

**COLORADO GENERAL ASSEMBLY
JOINT BUDGET COMMITTEE**



**SUPPLEMENTAL REQUESTS FOR FY 2015-16
DEPARTMENT OF PUBLIC HEALTH AND
ENVIRONMENT**

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

**Prepared By:
Megan Davisson, JBC Staff
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For Further Information Contact:

Joint Budget Committee Staff
200 E. 14th Avenue, 3rd Floor
Denver, Colorado 80203
Telephone: (303) 866-2061
TDD: (303) 866-3472

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DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Department Overview

The Department of Public Health and Environment is responsible for protecting and improving the health of the people of Colorado and ensuring the quality of Colorado's environment.

Summary: FY 2015-16 Appropriation and Recommendation

Department of Public Health and Environment: Recommended Changes for FY 2015-16						
	Total Funds	General Fund	Cash Funds	Reappropriated Funds	Federal Funds	FTE
FY 2015-16 Appropriation						
HB 15-234 (Long Bill)	\$532,213,807	\$44,363,169	\$156,136,752	\$37,560,004	\$294,153,882	1,287.1
Other legislation	2,134,415	152,118	2,007,297	(25,000)	0	2.2
HB 15-1367 Contingent appropriations	<u>3,500,000</u>	<u>3,500,000</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0.0</u>
Current FY 2015-16 Appropriation	\$537,848,222	\$48,015,287	\$158,144,049	\$37,535,004	\$294,153,882	1,289.3
Recommended Changes						
Current FY 2015-16 Appropriation	\$537,848,222	\$48,015,287	\$158,144,049	\$37,535,004	\$294,153,882	1,289.3
S1 Marijuana lab proficiency testing	0	0	0	0	0	0.0
S2 Technical vital records operating correction	190,000	0	190,000	0	0	0.0
S3 Pompe reduction	(483,149)	0	(483,149)	0	0	(1.0)
HB 14-1360 licensure fee technical correction (staff-initiated)	110,000	0	0	110,000	0	0.0
NPS1 Supplemental fleet adjustment	<u>(41,283)</u>	<u>0</u>	<u>0</u>	<u>(35,000)</u>	<u>(6,283)</u>	<u>0.0</u>
Recommended FY 2015-16 Appropriation	\$537,623,790	\$48,015,287	\$157,850,900	\$37,610,004	\$294,147,599	1,288.3
Recommended Increase/(Decrease)	(\$224,432)	\$0	(\$293,149)	\$75,000	(\$6,283)	(1.0)
Percentage Change	0.0%	0.0%	(0.2%)	0.2%	0.0%	(0.1%)
FY 2015-16 Executive Request	\$537,528,790	\$48,015,287	\$157,850,900	\$37,515,004	\$294,147,599	1,288.3
Request Above/(Below) Recommendation	(\$95,000)	\$0	\$0	(\$95,000)	\$0	(0.0)

Request/Recommendation Descriptions

S1 Marijuana lab proficiency testing: The request includes an increase of \$15,000 reappropriated funds from the Department of Revenue, Marijuana Tax Cash Fund to reappropriate to the Department of Agriculture¹ to conduct cannabinoid content and homogeneity testing on marijuana flowers. The staff recommendation is to deny the request because the Department of Agriculture does not have clear statutory authority to conduct cannabinoid content and homogeneity testing on marijuana flowers. Additionally this use of the Marijuana Tax Cash Fund by the Department of Agriculture does not clearly fall within any of the allowable uses of the Marijuana Tax Cash Fund.

S2 Technical vital records operating correction: The request includes an increase of \$190,000 cash funds to correct a technical error made when annualizing out the onetime costs of building the Electronic Death Registration System pursuant to H.B. 12-1041. The request includes \$68,736 cash funds in ongoing maintenance costs that are part of the existing contract with the system vendor. The staff recommendation is to approve the request in order to correct the technical error and provide the Department with spending authority to support ongoing maintenance costs of the system.

S3 Pompe reduction: The Department requests a reduction of \$483,149 cash funds from the Newborn Screening and Genetic Counseling Cash Fund and 1.0 FTE to not add the Pompe disorder to the newborn screening panel because of state revenue constraints and uncertainty about the available revenues in the Newborn Screening and Genetic Counseling Cash Fund. Staff recommends the Committee approve the request because the Department is working to identify what is causing uncertainty with the Newborn Screening and Genetic Counseling Cash Fund and staff does not believe it is prudent to add an ongoing cost to the Newborn Screening and Genetic Counseling Cash Fund at this time. Additionally new revenue through fees would increase the revenue subject to TABOR, reducing the amount of General Fund available for other purposes.

