MEMORANDUM

JOINT BUDGET COMMITTEE

TO	Joint Budget Committee
FROM	Eric Kurtz, JBC Staff (303-866-4952)
DATE	September 20, 2017
SUBJECT	Senate Bill 17-267

This memo provides a summary of S.B. 17-267, followed by items for discussion about the implementation of the bill. The summary focuses on the programs and entities that receive a benefit from the bill and simplifies or omits some details about the mechanics of the financing. For a more detailed summary, the final Legislative Council Staff Fiscal Note is an excellent resource and can be accessed here:

http://leg.colorado.gov/sites/default/files/documents/2017A/bills/fn/2017a_sb267_f1.pdf

The estimates in this summary are based on the assumptions in the Legislative Council Staff Fiscal Note at the time the bill passed. In a separate document, near to the time when the September forecast is released, Legislative Council Staff will be providing an update to assumptions based on the September forecast.

SUMMARY OF THE BILL

1 Hospitals - The bill repeals the Hospital Provider Fee and creates the Healthcare Affordability and Sustainability (HAS) Fee. The HAS Fee is designated as an enterprise for purposes of the Taxpayer's Bill of Rights (TABOR). This allows the bill to reverse a $264.1 million restriction on provider fee revenues that was made in S.B. 17-256 without increasing the General Fund obligation for a TABOR refund. In future years, revenues from the HAS Fee can grow without any impact on General Fund obligations for a TABOR refund.

2 State Buildings and Transportation – The bill requires the state to execute lease purchase agreements for state buildings in increments of up to $500 million per year in FYs 2018-19 through 2021-22 (up to $2 billion in total). The first $120 million from FY 2018-19 proceeds is allocated for the construction and maintenance of state buildings and the remainder (up to $1.88 billion) is allocated to transportation projects, with 25.0 percent of the transportation funds earmarked for counties with a population of less than 50,000. The benefit for transportation is somewhat offset by the termination of transfers from the General Fund to the Highway Users Tax Fund of $160.0 million each in FY 2018-19 and in FY 2019-20 that were scheduled to occur pursuant to S.B. 17-262. Annual payments on the lease purchase agreements are capped at $150.0 million, with up to $100.0 million coming from the General Fund and up to $50.0 million coming from the State Highway Fund (or other legal sources identified by the General Assembly and Transportation Commission respectively).

3 Referendum C Cap – The bill creates approximately $415.0 million in room under the Referendum C Cap in FY 2017-18 and beyond that could be filled by revenue from other sources, including the General Fund, provided there are sufficient additional revenues. This is the net result of the following:
   a. By repealing the Hospital Provider Fee and designating the HAS Fee as an enterprise, the bill removes an estimated $584.9 million[1] in revenue from under the Referendum C Cap;
   b. A separate provision of the bill reduces the Referendum C cap by $200.0 million; and
   c. The bill exempts retail (recreational) marijuana from the 2.9 percent state sales tax, which is subject to TABOR, and increases the retail marijuana special sales tax, which is exempt from TABOR, thereby removing another estimated $30.1 million in revenue from under the Referendum C Cap, based on the Legislative Council Staff Fiscal Note.

4 Department Budgets – The bill requires state departments, other than the departments of Education and Transportation, that submit budget requests to the Office of State Planning and Budgeting (OSPB) to propose a budget that is at least 2.0 percent lower than the budget in FY 2017-18. The requirement does not apply to departments with elected officials that submit budget requests directly to the General Assembly. The bill requires OSPB to "strongly consider" these proposals in preparing the budget request submitted to the General Assembly.

5 Schools – The bill increases the special sales tax on retail (recreational) marijuana and allocates a portion of the increased revenue to schools. In FY 2017-18, $30.0 million from increased retail marijuana taxes is transferred to the State Public School Fund for rural schools. In FY 2018-19 and beyond, 12.59 percent of the additional retail marijuana tax revenue retained by the state is allocated for the state's share of total program (estimated in the Legislative Council Staff Fiscal Note at $19.7 million). There is no explicit requirement in the bill that the money for total program be used for rural schools, or that it supplement, rather than supplant, the General Fund.

