

JOINT BUDGET COMMITTEE



STAFF BUDGET BRIEFING FY 2022-23

MARIJUANA POLICY OVERVIEW

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A ADDITIONAL RESOURCES

Brief summaries of all bills that passed during the 2020 and 2021 legislative sessions that had a fiscal impact are available in Appendix A of the annual Appropriations Report available at this link: https://leg.colorado.gov/sites/default/files/fy21-22apprept_0.pdf

The online version of the briefing document may be found by searching the budget documents on the General Assembly’s website by visiting leg.colorado.gov/content/budget/budget-documents. Once on the budget documents page, select “Marijuana” under *Department/Topic*, “Briefing” under *Type*, and ensure that *Start date* and *End date* encompass the date a document was presented to the JBC.

MARIJUANA POLICY OVERVIEW

LEGAL AND REGULATORY OVERVIEW

Marijuana was legalized in Colorado through the passage of two citizen ballot initiatives that amended the State Constitution. In 2000, voters passed an initiative¹ that added Section 14 to Article XVIII, authorizing the medical use of marijuana for persons suffering from debilitating medical conditions. In 2012, voters passed a second initiative² that added Section 16 to Article XVIII, authorizing personal use of marijuana.

The General Assembly has passed legislation to implement the constitutional provisions adopted by voters. The most significant statutory provisions concerning marijuana include:

- Colorado Marijuana Code [Section 44-10-101 et. seq., C.R.S.]³
- Taxes on Marijuana and Marijuana Products [Section 39-28.8-101 et seq., C.R.S.]

Two state agencies are primarily responsible for implementing the above laws: the Department of Revenue and the Department of Public Health and Environment.

The **Department of Revenue** has two general areas of responsibility:

- First, the Department's Executive Director is the "State Licensing Authority," charged with regulating and controlling the licensing of the cultivation, manufacture, distribution, and sale of medical and retail⁴ marijuana. These duties are performed with the assistance of the Department's Marijuana Enforcement Division and are supported by medical and retail marijuana business fees that are credited to the *Marijuana Cash Fund*⁵. These regulatory functions include:
 - Establishing and enforcing rules and regulations for the marijuana industry.
 - Administering the marijuana inventory seed-to-sale tracking system (METRC).
 - Issuing licenses to medical and retail marijuana businesses (including stores, cultivations, and testing facilities), and issuing occupational licenses to those seeking employment in the marijuana industry.
 - Administering caregiver cultivation registration.
 - Approving responsible vendor training programs.
- Second, the Department collects, administers, and enforces state taxes and fees related to marijuana and marijuana products. This includes the distribution of a portion of the special sales tax on retail marijuana to local governments. These activities are supported by medical and retail marijuana sales tax revenues that are credited to the *Marijuana Tax Cash Fund*.

¹ Amendment 20 was adopted with 915,943 (53.5 percent) voting for the measure.

² Amendment 64 was adopted with 1,383,140 (55.3 percent) voting for the measure.

³ Senate Bill 19-224 integrates the previously existing Colorado Medical Marijuana Code and Colorado Retail Marijuana Code into a single "Colorado Marijuana Code" in Article 10 of Title 44, C.R.S.

⁴ While marijuana that is sold for personal use as authorized by Amendment 64 is often called "recreational" marijuana, the statutory provisions that implement Amendment 64 use the term "retail" marijuana. Staff has generally used the term "retail" for purposes of this document.

⁵ Actual business fee and fine revenues collected and credited to this fund, along with associated interest and other adjustments, totaled \$12,292,465 in FY 2020-21.

The **Department of Public Health and Environment** administers portions of the medical marijuana program, including:

- Administering the medical marijuana registry (which tracks patients, caregivers, and physician recommendations) and distributing medical marijuana cards.
- Coordinating inspection of retail marijuana lab testing facilities.
- Administering education and prevention campaigns to educate the public and visitors on the parameters of safe, legal, and responsible marijuana use.
- Monitoring marijuana use patterns, health impacts, and research on marijuana's health effects.
- This department's regulatory activities are supported by fees paid by patients seeking medical marijuana cards that are credited to the *Medical Marijuana Program Cash Fund*⁶, and the remaining activities are supported by medical and retail marijuana sales tax revenues that are credited to the *Marijuana Tax Cash Fund*.

Other state agencies that perform key functions related to marijuana legalization include the following:

- The **Department of Agriculture** determines and monitors allowable pesticides for use on cannabis plants. This department also administers registration for commercial industrial hemp growers and administers industrial hemp inspection, sampling, and testing.
- The **Governor's Office** coordinates the Executive Branch response to the legalization of marijuana, including strategic planning and budget coordination.
- The **Department of Law** provides training for peace officers concerning various legal issues related to marijuana legalization. This department also provides legal clarification and guidance for state agencies and district attorneys concerning marijuana legalization.
- The **Department of Public Safety** enforces criminal marijuana laws, and collects and analyzes data concerning the impacts of marijuana legalization.
- The **Department of Regulatory Agencies** administers disciplinary proceedings concerning physicians who inappropriately recommend medical marijuana in excess, for a profit, or without medical necessity. This department is also responsible for approving applications for charter marijuana financial services cooperatives.
- The **Department of Transportation** administers impaired driving public education campaigns, including those related to marijuana use. This department also administers and certifies Colorado law enforcement officers in advanced impaired driving training and in the detection of drivers impaired by drugs other than alcohol.

Finally, local governments also have a role in regulating marijuana. Cities and counties may prohibit or place limits on the sale of medical and retail marijuana in their jurisdictions, including the number and location of businesses as well as hours of operation. Cities and counties may establish land use restrictions concerning marijuana businesses, cultivation, and operations. Local jurisdictions may also impose and collect their own sales or excise tax on retail marijuana. However, each local government is responsible for collecting, administering, and enforcing local marijuana taxes.

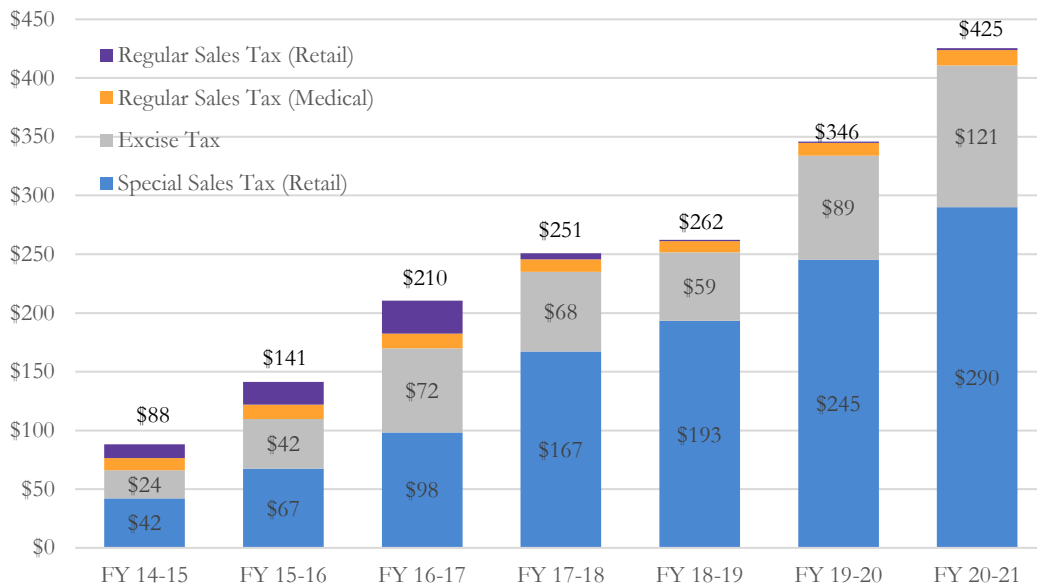
⁶ Actual patient fee revenues collected and credited to this fund, along with associated interest and other adjustments, totaled \$2,282,609 in FY 2020-21.

TAX POLICY AND REVENUE OVERVIEW

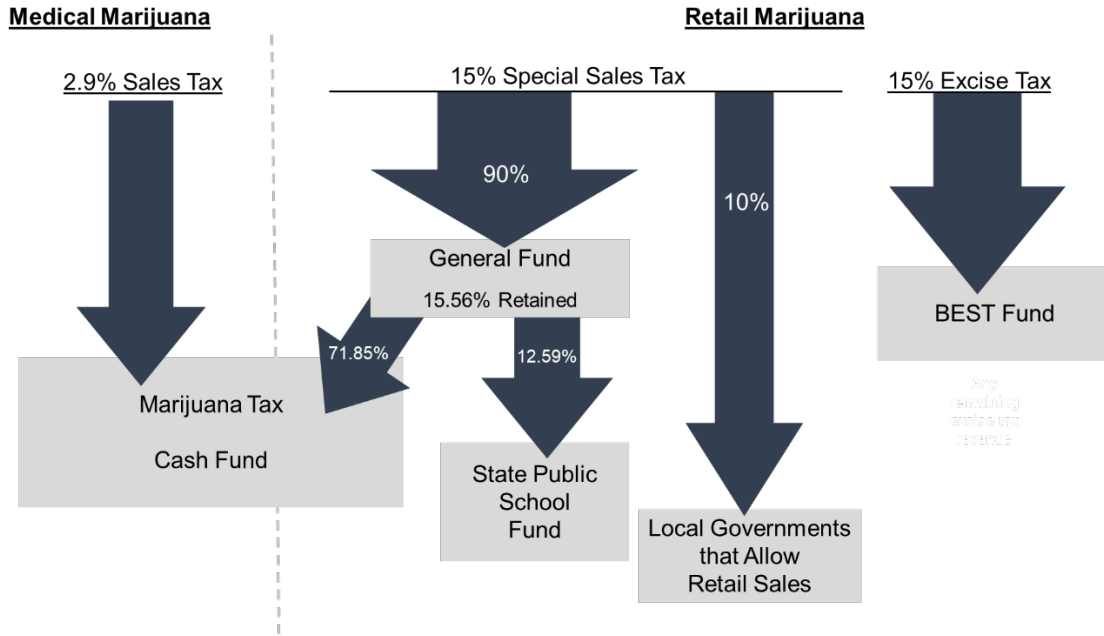
The State collects three types of taxes on marijuana products: (1) a special sales tax on retail marijuana, which accounts for the majority of annual marijuana tax revenues; (2) an excise tax on wholesale transfers of retail marijuana that supports uses related to K-12 education; and (3) the State’s regular sales tax, which applies to medical marijuana and some non-marijuana products.