H.B. 14-1360 Home Care Licensure Fee Technical Correction (staff-initiated): The Department did not request this change but is supportive of the recommendation. The recommendation is for \$110,000 reappropriated funds from the Intellectual and Developmental Disabilities Services Cash Fund in the Department of Health Care Policy and Financing. This recommendation ensures compliance with Section 25-27.5-106 (2) (a.5) (I) (C), C.R.S., which requires fees for new and renewal home care agency licenses for a Community-Centered Board or service agency be paid for from the Intellectual and Developmental Disabilities Services Cash Fund for FY 2014-15 and FY 2015-16.

¹ The Department of Agriculture's request shows an appropriation of cash funds from the Marijuana Tax Cash Fund. Staff has talked with the Departments and the amount should be reappropriated funds from the Department of Public Health and Environment.

NPS1 Supplemental fleet adjustment: The request includes a reduction of \$41,283 total funds for the annual mid-year fleet vehicle adjustment. The recommendation is pending the Committee action on common policy supplementals and staff will adjust the line item based on final Committee action.

Prioritized Supplemental Requests

SUPPLEMENTAL REQUEST, DEPARTMENT PRIORITY #1 MARIJUANA LAB PROFICIENCY TESTING

	Request	Recommendation
Total	<u>\$15,000</u>	<u>\$0</u>
Cash Funds	0	0
Reappropriated Funds	15,000	0

Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? [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.]	NO
JBC staff and the Department do not agree that this request is the result of new information. The request states that "when the Department reviewed H.B. 15-1283 it believed that proficiency testing protocols would exist nationally and Colorado would be able to use those." This supplemental request is not for proficiency testing protocols. This request is for funding to allow the Department of Agriculture to test marijuana flower samples for cannabinoid content and homogeneity. The need for testing is not addressed in the request as a result of new information. Additionally the Department of Agriculture does not clear statutory authority to conduct cannabinoid content or homogeneity testing nor does this requested use of the Marijuana Tax Cash Fund clearly fall within any of the allowable uses of the Marijuana Tax Cash Fund.	

Department Request: The Department requests \$15,000 reappropriated funds to enable the Department of Agriculture to test marijuana flower samples for cannabinoid content and homogeneity.

Technical Comments about the Request: The amount requested by the Department of Public Health and Environment should have been \$15,000 cash funds from the Marijuana Tax Cash Fund based on the effective date of H.B. 15-1283 which allowed the Department to receive direct appropriations from the Marijuana Tax Cash Fund for laboratory certification work. There is no associated cash funds appropriation in the Department of Revenue from which the \$15,000 could come.

This request is tied to the Department of Agriculture's non-prioritized supplemental #2 which is requesting \$15,000 cash funds from the Marijuana Tax Cash Fund to conduct testing of marijuana flower samples for cannabinoid content and homogeneity. The Department of Agriculture's request should have been for \$15,000 reappropriated funds from the Department of Public Health and Environment.

Staff Recommendation: Staff recommends that the Committee deny the requests for both Departments because the Department of Agriculture does not have clear statutory authority to conduct testing of marijuana flowers for cannabinoid content and homogeneity, and this requested use of the Marijuana Tax Cash Fund by the Department of Agriculture does not clearly fall under any of the allowable uses of the Marijuana Tax Cash Fund.

Staff Analysis: The supplemental budget request is for funding for the Department of Agriculture to test marijuana flowers for cannabinoid content and homogeneity. Since cannabinoid content and homogeneity are not looking for pesticides in marijuana flowers these tests do not fall under the Department of Agriculture's authority in the Pesticide Applicator Act. Even if these tests did, the rules and regulations governing administration and enforcement of the Pesticide Applicators' Act make no reference to the testing of marijuana flowers for cannabinoid content or homogeneity.

Cannabinoids are a group of chemicals found in the cannabis plant. Different strains of the plant have varying levels and types of cannabinoids in them. Cannabinoid testing means determining if certain, more common cannabinoids are present in the flower and how much of those found is there. Homogeneity testing determines if those cannabinoids are evenly distributed throughout the individual samples as well as all the samples in total. Homogeneity is important for proficiency testing (PT), also known as inter-laboratory comparison, because PT compares results from different laboratories on samples from the same product. PT samples must be homogeneous so that each lab testing them gets the same distribution of cannabinoids in their product samples.²

The testing for cannabinoid content and homogeneity does not appear to fall under the Department of Agriculture's authority related to agricultural products, and no argument was presented in the request for how the authority provided to the Department of Agriculture in Section 35-23-106, C.R.S. applies to marijuana flowers. Section 35-23-106, C.R.S. authorizes the Commission of the Department of Agriculture to establish regulations and grades for fruit vegetables, and other agriculture products. There is no definition of "other agricultural products" within Article 23 of Title 35. The Department's request makes no arguments for or against the idea that marijuana flowers fall within the "other agricultural products" category.