6 Business Personal Property Taxes – The bill replaces an existing temporary tax credit for business personal property taxes that was set to expire after 2019 with a more generous permanent tax credit beginning in 2019. The old tax credit was limited to businesses with personal property tax values of $15,000 or less, adjusted for inflation, while the new credit applies to the first $18,000 in value regardless of the total value of the business personal property. The Legislative Council Staff Fiscal Note estimated this change would cause a net increase in tax credits of approximately $20.0 million by FY 2019-20.

7 General Fund - The bill increases the special sales tax on retail (recreational) marijuana and from the increased revenues a portion is transferred to schools (discussed above), a portion is transferred to the Marijuana Tax Cash Fund (roughly equal to the lost revenue to that fund due to exempting retail marijuana from the 2.9% state sales tax), and a portion is left in the General Fund. The Legislative Council Staff Fiscal Note estimated that the portion remaining in the General Fund after transfers would be $9.7 million in FY 2017-18, $24.3 million in FY 2018-19, and $25.3 million in FY 2019-20.

8 Senior Homestead Exemption and Disabled Veterans Property Tax Exemption – The bill specifies that reimbursements to local governments from the state for property tax exemptions for qualifying seniors and disabled veterans are a TABOR refund mechanism in years when a refund is required.

9 Medicaid – Copayments for Medicaid for pharmacy and hospital outpatient services are required to double as of January 1, 2018, except that copayments may not exceed federal maximums. The Legislative

[1] This is $600.6 million in projected revenues, after the $264.1 million restriction imposed by SB. 17-256, less administrative expenses. Payments from the enterprise to the Department of Healthcare Policy and Financing for administration are assumed to be subject to the TABOR limit.

Council Staff Fiscal Note estimated the annual Medicaid savings when fully implemented in FY 2018-19 would be $4.4 million, including $768,082 General Fund.

10 Healthcare Delivery System Reform Incentive Program – The bill requires the new Colorado Healthcare Affordability and Sustainability Enterprise, in cooperation with the Department of Health Care Policy and Financing, to seek federal waivers to fund incentive payments, beginning no sooner than October 1, 2019, to improve health access and outcomes through care coordination, integration of physical and behavioral health services, chronic condition management, targeted population health, and data-driven accountability and outcome management.

11 Children with Complex Medical Conditions – Subject to available appropriations, the bill requires the Department of Health Care Policy and Financing to seek any federal approval necessary for an enhanced pediatric health home for children with complex medical conditions, consistent with the federal Advancing Care for Exceptional (ACE) Kids Act, within 120 days of federal enactment. As of this memo, Congress had not passed the ACE Kids Act.

12 Conservation Easement Tax Credits – As a byproduct of eliminating the projected TABOR refund, the bill triggers an existing statutory provision that converts conservation easement tax credits from refundable to nonrefundable. The Legislative Council Staff Fiscal Note projected this would increase General Fund revenues by $2.5 million in FY 2017-18 and $4.9 million in FY 2018-19.

ISSUES FOR DISCUSSION

SPECIAL DISTRICT TAXATION OF MARIJUANA

In many cases the sales tax base for local governments is tied to the goods and services that are taxed by the state. In S.B. 17-256 retail (recreational) marijuana is exempted from the 2.9 percent state sales tax. For the state, the lost revenue is more than offset by an increase in the retail marijuana special sales tax rate from 8.0 percent to 15.0 percent. For local governments, the bill contains a provision that counties and municipalities will continue to collect local sales taxes on retail marijuana, unless the county or municipality chooses to implement their own exemption. However, this provision of the bill only applies to counties and municipalities and not to special districts. Some special district sales tax bases are tied to the state sales tax base and so these districts will lose revenue.

Legislative Council Staff has identified the special districts below where the district currently levies a local sales tax, the local sales tax base is tied to the state sales tax base, and there are currently retail marijuana sales. Where available, an estimate of the annual lost revenue to the special district is provided. The estimates are from Legislative Council Staff and may not match estimates from the special districts.

- Regional Transportation District ($7.1 million)
- Scientific and Cultural Facilities District ($710,000)
- Montezuma Hospital District (Not estimated)
- Summit Combined Housing Authority (Not estimated)
- Roaring Fork Regional Transportation Authority ($142,700)
- Gunnison Valley Regional Transportation Authority ($69,050)

- San Miguel Authority for Regional Transportation ($11,250)
- Pikes Peak Regional Transportation Authority (Not estimated)

There are many other special districts that could be affected if they begin assessing a sales tax, or if marijuana sales begin in the special district.