In FY 2020-21, the state collected a total of \$426.3 million in marijuana tax revenues from those three taxes, with the special sales tax accounting for \$290.0 million (68.0 percent of the total revenues). The excise tax added another \$120.8 million (28.3 percent of the total). Regular sales tax revenues provided \$15.5 million (3.6 percent). As shown in the following graphic, marijuana-related revenues have grown significantly since the legalization of retail marijuana, with special sales tax revenues driving much of the increase.

Marijuana special sales taxes have driven much of the increase in marijuana tax revenues (\$ in millions).



The following graphic (designed by Legislative Council Staff) illustrates the allocation of state tax revenues related to marijuana. Please note that for FY 2020-21 only, H.B. 20-1418 (School Finance) diverted all marijuana excise tax revenues collected above the first \$40.0 million in collections to the State Public School Fund rather than the Public School Capital Construction Assistance (BEST) Fund as a budget balancing measure. A discussion of each type of tax and the allocation of the associated tax revenue follows the graphic.



In FY 2020-21, the State allocated the total of \$426.3 million in marijuana tax revenue collections as follows:

- \$203.0 million (47.6 percent) was credited to the MTCF and made available for appropriation for a variety of purposes.
- \$153.6 million (36.0 percent) was allocated to three funds that support K-12 education, including \$120.8 million in excise taxes and \$32.9 million originating as special sales taxes.
- \$29.0 million (6.8 percent) was distributed to local governments.
- \$40.6 million (9.5 percent) was retained in the General Fund.

Special Sales Tax (\$290.0 million in FY 2020-21 and 68.0 percent of marijuana taxes)

The **15.0 percent special sales tax** applies to retail marijuana sales (but not medical marijuana) and represents the largest source of marijuana-related tax revenue. Proposition AA, which the voters approved in 2013, authorized the state to levy up to a 15.0 percent special sales tax. The State initially chose to levy a tax of 10.0 percent, beginning January 1, 2014. However, S.B. 17-267 increased that rate to 15.0 percent beginning July 1, 2017, and exempted retail marijuana from the regular state sales tax, which is discussed below. With the increased tax rate and increasing retail sales, special sales tax revenues have grown significantly, from \$67.3 million in FY 2015-16 (the first full fiscal year of collections) to \$290.0 million in FY 2020-21.

Statute (see Sec. 39-28.8-203, C.R.S.) allocates 10.0 percent of total special sales tax collections to local governments based on the percentage of such revenues collected within the boundaries for each local government and allocates the remaining 90.0 percent state share of special sales tax revenues among three funds (percentages shown represent shares of the money actually retained by the State):

- 71.85 percent to the *MTCF* which is then available for appropriation or transfer for a variety of uses. Subsequent sections of this document provide more detail on the status and uses of the MTCF.

- 12.59 percent to the State Public School Fund to support school finance (this revenue is available in the year after it is collected).⁷
- 15.56 percent to the General Fund.

Excise Tax (\$120.8 million in FY 2020-21 and 28.3 percent of marijuana taxes)

A **15.0 percent marijuana excise tax** (also authorized by Proposition AA) applies to the wholesale price of the product being sold or otherwise transferred from a retail marijuana cultivation facility. For certain transfers between unaffiliated businesses, the tax applies to the contract price for the transfer. For transfers between affiliated businesses, the tax applies to an “average market rate” (AMR) set by the Department of Revenue’s Office of Research and Analysis (ORA) and the Marijuana Enforcement Division (MED). The Department sets the AMR for several categories of marijuana product based on the median price for recent transactions (for example, transactions between June 1, 2021, and August 31, 2021, determined the rate for October 1, 2021, through December 31, 2021, shown in Table 1 below).⁸

PRODUCT CATEGORY	DETAILED DESCRIPTION	PRICE	MEASUREMENT
Retail bud	Product in the flowering stage	\$1,316	pound
Retail trim	Any part of a plant other than the bud or wet whole plant	\$425	pound
Retail immature plant	Nonflowering plant no larger than 8 inches tall or wide	\$10	plant
Wet whole plant	A plant that is cut off just above the roots and is not trimmed, dried, or cured. The plant must be weighed within two hours of being harvested.	\$181	pound
Seed	Seeds of the marijuana plant	\$3	seed
Trim allocated for extraction	Trim that is designated for the extraction of retail marijuana concentrate and not for direct sale to consumers	\$302	pound
Bud allocated for extraction	Bud that is designated for the extraction of retail marijuana concentrate and not for direct sale to consumers	\$405	pound

According to the Department of Revenue, a majority (roughly 57 percent in FY 2020-21) of excise tax revenues are driven by the AMR rather than contract pricing. As a result, changes in the AMR can significantly affect revenues. The AMR has fluctuated over time (e.g., the AMR for “retail bud” decreased from \$2,007 per pound in January 2015 to a low of \$759 per pound in October 2018 but now stands at \$1,316 per pound). In addition, the Department has added additional categories of product, such as bud and trim allocated for extraction (added in January 2018), to reflect changes in the market. In large part as a result of the changes in AMR, excise tax revenues decreased from \$71.4 million in FY 2016-17 to \$58.4 million in FY 2018-19 even as sales of marijuana increased. However, with increases in both the AMR and in marijuana sales, excise tax revenues rebounded to \$81.1 million

⁷ Prior to FY 2019-20, these funds were statutorily appropriated to the Department of Education for school finance in the year in which the revenues were collected. Pursuant to H.B. 18-1101 [Section 22-54-139 (3), C.R.S.], starting with the FY 2019-20 budget year the General Assembly may appropriate all or any portion of the marijuana sales tax proceeds that are transferred to the State Public School Fund during the prior budget year. Thus, these revenues are now subject to annual appropriation and may be distributed to school districts in a fiscal year following the fiscal year in which the revenue is received.

⁸ Current average market rates and a description of the Department’s methodology are available at: <https://www.colorado.gov/pacific/tax/marijuana-AMR>

in FY 2019-20 and increased again to \$120.8 million in FY 2020-21. Both of the September 2021 revenue forecasts (LCS and OSPB) anticipate continued increases in excise tax revenues going forward, although LCS is projecting larger increases than OSPB.

Pursuant to Amendment 64, the State Constitution requires the transfer of the first \$40.0 million of annual marijuana excise tax revenues to the *Public School Capital Construction Assistance Fund (PSCCAF)*.⁹ Money in this fund helps pay for local K-12 school construction projects through the Building Excellent Schools Today (BEST) program, which is administered through the Department of Education. While the State Constitution specifies that the first \$40.0 million in excise tax revenues will support BEST, the General Assembly has made statutory changes to adjust the amount of excise tax revenues supporting BEST.

- For FY 2014-15 through FY 2017-18, statute transferred any *additional* excise tax collections (above \$40.0 million per year) to the *Public School “Permanent” Fund*, which is a constitutionally created trust fund that generates income to support public K-12 schools.
- Starting July 1, 2018, H.B. 18-1070 (Additional Public School Capital Construction Funding) required the transfer of 90.0 percent of excise tax revenues to support the BEST Program.¹⁰
- Beginning in FY 2019-20, H.B. 19-1055 (Public School Capital Construction Financial Assistance) transfers *all* marijuana excise tax revenues to the PSCCAF, thereby eliminating deposits of excise tax revenues to the Permanent Fund.
- Finally, *for FY 2020-21 only*, H.B. 20-1418 (School Finance) diverted all excise tax above the first \$40.0 million to the State Public School Fund, making those revenues available for appropriation to support school finance (rather than BEST) in FY 2021-22. This provision diverted \$80.8 million to the State Public School Fund in FY 2020-21.

From FY 2013-14 through FY 2020-21, the State has collected a total of \$466.1 million from marijuana excise tax revenue, directing \$317.7 million to the PSCCAF¹¹, \$67.6 million to the Permanent Fund, and the \$80.8 million to the State Public School Fund in FY 2020-21.

Regular Sales Tax (\$15.5 million in FY 2020-21 and 3.6 percent of marijuana taxes)

Finally, the State’s **2.9 percent regular state sales tax** (2.9 percent) applies to sales of both medical marijuana and non-marijuana products sold by marijuana stores (e.g., t-shirts and other novelty items). As noted above, retail marijuana has been exempt from this tax since July 1, 2017, as a result of S.B. 17-267 (which also increased the special sales tax rate from 10.0 percent to 15.0 percent as of that date).

Current statute credits all general sales tax revenue related to marijuana to the *Marijuana Tax Cash Fund (MTCF)* to support a variety of state programs and services. However, with retail marijuana exempt from the regular sales tax, this tax is now a relatively minor share of marijuana-related tax revenue (representing 3.6 percent of total marijuana tax collections in FY 2020-21).

TABOR Implications

⁹ See Article XVIII, Section 16 (5)(d), of the State Constitution.

¹⁰ The bill specifically required the transfer of the greater of 90.0 percent of excise tax revenues or \$40.0 million.

