking water sources by November 30, 2024, if the Department determines that sufficient funds are available for reimbursement. Within 90 days of testing, schools and child care centers must remediate drinking water sources if above certain lead levels. Within an additional 90 days, schools and child care centers must take confirmation samples to determine if the source has been remediated.

Testing and remediation costs are reimbursed by the Department from the SCCCDWF. The way the language of the bill is currently written, no reimbursements will be issued from the SCCCDWF after June 30, 2023. Staff believes that it was the sponsor’s intent that SCCCDWF funds to remain available through FY 25-26 as the program requirements do not repeal until June 30, 2026. In addition, the Department was appropriated \$2.6 million to provide technical assistance to schools during the testing and remediation process, as well as staffing costs, and IT related expenditures. With the testing and remediation process for grades 6-8 possibly stretching to the end of FY 2024-25 staff also believes that it was the sponsors intent that this appropriation be made available over multiple fiscal years.

S3 STATIONARY SOURCES ROLLFORWARD

	REQUEST	RECOMMENDATION
TOTAL	\$0	\$0
FTE	0.0	0.0
General Fund	0	0
Cash Funds	0	0
Federal Funds	0	0

Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? **YES**
 [An emergency or act of God; a technical error in calculating the original appropriation; data that was not available when the original appropriation was made; or an unforeseen contingency.]

Explanation: JBC staff believes that supply chain issues represent an unforeseen contingency.

DEPARTMENT REQUEST: The Department requests rollforward authority for a portion of the Departments FY 22-23 R1 Air Quality Transformation request equating to \$3.0 million General Fund.

STAFF RECOMMENDATION: Staff recommends that the Committee approve the Department’s request.

STAFF ANALYSIS: The Department’s R1 request provided funding for air quality monitoring equipment replacement, added an additional mobile monitoring lab to the existing fleet, and expanded the state’s monitoring capabilities for air toxics and criteria pollutants. Among the capital equipment to be purchased were criteria pollutant monitoring equipment, air quality monitoring equipment, and air toxics monitoring equipment.

The Department claims that they have been unable to fully utilize the funds because it has been experiencing supply chain disruptions caused by greater consumer demand, labor shortages, and temporary business disruptions linked to COVID-19 outbreaks. In Colorado, nearly 45% of

businesses are facing domestic supplier delays, while 20% are grappling with foreign supplier delays. Trucks, ports, and shipping are all experiencing significant labor constraints, which is causing products to be delayed. For example, the acquisition of a mobile air monitoring lab which was scheduled for delivery in July 2022, but did not arrive until December 2022.

S4 INDIRECT COSTS

	REQUEST	RECOMMENDATION
TOTAL	\$140,096	\$140,096
FTE	1.5	1.5
General Fund	0	0
Cash Funds	140,096	140,096
Federal Funds	0	0

Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? YES

[An emergency or act of God; a technical error in calculating the original appropriation; data that was not available when the original appropriation was made; or an unforeseen contingency.]

Explanation: JBC staff and the Department agree that this request is the result of the approval of a federal grant mid fiscal year that requires increased resources.

DEPARTMENT REQUEST: The Department requests several actions by the Joint Budget Committee to stabilize the process of collecting indirect cost recoveries from various cash and federal fund sources, primarily as a result of the recent influx federal funds during the COVID-19 pandemic.

- First, the Department requests \$140,096 reappropriated funds from indirect cost recoveries and 1.5 FTE in FY 2022-23 to provide administrative services for a new five year \$30.6 million grant from the Centers for Disease Control (CDC). The Department submitted a corresponding budget amendment for \$508,176 and 5.3 FTE for FY 2023-24.
- Second, the Department requests that the Committee allow the Department to request administrative staff funded by indirects from federal grants over \$20.0 million to be approached as a base budget adjustment rather than a formal decision item.
- Lastly, the Department requests that the Committee author a letter to the Federal Office of Management and Budget (OMB) requesting that all grants allocated through the American Rescue Plan Act (ARPA) be exempted from indirect cost recoveries.