The General Assembly could consider legislation to allow special districts to collect local sales taxes on retail marijuana. This is the issue that the Governor included in the call for the special session that begins October 2, 2017.

TWO PERCENT DEPARTMENT BUDGET REDUCTIONS

The bill requires the Office of State Planning and Budgeting (OSPB) to "strongly consider" the 2.0 percent budget reductions submitted by departments, but the Governor is not required to incorporate these reductions into the budget request submitted to the General Assembly. For reductions not included in the budget request, it is not clear whether the executive branch will make those proposals available to the General Assembly, or keep them private on the grounds that they are work product and not public documents. At the time of this memo, OSPB staff indicated that they were considering both options and a final decision had not been made.

The JBC could consider legislation to require that the 2.0 percent budget reductions submitted by departments be made public. The JBC could consider asking departments with elected officials that do not submit budgets through OSPB to also propose 2.0 percent reductions.

HEALTHCARE AFFORDABILITY AND SUSTAINABILITY (HAS) FEE CONTINUOUSLY APPROPRIATED

The bill makes revenue from the HAS Fee continuously appropriated to the enterprise. This delegates decision making to the enterprise over the uses of the funds for the allowable purposes, which include hospital reimbursements, expansion populations, and administration. For hospital reimbursements and the expansion populations the enterprise would need to fund eligibility, benefits, and provider payments within the parameters from statutes, the Medical Services Board, and the federal Centers for Medicare and Medicaid Services, and so practically speaking the additional flexibility for the enterprise might be small. However, the JBC staff may not be anticipating all scenarios, and there might be circumstances when the enterprise would have significant flexibility to act in unanticipated ways within these outside parameters. For administration the Hospital Provider Fee expenses were controlled by the General Assembly through the annual appropriation process, and so making the HAS Fee funds continuously appropriated delegates significant authority to the enterprise to spend for administration in different amounts and/or in different ways than what was allowable under the Hospital Provider Fee.

For FY 2017-18, and only FY 2017-18, the bill requires the Medical Services Board to establish the HAS Fee to generate revenue approximately equal to the sum of appropriations. Thus, for FY 2017-18 the bill includes appropriations from the HAS Fee. However, for FY 2018-19 and beyond, it is not clear whether the executive branch will (a) propose that appropriations be made from the HAS Fee, or (b) propose that the money be off budget, since it is continuously appropriated by statute. If no appropriations are made, then the expenditures associated with the enterprise, such as those for hospital reimbursements, expansion populations, and administration, would not be reported or accounted for through the budget process. If appropriations are made, the appropriations would be informational only (designated by an "(I)" notation in the Long Bill), because the money is continuously appropriated by statute. An informational appropriation in the Long Bill would be merely a suggestion to the enterprise and not binding.

No purpose is provided in the bill for why the HAS Fee is continuously appropriated to the enterprise. Continuous spending authority is not part of the test for whether an entity qualifies as an enterprise under TABOR and there are examples of TABOR enterprises where the funds are subject to annual appropriation, such as the Parks and Wildlife enterprise and the higher education enterprises.

The JBC could consider legislation to make the revenue from the HAS Fee subject to annual appropriation.

BALANCING SCHOOL FINANCE

It is unclear how the General Assembly would balance school finance with the additional revenue allocated by the bill to the state's share of total program. Beginning in FY 2018-19 the bill requires that 12.59 percent of additional retail marijuana tax revenues retained by the state be transferred to the State Public School Fund, and then the bill makes a statutory appropriation of this money to the Department of Education for the state's share of the total program. In the middle of the fiscal year, when the General Assembly is truing up appropriations for school finance, the actual additional revenues from retail marijuana will not be known. If the General Assembly estimates the additional retail marijuana tax revenues too high, then the Department of Education will not have enough money to make payments according to the school finance formula. If the General Assembly estimates too low, the statutory appropriation of the marijuana money would mean that the Department of Education will have too much money for the school finance formula and it is unclear whether the Department of Education could spend that extra money.

The JBC could consider legislation to remove the statutory appropriation. This would maintain the transfer to the State Public School Fund, but allow the General Assembly to appropriate the money when the actual available amount is known.