House Bill 15-1283 (Marijuana Reference Library and Lab Testing Access) required the Department of Public Health and Environment to develop and maintain a marijuana testing library which must contain methodologies for marijuana testing in the areas of potency, homogeneity, contaminants, and solvents. Additionally the Department must include standard sample attainment and preparation procedures for laboratory analysis. The Department of Public Health and Environment must also determine an acceptable range in variance for potency representations. The bill does not grant any authority to the Department of Agriculture for cannabinoid or homogeneity testing.

² Information provided by the Department of Public Health and Environment.

Allowable uses of the Marijuana Tax Cash Fund outlined in Section 39-28.8-501 (2) (b), C.R.S. include the marijuana laboratory testing reference library but does not include the testing of cannabinoid content or homogeneity specifically. The request did not make an argument for which purpose outlined in statute allowed for the use of funds for cannabinoid and homogeneity testing by the Department of Agriculture. Staff talked with Legal Services and they were in agreement with the staff argument that the Department of Agriculture lacked statutory to conduct the testing, and the request use of the Marijuana Tax Cash Fund did not align with statute.

**SUPPLEMENTAL REQUEST, DEPARTMENT PRIORITY #2
TECHNICAL VITAL RECORDS OPERATING CORRECTION**

	Request	Recommendation
Total	<u>\$190,000</u>	<u>\$190,000</u>
Cash Funds	190,000	190,000

Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? [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.]	YES
JBC staff and the Department agree that this request is the result of a technical error in calculating the original appropriation.	

Department Request: The Department requests \$190,000 cash funds from the Vital Statistics Records Cash Fund to correct a technical error made when annualizing H.B. 12-1041 (Electronic Death Registration System).

Staff Recommendation: Staff recommends that the Committee approve the request to correct the technical error and provide the Department with spending authority to support the ongoing maintenance costs of the system.

Staff Analysis: The request corrects a technical error made in the FY 2015-16 Long Bill which annualized out \$190,000 cash funds more than should have been for cost of the Electronic Death Registration System that was developed pursuant to H.B. 12-1041. The request includes ongoing maintenance costs of the system that are part of the contract with system vendor. Since the development costs of the system were funded through legislation, the ongoing maintenance costs were not quantified in the fiscal note because the fiscal year in which ongoing maintenance costs occurred exceed the time frame of the fiscal note. The Department's contract with the system vendor includes \$68,736 cash fund as the annual maintenance costs. There are sufficient funds in the Vital Statistics Records Cash Fund to support the ongoing costs of system maintenance. The following table summarizes how the request and recommendation was calculated.

Summary of S2 Technical Vital Records Operating Correction	
Change	Amount
HB 12-1041 Appropriation	\$665,000
FY 2013-14 Annualization of one-time cost of HB 12-1041	(190,000)
FY 2015-16 annualization of remaining H.B. 12-1041 moneys	<u>(596,264)</u>
<i>Total appropriation and annualizations below original appropriation</i>	<i>(121,264)</i>
Amount to correct annualizations	<u>\$121,264</u>
Ongoing maintenance cost	68,736
Total amount needed to correct annualizations and fund ongoing maintenance	\$190,000

SUPPLEMENTAL REQUEST, DEPARTMENT PRIORITY #3 POMPE REDUCTION

	Request	Recommendation
Total	<u>(\$483,149)</u>	<u>(\$483,149)</u>
FTE	(1.0)	(1.0)
Cash Funds	(483,149)	(483,149)

Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? [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.]	YES
JBC staff and the Department agree that this request is the result of data that was not available when the original appropriation was made.	

Department Request: The Department requests a reduction of \$483,149 cash funds from the Newborn Screening and Genetics Counseling Cash Fund and 1.0 FTE to not add the POMPE disorder to the newborn screening panel.

Staff Recommendation: Staff recommends that the Committee approve the request because of uncertainty about the stability of the Newborn Screening Cash Fund and because of the TABOR impacts a fee increase would have.

