

JOINT BUDGET COMMITTEE



SUPPLEMENTAL BUDGET REQUESTS FY 2022-23

DEPARTMENT OF REGULATORY AGENCIES

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

PREPARED BY:
MATTHEW VALETA, JBC STAFF
JANUARY 20, 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>

CONTENTS

Department Overview	1
Summary: FY 2022-23 Appropriation and Recommendation	3
Prioritized Supplemental Requests.....	5
S1 Contract Resources for Prompt Implementation of Proposition 122 Psilocybin Regulation.....	5
Staff-initiated Supplemental Requests.....	9
Staff-initiated – Long Bill Technical Adjustment.....	9
Statewide Common Policy Supplemental Request	9
Appendix A: Numbers Pages.....	A-1

DEPARTMENT OF REGULATORY AGENCIES

DEPARTMENT OVERVIEW

The Department of Regulatory Agencies (DORA) includes the following eleven units:

- The **Executive Director's Office** provides administrative and technical support for the Department's divisions and programs, including functions associated with accounting, purchasing, budgeting, communications, legislative services, and human resources. The Office also includes the Colorado Office of Policy, Research, and Regulatory Reform.
- The **Division of Banking** regulates state-chartered commercial banks, trust companies, money transmitters, and national banks and interstate banks that maintain public deposit accounts in Colorado.
- The **Division of Civil Rights** enforces Colorado's anti-discrimination laws in the areas of employment, housing, and public accommodations.
- The **Office of the Utility Consumer Advocate** represents the public interest and the specific interests of residential, small business, and agricultural consumers in rate and rulemaking cases before the Public Utilities Commission, federal agencies, and the courts.
- The **Division of Financial Services** examines and supervises state-chartered credit unions and state-chartered savings and loan associations, enforces the Savings and Loan Public Deposit Protection Act, and regulates certain financial activities of life care institutions.
- The **Division of Insurance** regulates companies and agents providing health insurance, property and liability insurance (homeowners and automobile), life insurance, and title insurance.
- The **Public Utilities Commission** regulates investor-owned electric, natural gas, telecommunications, private water utilities, and motor vehicle carriers for hire.
- The **Division of Real Estate** licenses real estate agents, appraisers, and mortgage loan originators and registers mortgage companies and homeowners' associations.
- The **Division of Professions and Occupations** regulates over 500,000 licensees in over 50 professions, occupations, and businesses to ensure a basic level of competence to protect the public welfare.
- The **Division of Securities** monitors the conduct of broker-dealers and sales representatives, investigates citizen complaints, and investigates indicators of investment fraud.

- The **Division of Conservation**, in conjunction with the Conservation Easement Oversight Commission, certifies conservation easement holders and conservation easement tax credit certificates.

SUMMARY: FY 2022-23 APPROPRIATION AND RECOMMENDATION

DEPARTMENT OF REGULATORY AGENCIES: RECOMMENDED CHANGES FOR FY 2022-23						
	TOTAL FUNDS	GENERAL FUND	CASH FUNDS	REAPPROPRIATED FUNDS	FEDERAL FUNDS	FTE
FY 2022-23 APPROPRIATION						
HB 22-1329 Long Bill	\$116,915,270	\$2,905,370	\$106,162,769	\$6,250,779	\$1,596,352	651.7
Other legislation	3,947,489	110,383	3,782,287	55,637	(818)	17.2
CURRENT FY 2022-23 APPROPRIATION:	\$120,862,759	\$3,015,753	\$109,945,056	\$6,306,416	\$1,595,534	668.9
RECOMMENDED CHANGES						
Current FY 2022-23 Appropriation	\$120,862,759	3,015,753	\$109,945,056	\$6,306,416	\$1,595,534	668.9
S1 Contract resources for prompt implementation of 122	700,000	700,000	0	0	0	0.0
Non-prioritized	(468,049)	0	(468,049)	0	0	0.0
Staff initiated Long Bill technical adjustment	0	0	0	0	0	0.0
RECOMMENDED FY 2022-23 APPROPRIATION:	\$121,094,710	\$3,715,753	\$109,477,007	\$6,306,416	\$1,595,534	668.9
RECOMMENDED INCREASE/(DECREASE)	\$231,951	\$700,000	(\$468,049)	\$0	\$0	0.0
Percentage Change	0.2%	23.2%	(0.4%)	0.0%	0.0%	0.0%
FY 2022-23 EXECUTIVE REQUEST	\$121,794,710	\$3,715,753	\$110,177,007	\$6,306,416	\$1,595,534	668.9
Request Above/(Below) Recommendation	\$700,000	\$0	\$700,000	\$0	\$0	(0.0)

