

MEMORANDUM



JOINT BUDGET COMMITTEE

TO Joint Budget Committee Members
FROM Craig Harper, JBC Staff (303-866-3481)
DATE March 20, 2023
SUBJECT Marijuana Tax Cash Fund Solvency and Appropriations with OSPB Forecast

With the Committee's selection of the March 2023 OSPB revenue forecast for balancing purposes, this memorandum provides a final update on the status of the Marijuana Tax Cash Fund for in FY 2022-23 and FY 2023-24 for balancing purposes.

RECOMMENDATION

FY 2022-23: Given the anticipated shortfall in FY 2022-23 and the limited options at this point in the fiscal year, **staff recommends that the Committee sponsor legislation to eliminate the \$30.0 million transfer to the Public School Capital Construction Assistance Fund (PSCCAF) currently scheduled for June 1, 2023.**

- If the Committee wishes to maintain a transfer of \$30.0 million to the PSCCAF in the current year, staff has offered another option (in a separate memorandum) to use the existing balance of the State Education Fund to make \$30.0 million General Fund available in the current year – and then sponsor legislation to eliminate the current law transfer from the MTCF and replace it with a transfer from the General Fund.
- Conversely, the Committee may wish to consider whether a transfer remains necessary based on brand new revenue estimates for the BEST program provided by the Department of Education on March 20 (see separate memorandum from Amanda Bickel).

Under the OSPB forecast, eliminating the transfer from the MTCF in the current year would balance revenues and appropriations for FY 2022-23; the fund would be projected to end the year with \$878,632 above the fund's reserve requirements (see table below).

FY 2022-23 MARIJUANA TAX CASH FUND PROJECTIONS - MARCH 2023 OSPB FORECAST	
DESCRIPTION	FY 2022-23
Beginning fund balance as of July 1, 2022 (per Department of Revenue)	\$129,043,151
PLUS: Total MTCF share of revenue (March OSPB)	154,495,102
LESS: Amount designated as TABOR emergency reserve	(100,000,000)
LESS: S.B. 21-207 (Pub School Cap Const Assistance Fund Transfer) and H.B. 22-1341 (Marijuana Tax Cash Fund) Transfer to Education	(30,000,000)
ADJUST: Recommended change to transfer to education	30,000,000
LESS: H.B. 21-1315 (Costs Assessed to Juveniles in the Criminal Justice System) Transfers	(598,000)
LESS: Current/requested annual appropriations to a variety of departments	(158,314,453)
LESS: Recommended statutory reserve (15.0 percent of appropriations)	(23,747,168)
EQUALS: Estimated available balance above/(deficit below) 15.0 percent statutory reserve	\$878,632
PLUS: Total reserve amounts	123,747,168
Year-end fund balance (including reserves)	\$124,625,800

FY 2023-24: The OSPB forecast is also more optimistic about MTCF revenues in FY 2023-24 – it anticipates a total of \$175.1 million in collections, an increase of \$24.9 million (16.6 percent) above the LCS forecast for that year. Obviously, the increased revenue assumption makes balancing to that

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forecast easier than balancing to the LCS forecast, although it also adds risk if actual revenues are lower than projected.

Based on the OSPB forecast, if the Committee eliminates the \$30.0 million transfer to the PSCCAF in FY 2022-23 (as recommended above), then the currently-assumed appropriations and transfers from the fund in FY 2023-24 would leave a deficit of \$6.2 million below the reserve *requirement* for FY 2023-24 (see table below).¹

TWO-YEAR MARIJUANA TAX CASH FUND PROJECTIONS - MARCH 2023 OSPB FORECAST		
DESCRIPTION	FY 2022-23	FY 2023-24
Beginning fund balance as of July 1, 2022 (per Department of Revenue)	\$129,043,151	\$124,625,800
PLUS: Total MTCF share of revenue (March OSPB)	154,495,102	175,085,734
LESS: Amount designated as TABOR emergency reserve	(100,000,000)	(100,000,000)
LESS: S.B. 21-207 (Pub School Cap Const Assistance Fund Transfer) and H.B. 22-1341 (Marijuana Tax Cash Fund) Transfer to Education	(30,000,000)	(20,000,000)
ADJUST: Recommended change to transfer to education	30,000,000	
LESS: H.B. 21-1315 (Costs Assessed to Juveniles in the Criminal Justice System) Transfers	(598,000)	(598,000)
LESS: Current annual appropriations to a variety of departments	(158,314,453)	(161,155,106)
LESS: Recommended statutory reserve (15.0 percent of appropriations)	(23,747,168)	(24,173,266)
EQUALS: Estimated available balance above/(deficit below) 15.0 percent statutory reserve	\$878,632	(\$6,214,838)
PLUS: Total reserve amounts	123,747,168	124,173,266
Year-end fund balance (including reserves)	\$124,625,800	\$117,958,428