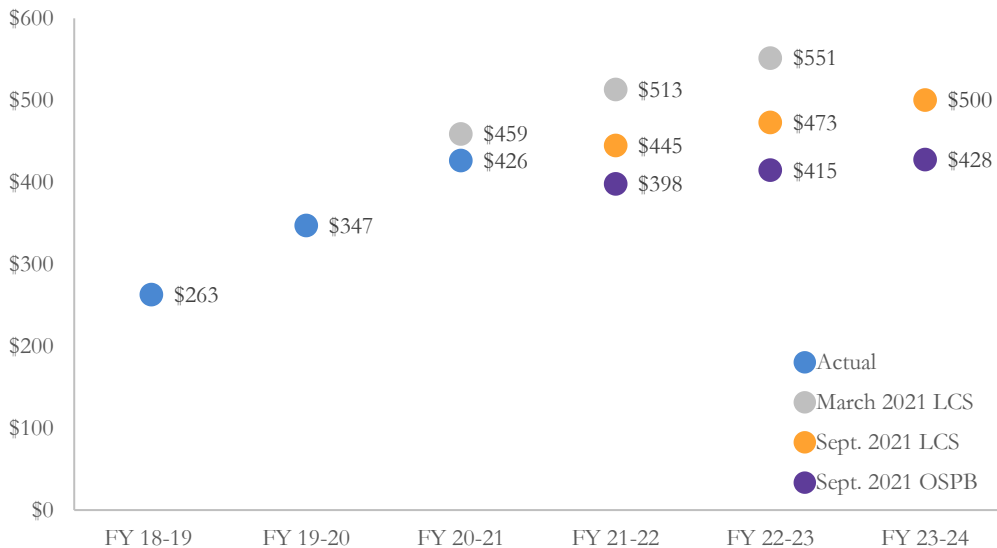
¹¹ This amount excludes an additional \$40.0 million that was transferred to the Public School Capital Construction Assistance Fund from the Proposition AA Refund Account in FY 2015-16, pursuant to voter approval of Proposition BB. The source of this funding was sales tax revenues, rather than excise tax revenues.

Please note that the 15.0 percent special sales tax and the 15.0 percent excise tax are not subject to the limitation on state fiscal year spending imposed by Article X, Section 20, of the State Constitution (the Taxpayer’s Bill of Rights or TABOR)¹². However, the regular (2.9 percent) state sales tax revenue collected by medical marijuana centers and retail marijuana stores is subject to TABOR. In addition, the fees and fines paid by retail and medical marijuana businesses and the fees paid by medical marijuana patients are subject to TABOR. For FY 2020-21, the marijuana-related tax and fee revenue that is subject to TABOR totaled \$26.8 million (including \$14.6 million in sales tax revenue and \$12.2 million in fee revenue).

MARIJUANA REVENUE OUTLOOK

Looking toward the 2022 Session, the Committee should note that marijuana revenue projections have decreased since the General Assembly finalized the FY 2021-22 budget. The March 2021 LCS revenue forecast anticipated robust growth in marijuana tax revenues through FY 2022-23, continuing the levels of growth seen during FY 2019-20 and FY 2020-21. However, as shown in the following chart, both staff agencies’ September revenue forecasts now anticipate either slower growth (in the case of LCS) or an actual decline in FY 2021-22 (OSPB) followed by modest growth in subsequent years.

Anticipated marijuana tax revenues have decreased since the March 2021 revenue forecast (\$ in millions).



As is discussed in the second issue brief in this document, current estimates of special sales tax collections that support the MTCF would require action by the General Assembly during the 2022 session to support the fund’s current obligations and maintain the solvency of the fund in FY 2021-22. Table 2 (on the following page) shows detailed marijuana tax revenue data from FY 2017-18 through the projections for FY 2023-24 based on the September 2021 LCS revenue forecast.¹³

¹² See Sections 39-28.8-204 and 39-28.8-307, C.R.S., respectively.

¹³ As shown above, the OSPB revenue projections are lower than LCS. Staff is reflecting the LCS forecast in Table 2 because the Committee balanced to the March 2021 LCS revenue forecast for FY 2021-22.

TABLE 2
STATE TAX REVENUES RELATED TO RETAIL AND MEDICAL MARIJUANA

	ACTUALS				LCS FORECAST (9/2021)		
	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24
Proposition AA Taxes (Not Subject to TABOR)							
Total Special Sales Tax on Retail Marijuana ^a	\$167,186,831	\$193,233,174	\$245,459,193	\$290,021,000	\$303,071,945	\$325,196,197	\$346,333,950
<i>State Share of Special Sales Tax</i>	150,468,148	173,909,857	220,913,274	261,018,900	272,764,751	292,676,577	311,700,555
<i>Local Share of Special Sales Tax</i>	16,718,683	19,323,317	24,545,919	29,002,100	30,307,194	32,519,620	34,633,395
15.0 Percent Excise Tax on Retail Marijuana	67,752,967	58,498,266	88,497,457	120,779,006	126,576,398	132,448,067	138,540,678
Total Proposition AA Tax Revenues	\$234,939,798	\$251,731,440	\$333,956,650	\$410,800,006	\$429,648,343	\$457,644,264	\$484,874,628
Regular 2.9 Percent Sales Taxes (Subject to TABOR)							
Regular Sales Tax on Medical Marijuana	\$10,605,146	\$9,379,282	\$10,718,922	\$13,026,503	\$13,536,935	\$13,388,028	\$13,521,909
Regular Sales Tax on Retail Marijuana ^b	5,156,967	1,097,023	1,328,125	1,558,831	1,629,280	1,748,218	1,861,852
Interest	330,181	284,532	330,057	917,514	121,658	130,539	139,024
Total 2.9 Percent Sales Tax Revenues	\$16,092,294	\$10,760,837	\$12,377,104	\$15,502,848	\$15,287,873	\$15,266,785	\$15,522,784
Total State Taxes on Marijuana	\$251,032,092	\$262,492,277	\$346,333,754	\$426,302,854	\$444,936,216	\$472,911,049	\$500,397,413
<i>Portion Credited to Marijuana Tax Cash Fund^c</i>	<i>\$124,203,658</i>	<i>\$135,715,069</i>	<i>\$171,103,291</i>	<i>\$203,044,928</i>	<i>\$211,269,346</i>	<i>\$225,554,906</i>	<i>\$239,479,633</i>

^a Special sales tax rate was 10.0 percent through June 30, 2017, and increased to 15.0 percent effective July 1, 2017.

^b Effective July 1, 2017, the general state sales tax only applies to sales of medical marijuana and non-marijuana products (e.g., t-shirts); retail marijuana is exempt from the regular state sales tax.

^c Beginning July 1, 2017, 71.85 percent (rather than 100.0 percent) of the State share of special sales tax revenues is credited to the Marijuana Tax Cash Fund.

MARIJUANA TAX CASH FUND OVERVIEW

As discussed above, the General Assembly has established three cash funds related to marijuana legalization:

- The *Marijuana Cash Fund* consists of medical and retail marijuana business fees and fines. Money in this fund is annually appropriated to the Department of Revenue to support the Marijuana Enforcement Division.
- The *Medical Marijuana Program Cash Fund* consists of fees paid by patients seeking medical marijuana cards. Money in this fund is annually appropriated to the Department of Public Health and Environment to support the medical marijuana registry and other regulatory functions.
- The *Marijuana Tax Cash Fund* (MTCF) consists of: (a) all revenues collected from the regular state sales tax on medical marijuana and non-marijuana retail product sales and (b) a portion of special sales tax revenue that is collected on retail marijuana sales (64.665 percent of total special sales tax revenues and 71.85 percent of the revenues actually retained by the state). The General Assembly annually appropriates money in this fund to support a variety of state programs and services, including the Department of Revenue's Taxation Business Group.

The remainder of this section provides an overview of the allocation of money in the MTCF.

The General Assembly has declared its authority to appropriate marijuana tax revenue for any purpose but has also chosen to prioritize appropriations for certain purposes. Staff has provided below the relevant statutory excerpt¹⁴:

“The general assembly hereby finds and declares that the retail marijuana excise tax and sales tax created a new revenue stream for the state, and the basis of these taxes is the legalization of marijuana, which presents unique issues and challenges for the state and local governments. Thus, there is a need to use some of the sales tax revenue for marijuana-related purposes. But, as this is revenue from a tax, the general assembly may appropriate this money for any purpose.

The general assembly further declares that the new retail marijuana tax revenue presents an opportunity to invest in services, support, intervention, and treatment related to marijuana and other drugs.

Therefore, the purposes identified in this subsection (2) prioritize appropriations related to legalized marijuana, such as drug use prevention and treatment, protecting the state's youth, and ensuring the public peace, health, and safety.”

The statutory provisions that follow this declaration limit the timing, amount, and allowable uses of money in the MTCF¹⁵. With respect to **timing**:

- Prior to FY 2020-21, statute allowed for appropriations to the Department of Revenue for the year in which revenue was collected but required the General Assembly to make all other appropriations from the MTCF in fiscal years following the year of collection (e.g., revenue

¹⁴ See Section 39-28.8-501 (2)(b), C.R.S.

¹⁵ See Section 39-28.8-501 (2), C.R.S.

collected in FY 2019-20 could only support appropriations for FY 2020-21 or subsequent fiscal years).

- However, beginning in FY 2020-21, H.B. 20-1401 (Marijuana Tax Cash Fund Spending and Transfer) repealed that requirement allowing the General Assembly to appropriate MTCF revenues in the same year in which they are collected for FY 2020-21 and FY 2021-22 (see the first issue brief in this document for a discussion of a new complication for FY 2022-23). That change allowed the General Assembly to appropriate \$121.7 million from the Marijuana Tax Cash Fund *and* transfer \$137.0 million to the General Fund to assist with budget balancing for FY 2020-21. In effect, FY 2019-20 revenues supported the transfer to the General Fund while projected FY 2020-21 revenues supported most of the appropriation.
- As is discussed the issue briefs in this document, the reliance on current year revenues to support appropriations does increase the risk of appropriations exceeding available revenues. With projections of MTCF revenues for FY 2021-22 falling below the estimates used for the original appropriation, appropriations and transfers from the MTCF exceed the most recent projections of available revenues for the current fiscal year and will likely require legislative action in the 2022 Session to maintain the solvency of the MTCF.