REQUEST/RECOMMENDATION DESCRIPTIONS

S1 CONTRACT RESOURCES FOR PROMPT IMPLEMENTATION OF PROPOSITION 122 PSILOCYBIN REGULATION: The request is for a \$700,000 General Fund loan to fund the newly established Regulated Natural Medicine Access Program Fund and \$700,000 in cash fund spending authority to support immediate contract resources and expertise to assist the prompt implementation of Proposition 122 in FY 2022-23 & FY 2023-24. The Department is required to regulate the manufacture, cultivation, testing, storage, transfer, transport, delivery, sale, and purchase of psilocybin, psilocin, ibogaine, mescaline, and dimethyltryptamine, or DMT, for adults. *The Department has identified the request as theory-informed.*

Staff recommends the approval of \$700,00 General Fund in FY 2022-23 and not in FY 2023-24 as this is a supplemental request. Additionally, the Department does not need cash fund spending authority for funds in the Regulated Natural Medicine Access Program Fund as funds from this cash fund are continually appropriated to the Department by the Natural Medicine Health Act (Proposition 122).

STAFF INITIATED LONG BILL TECHNICAL ADJUSTMENT: Staff recommends a technical adjustment to fix an error in H.B. 22-1329 to change the funding source for \$82,000 from “various cash funds” to the Marijuana Cash Tax Fund. The Department is aware of and supports this adjustment.

NONPRIORITIZED COMMON POLICY REQUESTS: The request includes a decrease of \$503,498 cash fund for an adjustment to the Department’s share of a nonprioritized adjustment for Real-time Billing in the Governor’s Office of Information Technology and a \$35,449 cash fund increase for the Department’s share of the Department of Personnel and Administration’s Variable Vehicle Adjustments. The recommendation on these items is pending Committee common policy decisions.

PRIORITIZED SUPPLEMENTAL REQUESTS

S1 CONTRACT RESOURCES FOR PROMPT IMPLEMENTATION OF PROPOSITION 122 PSILOCYBIN REGULATION

	REQUEST	RECOMMENDATION
TOTAL	\$1,400,000	\$700,000
General Fund	\$700,000	\$700,000
Cash Funds	700,00	0
Reappropriated 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: Proposition 122 is was recently approved by Colorado's voters during the 2022 general election, which was a contingency for which the Department could not prepare during last year's budget process.

DEPARTMENT REQUEST: The request is for a \$700,000 General Fund loan to fund the newly established Regulated Natural Medicine Access Program Fund and \$700,000 cash fund spending authority in FY 2022-23 and FY 2034-24, to be repayable to the General Fund no later than FY 2027-28, to support immediate contract resources and expertise to assist the prompt implementation of Proposition 122. The Department is now required to regulate the manufacture, cultivation, testing, storage, transfer, transport, delivery, sale, and purchase of psilocybin, psilocin, ibogaine, mescaline, and dimethyltryptamine, or DMT, for adults.

STAFF RECOMMENDATION: Staff recommends an appropriation of \$700,000 General Fund to the Regulated Natural Medicine Access Program Fund in FY 2022-23.