Based on that shortfall, staff recommends that the Committee take the following actions to reduce appropriations from the MTCF for FY 2023-24 by \$5.5 million and bring the appropriations into balance with the OSPB forecast:

- **Refinance \$5.4 million in appropriations to the Early Literacy Competitive Grant Program in the Department of Education (a reduction of \$5.4 million MTCF) on a one-time basis.** The Early Literacy Fund (supported by annual transfers from the State Education Fund) has sufficient fund balance to support that appropriation for FY 2023-24 (but not ongoing).
- **Reduce the *increase* approved for Department of Higher Education request R4 (for the Institute of Cannabis Research at CSU Pueblo) from \$1,139,828 to \$1,000,000.** The Institute would still receive an increase of \$1.0 million over the current appropriation but, combined with the refinancing in the Department of Education, the adjustment would bring the fund into balance with OSPB’s revenue forecast (with a projected ending balance \$131,444 above the reserve requirement, see table below).

¹ Section 39-28.8-501 (5)(a), C.R.S., enacted in H.B. 22-1341 (a JBC bill), requires the General Assembly to leave a 15.0 percent reserve in the fund based on the initial appropriation for each fiscal year. Thus, the General Assembly will need to reach that target for the FY 2023-24 appropriation.

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FY 2022-23 MARIJUANA TAX CASH FUND PROJECTIONS - MARCH 2023 OSPB FORECAST		
DESCRIPTION	FY 2022-23	FY 2023-24
Beginning fund balance as of July 1, 2022 (per Department of Revenue)	\$129,043,151	\$124,625,800
PLUS: Total MTCF share of revenue (March OSPB)	154,495,102	175,085,734
LESS: Amount designated as TABOR emergency reserve	(100,000,000)	(100,000,000)
LESS: S.B. 21-207 (Pub School Cap Const Assistance Fund Transfer) and H.B. 22-1341 (Marijuana Tax Cash Fund) Transfer to Education	(30,000,000)	(20,000,000)
ADJUST: Recommended change to transfer to education	30,000,000	
LESS: H.B. 21-1315 (Costs Assessed to Juveniles in the Criminal Justice System) Transfers	(598,000)	(598,000)
LESS: Current/requested annual appropriations to a variety of departments	(158,314,453)	(155,636,600)
LESS: Recommended statutory reserve (15.0 percent of appropriations)	(23,747,168)	(23,345,490)
EQUALS: Estimated available balance above/(deficit below) 15.0 percent statutory reserve	\$878,632	\$131,444
PLUS: Total reserve amounts	123,747,168	123,345,490
Year-end fund balance (including reserves)	\$124,625,800	\$123,476,934

Those two actions, which would not affect the existing level of funding or services for the MTCF-funded programs, would bring the fund into balance based on the OSPB forecast (though not based on LCS). They would also leave the \$20.0 million transfer to the PSCCAF currently scheduled for June 1, 2024, in place.

Staff notes that this scenario still presents significant risk if the LCS forecast happens to be more accurate in its projections of revenues for both FY 2022-23 and FY 2023-24. Applying that forecast to both years would leave the fund \$28.6 million short of the reserve requirement for FY 2023-24. If the Committee wishes to mitigate that risk, then it could still consider either or both of the following options:

- *Department of Local Affairs Housing:* The Governor’s Office has requested a one-time reduction of \$14,924,660 from the MTCF for housing programs in the Department of Local Affairs (Statewide MTCF BA-01). The Committee has tabled action on this particular request. Staff understands that this proposal may present complications with maintenance of effort requirements under Proposition 123 – and that legislation may be necessary to clarify the maintenance of effort requirement.² That said, if adopted, this option would close a significant portion of the gap and would create additional flexibility for the General Assembly.
- *ARPA Funds:* Because both of the March 2023 revenue forecasts anticipate revenues rebounding to approximately \$175 million by FY 2024-25 (see discussion below), the shortfall in funding appears to be a one-time event, and offsetting that impact with one-time refinancing using ARPA funds would be an appropriate use of the federal funding. If the Committee wishes to pursue this option, then JBC Staff will continue to work to identify the federal funds that may be available for such refinancing and line items that would be appropriate uses of the funds.

Finally, the Committee could also consider adjusting the designation of the fund for the TABOR emergency reserve, though JBC staff continues to recommend maintaining cash in that reserve. Appendix A on the following pages shows the appropriations from the MTCF based on the revised staff recommendation.

² Staff understands that there may be similar maintenance of effort concerns in a rental assistance program in Local Affairs, and that both issues could be addressed through legislation.

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SUMMARY OF APPROPRIATIONS FROM THE MARIJUANA TAX CASH FUND FOR FY 2022-23 AND FY 2023-24				
	FY 2022-23 APPROPRIATION	FY 2023-24 REQUEST	FY 2023-24 JBC ACTION	ANNUAL CHANGE
Breakdown of Appropriations by Department and Program				
Agriculture:				
Pesticide control and regulation	\$1,219,603	\$1,247,195	\$1,247,195	\$27,592
Colorado State Fair Authority: FFA and 4-H	300,000	300,000	300,000	0
Centrally appropriated amounts not accounted for above	<u>573,286</u>	<u>590,820</u>	<u>590,820</u>	<u>17,534</u>
Subtotal: Agriculture	2,092,889	2,138,015	2,138,015	45,126
Early Childhood:				
Community and Family Support	108,521	119,288	119,288	10,767
Social-Emotional Learning Programs Grants	777,926	801,264	801,264	23,338
Centrally appropriated amounts not accounted for above	<u>63,531</u>	<u>29,511</u>	<u>29,511</u>	<u>(34,020)</u>
Subtotal: Early Childhood	949,978	950,063	950,063	85
Education:				
School Health Professionals Grant Program	14,959,590	14,969,937	14,968,106	8,516
Early Literacy Competitive Grant Program (refinance recommended)	5,378,678	5,378,678	0	(5,378,678)
Office of Dropout Prevention and Student Reengagement	2,009,771	2,010,299	2,010,299	528
Appropriation to the School Bullying Prevention and Education Cash Fund	1,000,000	1,000,000	1,000,000	0
Concurrent Enrollment Expansion and Innovation Grant Program	1,476,896	1,476,896	1,476,896	0
K-5 Social and Emotional Health Pilot Program	2,500,000	2,502,225	2,502,225	2,225
Centrally appropriated amounts not accounted for above	<u>139,642</u>	<u>194,337</u>	<u>192,147</u>	<u>52,505</u>
Subtotal: Education	27,464,577	27,532,372	22,149,673	(5,314,904)
Governor:				
Evidence-based policymaking evaluation and support	500,000	500,000	500,000	0
Office of Information Technology, Enterprise Solutions	453,812	453,812	453,812	0
Governor's Office	106,912	106,912	106,912	0
Centrally appropriated amounts not accounted for above	<u>35,709</u>	<u>81,519</u>	<u>81,808</u>	<u>46,099</u>
Subtotal: Governor	1,096,433	1,142,243	1,142,532	46,099
Health Care Policy and Financing:				
Training for health professionals to provide Screening, Brief Intervention, and Referral for Treatment (SBIRT) services for Medicaid clients at risk for substance abuse	<u>1,500,000</u>	<u>1,500,000</u>	<u>1,500,000</u>	<u>0</u>
Subtotal: Health Care Policy and Financing	1,500,000	1,500,000	1,500,000	0
Higher Education:				
Regulating marijuana concentrates - CU School of Public Health (H.B. 21-1317)	3,000,000	3,000,000	3,000,000	0
Medication-assisted Treatment Pilot Program (S.B. 17-074)	3,000,000	3,000,000	3,000,000	0
Institute of Cannabis Research at CSU-Pueblo (S.B. 16-191)	2,800,000	3,939,828	3,800,000	1,000,000
AgrAbility project at CSU (S.B. 21-137)	900,000	900,000	900,000	0
Opioid awareness campaign, grant assistance, and provider education per Section 27-80-118, C.R.S.	<u>1,250,000</u>	<u>1,250,000</u>	<u>1,250,000</u>	<u>0</u>
Subtotal: Higher Education	10,950,000	12,089,828	11,950,000	1,000,000
Human Services:				