STAFF RECOMMENDATION: Staff recommends that the Committee:

- Approve the Department’s request for increased reappropriated funds spending authority, FTE, and the subsequent budget amendment annualization of \$508,176 and 5.3 FTE.
- Does not change its policy on how the Department requests administrative staff hired with indirect cost recoveries, and instead suggests that the Department submit an annual decision item to the JBC that includes all of the federal grants the Department has been awarded and the associated FTE funded with indirect cost recoveries.
- Does not author a letter to OMB to exempt the Department from ARPA related indirect cost, but does encourage the Department, Governor’s Office, and State Controller to work together with the federal government to stabilize the Department’s indirect cost collections.

STAFF ANALYSIS: Indirect costs are charged to cash and federally funded programs within the Department to pay for Department wide services (e.g. human resources, accounting, etc.). The Department’s indirect cost rate is calculated as a fraction of prior-year expenditures: the numerator equating to administrative overhead expenses, and the denominator equating to the total expenditure base for the entire Department. Any excess collections from the previous year are also reduced from the numerator with the expectation that a lower rate will correct against future over-collections. In general, the Department’s indirect cost recovery plan applies a uniform indirect rate across all fund sources, federal and state, except as specified according to statute, law or grant.

Indirect cost rates are typically based on historical appropriations, and it is common for rates to change each year. For years where the historical appropriations were high, the rate may be high and the collections are more than is needed to maintain the required administrative costs of operating the Department. In years where the historical appropriation is low and the collections are low, the Department may not collect enough indirect costs to fully fund the Department’s administrative needs. Due to the varied nature of indirect cost collections, the General Assembly created the Indirect Costs Excess Recovery Fund in FY 2013-14 for the purpose of reducing budget adjustments related to the over and under collection of indirect costs in a given fiscal year. The fund is used by the Department for holding excess indirect collections in high years for use by the Department in years when collections are insufficient.

Since 2020, the Department has received more than \$1.8 billion in funding related to controlling and recovering from the pandemic, most of which is “off budget”. During this time the Department has made an error in how they account for temporary administrative staff, by classifying them as direct program staff paid for with direct federal dollars rather than staff funded with indirect costs. This means that it would appear the Department has kept administrative staffing levels relatively constant while the Department’s total funding has grown significantly. Essentially, the Department has still been receiving federal indirects, but not using those funds for associated staff. This has led to a large over collection of indirect funds from federal sources, and brought the balance of the Indirect Cost Recovery Fund from \$2.3 million in 2020 to \$22.1 million in 2022.

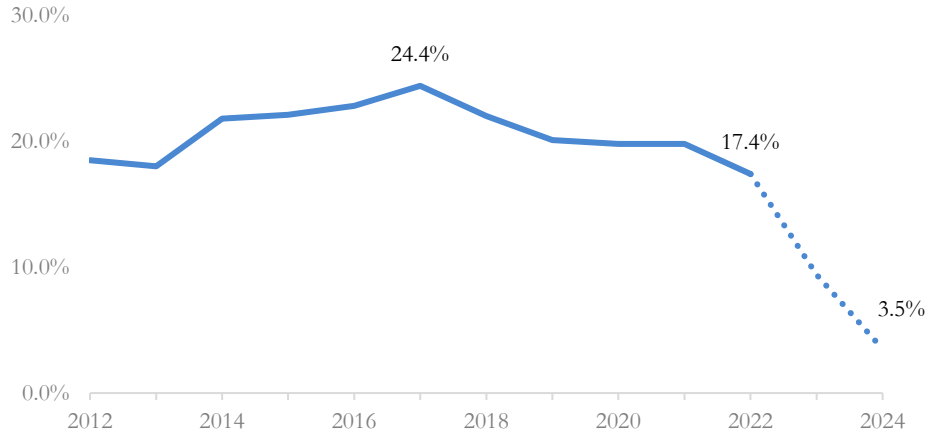
$$\text{Administrative Expenditures (\$)} \div \text{Total Cost Base (\$)} = \text{Indirect Cost Rate (\%)}$$

HISTORICAL INDIRECT CALCULATIONS			
FISCAL YEAR	ADMINISTRATIVE EXPENSES (MILLIONS)	TOTAL COST BASE (MILLIONS)	INDIRECT COST RATE
2018-19	\$31.9	\$157.1	20.3%
2019-20	32.1	168.8	19.0
2020-21	32.4	219.9	14.7
2021-22	30.2	298.4	10.1

*Note: The indirect rate is calculated from prior year data, so the indirect rate for any given year is applied to future year costs.