With respect to the **amount** appropriated from the MTCF, Sec. 39-28.8-501 (5), C.R.S., limits annual appropriations from the MTCF to 93.5 percent of the “amount of moneys in the fund available for appropriation” thereby creating a 6.5 percent reserve requirement for the fund. In addition, for FY 2021-22, the General Assembly designated \$100.0 million of the MTCF fund balance as part of the TABOR emergency reserve, reducing the amount available for appropriation by that amount (see the first issue brief in this document for additional discussion of the reserve requirements).

Finally, the General Assembly has specified the following **allowable purposes** for which money in the MTCF may be appropriated:¹⁶

- (A) To *educate people about marijuana* to prevent its illegal use or legal abuse.
- (B) To provide *services for adolescents and school-aged children* in school settings or through community-based organizations.
- (C) To treat and provide related services to people with any type of substance use or mental health disorder, including those with co-occurring disorders, or to evaluate the effectiveness and sufficiency of *behavioral health services*.
- (D) For jail-based and other *behavioral health services for persons involved in or diverted from the criminal justice system*.
- (E) For state *regulatory enforcement, policy coordination, or litigation defense costs* related to retail or medical marijuana.
- (F) For *law enforcement and law enforcement training*, including any expenses for the police officers standards and training board training or certification.
- (G) For the *promotion of public health*, including poison control, prescription drug take-back programs, the creation of a marijuana laboratory testing reference library, and other public health services related to controlled substances.
- (H) To *study the use of marijuana and other drugs*, their health effects, and other social impacts related to them.
- (I) To *research, regulate, study, and test industrial hemp or hemp seeds*.

¹⁶ See Section 39-28.8-501 (2)(b)(IV), C.R.S.

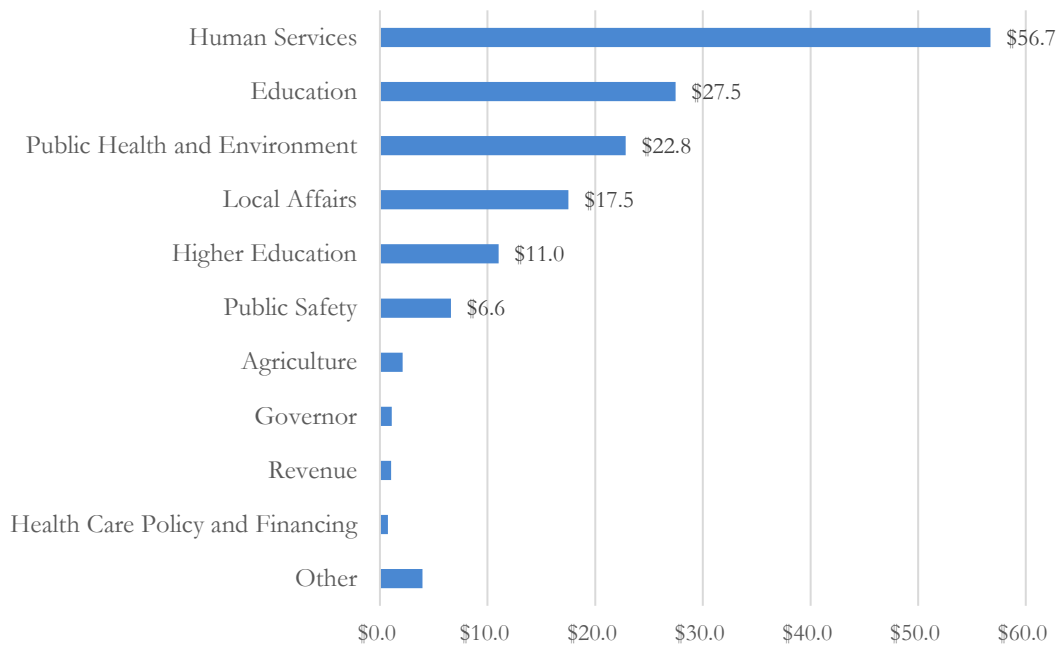
- (J) [Repealed by H.B. 20-1217].
- (K) [Repealed by H.B. 18-1336].
- (L) For the *Colorado Veterans' Service-to-career Pilot Program*.
- (M) For the expenses of the Department of Education and the Department of Public Health and Environment in *developing and maintaining a resource bank for educational material on marijuana* and providing technical assistance.
- (N) For *housing, rental assistance, and supportive services*, including reentry services.
- (O) For the development of local dually identified crossover youth plans and services.
- (P) For *comprehensive quality physical education instruction*.
- (Q) Repealed.
- (R) Repealed.
- (S) For the program to support *entrepreneurs in the marijuana industry*.
- (T) For expenses relating to the reduction of collateral consequences experienced by people previously sentenced for drug offenses.
- (U) For *trial court programs* administered by the Judicial Department.

The General Assembly appropriates money in the MTCF based on the most recent revenue projections from either LCS or OSPB, depending on the Committee's choice of forecast for General Fund balancing purposes (the March 2021 LCS revenue forecast for FY 2021-22).

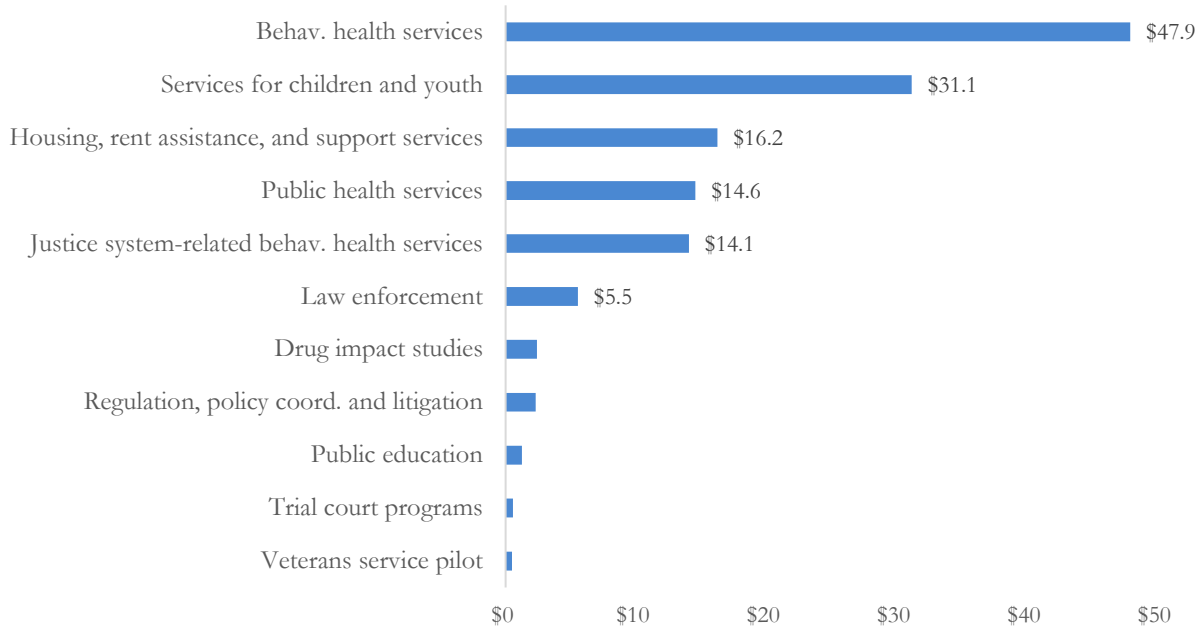
- For FY 2021-22, the General Assembly has *appropriated* a total of \$151.2 million from the MTCF, an increase of \$29.7 million above the FY 2020-21 appropriation.
- In addition, the General Assembly enacted *transfers* totaling \$105.3 million from the MTCF in FY 2021-22, driven primarily by a transfer of \$100.0 million to the Public School Capital Construction Assistance Fund, which supports the Building Excellent Schools Today (BEST) program in the Department of Education.
- Finally, as noted above, the General Assembly designated \$100.0 million of the fund balance as a portion of the TABOR emergency reserve.

The following two graphics illustrate the current FY 2021-22 allocation of MTCF *appropriations* among state agencies and among the statutorily authorized purposes. With respect to the charts, it is important to note that it only includes appropriations from the MTCF and therefore does not include either excise taxes (credited directly to the fund supporting the BEST program) or special sales taxes that are credited to either the General Fund or the State Public School Fund. As a result, the amounts of *total marijuana taxes* dedicated to education are understated by those amounts.

FY 2021-22 MTCF appropriations by department (\$ in millions)



FY 2021-22 MTCF appropriations by statutory purpose (\$ in millions)



The following issue brief provides additional detail on the status of the MTCF looking toward the 2022 session. Please note that Appendix B details appropriations from the MTCF for FY 2020-21 and FY 2021-22, and the requested appropriations for FY 2022-23, by department and purpose.

ISSUE: POTENTIAL MTCF STATUTORY CHANGES

This issue brief discusses potential statutory issues related to the MTCF that the General Assembly may wish to consider in the 2022 Session. First, an apparent drafting error during the 2021 Session reinstated a requirement that the General Assembly make appropriations from the MTCF in arrears. The General Assembly will have to enact legislation if it intends to continue to appropriate money from the MTCF in the year in which it is collected. Staff is also recommending that the Committee consider clarifying the fund's statutory reserve requirement if the General Assembly intends to continue to designate a portion of the fund as part of the TABOR emergency reserve.