Staff Analysis: The supplemental budget request is a result of information that was not known when the FY 2015-16 Long Bill was set. At that time, the Department projected the Newborn Screening and Genetic Counseling Cash Fund would have sufficient spending authority to cover the costs associated with adding the Pompe disorder to the newborn screening panel. Since the passage of the FY 2015-16 Long Bill the Department discovered that (1) the cost of adding the disorder to the panel was approximately \$200,000 more than was budgeted for and (2) the Newborn Screening and Genetic Counseling Cash Fund did not have sufficient revenue to cover the expenses. The Department is working through what caused there to be

uncertainty with the stability of the Newborn Screening and Genetic Counseling Cash Fund. The Department estimates that two to three cases of Pompe would be identified each year if the disorder was added to the screening panel.

If the Committee wishes the Department to proceed with adding the Pompe disorder to the newborn screening panel, the fee increase to pay for the screening will be in the range of \$20 to \$30 per test. The fee is typically incorporated into the hospital bill for births and is usually paid for by insurance companies. This revenue is subject to TABOR and would increase TABOR refunds in FY 2015-16 and FY 2016-17. The request cites the revenue constraints imposed on the budget as a result of TABOR as one of the factors the Department is requesting this test not be added the newborn screening panel.

Non-prioritized Supplemental Requests

JBC STAFF-INITIATED SUPPLEMENTAL #1 H.B. 14-1360 LICENSURE FEE TECHNICAL CORRECTION

	Request	Recommendation
Total	<u>\$0</u>	<u>\$110,000</u>
Reappropriated Funds	0	110,000

Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? [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.]	YES
JBC staff and the Department agree that this request is the result of a technical error made by staff when writing the FY 2015-16 Long Bill.	

Department Request: The Department did not request this change. However, the Department is aware of and supports the staff recommendation.

Staff Recommendation: Staff recommends that the Committee approve \$110,000 reappropriated funds from the Department of Health Care Policy and Financing's Intellectual and Developmental Disabilities Services Cash Fund for the cost of new and renewal home care agency licenses for Community-Centered Boards and services provides pursuant to Section 25-27.5-106 (2) (a.5) (I) (C), C.R.S.

Staff Analysis: Section 25-27.5-106 (2) (a.5) (I) (C), C.R.S. requires that fees for new and renewal home care agency licenses for a Community-Centered Board or service agency for FY 2014-15 and FY 2015-16 be paid for from the Intellectual and Developmental Disabilities Services Cash Fund (IDD Services Fund). This requirement is part of the system capacity expansion that has occurred as a result of eliminating the waiting lists for Supported Living

Services and Children's Extensive Support Services waivers starting in 2013. Staff inadvertently annualized out this funding in the FY 2015-16 Long Bill. This supplemental corrects the error.

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
Supplemental Fleet Vehicle Request	(\$41,283)	\$0	\$0	(\$35,000)	(\$6,283)	0.0
Department's Total Statewide Supplemental Requests	(\$41,283)	\$0	\$0	(\$35,000)	(\$6,283)	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 this common policy supplemental. If staff believes there is reason to deviate from the common policy, staff will appear before the Committee later to present the relevant analysis.

JBC Staff Supplemental Recommendations - FY 2015-16
Staff Working Document - Does Not Represent Committee Decision

Appendix A: Number Pages

	FY 2014-15 Actual	FY 2015-16 Appropriation	FY 2015-16 Requested Change	FY 2015-16 Rec'd Change	FY 2015-16 Total w/Rec'd Change
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DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
Dr. Larry Wolk, Executive Director

S1 Marijuana lab proficiency testing

(3) LABORATORY SERVICES

Certification	<u>688,695</u>	<u>1,419,182</u>	<u>15,000</u>	<u>0</u>	<u>1,419,182</u>
FTE	7.8	13.5	0.0	0.0	13.5
Cash Funds	499,008	626,590	0	0	626,590
Reappropriated Funds	0	176,292	15,000	0	176,292
Federal Funds	189,687	616,300	0	0	616,300
Total for S1 Marijuana lab proficiency testing	688,695	1,419,182	15,000	0	1,419,182
<i>FTE</i>	<u>7.8</u>	<u>13.5</u>	<u>0.0</u>	<u>0.0</u>	<u>13.5</u>
Cash Funds	499,008	626,590	0	0	626,590
Reappropriated Funds	0	176,292	15,000	0	176,292
Federal Funds	189,687	616,300	0	0	616,300

JBC Staff Supplemental Recommendations - FY 2015-16
Staff Working Document - Does Not Represent Committee Decision