This over collection is going to have the delayed but rather severe effect of reducing the Department’s indirect cost rate down from 19.8% in FY 2020-21 to 9.4% in FY 2022-23 and down to an anticipated 3.5% in FY 2023-24, as illustrated in the graph below.

The Department's indirect cost rate is expected to drop significantly over the next two years.



Accurately accounting for the increased administrative needs that each federal grant contributes to the Department’s administrative services will help stabilize the indirect cost rate in the future by allowing the rates numerator to grow in proportion to the denominator. To begin to right size this appropriation staff recommends approving the Department’s request for increased reappropriated funds spending authority for indirect costs related to the CDC’s Strengthening U.S. Public Health Infrastructure, Workforce, and Data Systems grant. In addition, in the future staff suggests that the Department submit an annual (when appropriate) decision item outlining all newly awarded grants, associated administrative costs, and duration of those costs.

Furthermore, staff believes the most immediate fix to the Department’s problem would be for the federal government to assist in rightsizing the Department’s indirect rate. This could involve refunding unused indirect dollars to the federal government or going back and historically “fixing” the Department’s rates so that it doesn’t lead to a potential fiscal cliff effect. Regardless of the solution staff does not believe it is in the legislative branches’ interest to get involved in what is an executive branch matter. Staff would ask the Committee to encourage the Governor’s office, Controllers office, and the Department to work with their federal partners to rectify the issue, but does not believe a letter solely from the JBC would be appropriate at this time.

NON-PRIORITIZED SUPPLEMENTAL REQUESTS

NP3 CDPHE LEGAL

	REQUEST	RECOMMENDATION
TOTAL	\$190,332	\$190,332
FTE	0.0	0.0
General Fund	190,332	190,332
Cash Funds	0	0
Federal Funds	0	0

DEPARTMENT REQUEST: The Department requests an increase of \$190,332 General Fund.

STAFF RECOMMENDATION: The staff recommendation for this request is pending Committee action on the corresponding request submitted by the Department of Law: CDPHE Legal. Staff will include the corresponding appropriation in the supplemental bill for the Department of Public Health and Environment based on Committee action on that prioritized request.

STATEWIDE COMMON POLICY SUPPLEMENTAL REQUESTS

These requests are not prioritized and are not analyzed in this packet. The JBC will act on these items later when it makes decisions regarding common policies.

DEPARTMENT'S PORTION OF STATEWIDE SUPPLEMENTAL REQUEST	TOTAL	GENERAL FUND	CASH FUNDS	REAPPROP. FUNDS	FEDERAL FUNDS	FTE
OIT FY23 Real time billing	\$1,212,705	\$1,212,705	\$0	\$0	\$0	0.0
DPA Annual fleet supplemental	(1,700)	0	(1,546)	0	(154)	0.0
DEPARTMENT'S TOTAL STATEWIDE SUPPLEMENTAL REQUESTS	\$1,211,005	\$1,212,705	(\$1,546)	\$0	(\$154)	0.0

STAFF RECOMMENDATION: The staff recommendation for these requests is pending Committee action on common policy supplementals. Staff asks permission to include the corresponding appropriations in the Department's supplemental bill when the Committee acts on common policy supplementals. If staff believes there is reason to deviate from the common policy, staff will appear before the Committee at a later date to present the relevant analysis.

*JBC Staff Supplemental Recommendations - FY 2022-23
Staff Working Document - Does Not Represent Committee Decision*

Appendix A: Numbers Pages

	FY 2021-22 Actual	FY 2022-23 Appropriation	FY 2022-23 Requested Change	FY 2022-23 Rec'd Change	FY 2022-23 Total w/Rec'd Change
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DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
Jill Ryan, Executive Director

S1 Ensuring implementation of HB22-1358

(5) WATER QUALITY CONTROL DIVISION

(D) Drinking Water Program

Operating Expenses	<u>1,016,544</u>	<u>23,271,620</u>	<u>0</u>	<u>23,271,620</u>
General Fund	123,909	1,603,335	0	1,603,335
Cash Funds	458,790	24,815	0	24,815
Reappropriated Funds	0	21,000,000	0	21,000,000
Federal Funds	433,845	643,470	0	643,470

