

**COLORADO GENERAL ASSEMBLY  
JOINT BUDGET COMMITTEE**



**FY 2016-17 STAFF BUDGET BRIEFING  
MARIJUANA TAX CASH FUND OVERVIEW**

**JBC Working Document - Subject to Change  
Staff Recommendation Does Not Represent Committee Decision**

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**Summary of Request from Marijuana Tax Cash Fund**

<b>Marijuana Tax Cash Fund Request</b>						
	<b>Total Funds</b>	<b>General Fund</b>	<b>Marijuana Tax Cash Fund</b>	<b>Reappropriated Funds</b>	<b>Federal Funds</b>	<b>FTE</b>
<b>FY 2015-16 Appropriation</b>						
SB 15-234 (Long Bill)	\$23,160,837	\$0	\$23,160,837	\$0	\$0	86.8
Other Legislation	<u>858,732</u>	<u>0</u>	<u>858,732</u>	<u>0</u>	<u>0</u>	<u>9.9</u>
<b>TOTAL</b>	<b>\$24,019,569</b>	<b>\$0</b>	<b>\$24,019,569</b>	<b>\$0</b>	<b>\$0</b>	<b>96.7</b>
<b>FY 2016-17 Requested Appropriation</b>						
FY 2015-16 Appropriation	\$24,019,569	0	\$24,019,569	\$0	\$0	96.7
Continuation of Programs Funded by Passage of Proposition BB <sup>2</sup>	10,800,000	0	10,800,000	0	0	0.0
HUM R11 Intensive Residential Treatment for Substance Use Disorders	4,726,272	0	4,726,272	0	0	0.9
LOC R1 Ft. Lyon Transitional Housing and Supportive Services	1,765,786	0	1,765,786	0	0	0.0
AG Pesticide Laboratory Augmentation (Capital Construction Request)	1,220,000	0	1,220,000	0	0	0.0
HUM R13 Supportive Employment for Substance Use Clients	500,000	0	500,000	0	0	0.0
TRA R1 Impaired Driving Campaign	500,000	0	500,000	0	0	0.0
PHE RM2 Enhanced Marijuana Data Collection through Rocky Mountain Poison and Drug	346,612	0	346,612	0	0	0.0
HUM R12 Sober Living Homes	300,000	0	300,000	0	0	0.0
PHE RM1 Health Survey Data Collection	238,000	0	238,000	0	0	0.0
AG R2 Hemp Regulatory and Seed Certification Support	349,810	0	349,810	0	0	1.0
Centrally appropriated line items	152,934	0	152,934	0	0	0.0
AG R1 Pesticide Laboratory Augmentation (Operating Request)	90,865	0	90,865	0	0	0.0
PBS R3 Jail-based Survey on Homelessness	75,000	0	75,000	0	0	0.0
Annualize prior year budget actions	(125,274)	0	(125,274)	0	0	0.0
Annualize prior year legislation	<u>(196,138)</u>	<u>0</u>	<u>(196,138)</u>	<u>0</u>	<u>0</u>	<u>0.0</u>
<b>TOTAL</b>	<b>\$44,763,436</b>	<b>\$0</b>	<b>\$44,763,436</b>	<b>\$0</b>	<b>\$0</b>	<b>98.6</b>
<b>Increase/(Decrease)</b>	\$0	\$0	\$0	\$0	\$0	0.0
Percentage Change	86.4%	n/a	86.4%	n/a	n/a	n/a

<sup>1</sup> This table does not include appropriations related to Marijuana from non-MTCF fund types

<sup>2</sup> Includes requested \$500,000 transfer from MTCF to General Fund for SBIRT for Medicaid-eligible Individuals at Risk for Substance Abuse

Descriptions of Requested Changes are found in the briefing document for the Department requesting the change item.

## **Issue: Repayment of General Fund Reserved for Proposition AA Refund from Marijuana Tax Cash Fund**

Amongst many other things, H.B. 15-1367 (Retail Marijuana Taxes) reserved \$30.3 million General Fund in the Proposition AA Refund Account to pay for the refund if Proposition BB failed and to fund specific marijuana-related programs if passed.

### **SUMMARY:**

- Due to an issue with underestimating state fiscal year revenues, Article X, Section 20 (3) (c) of the Colorado Constitution, the election provision of TABOR, required the General Assembly to ask permission of the voters to keep the revenue from Proposition AA taxes. To reserve the amount necessary to refund if the ballot question failed, the General Assembly reserved \$30.3 million General Fund in the Proposition AA Refund Account.
- The General Assembly acted to pay back the General Fund that was set aside in the Proposition AA Refund Account of the General Fund over a 5 year period under the policy that marijuana should pay for the costs attributable to legalization through a provision in H.B. 15-1367 (Retail Marijuana Taxes).
- Ongoing funding requested from the Marijuana Tax Cash Fund total \$34.8 million in FY 2016-17, not accounting for any of the new requests. New requests total approximately \$10.1 million. Estimated tax revenue available in FY 2016-17 from FY 2015-16 revenue is \$66.4 million.