Pursuant to Section 12-170-106 (4), C.R.S., the Program is required to repay any advanced funds to the General Fund using the initial proceeds from fees collected pursuant to Article 170.

The money in the Regulated Natural Medicine Access Program Fund is continually appropriated to the Department for the direct and indirect costs of carrying out the Natural Medicine Health Act of 2022 (Article 170). Therefore, the Committee does not need to approve cash funding spending authority for the Regulated Natural Medicine Access Program Fund.

STAFF ANALYSIS:

Proposition 122 requires the following actions:

- By late 2024, allow the supervised use of psychedelic mushrooms by individuals aged 21 and over at licensed facilities and require the state to create a regulatory structure for the operation of these licensed facilities;
- Allow the state to expand the types of substances that may be used in licensed facilities to include the use of additional plant-based psychedelic substances — dimethyltryptamine (DMT), ibogaine, or mescaline — starting in 2026;

- Decriminalize the personal possession, growing, sharing, and use, but not the sale, of five natural psychedelic substances by individuals aged 21 and over, including two substances found in psychedelic mushrooms — psilocybin and psilocin — and three plant-based psychedelic substances — dimethyltryptamine, ibogaine, and mescaline;
- Allow local governments to regulate the time, place, and manner of operation of licensed facilities, while prohibiting local governments from banning licensed facilities, services, and use of natural psychedelic substances; and
- Establish penalties for individuals under the age of 21 for possessing, using, or transporting natural psychedelic substances and for individuals aged 21 and over who allow underage access to these substances.

Implementation Schedule

PROPOSITION 122 IMPLEMENTATION SCHEDULE	
Deadline	Implementation Action
1/31/2023	The Governor shall appoint the initial Natural Medicine Advisory Board.
9/30/2023	The Board shall make initial recommendations to the Department.
1/1/2024	Adopt rules to establish qualifications, education, and training requirements for facilitators and approve required training programs
9/30/2024	Adopt rules necessary to implement the regulated Natural Medicine Access program and begin accepting applications for licensure; decisions made within 60 days of receipt.
6/1/2026	After this date, the Department may add one or more of the following to the term “Natural Medicine”: dimethyltryptamine, ibogaine, and mescaline (excluding <i>lophophora williamsii</i> (peyote)); may adopt rules prior.
12/31/2033	Board is repealed.

The Department is requesting \$700,000 to retain contractors to serve as program experts and help design new program requirements, consult with respect to necessary board expertise, and generally position the Department to timely achieve these implementation milestones.

Proposition 122 Implementation Cost Estimates

The Proposition in Section 12-170-106 (4) and (5), C.R.S directs the Office of State Planning and Budget to seek General Fund for a loan to fund the initial establishment and support the Department of Regulatory Affairs’ regulatory activities. The Department has noted that the Executive branch is not constitutionally authorized to make appropriations and that the General Assembly could provide funding for the initial fund for the implementation for Proposition 122 before the program’s financing model is logistically resolved.

The newly established Regulated Natural Medicine Access Program Fund has continuous appropriation authority and will eventually be funded through licensing fees. The Legislative Council estimated that Proposition 122 will increase costs in the Department of Regulatory Agencies by an estimated \$0.7 million in FY 2022-23 and \$2.2 million in FY 2023-24 to establish program rules, support the advisory board, and issue initial licenses prior to the new regulatory program created by the measure in their “Blue Book” ballot analysis. The Department has not submitted a budget amendment for funding to implement Proposition in FY 2023-24.

The Department currently has no resources or expertise on psychedelic substances and would seek immediate help from professionals with experience working in the field if funds are approved by the

Joint Budget Committee. As a board will be appointed by the end of January 2023, the work to implement Proposition 122 is already underway.

If the Joint Budget Committee approves this request and no further action is taken, the \$700,000 appropriated to the Regulated Natural Medicine Access Program Fund would be the only funding available for the development of regulations for the use of natural medicines until application, licensing, and renewal fees are established. Clean-up legislation for the implementation of Proposition 122 may also impact the funding available to the Department for implementation costs after FY 2022-23.