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	FY 2022-23 APPROPRIATION	FY 2023-24 REQUEST	FY 2023-24 JBC ACTION	ANNUAL CHANGE
Increasing access to effective substance use disorder services, including evaluation of intensive residential treatment (S.B. 16-202)	16,122,754	16,606,437	16,606,437	483,683
Criminal justice diversion programs (Law Enforcement Assisted Diversion or "LEAD" pilot programs and S.B. 17-207)	5,891,108	6,064,258	6,064,258	173,150
Circle Program and other rural treatment programs for people with co-occurring mental health and substance use disorders	5,845,225	6,039,767	6,039,767	194,542
Mental health services for juvenile and adult offenders	5,910,980	6,088,309	6,088,309	177,329
Enhance behavioral health crisis response system (S.B. 17-207)	5,053,037	5,204,628	5,204,628	151,591
Programs that fund service alternatives to placing youth in a correctional facility (S.B. 91-094)	3,184,795	3,288,676	3,288,676	103,881
Tony Grampsas Youth Services Program grants for the prevention of youth marijuana use	1,629,377	1,635,727	1,635,727	6,350
Community prevention and treatment for alcohol and drug abuse	611,535	629,881	629,881	18,346
Office of Behavioral Health administrative expenses	781,243	843,737	843,737	62,494
Treatment and Detoxification Programs	6,968,600	7,177,659	7,177,659	209,059
Substance use disorder treatment at the mental health institutes	578,106	627,143	627,143	49,037
Appropriation to the Youth Mentoring Services Cash Fund (Tony Grampsas Youth Services Program)	500,000	500,000	500,000	0
Mental Health Treatment for Children and Youth at Risk of Out-of-home Placement	431,824	445,954	445,954	14,130
Medication consistency and health information exchange (S.B. 17-019)	760,700	760,700	760,700	0
Office of Children, Youth, and Families Program Administration	397	397	397	0
Office of Information Technology Services, Behavioral Health Capacity Tracking System	42,611	42,611	42,611	0
Indirect cost assessments and centrally appropriated amounts not accounted for above	<u>3,141,858</u>	<u>3,849,329</u>	<u>3,722,656</u>	<u>580,798</u>
Subtotal: Human Services	57,454,150	59,805,213	59,678,540	2,224,390
Judicial:				
Appropriation to the Correctional Treatment Cash Fund for jail-based behavioral health services (administered through the Department of Human Services)	1,626,967	1,626,967	1,626,967	0
Trial court programs	<u>1,107,724</u>	<u>1,107,724</u>	<u>1,107,724</u>	<u>0</u>
Subtotal: Judicial	2,734,691	2,734,691	2,734,691	0
Labor and Employment:				
Colorado Veterans' Service-to-career Pilot Program (H.B. 16-1267)	<u>500,000</u>	<u>500,000</u>	<u>500,000</u>	<u>0</u>
Subtotal: Labor and Employment	500,000	500,000	500,000	0
Law:				
Local law enforcement training through the Peace Officers Standards and Training (POST) Board	1,036,766	1,036,766	1,036,766	0
Office of Community Engagement/Safe2Tell	180,140	0	0	(180,140)