SUMMARY

- As a budget balancing measure in FY 2020-21, the General Assembly eliminated a requirement to make appropriations from the MTCF in arrears (in the year(s) after collection of the revenue) and shifted to appropriating those funds in the year of collection. However, an apparent drafting error in S.B. 21-059 (Juvenile Justice Code Reauthorization) restored the previous statutory language requiring appropriations from the MTCF in arrears. Continuing to appropriate funds in the year of collection (as the General Assembly has done in FY 2020-21 and FY 2021-22) would require statutory change, as would making midyear adjustments to appropriations for the current year.
- The situation in FY 2021-22 has also highlighted a potential point of uncertainty related to the reserve requirements for the MTCF. If the General Assembly intends to continue to designate a portion of the fund as part of the TABOR emergency reserve then staff recommends that the Committee consider clarifying how the statutory reserve requirement should interact with the portion of the fund designated as part of the TABOR reserve.

RECOMMENDATION

Staff recommends that the Committee consider sponsoring legislation in the 2022 Session to address concerns related to the MTCF. Staff recommends that the Committee consider the following components:

- *Appropriations Timing:* House Bill 20-1401 (Marijuana Tax Cash Fund Spending and Transfer) changed previous statute to authorize the General Assembly to appropriate funds in the year in which the revenue is collected. However, staff has now learned that S.B. 21-059 (Juvenile Justice Code Reorganization) restored the original language (Sec. 39-28.8-501 (2)(b)(IV), C.R.S.) requiring appropriations to be from prior year revenues. Consistent with prior years, staff recommends that the Committee consider leaving the requirement in place and returning to appropriating in arrears. However, if the General Assembly intends to continue to appropriate funds in the year of collection (including potentially any midyear adjustments to FY 2021-22 appropriations) then a bill will be necessary to restore that authorization *prior to making any such appropriations in the 2022 Session*.
- *Clarifying Reserve Requirements:* Current law limits the General Assembly to appropriating no more than 93.5 percent of the balance of the MTCF (including the beginning fund balance plus any money transferred or credited to the fund during the fiscal year).¹⁷ Staff assumes that the intent is

¹⁷ See Sec. 39-28.8-501 (5), C.R.S.

to require a 6.5 percent reserve that would be available to absorb fluctuations in revenues. However, this provision interacts with the General Assembly's designation of a portion of the MTCF as part of the TABOR emergency reserve, creating uncertainty about the reserve requirement and the State's ability to utilize the statutory reserve. Staff recommends that the Committee consider clarifying the statute to require that any statutory reserve in the MTCF must be in excess of any amounts designated as a portion of the TABOR reserve.

- If the Committee does not run legislation or does not wish to adjust the reserve requirement in statute, staff recommends that the Committee give direction to staff that all figure setting and balancing recommendations should ensure the statutory reserve amount is over and above the TABOR emergency amounts in the fund. That process would clarify the Committee's intent for appropriations in the Long Bill and budget package. However, staff notes that modifying the statute may provide better guidance and "guard rails" for special bills outside of the budget package.

DISCUSSION

TIMING OF APPROPRIATIONS

Prior to FY 2020-21 statute required the General Assembly to appropriate funds from the MTCF in the year(s) after the revenues were actually collected. With the enactment of H.B. 20-1401, the General Assembly started appropriating MTCF funds in the year of collection in FY 2020-21 as a budget balancing measure. Doing so allowed the General Assembly to use FY 2019-20 and FY 2020-21 revenues to assist with balancing in FY 2020-21. Appropriations and transfers from the fund in FY 2021-22 include both prior year revenues and anticipated revenues from the current year (based on the March 2021 LCS revenue forecast).

Staff has now learned that S.B. 21-059 restored the original language (Sec. 39-28.8-501 (2)(b)(IV), C.R.S.) requiring appropriations from the MTCF in arrears for all departments other than the Department of Revenue. This appears to have been an erroneous "correction" late in the legislative process for S.B. 21-059 and legislative staff did not catch the error until November 2021. Staff notes the following:

- The current appropriations for FY 2021-22 should be legal because the appropriations were actually made *before the reversion to previous language took effect in October 2021*. Because the statutory language restricts the General Assembly's ability to *appropriate* the funds, the appropriations were made under the language enacted in H.B. 20-1401 and the recipient agencies can legally *spend* the money in FY 2021-22.
- However, continuing to appropriate funds in the year of collection (through either adjustments in FY 2021-22 or for subsequent years) would require statutory change.

Consistent with prior years, staff recommends that the Committee consider leaving the requirement in place and reverting to making appropriations from the MTCF in arrears. Staff would also recommend applying that requirement to the appropriations to the Department of Revenue, as the authorization to appropriate current year revenues to the Department of Revenue no longer appears to be necessary. Staff notes the following:

- The revenue situation in FY 2021-22 (discussed in greater detail in the following issue brief) highlights the risk of appropriating from the MTCF in the same year that revenues are collected. Revenue expectations for the current year have decreased since the General Assembly approved the appropriations last session, threatening the solvency of the fund in the current year.

- Appropriating in arrears in “normal years” can also facilitate the use of the fund for budget balancing purposes in the event of a downturn by as the General Assembly did in FY 2020-21.

If the Committee wishes to consider returning to appropriating in arrears, the strains on the fund in the current year (discussed in the following issue brief) would require adjustments to the proposed appropriations, transfers, and/or reserve designations for FY 2022-23. Staff offers three options for the Committee’s consideration:

- 1 First, the General Assembly could use General Fund as a bridge in FY 2022-23 by supporting some or all of the anticipated MTCF appropriations with *one-time* appropriations from the General Fund. Replenishing the MTCF with revenues collected in FY 2022-23 would allow for appropriations in arrears again in FY 2023-24, ensuring that the use of General Fund was one-time in nature.
- 2 Second, and potentially in combination with the first option, the General Assembly could reduce or eliminate the share of the MTCF designated as a portion of the TABOR Reserve for FY 2022-23. Those revenues consist of prior year revenues and could also provide a “bridge” to appropriations in arrears for FY 2023-24. The Committee should note that doing so would require replacement of those funds in the TABOR reserve (either with buildings or another source of cash) for FY 2022-23.
- 3 Finally, the General Assembly could further adjust appropriations or transfers from the MTCF in FY 2021-22 and then balance to the available amounts for FY 2022-23 (without a refinance to General Fund or other sources). This option would likely require large reductions to appropriations in one or both years, almost certainly presenting problems for the programs supported by the MTCF.

If the Committee wishes to consider one or more of these options to revert to appropriating in arrears in greater detail then staff will return to the Committee with modeling of the selected option(s).

CLARIFYING RESERVE REQUIREMENTS

The situation in FY 2021-22 has also highlighted a point of uncertainty related to the reserve requirements for the MTCF, at least in years in which the General Assembly designates a portion of the fund as part of the TABOR emergency reserve. Current law limits the General Assembly to appropriating no more than 93.5 percent of the balance of the MTCF (including the beginning fund balance plus any money transferred or credited to the fund during the fiscal year).¹⁸ Staff assumes that the intent is to require a 6.5 percent reserve that would be available to absorb fluctuations in revenues or necessary midyear adjustments. However, that statutory requirement does not account for the potential use of the fund for the TABOR emergency reserve.

- For example, the fund started FY 2021-22 with a beginning balance of \$145.5 million and the September 2021 LCS revenue forecast anticipates an additional \$211.3 million in revenue this year, for a total of \$356.8 million. Thus, the statutory reserve requirement would allow the General Assembly to appropriate a maximum of \$333.6 million from the fund in FY 2021-22, leaving a 6.5 percent reserve of \$23.2 million that should be available to absorb fluctuations in revenue.
- However, the General Assembly designated \$100.0 million of the fund balance as part of the TABOR emergency reserve this year, equal to 28.0 percent of the total estimated revenues.

¹⁸ See Sec. 39-28.8-501 (5), C.R.S.

- The current statutory reserve calculation/requirement does not acknowledge the TABOR reserve – and thus it is not clear from statute whether the statutory reserve must be over and above any amount designated as the TABOR emergency reserve. In order for the statutory reserve to be available to manage revenue fluctuations or midyear adjustments, the reserve must be in excess of any amounts in the TABOR reserve (which is only available during a declared emergency).

Particularly if the Committee elects to sponsor legislation to continue appropriating from the MTCF in the same year in which revenues are collected, staff recommends including language in that bill to clarify an intention that statutory reserve must be over and above any amounts in the fund designated as part of the TABOR reserve.

If the Committee does not run legislation or does not wish to adjust the reserve requirement in statute, staff recommends that the Committee give direction to staff that all figure setting and balancing recommendations should ensure the statutory reserve amount is over and above the TABOR emergency amounts in the fund. That process would clarify the Committee’s intent for appropriations in the Long Bill and budget package. However, staff notes that modifying the statute may provide better guidance and “guard rails” for special bills outside of the budget package.

ISSUE: FY 2021-22 MARIJUANA TAX CASH FUND STATUS AND THE GOVERNOR'S FY 2022-23 REQUEST

This issue brief provides an overview of the status of the Marijuana Tax Cash Fund (MTCF) in FY 2021-22 based on current revenue projections as well as a discussion of the Governor's MTCF budget requests for FY 2022-23. Decreasing projections of revenues in FY 2021-22 will likely require legislative action to support the fund's current obligations and maintain the solvency of the fund in the current year. The revenue changes and the General Assembly's response will also impact the status of the fund in FY 2022-23.

SUMMARY

- Lower-than-anticipated marijuana tax revenues in FY 2021-22 will likely require action by the General Assembly to support the fund's current obligations and maintain the solvency of the MTCF in the current year. The Governor's Office is proposing to partially delay a transfer to the Public School Capital Construction Assistance Fund (PSCCAF, which supports the BEST program in the Department of Education) to maintain the solvency of the MTCF in FY 2021-22.
- Looking toward FY 2022-23, the September 2021 revenue forecasts from LCS and OSPB both anticipate modest growth in revenues (above the reduced base in FY 2021-22). Subsequent revenue forecasts in December 2021 and March 2022 will be available to inform the Committee's decisions regarding appropriations from the fund for FY 2022-23.