Once regulation begins, DORA estimates that it will require approximately \$5.2 million in FY 2024-25 and \$5.6 million in FY 2025-26 to regulate the manufacture, cultivation, testing, storage, transfer, transport, delivery, sale, use, and purchase of psychedelic mushrooms by licensed facilities. Estimated spending in fiscal years 2024-25 and 2025-26 also includes the repayment of state money used to cover costs in the first two years.

Natural Medicine Advisory Board Implementation Required Rulemaking

The Department, in consultation with the Natural Medicine Advisory Board, is required to adopt rules to regulate the manufacture, cultivation, testing, storage, transfer, transport, delivery, sale and purchase of natural medicines by and between healing centers and other permitted entities and the provision of natural medicine services to participants. Below is a partial list of the rulemaking requirements for the Department by September 30, 2024.

- Holding and verifying completion of a preparation session, administration session, and an integration session,
- Health and safety warnings that must be provide to participants
- Educational materials
- Forms verifying that the participant was provided accurate and complete information
- Supervision during the administration session and safe transportation for the participant when the session is complete
- Provision for group administration sessions
- Provisions to allow the refusal to provide natural medicine services to a participant
- Requirements and standards for independent testing
- Standards for advertising and marketing
- Requirements governing the licensing and practice of facilitators
- Qualification for licensure and renewal
- Oversight requirements for healing centers
- Recordkeeping, privacy, and confidentiality requirements
- Security requirements
- Procedures for suspending or revoking licenses of healing centers
- Permissible financial relationships between licensed healing centers, facilitators and other entities
- Rules that allow for healing centers to share the same premises with other healing venters or to share the same premises with health-care facilities

Ongoing Department Regulation of Natural Medicine Facilities

The Department will manage the licensing and registration for facilities where supervised use will occur, as well as people who are licensed to facilitate the use of them at licensed facilities. DORA will also regulate related businesses, such as cultivators and product manufacturers. Additionally, DORA is tasked with protecting consumers, developing public education campaigns, making recommendations to the state legislature regarding the potential for off-site use of natural psychedelic substances received at regulated facilities, and providing data on the implementation and outcomes of the program. Licensed facilities and related businesses will be required to pay a licensing fee to cover the cost of regulating these businesses.

STAFF-INITIATED SUPPLEMENTAL REQUESTS

STAFF-INITIATED – LONG BILL TECHNICAL ADJUSTMENT

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 made a technical error in calculating the original appropriation.

DEPARTMENT REQUEST: The Department did not request this correction but is aware of staff's recommendation and agrees with staff that the error should be corrected.

STAFF RECOMMENDATION: Staff recommends that the Committee approve a technical correction to fix an error in the 2022 Long Bill. Specifically, the letter note associated with the Information Technology Asset Maintenance line item in the Executive Director's Office does not currently specify that \$82,000 of the appropriation is from the Marijuana Cash Tax Fund. Staff recommends correcting this error through the Department's supplemental bill.

STATEWIDE COMMON POLICY SUPPLEMENTAL REQUEST

This request is not prioritized and is not analyzed in this packet. The JBC will act on this item later when it makes decisions regarding common policies.

NON-PRIORITIZED				
DEPARTMENT'S PORTION OF STATEWIDE SUPPLEMENTAL REQUEST	TOTAL FUNDS	GENERAL FUND	CASH FUNDS	FTE
SNP2 Annual fleet vehicle supplemental true-up	\$35,449	\$0	\$35,449	0.0
SNP1 OIT FY23 Real-time billing	(503,498)	0	(503,498)	0.0
DEPARTMENT'S TOTAL STATEWIDE SUPPLEMENTAL REQUESTS	(\$468,049)	\$0	(\$468,049)	0.0

Staff Recommendation: The staff recommendation for this request is pending Committee action on common policy supplementals. Staff will include the corresponding appropriation in the Department's supplemental bill based on Committee action 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.