CAPITAL CONSTRUCTION AND CONTROLLED MAINTENANCE

The first $120.0 million in proceeds from lease purchase agreements in FY 2018-19 must be used as follows:

- $13,006,081 for Level I controlled maintenance
- $60,637,305 for Level II controlled maintenance
- $40,209,535 for Level III controlled maintenance
- $6,147,079 for capital construction projects prioritized by the Capital Development Committee

The Capital Development Committee was required by the bill to post the list of controlled maintenance projects in levels I through III on the Capital Development Committee's web site. The funding includes all out-year phases of the projects to completion. The list of projects is available here:

http://leg.colorado.gov/sites/default/files/images/17_contmaint_proj_funded_pursuant_to_sbill_17-267.pdf

The Capital Development Committee has not yet prioritized the use of the $6.1 million for new capital construction projects. It is possible that some of the prioritized projects could have additional phases in future years. For the prioritized projects the CDC will send a letter to the Treasurer and the proceeds from the lease purchase agreements will then be directed to those projects with no further appropriation. Appropriations will be needed for the lease purchase payments.

Revenue Impact Summary Sheet for Senate Bill 17-267

Updated to Reflect September 2017 LCS Forecast

General Fund Impacts	FY 2017-18	FY 2018-19	FY 2019-20
General Fund Revenue	**$70,810,218**	**$73,214,743**	**$72,043,996**
…from increased Retail Marijuana Special Sales Tax	*70,810,218*	*80,485,392*	*87,057,715*
…from Business Personal Property Tax Credit	-	*(9,794,009)*	*(19,950,727)*
…from Conservation Easement Credit Refundability	-	*2,523,360*	*4,937,008*
General Fund Transfers	**$60,646,557**	**($104,748,580)**	**($100,236,827)**
…to State Highway Fund	-	*(160,000,000)*	*(160,000,000)*
…to Marijuana Tax Cash Fund	*30,646,557*	*34,833,957*	*37,678,449*
…to State Public School Fund	*30,000,000*	*20,417,462*	*22,084,723*
General Fund Expenditures	**($320,035)**	**($171,721,369)**	**($98,046,454)**
…for lease payments	-	*9,000,000*	*25,000,000*
…for Medicaid copayments	*(320,035)*	*(768,082)*	*(844,890)*
…for implementation of tax policy changes	-	-	*56,304*
…for TABOR refunds		*(179,953,287)*	*(122,257,867)*
Change in General Fund Position	**$10,483,696**	**$349,684,692**	**$270,327,277**

State Highway Fund Impacts			
SHF Revenue from Lease-Purchase Agreements	-	$380,000,000	$500,000,000
SHF Transfers from General Fund	-	(160,000,000)	(160,000,000)
SHF Expenditures for Lease Payments	-	28,500,000	50,000,000
Change in SHF Position	-	**$191,500,000**	**$290,000,000**

Healthcare Affordability and Sustainability Fee Cash Fund Impacts *(presented relative to Hospital Provider Fee Cash Fund)*			
Healthcare Affordability Fee Cash Fund Revenue	$264,100,000	-	-
Healthcare Affordability Fee Cash Fund Expenditures	$264,035,165	($155,605)	($171,165)
…attributable to enterprise creation	*264,100,000*	-	-
…for Medicaid copayments	*(64,835)*	*(155,605)*	*(171,165)*
Change in Healthcare Affordability Fund Position	**$64,835**	**$155,605**	**$171,165**

Marijuana Tax Cash Fund Impacts			
MTCF Revenue from 2.9% State Sales Tax	($29,628,581)	($33,676,890)	($36,426,897)
MTCF Transfers from General Fund	30,646,557	34,833,957	37,678,449
Change in MTCF Position	**$1,017,976**	**$1,157,068**	**$1,251,552**

State Public School Fund Impacts			
SPSF Transfers from General Fund	$30,000,000	$20,417,462	$22,084,723
SPSF Expenditures for School Funding	30,000,000	20,417,462	22,084,723
Change in SPSF Position	-	-	-

Capital Construction and Controlled Maintenance Impacts			
Revenue from Lease-Purchase Agreements	-	$120,000,000	-
Expenditures for Controlled Maintenance	-	113,852,921	-
Change in Amount for Capital Construction	-	**$6,147,079**	-

Source: Senate Bill 17-267, Senate Bill 17-256, and September 2017 Legislative Council Staff Forecast.
Prepared by Legislative Council Staff, September 2017.