	FY 2014-15 Actual	FY 2015-16 Appropriation	FY 2015-16 Requested Change	FY 2015-16 Rec'd Change	FY 2015-16 Total w/Rec'd Change
S2 Vital records operating technical correction					
(2) CENTER FOR HEALTH AND ENVIRONMENTAL INFORMATION					
(B) Health Statistics and Vital Records					
Operating Expenses	773,366	266,394	190,000	190,000	456,394
Cash Funds	525,131	72,794	190,000	190,000	262,794
Federal Funds	248,235	193,600	0	0	193,600
Total for S2 Vital records operating technical correction	773,366	266,394	190,000	190,000	456,394
<i>FTE</i>	0.0	0.0	0.0	0.0	0.0
Cash Funds	525,131	72,794	190,000	190,000	262,794
Federal Funds	248,235	193,600	0	0	193,600

JBC Staff Supplemental Recommendations - FY 2015-16
Staff Working Document - Does Not Represent Committee Decision

	FY 2014-15 Actual	FY 2015-16 Appropriation	FY 2015-16 Requested Change	FY 2015-16 Rec'd Change	FY 2015-16 Total w/Rec'd Change
S3 POMPE reduction					
(3) LABORATORY SERVICES					
Chemistry and Microbiology Personal Services	4,510,873	4,373,167	(62,496)	(62,496)	4,310,671
FTE	58.6	50.2	(1.0)	(1.0)	49.2
General Fund	766,746	401,935	0	0	401,935
Cash Funds	2,092,814	2,568,783	(62,496)	(62,496)	2,506,287
Reappropriated Funds	58,748	152,706	0	0	152,706
Federal Funds	1,592,565	1,249,743	0	0	1,249,743
Chemistry and Microbiology Operating Expenses	3,791,809	4,533,618	(420,653)	(420,653)	4,112,965
General Fund	321,389	321,389	0	0	321,389
Cash Funds	2,600,960	3,357,653	(420,653)	(420,653)	2,937,000
Reappropriated Funds	4,752	179,676	0	0	179,676
Federal Funds	864,708	674,900	0	0	674,900
Total for S3 POMPE reduction	8,302,682	8,906,785	(483,149)	(483,149)	8,423,636
FTE	<u>58.6</u>	<u>50.2</u>	<u>(1.0)</u>	<u>(1.0)</u>	<u>49.2</u>
General Fund	1,088,135	723,324	0	0	723,324
Cash Funds	4,693,774	5,926,436	(483,149)	(483,149)	5,443,287
Reappropriated Funds	63,500	332,382	0	0	332,382
Federal Funds	2,457,273	1,924,643	0	0	1,924,643

JBC Staff Supplemental Recommendations - FY 2015-16
Staff Working Document - Does Not Represent Committee Decision

	FY 2014-15 Actual	FY 2015-16 Appropriation	FY 2015-16 Requested Change	FY 2015-16 Rec'd Change	FY 2015-16 Total w/Rec'd Change
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HB 14-1360 technical correction

(10) HEALTH FACILITIES AND EMERGENCY MEDICAL SERVICES DIVISION

(B) Health Facilities Programs

Home and Community Survey	<u>1,348,999</u>	<u>1,537,195</u>	<u>110,000</u>	<u>1,647,195</u>
FTE	16.3	14.4	0.0	14.4
General Fund	63,409	72,121	0	72,121
Cash Funds	1,180,225	1,465,074	0	1,465,074
Reappropriated Funds	105,365	0	110,000	110,000

Total for HB 14-1360 technical correction	1,348,999	1,537,195	110,000	1,647,195
FTE	<u>16.3</u>	<u>14.4</u>	<u>0.0</u>	<u>14.4</u>
General Fund	63,409	72,121	0	72,121
Cash Funds	1,180,225	1,465,074	0	1,465,074
Reappropriated Funds	105,365	0	110,000	110,000

Totals Excluding Pending Items					
PUBLIC HEALTH AND ENVIRONMENT					
TOTALS for ALL Departmental line items	511,491,773	537,848,222	(278,149)	(183,149)	537,665,073
FTE	<u>1,257.5</u>	<u>1,289.3</u>	<u>(1.0)</u>	<u>(1.0)</u>	<u>1,288.3</u>
General Fund	58,409,399	47,587,694	0	0	47,587,694
General Fund Exempt	0	427,593	0	0	427,593
Cash Funds	144,334,516	158,144,049	(293,149)	(293,149)	157,850,900
Reappropriated Funds	33,137,350	37,535,004	15,000	110,000	37,645,004
Federal Funds	275,610,508	294,153,882	0	0	294,153,882