### **DISCUSSION:**

In FY 2015-16, the General Assembly appropriated approximately \$25.3 million from the Marijuana Tax Cash Fund (MTCF) to fund ongoing programs in a number of Departments. Due to the potential for a refund required by a provision Article X, Section 20 of the Colorado Constitution, the Taxpayer Bill of Rights (TABOR), the General Assembly was required to set aside an estimated \$58.0 million for a refund if the voters of Colorado did not grant authority for the state to retain the taxes. In order to backfill the remainder of the forecasted refund amount, the General Assembly, through H.B. 15-1367 (Retail Marijuana Taxes), reserved \$30.3 million General Fund in the Proposition AA Refund Account of the General Fund. This was in addition to the \$27.7 million transferred pursuant Joint Budget Committee bill S.B. 15-249 (Marijuana Tax Cash Fund Transfer to General Fund) from the MTCF to the General Fund. If the referendum included in H.B. 15-1367 passed, as Proposition BB ultimately did, the total \$58.0 million reserved in the Proposition AA Refund Account is appropriated to in the following manner:

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<b>Contingency Appropriations in H.B. 15-1367 with Passage of Proposition BB (FY 15-16)</b>	
<b>Description</b>	<b>Amount</b>
Explicitly describes how the funds identified for the refund (\$58.0 million) would be spent:	
\$40.0 million is transferred to the Public School Capital Construction Fund, known as the BEST Fund	\$40,000,000
\$2.5 million to the Department of Public Health and Environment (CDPHE) for the marijuana education campaign	2,500,000
\$1.0 million to CDPHE for the dissemination of information from poison control centers	1,000,000
\$2.0 million to the School Bullying Prevention and Education Cash Fund administered by the Colorado Department of Education (CDE)	2,000,000
\$2.0 million to CDE via the Student Re-Engagement Program Cash Fund for costs associated with the student re-engagement program	2,000,000
\$1.0 million to the Department of Human Services (DHS) via the Youth Mentoring Services Cash Fund for costs associated with youth mentoring services	1,000,000
\$1.0 million to DHS for the provision of grants through the Tony Grampsas youth mentoring program	1,000,000
\$0.5 million to the Department of Health Care Policy and Financing for grants to substance abuse screening, brief intervention, and referral to treatment (SBIRT) program	500,000
\$0.3 million to the Department of Agriculture for Future Farmers of American and 4-H programs at the state fair	300,000
\$1.0 million to the Department of Local Affairs (DOLA) for grants through the Local Government Retail Marijuana Impact (LGRMI) Grant Program	1,000,000
\$0.5 million to DHS for treatment and detoxification contracts	500,000
\$0.2 million to the Department of Law (DOL) for Peace Officers Standards and Training (POST) Board	200,000
\$6.0 retained in the General Fund to begin repayment of the \$30.3 million General Fund identified for the refund	6,000,000
Appropriates \$82,132 and 1.0 FTE from the MTCF to DOLA for additional expenditures requires to make grants through the LGRMI Grant Program	82,132
Of the \$82,132 to DOLA, \$21,803 is reappropriated to the Office of Information Technology	21,803
Of the \$82,132 to DOLA, \$2,835 is reappropriated to the Office of Information Technology	<u>2,835</u>
<b>Total<sup>1</sup></b>	<b>\$58,106,770</b>

The transfer to the Public School Capital Construction Fund is a one-time transfer but does not affect the provision requiring the first \$40.0 million of the marijuana excise tax to be transferred to the same fund.

The policy for expending revenue generated from marijuana at the General Assembly has generally been one that marijuana should pay for itself, both in regulation of marijuana and in mitigating externalities legalized marijuana may have on society. Because of this policy, H.B. 15-1367 created several once-a-year transfers of \$6.0 million to the General Fund to repay it for the \$30.3 General Fund that ultimately went to pay for marijuana programs. Excluding a one-time \$40.0 million transfer from the Proposition AA Refund account to the Public School Capital Construction Fund, H.B. 15-1367 appropriated approximately \$10.8 million for programs that require ongoing funding. Together with the programs that received appropriations in other bills, the General Assembly appropriated \$34.8 million in MTCF in FY 2015-16, including amounts appropriated pursuant to passage of Proposition BB, that are included in the Governor’s Request in FY 2016-17 as part of the base. The table below provides a summary:

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<b>Detail of Marijuana Cash Tax Fund Base Appropriation and Request</b>			
<b>Long Bill Appropriation Summary</b>		<b>FY 2015-16 Appropriation</b>	<b>FY 2016-17 Request</b>
Study Health Effects of Marijuana (S.B. 13-283)	CDPHE	320,388	320,388
Public Awareness Campaign	CDPHE	2,150,000	2,150,000
Healthy Kids Colorado Survey	CDPHE	781,789	781,789
Marijuana Lab Certification	CDPHE	RF from DOR	176,292
Behavioral Health Treatment in Schools	CDE	2,295,079	2,281,147
Governor's Office of Marijuana Coordination	GOV	190,097	191,590
Tony Gramscas for the Prevention of Youth Marijuana Use	DHS	2,000,000	2,000,000
Expansions and enhancements of Jail-Based Behavioral Health Services	DHS	1,911,612	1,850,643
Enhancement of SB 91-94 Programs that Fund Alternatives to Incarceration	DHS	2,000,000	2,000,000
Develop In-House Legal Expertise and Training	LAW	436,766	436,766
Local Law Enforcement Training for DUID through the POST Board	LAW	1,168,000	750,000
Adult Jail Based Behavioral Health Services	JUD	1,550,000	1,550,000
Marijuana Impaired Driving Campaign	CDOT	450,000	450,000
Roll Forward Authority for S.B. 13-283 Data Collection and Analysis	DPS	56,998	56,998
S.B. 13-283 Data Collection and Analysis	DPS	159,983	161,691
Marijuana Enforcement Division (not including special bills below)	DOR	<u>7,690,125</u>	<u>7,768,189</u>
<b>Subtotal</b>		<b>23,160,837</b>	<b>22,925,493</b>
<b>Special Bill Appropriation Summary</b>			
HB 15-1283 Marijuana Reference Library And Lab Testing Access	CDPHE	23,850	23,850
HB 15-1367 Local Government Retail Marijuana Impact Grant Program	DOLA	71,342	146,819
HB 15-1367 GenTax Programming for Refund Account and Transfers	DOR	25,440	6,351
HB 15-1367 Pesticide Control and Regulation	CDA	314,633	314,633
SB 15-014 Caregiver System Monitoring and Analysis	DOR	113,704	109,001
SB 15-014 Include Medical Marijuana Info in Law Enforcement Questionnaires	DPS	60,000	61,940
SB 15-196 Industrial Hemp Certified Seeds Concentration Test	CDA	<u>249,763</u>	<u>0</u>
<b>Subtotal</b>		<b>858,732</b>	<b>662,594</b>
<b>Proposition BB Continuation Programs</b>			
Marijuana Public Education Campaign	CDPHE	2,500,000	2,500,000
School Bullying Prevention and Education Cash Fund	CDE	2,000,000	2,000,000
Student Re-engagement Grant Program Fund	CDE	2,000,000	2,000,000
Youth Mentoring Services Cash Fund	DHS	1,000,000	1,000,000
Tony Gramscas Youth Services Program	DHS	1,000,000	1,000,000
SBIRT for Medicaid-eligible Individuals at Risk for Substance Abuse <sup>1</sup>	HCPF	500,000	500,000
Colorado State Fair Authority: FFA and 4-H Programming	CDA	300,000	300,000
Local Government Retail Marijuana Impact Grant Program	DOLA	1,000,000	1,000,000
Treatment and Detoxification Contracts	DHS	<u>500,000</u>	<u>500,000</u>
<b>Subtotal</b>		<b>10,800,000</b>	<b>10,800,000</b>
<b>Total</b>		<b>34,819,569</b>	<b>34,388,087</b>

<sup>1</sup> The request continues to transfer \$500,000 to the General Fund for the SBIRT program for federal match.

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Overall, the General Assembly has made it practice to appropriate revenue from marijuana taxes in the fiscal year after the one in which they were collected. This means that for FY 2016-17, the amount of revenue available from marijuana taxes is the amount projected to be collected through FY 2015-16. The September Legislative Council Revenue Forecast estimates revenue that will be credited to the MTCF to be \$66.4 million in FY 2015-16. This is the sum of the state share of the 10 percent special sales tax, the 2.9 percent regular sales tax on medical marijuana and 2.9 percent regular sales tax on retail marijuana. Accounting for the \$34.8 million appropriated to programs the Governor has requested to be continued, there is at least \$31.6 million estimated to be available for new appropriations in FY 2016-17.

The Legislative Council state revenue forecast from September 2015 estimates a non-marijuana related TABOR refund to be required for revenue in FY 2015-16, refunded in FY 2016-17, of \$252.5 million. Because the TABOR surplus will continue to be an issue, the Joint Budget Committee could consider accelerating the repayment of the General Fund to offset the General Fund appropriated for the programs identified in Proposition BB in FY 2015-16, reducing the General Fund impact of the upcoming TABOR refund.

One final thing to note, Amendment 64 was advertised as being the vote to regulate marijuana like alcohol. Currently, all of the liquor excise tax is deposited in the General Fund.

If accelerating repayment to the General Fund from the Marijuana Tax Cash Fund is a priority for the Committee, JBC staff recommends legislation to change the transfers in current law. JBC staff further recommends postponing deciding how much to transfer and how quickly to accelerate the payments until two things have happened: (1) updated revenue forecast from the Governor and Legislative Council, and (2) decisions are made regarding supplemental appropriations for FY 2015-16. JBC staff is anticipating somewhere in the realm of \$27.0 million of requests from the Marijuana Tax Cash Fund in the January 2, 2015, supplemental budget submission.