RECOMMENDATION

Staff recommends that the Committee consider sponsoring legislation in the 2022 Session (potentially as part of the bill addressed in the previous issue brief) to ensure the solvency of the MTCF in FY 2021-22 and potentially to adjust requirements for FY 2022-23.

- *FY 2021-22 Fund Solvency:* Current revenue forecasts with lower-than-anticipated revenues in FY 2021-22 would require adjustments to the fund's obligations in the current year. The Governor's Office has proposed a partial delay to spread the transfer of \$100.0 million to the Public School Capital Construction Assistance Fund (enacted in S.B. 21-207) over a three year period through FY 2023-24. Staff agrees that this appears to be the most promising mechanism to restore the fund's solvency, although the Committee may wish to discuss the proposal with the Department of Education at the Department's upcoming hearing. Staff recommends that the Committee base decisions on amounts on subsequent revenue forecast(s).
- *Governor's FY 2022-23 Proposal:* As discussed below, the Governor's Office is also proposing refinancing transfers and appropriations to the Department of Revenue and the Judicial Branch for FY 2022-23 that would require statutory change. Staff is not making a recommendation on those proposals at this time (they will be addressed with the Department of Revenue request and potentially with the Judicial Branch). However, if the Committee approves the proposals then it may make sense to include them in one bill related to the MTCF.

DISCUSSION

FUND SOLVENCY IN FY 2021-22

Current MTCF revenue estimates would require action by the General Assembly to maintain the solvency of the fund in FY 2021-22. Based on the March 2021 LCS forecast, the current FY 2021-22 appropriation assumed that \$356.5 million would be available in the fund after accounting for the 6.5 percent statutory reserve. Based on that expectation, the General Assembly took the following actions during the 2021 Session:

- Designated \$100.0 million of the MTCF balance as part of the TABOR emergency reserve.
- Enacted a transfer of \$100.0 million from the MTCF to the PSCCAF to support the BEST program. Senate Bill 21-207 (Public School Capital Construction Assistance Fund Transfer) requires the Treasurer to make that transfer on June 1, 2022.
- Transferred an additional \$5.3 million to a variety of other cash funds.
- Appropriated a total of \$151.2 million to various state agencies.

As shown Table 3 below, the March 2021 LCS revenue forecast would have left \$45,403 in the MTCF above the required 6.5 percent statutory reserve (and a total year-end balance of \$124.8 million including the \$100.0 million designated as part of the TABOR emergency reserve). Table 3 compares the outlook for FY 2021-22 under the March 2021 LCS Forecast and each of the September 2021 forecasts.

- Under the September LCS forecast, the fund's current obligations would consume nearly all of the statutory reserve, leaving a final year-end balance of \$284,387 (plus the \$100.0 million TABOR emergency reserve which is not available for expenditure).
- Under the September 2021 OSPB forecast, available revenues would fall \$22.1 million short of supporting the current obligations *after using all of the 6.5 percent statutory reserve*.

TABLE 3
MARIJUANA TAX CASH FUND PROJECTIONS BASED ON 2021 REVENUE FORECASTS AND CURRENT TRANSFERS AND APPROPRIATIONS

DESCRIPTION	MARCH 2021 LCS FORECAST	SEPTEMBER 2021 LCS FORECAST	SEPTEMBER 2021 OSPB FORECAST
Beginning fund balance as of July 1, 2021 (per Department of Revenue)	\$138,444,843	\$145,499,720	\$145,499,720
PLUS: Total MTCF share of revenue collected in FY 2021-22	242,870,754	211,269,346	188,853,001
LESS: Statutorily required reserve (6.5 percent)	(24,785,514)	(23,189,989)	(21,732,927)
LESS: Amount designated as TABOR emergency reserve	(100,000,000)	(100,000,000)	(100,000,000)
LESS: S.B. 21-207 (Pub School Cap Const Assistance Fund Transfer) Transfer to Education	(100,000,000)	(100,000,000)	(100,000,000)
LESS: H.B. 21-1317 (Regulating Marijuana Concentrates) Transfer to CDOT	(2,000,000)	(2,000,000)	(2,000,000)
LESS: S.B. 21-283 (Cash Fund Solvency) Transfer to Marijuana Cash Fund	(1,805,317)	(1,805,317)	(1,805,317)
LESS: H.B. 21-1314 (DOR Action Against Certain Documents) Transfers to Various Cash Funds	(912,000)	(912,000)	(912,000)
LESS: H.B. 21-1315 (Costs Assessed to Juveniles in the Criminal Justice System) Transfers	(598,001)	(598,000)	(598,000)
LESS: FY 2021-22 appropriations to a variety of departments	(151,169,362)	(151,169,362)	(151,169,362)

TABLE 3
MARIJUANA TAX CASH FUND PROJECTIONS BASED ON 2021 REVENUE FORECASTS AND CURRENT TRANSFERS AND APPROPRIATIONS

DESCRIPTION	MARCH 2021 LCS FORECAST	SEPTEMBER 2021 LCS FORECAST	SEPTEMBER 2021 OSPB FORECAST
EQUALS: Estimated balance/(deficit) after reserve requirement for FY 2021-22	\$45,403	(\$22,905,602)	(\$43,864,885)
PLUS: FY 2020-21 statutory reserve amount	\$24,785,514	\$23,189,989	\$21,732,927
EQUALS: Estimated available year end fund balance/(deficit) for FY 2021-22	\$24,830,917	\$284,387	(\$22,131,958)

GOVERNOR’S PROPOSED ADJUSTMENT FOR FY 2021-22

In response to the lower-than-anticipated revenues for the current year, the Governor’s Office is proposing a legislative change to:

- Reduce the FY 2021-22 transfer to the PSCCAF from \$100.0 million (enacted in S.B. 21-207) to \$50.0 million.
- Transfer the remaining \$50.0 million over the following two years, including transfers of \$39.0 million in FY 2022-23 and \$11.0 million FY 2023-24.

The proposed changes would restore the solvency of the MTCF in FY 2021-22 under either of the September 2021 revenue forecasts, leaving a balance of \$27.1 million above the required reserve under the LCS forecast and \$6.1 million under the OSPB forecast. Staff notes that the General Assembly will have additional information available from the December 2021 and March 2022 revenue forecasts to inform final decisions about the current transfers and appropriations from the MTCF.

For FY 2021-22, staff assumes that major reductions to *appropriations* from the fund at mid-year would be problematic for the programs supported by the fund. Staff agrees with the Governor’s Office that delaying a portion of the transfer to the PSCCAF would avoid those impacts and ensure that the B.E.S.T. program would still receive the full \$100.0 million. Given the existing balance in the PSCCAF, staff anticipates that the Committee and the Department could plan appropriations for the BEST program to mitigate any impact on program operations. However, the Committee may wish to discuss the proposal with the Department of Education at the Department’s FY 2022-23 hearing.

If subsequent revenue forecasts indicate that a change in obligations is necessary, staff anticipates recommending adjustments to the transfer to the PSCCAF to maintain the solvency of the fund. Staff notes that the Committee could also consider reducing the amount of the MTCF balance designated as part of the TABOR reserve in order to free up funds in the current year. However, such an action would also require the General Assembly to substitute other resources (such as building or other cash) to replace the MTCF funds in the TABOR reserve.

FY 2022-23 REQUEST

The General Assembly’s potential actions to restore the solvency of the fund will affect the resources available for appropriation or transfer in FY 2022-23. The Governor’s FY 2022-23 request is based on the September 2021 OSPB revenue forecast and assumes that the General Assembly will approve the proposed partial delay in the transfer to the Public School Capital Construction Assistance Fund (PSCCAF) in FY 2021-22. Major components of the Governor’s FY 2022-23 request include:

- Continuing the designation of \$100.0 million of the fund balance as part of the TABOR emergency reserve.
- A transfer of \$39.0 million to the Public School Capital Construction Assistance Fund (as part of the proposed changes to the transfer in the current year).
- Appropriations totaling \$165.2 million from the fund to a variety of departments (see Appendix C for additional detail on requests by department and purpose).

Based on the assumptions underlying the request (adoption of the partial delay in the transfer to the PSCCAF and the revenue estimates from the September 2021 OSPB revenue forecast), the Governor’s Office estimates that the fund would end FY 2022-23 with an available balance of \$0.6 million above the required statutory reserve.

The Committee should note that the Department of Law is requesting an additional \$1,089,153 above the amount assumed in the Governor’s request, including an increase of \$1,036,766 for the Peace Officers Standards and Training (POST) Board to restore funding that was eliminated in FY 2020-21 as a budget balancing measure. It is staff’s understanding that the Governor’s Office was not aware of the requested increases from the Department of Law. Staff notes that including the requested increase from the Department of Law would exceed the estimated available balance in the Governor’s request based on the Governor’s Office’s assumptions for FY 2022-23. However, staff also notes that all of the relevant revenue information (including revenues, ending balances, and potential actions to restore solvency of the fund in FY 2021-22) will change before the Committee is making decisions regarding the FY 2022-23 appropriation.

SUMMARY OF MAJOR CHANGES PROPOSED FOR FY 2022-23

The total request for FY 2022-23 (including the Governor’s Office, Judicial, and the Department of Law) includes \$166.2 million in appropriations from the MTCF, an increase of \$15.0 million above the current *appropriations* (not including transfers) for FY 2021-22. Table 4 summarizes the major changes in the request. Brief descriptions of several proposals highlighted in the Governor’s MTCF summary (see bolded items in Table 4) follow the table. To the extent that the Committee has questions about the highlighted items, staff has identified the relevant dates for the corresponding JBC staff budget briefings.