APPENDIX A: NUMBERS PAGES

Appendix A details actual expenditures for the last state fiscal years, the appropriation for the current fiscal year, the requested change for the current fiscal year, staff recommendations, and the fiscal year total with recommended changes. This information is listed by line item and fund source.

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
--	----------------------	-----------------------------	--------------------------------	----------------------------	------------------------------------

DEPARTMENT OF REGULATORY AGENCIES
Patty Salazar, Executive Director

NP 02 Annual fleet vehicle supplemental true-up

(1) EXECUTIVE DIRECTOR'S OFFICE AND ADMINISTRATIVE SERVICES

Vehicle Lease Payments	<u>233,303</u>	<u>320,596</u>	<u>35,449</u>	<u>35,449</u>	<u>356,045</u>
General Fund	0	0	0	0	0
Cash Funds	233,303	320,596	35,449	35,449	356,045
Reappropriated Funds	0	0	0	0	0
Federal Funds	0	0	0	0	0
Payments to OIT	<u>3,633,431</u>	<u>5,052,459</u>	<u>(503,498)</u>	<u>(503,498)</u>	<u>4,548,961</u>
General Fund	183,803	176,741	0	0	176,741
Cash Funds	3,449,628	4,875,718	(503,498)	(503,498)	4,372,220
Reappropriated Funds	0	0	0	0	0
Federal Funds	0	0	0	0	0

Total for NP 02 Annual fleet vehicle supplemental true-up	3,866,734	5,373,055	(468,049)	(468,049)	4,905,006
<i>FTE</i>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>
General Fund	183,803	176,741	0	0	176,741
Cash Funds	3,682,931	5,196,314	(468,049)	(468,049)	4,728,265
Reappropriated Funds	0	0	0	0	0
Federal Funds	0	0	0	0	0

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
--	----------------------	-----------------------------	--------------------------------	----------------------------	------------------------------------

S 01 Contract resources for prompt implementation of 122

(9) DIVISION OF PROFESSIONS AND OCCUPATIONS

Personal Services	<u>14,073,864</u>	<u>17,143,144</u>	<u>1,400,000</u>	<u>0</u>	<u>17,143,144</u>
FTE	0.0	213.5	0.0	0.0	213.5
General Fund	0	0	700,000	0	0
Cash Funds	14,073,864	16,549,693	700,000	0	16,549,693
Reappropriated Funds	0	593,451	0	0	593,451
Federal Funds	0	0	0	0	0
Appropriation to the Regulated Natural Medicines					
Access Program Fund	<u>0</u>	<u>0</u>	<u>0</u>	<u>700,000</u>	<u>700,000</u>
General Fund	0	0	0	700,000	700,000

Total for S 01 Contract resources for prompt implementation of 122	14,073,864	17,143,144	1,400,000	700,000	17,843,144
FTE	<u>0.0</u>	<u>213.5</u>	<u>0.0</u>	<u>0.0</u>	<u>213.5</u>
General Fund	0	0	700,000	700,000	700,000
Cash Funds	14,073,864	16,549,693	700,000	0	16,549,693
Reappropriated Funds	0	593,451	0	0	593,451
Federal Funds	0	0	0	0	0

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					
REGULATORY AGENCIES					
TOTALS for ALL Departmental line items	89,395,200	120,862,759	931,951	231,951	121,094,710
<i>FTE</i>	<u>28.3</u>	<u>668.9</u>	<u>0.0</u>	<u>0.0</u>	<u>668.9</u>
General Fund	5,400,850	3,015,753	700,000	700,000	3,715,753
Cash Funds	78,182,436	109,945,056	231,951	(468,049)	109,477,007
Reappropriated Funds	5,059,478	6,306,416	0	0	6,306,416
Federal Funds	752,437	1,595,534	0	0	1,595,534