Total for S1 Ensuring implementation of HB22-1358	1,016,544	23,271,620	0	23,271,620
<i>FTE</i>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>
General Fund	123,909	1,603,335	0	1,603,335
Cash Funds	458,790	24,815	0	24,815
Reappropriated Funds	0	21,000,000	0	21,000,000
Federal Funds	433,845	643,470	0	643,470

JBC Staff Supplemental Recommendations - FY 2022-23
Staff Working Document - Does Not Represent Committee Decision

	FY 2021-22 Actual	FY 2022-23 Appropriation	FY 2022-23 Requested Change	FY 2022-23 Rec'd Change	FY 2022-23 Total w/Rec'd Change
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S3 Stationary sources rollforward

(4) AIR POLLUTION CONTROL DIVISION

(A) Administration

Program Costs	<u>511,230</u>	<u>12,654,987</u>	<u>0</u>	<u>12,654,987</u>
FTE	23.7	54.5	0.0	54.5
General Fund	493,460	10,895,647	0	10,895,647
Cash Funds	(342,795)	1,575,839	0	1,575,839
Reappropriated Funds	0	0	0	0
Federal Funds	360,565	183,501	0	183,501

Total for S3 Stationary sources rollforward	511,230	12,654,987	0	12,654,987
<i>FTE</i>	<u>23.7</u>	<u>54.5</u>	<u>0.0</u>	<u>54.5</u>
General Fund	493,460	10,895,647	0	10,895,647
Cash Funds	(342,795)	1,575,839	0	1,575,839
Reappropriated Funds	0	0	0	0
Federal Funds	360,565	183,501	0	183,501

JBC Staff Supplemental Recommendations - FY 2022-23
Staff Working Document - Does Not Represent Committee Decision

	FY 2021-22 Actual	FY 2022-23 Appropriation	FY 2022-23 Requested Change	FY 2022-23 Rec'd Change	FY 2022-23 Total w/Rec'd Change
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S4 Admin Indirect Costs

(1) ADMINISTRATION AND SUPPORT

(A) Administration

Personal Services	<u>8,731,035</u>	<u>9,896,182</u>	<u>110,993</u>	<u>10,007,175</u>
FTE	81.2	84.8	1.5	86.3
General Fund	1,688,649	1,832,273	0	1,832,273
Cash Funds	9,947	10,889	0	10,889
Reappropriated Funds	6,997,059	7,873,783	110,993	7,984,776
Federal Funds	35,380	179,237	0	179,237
Operating Expenses	<u>2,812,420</u>	<u>2,634,800</u>	<u>29,103</u>	<u>2,663,903</u>
General Fund	191,918	198,793	0	198,793
Cash Funds	0	0	0	0
Reappropriated Funds	2,620,502	2,436,007	29,103	2,465,110
Federal Funds	0	0	0	0

Total for S4 Admin Indirect Costs	11,543,455	12,530,982	140,096	12,671,078
FTE	<u>81.2</u>	<u>84.8</u>	<u>1.5</u>	<u>86.3</u>
General Fund	1,880,567	2,031,066	0	2,031,066
Cash Funds	9,947	10,889	0	10,889
Reappropriated Funds	9,617,561	10,309,790	140,096	10,449,886
Federal Funds	35,380	179,237	0	179,237

JBC Staff Supplemental Recommendations - FY 2022-23
Staff Working Document - Does Not Represent Committee Decision

	FY 2021-22 Actual	FY 2022-23 Appropriation	FY 2022-23 Requested Change	FY 2022-23 Rec'd Change	FY 2022-23 Total w/Rec'd Change
Totals Excluding Pending Items					
PUBLIC HEALTH AND ENVIRONMENT					
TOTALS for ALL Departmental line items	883,683,995	913,454,461	140,096	913,594,557	
<i>FTE</i>	<u>1,554.8</u>	<u>1,730.9</u>	<u>1.5</u>	<u>1,732.4</u>	
General Fund	68,597,594	199,453,895	0	199,453,895	
General Fund Exempt	0	381,798	0	381,798	
Cash Funds	158,735,328	311,499,707	0	311,499,707	
Reappropriated Funds	43,481,090	77,676,175	140,096	77,816,271	
Federal Funds	612,869,983	324,442,886	0	324,442,886	