DEPARTMENT	PROGRAM	ANNUAL CHANGE
Agriculture	Hemp decortication grant program (Request R3)	\$5,054,453
Public Health and Env.	Public awareness campaign funding restoration	3,706,281
Governor	Cannabis research optimization program (GOV R1)	2,500,000
Higher Education	Institute of Cannabis Research at CSU-Pueblo (Request R3)	1,800,000
Public Safety	School Safety Resource Center (Request R4)	1,200,000
Public Safety	State toxicology lab (Request R5)	1,084,062
Law	Peace Officers Standards and Training (P.O.S.T.) Board funding restoration	1,036,766
Judicial	Trial court programs refinance (HB 21-1314)	553,862
Human Services	OBH criminal justice line item consolidation (Request R11)	62,859
Higher Education	CU School of Public Health - regulating marijuana concentrates (annualize HB 21-1317)	(3,000,000)
Revenue	Refinance MTCF transfer to Revenue to use HUTF instead of MTCF (REV request R6)	(1,401,000)

TABLE 4 MAJOR REQUESTED CHANGES IN APPROPRIATIONS AND TRANSFERS FROM THE MARIJUANA TAX CASH FUND: FY 2022-23		
DEPARTMENT	PROGRAM	ANNUAL CHANGE
Judicial	Refinance appropriation to Judicial to use HUTF instead of MTCF (REV request R6)	(1,107,724)
Labor and Emp.	Colorado Veterans' Service-to-career Pilot Program refinance (DOLE request R4)	(500,000)
Total		\$10,989,559

GOVERNOR'S HIGHLIGHTED MTCF PROPOSALS:

AGRICULTURE – HEMP DECORTICATION GRANT PROGRAM (R3): The proposal includes a request for a one-time appropriation of \$5,054,453 from the MTCF to support a grant program to provide matching funding for the purchase of hemp decortication equipment in FY 2022-23. *[Briefing by Andrew Forbes, 11/16/21]*

GOVERNOR, COLORADO ENERGY OFFICE – CANNABIS RESOURCE OPTIMIZATION PROGRAM (ENERGY OFFICE R1): The proposal includes an increase of \$2,500,000 from the MTCF to assist marijuana cultivators to reduce carbon emissions, energy use, and water use through assessments, program supports, tools and financing, and technical assistance. The request proposes total funding of \$4.5 million in FY 2022-23 (including \$2.5 million from the MTCF and \$2.0 million General Fund) with ongoing support of \$500,000 per year from the MTCF in subsequent years. *[Briefing by Scott Thompson, 12/6/21]*

HIGHER EDUCATION, INSTITUTE OF CANNABIS RESEARCH AT CSU PUEBLO (R8): The proposal includes an increase of \$1,800,000 from the MTCF to double support for the Institute of Cannabis Research at CSU Pueblo (from \$1.8 million in FY 2021-22 to \$3.6 million in FY 2022-23 and subsequent years). *[Briefing by Amanda Bickel, 12/9/21]*

PUBLIC SAFETY, SCHOOL SAFETY RESOURCE CENTER REFINANCE (R4): The proposal includes an increase of \$1,200,000 from the MTCF to provide a permanent fund source for a pilot program through the School Safety Resource Center that is currently supported with one-time funding from the School Safety Resource Center Cash Fund. The request includes an increase of \$299,619 above the current (FY 2021-22) funding for the pilot program to waive conference and training fees for schools and encourage them to participate in the program. *[Briefing by Emily Hansen, 11/16/21]*

PUBLIC SAFETY, STATE TOXICOLOGY LAB (R8): The proposal includes an increase of \$1,152,316 from the MTCF and 4.0 FTE to respond to increasing workload and provide timely toxicology analyses for DUI and DUID blood samples submitted by law enforcement and criminal justice agencies. *[Briefing by Emily Hansen, 11/16/21]*

REFINANCES IN REVENUE (REV R6), JUDICIAL (REV R6), AND LABOR AND EMPLOYMENT (DOLE R4): The Governor is proposing to refinance programs in these three Departments away from the MTCF. The proposals would reduce appropriations and transfers from the MTCF by a total of \$3.0 million in FY 2022-23. The proposed changes include:

- Refinancing \$1,401,000 that would be transferred to the Licensing Services Cash Fund in the Department of Revenue pursuant to H.B. 21-1314 for use by the Hearings Division and the Division of Motor Vehicles. Instead, the Governor's Office is proposing to support those appropriations with off-the-top funding from the Highway Users Tax Fund (HUTF). The request

is included in Department of Revenue request R6 but eliminating the transfer from the MTCF and shifting to use of the HUTF would require statutory change. *[Briefing by Jon Catlett, 11/18/21]*

- Refinancing \$1,107,724 in the Judicial Branch that was originally *appropriated* to the Judicial Branch in H.B. 21-1314. The Governor's Office is suggesting that this appropriation also be shifted to the HUTF. Shifting this authorization to the HUTF would also likely require statutory change. While the Governor's Office does not control the Judicial Branch budget, the Governor's Office included this proposal in Department of Revenue request R6. *[Briefing by Jon Catlett, 11/18/21]*
- Refinancing \$500,000 for the Colorado Veterans' Service-to-Career Pilot Program in the Department of Labor and Employment to support the program with federal funds from the American Rescue Plan Act (ARPA) rather than the MTCF. The proposal would support the program with federal funds through the current expiration of the program January 1, 2024. *[Briefing by Abby Magnus, 11/18/21]*.

APPENDIX A

LIST OF ONLINE RESOURCES CONCERNING MARIJUANA LEGALIZATION IN OTHER STATES AND IN LOCAL JURISDICTIONS IN COLORADO

Since 1996, thirty-five states, the District of Columbia, and three U.S. territories have legalized medical use of marijuana. Fifteen states plus the District of Columbia allow adult-use recreational marijuana, including four that approved adult use through the 2020 election. Staff has identified and listed below a few sources of timely information about marijuana laws in other states, as well as information on local jurisdictions allowing marijuana sales in Colorado.

National Conference of State Legislatures - State Medical Marijuana Laws (also includes recreational and data, a table listing details by state, and a map):

<https://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx>

National Conference of State Legislatures – Marijuana Deep Dive

<https://www.ncsl.org/bookstore/state-legislatures-magazine/marijuana-deep-dive.aspx>

The Department of Revenue maintains a list of local authorities that have advised the Department’s Marijuana Enforcement Division that they are currently allowing marijuana businesses to operate within their jurisdiction:

<https://sbg.colorado.gov/sites/sbg/files/documents/211108%20Local%20Authority%20Status%20List-Current%20Version%20.pdf>

The Marijuana Enforcement Division also maintains a set of reports related to regulated marijuana and summaries of recent relevant legislation:

MED Regulated Marijuana Reports: <https://sbg.colorado.gov/regulated-marijuana-reports>

MED 2021 Legislation Summary: https://drive.google.com/file/d/1SD3FYx3-8bQBw5q_gbT8su2p05kCs_N3/view?usp=sharing

The Department of Public Health and Environment has a Marijuana Resources page:

<https://cdphe.colorado.gov/marijuana>

The Department of Public Safety (Office of Research and Statistics in the Division of Criminal Justice) studies the impact of the legalization of recreational marijuana on public safety. The relevant reports are published at:

<https://ors.colorado.gov/ors-mjimpacts>

Finally, the Cannabis Business Office in the Office of Economic Development and International Trade also provides resources related to that Office’s efforts:

<https://oedit.colorado.gov/cannabis-business-office>

APPENDIX B

SUMMARY OF APPROPRIATIONS AND TRANSFERS FROM THE MTCF

SUMMARY OF APPROPRIATIONS AND TRANSFERS FROM THE MARIJUANA TAX CASH FUND FOR FY 2020-21 THROUGH THE FY 2022-23 REQUEST				
	FY 2020-21 APPROPRIATION	FY 2021-22 APPROPRIATION	FY 2022-23 REQUEST	ANNUAL CHANGE
Breakdown of Appropriations by Department and Program				
Agriculture:				
Pesticide control and regulation	\$1,198,700	\$1,216,076	\$1,219,603	\$3,527
Colorado State Fair Authority: FFA and 4-H programming	150,000	300,000	300,000	0
Hemp Decortication Grant Program (FY 2022-23 Request R3)	0	0	5,054,453	5,054,453
Centrally appropriated amounts not accounted for above	<u>554,694</u>	<u>607,084</u>	<u>590,710</u>	<u>(16,374)</u>
Subtotal: Agriculture	1,903,394	2,123,160	7,164,766	5,041,606
Education:				
School Health Professionals Grant Program	11,948,026	14,948,029	14,959,590	11,561
Early Literacy Competitive Grant Program	5,378,678	5,378,678	5,378,678	0
Office of Dropout Prevention and Student Reengagement	2,006,088	2,006,088	2,009,771	3,683
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	0	2,500,000	2,500,000	0
Centrally appropriated amounts not accounted for above	<u>129,453</u>	<u>158,437</u>	<u>134,884</u>	<u>(23,553)</u>
Subtotal: Education	21,939,141	27,468,128	27,459,819	(8,309)
Governor:				
Office of Information Technology, Applications Administration	629,550	0	0	0
Evidence-based policymaking evaluation and support	500,000	500,000	500,000	0
Office of Information Technology, Enterprise Solutions	0	453,812	453,812	0
Governor's Office	106,912	106,912	106,912	0
Cannabis Resource Optimization Program (FY 2022-23 R1)	0	0	2,500,000	2,500,000
Centrally appropriated amounts not accounted for above	<u>37,718</u>	<u>28,099</u>	<u>63,196</u>	<u>35,097</u>
Subtotal: Governor	1,274,180	1,088,823	3,623,920	2,535,097
Health Care Policy and Financing:				