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	FY 2022-23 APPROPRIATION	FY 2023-24 REQUEST	FY 2023-24 JBC ACTION	ANNUAL CHANGE
Consumer Protection and Antitrust (S.B. 22-205)	587,347	564,117	583,000	(4,347)
Centrally appropriated amounts not accounted for above	<u>26,561</u>	<u>0</u>	<u>0</u>	<u>(26,561)</u>
Subtotal: Law	1,830,814	1,600,883	1,619,766	(211,048)
Local Affairs:				
Affordable Housing Construction Grants and Loans (Tabled)	15,300,000	375,340	15,300,000	0
Gray and Black Market Marijuana Enforcement Efforts (H.B. 17-1221)	955,178	963,668	963,668	8,490
Low income rental subsidies	939,649	939,649	939,649	0
Division of Housing Administration	58,811	59,830	59,830	1,019
Indirect cost assessments and centrally appropriated amounts not accounted for above	<u>285,910</u>	<u>276,650</u>	<u>283,485</u>	<u>(2,425)</u>
Subtotal: Local Affairs	17,539,548	2,615,137	17,546,632	7,084
Public Health and Environment:				
Substance abuse prevention	10,043,008	10,054,476	10,054,476	11,468
Public awareness campaign	960,436	965,714	965,714	5,278
Colorado Health Service Corps Program (S.B. 18-024)	3,560,762	3,566,369	3,566,369	5,607
Distributions to Local Public Health Agencies	1,892,466	1,949,240	1,949,240	56,774
Transfer to Harm Reduction Cash Fund	1,800,000	1,800,000	1,800,000	0
Healthy Kids Colorado Survey	756,196	759,874	759,874	3,678
Marijuana Health Effects Monitoring	362,367	371,114	371,114	8,747
Health survey data collection	243,596	244,134	244,134	538
Data collection and analysis (S.B. 13-283)	210,421	227,302	227,302	16,881
Enhanced marijuana data collection through Rocky Mountain Poison and Drug	60,100	60,100	60,100	0
Executive Director's Office, Personal Services	10,468	10,948	10,948	480
Marijuana lab certification	1,135,732	20,500	1,156,232	20,500
Indirect cost assessments and centrally appropriated amounts not accounted for above	<u>2,593,656</u>	<u>2,749,790</u>	<u>2,548,799</u>	<u>(44,857)</u>
Subtotal: Public Health and Environment	23,629,208	22,779,561	23,714,302	85,094
Public Safety:				
Black market marijuana interdiction/state toxicology lab	4,341,986	4,532,917	4,353,816	11,830
School Safety Resource Center (JBC Bill in 2023)	0	250,000	250,000	250,000
Division of Criminal Justice - Study of the impacts of the legalization of retail marijuana (S.B. 13-283/S.B. 16-191), and Law Enforcement Assistance Grant Program (H.B. 18-1020)	1,170,603	1,175,103	1,170,603	0
Juvenile diversion programs	400,000	400,000	400,000	0
Enhance school safety incident response grant program	250,000	0	0	(250,000)
State Patrol training academy	150,000	150,000	150,000	0
Public Safety Intelligence Support Related to the Illegal Sale and Diversion of Marijuana	79,648	85,861	85,352	5,704
Indirect cost assessments and centrally appropriated amounts not accounted for above	<u>1,248,978</u>	<u>1,423,314</u>	<u>1,423,314</u>	<u>174,336</u>
Subtotal: Public Safety	7,641,215	8,017,195	7,833,085	191,870
Regulatory Agencies:				

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	FY 2022-23 APPROPRIATION	FY 2023-24 REQUEST	FY 2023-24 JBC ACTION	ANNUAL CHANGE
Division of Professions and Occupations for medical marijuana enforcement	120,807	120,807	120,807	0
Centrally appropriated amounts not accounted for above	<u>82,000</u>	<u>82,000</u>	<u>82,000</u>	<u>0</u>
Subtotal: Regulatory Agencies	202,807	202,807	202,807	0
Revenue:				
Appropriations to Department of Revenue	<u>1,026,494</u>	<u>1,028,198</u>	<u>1,026,494</u>	<u>0</u>
Subtotal: Revenue	1,026,494	1,028,198	1,026,494	0
Transportation:				
Marijuana impaired driving campaign	950,000	950,000	950,000	0
Impairment device study (HB 22-1321)	<u>751,649</u>	<u>0</u>	<u>0</u>	<u>(751,649)</u>
Subtotal: Transportation	1,701,649	950,000	950,000	751,649
Total Appropriations (including Long Bill and Other Legislation)	\$158,314,453	\$145,586,206	\$155,636,600	(\$2,677,853)