SUMMARY OF APPROPRIATIONS AND TRANSFERS FROM THE MARIJUANA TAX CASH FUND FOR FY 2020-21 THROUGH
THE FY 2022-23 REQUEST

	FY 2020-21 APPROPRIATION	FY 2021-22 APPROPRIATION	FY 2022-23 REQUEST	ANNUAL CHANGE
Training for health professionals to provide Screening, Brief Intervention, and Referral for Treatment (SBIRT) services for Medicaid clients at risk for substance abuse	<u>500,000</u>	<u>750,000</u>	<u>500,000</u>	<u>(250,000)</u>
Subtotal: Health Care Policy and Financing	500,000	750,000	500,000	(250,000)
Higher Education:				
Regulating marijuana concentrates - CU School of Public Health (H.B. 21-1317)	0	4,000,000	1,000,000	(3,000,000)
Medication-assisted Treatment Pilot Program (S.B. 17-074)	2,500,000	3,000,000	3,000,000	0
Institute of Cannabis Research at CSU-Pueblo (S.B. 16-191)	1,000,000	1,800,000	3,600,000	1,800,000
AgrAbility project at CSU (S.B. 21-137)	0	900,000	900,000	0
Opioid awareness campaign, grant assistance, and provider education per Section 27-80-118, C.R.S.	500,000	1,250,000	1,250,000	0
Perinatal Data Linkage Study (S.B. 19-228)	<u>50,000</u>	<u>75,000</u>	<u>0</u>	<u>(75,000)</u>
Subtotal: Higher Education	4,050,000	11,025,000	9,750,000	(1,275,000)
Human Services:				
Increasing access to effective substance use disorder services, including evaluation of intensive residential treatment (S.B. 16-202)	13,921,095	15,806,622	15,964,688	158,066
Criminal justice diversion programs (Law Enforcement Assisted Diversion or "LEAD" pilot programs and S.B. 17-207)	5,632,130	5,772,933	62,859	(5,710,074)
Jail-based behavioral health services	0	0	5,772,933	5,772,933
Circle Program and other rural treatment programs for people with co-occurring mental health and substance use disorders	5,590,842	5,730,613	5,787,919	57,306
Mental health services for juvenile and adult offenders	4,653,735	5,795,078	5,853,029	57,951
Enhance behavioral health crisis response system (S.B. 17-207)	3,957,414	4,953,958	4,994,521	40,563
Programs that fund service alternatives to placing youth in a correctional facility (S.B. 91-094)	3,048,112	3,124,315	3,154,555	30,240
Tony Grampsas Youth Services Program grants for the prevention of youth marijuana use	1,623,672	1,623,672	1,628,827	5,155
Incredible Years program	846,029	864,773	877,776	13,003
Community prevention and treatment for alcohol and drug abuse	774,830	1,094,201	1,105,143	10,942
Office of Behavioral Health administrative expenses	565,831	817,731	865,985	48,254
Treatment and Detoxification Programs	540,000	6,192,376	6,906,676	714,300
Substance use disorder treatment at the mental health institutes	535,753	541,445	572,224	30,779
Appropriation to the Youth Mentoring Services Cash Fund (Tony Grampsas Youth Services Program)	500,000	500,000	500,000	0

SUMMARY OF APPROPRIATIONS AND TRANSFERS FROM THE MARIJUANA TAX CASH FUND FOR FY 2020-21 THROUGH
THE FY 2022-23 REQUEST

	FY 2020-21 APPROPRIATION	FY 2021-22 APPROPRIATION	FY 2022-23 REQUEST	ANNUAL CHANGE
Mental Health Treatment for Children and Youth at Risk of Out-of-home Placement Medication consistency and health information exchange (S.B. 17-019)	413,031	423,357	427,591	4,234
Office of Operations, personal services	380,700	760,700	760,700	0
Building Substance Use Disorder Treatment Capacity in Underserved Communities Grant Program	3,291	3,291	3,291	0
Disability benefits application assistance	0	0	0	0
Office of Information Technology Services, Behavioral Health Capacity Tracking System	0	42,611	42,611	0
Adult Assistance Programs Administration	0	0	0	0
Indirect cost assessments and centrally appropriated amounts not accounted for above	<u>1,773,026</u>	<u>2,661,927</u>	<u>3,006,159</u>	<u>344,232</u>
Subtotal: Human Services	44,759,491	56,709,603	58,287,487	1,577,884
Judicial:				
Appropriation to the Correctional Treatment Cash Fund for jail-based behavioral health services (administered through the Department of Human Services)	1,587,285	1,626,967	1,626,967	0
Trial court programs	<u>0</u>	<u>553,862</u>	<u>1,107,724</u>	<u>553,862</u>
Subtotal: Judicial	1,587,285	2,180,829	2,734,691	553,862
Labor and Employment:				
Colorado Veterans' Service-to-career Pilot Program (H.B. 16-1267)	<u>300,000</u>	<u>500,000</u>	<u>0</u>	<u>(500,000)</u>
Subtotal: Labor and Employment	300,000	500,000	0	(500,000)
Law:				
Local law enforcement training through the Peace Officers Standards and Training (POST) Board	0	0	1,036,766	1,036,766
Office of Community Engagement/Safe2Tell	175,209	175,399	180,140	4,741
Centrally appropriated amounts not accounted for above	<u>0</u>	<u>3,123</u>	<u>48,069</u>	<u>44,946</u>
Subtotal: Law	175,209	178,522	1,264,975	1,086,453
Local Affairs:				
Affordable Housing Construction Grants and Loans	15,300,000	15,300,000	15,300,000	0
Gray and Black Market Marijuana Enforcement Efforts (H.B. 17-1221)	950,673	950,673	950,673	0
Low income rental subsidies	939,649	939,649	939,649	0
Division of Housing Administration	58,811	58,811	58,811	
Indirect cost assessments and centrally appropriated amounts not accounted for above	<u>159,337</u>	<u>262,095</u>	<u>431,649</u>	<u>169,554</u>
Subtotal: Local Affairs	17,408,470	17,511,228	17,680,782	169,554
Public Health and Environment:				
Substance abuse prevention	9,439,501	9,439,554	9,452,511	12,957

SUMMARY OF APPROPRIATIONS AND TRANSFERS FROM THE MARIJUANA TAX CASH FUND FOR FY 2020-21 THROUGH
THE FY 2022-23 REQUEST

	FY 2020-21 APPROPRIATION	FY 2021-22 APPROPRIATION	FY 2022-23 REQUEST	ANNUAL CHANGE
Public awareness campaign	954,102	954,155	4,660,436	3,706,281
Colorado Health Service Corps Program (S.B. 18-024)	2,044,153	3,555,191	3,560,762	5,571
Distributions to Local Public Health Agencies	1,810,105	1,855,358	1,873,912	18,554
Transfer to Harm Reduction Cash Fund	1,800,000	1,800,000	1,800,000	0
Healthy Kids Colorado Survey	752,416	752,469	756,196	3,727
Marijuana Health Effects Monitoring	349,895	349,921	362,367	12,446
Health survey data collection	238,000	238,000	243,596	5,596
Data collection and analysis (S.B. 13-283)	194,285	194,325	210,421	16,096
Enhanced marijuana data collection through Rocky Mountain Poison and Drug	60,100	60,100	60,100	0
Executive Director's Office, Personal Services	9,947	9,947	10,343	396
Retail marijuana health research grants	8,103	0	0	0
School Nurse Program (H.B. 19-1203)	0	0	0	0
Marijuana lab certification	0	1,135,732	1,135,732	0
Indirect cost assessments and centrally appropriated amounts not accounted for above	<u>2,469,196</u>	<u>2,482,560</u>	<u>2,575,529</u>	<u>92,969</u>
Subtotal: Public Health and Environment	20,129,803	22,827,312	26,701,905	3,874,593
Public Safety:				
Black market marijuana interdiction/state toxicology lab	3,205,227	3,205,227	4,289,289	1,084,062
School Safety Resource Center (FY 2022-23 R4)	0	0	1,200,000	1,200,000
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)	1,163,406	1,163,406	1,170,603	7,197
Juvenile diversion programs	400,000	400,000	400,000	0
Enhance school safety incident response grant program	0	250,000	250,000	0
State Patrol training academy	150,000	150,000	150,000	0
Public Safety Intelligence Support Related to the Illegal Sale and Diversion of Marijuana	77,611	77,611	79,648	2,037
Office of Preparedness, Program Administration	0	443	443	0
Indirect cost assessments and centrally appropriated amounts not accounted for above	<u>1,079,209</u>	<u>1,363,449</u>	<u>1,268,080</u>	<u>(95,369)</u>
Subtotal: Public Safety	6,075,453	6,610,136	8,808,063	2,197,927
Regulatory Agencies:				
Division of Professions and Occupations for medical marijuana enforcement	0	133,207	120,807	(12,400)
Centrally appropriated amounts not accounted for above	<u>0</u>	<u>82,000</u>	<u>82,000</u>	<u>0</u>
Subtotal: Regulatory Agencies	0	215,207	202,807	(12,400)
Revenue:				

SUMMARY OF APPROPRIATIONS AND TRANSFERS FROM THE MARIJUANA TAX CASH FUND FOR FY 2020-21 THROUGH
THE FY 2022-23 REQUEST

	FY 2020-21 APPROPRIATION	FY 2021-22 APPROPRIATION	FY 2022-23 REQUEST	ANNUAL CHANGE
Appropriations to Department of Revenue	<u>1,063,130</u>	<u>1,031,424</u>	<u>1,062,978</u>	<u>31,554</u>
Subtotal: Revenue	1,063,130	1,031,424	1,062,978	31,554
Transportation:				
Marijuana impaired driving campaign	<u>450,000</u>	<u>950,000</u>	<u>950,000</u>	<u>0</u>
Subtotal: Transportation	450,000	950,000	950,000	0
Total Appropriations (including Long Bill and Other Legislation)	\$121,615,556	\$151,169,372	\$166,192,193	\$15,022,821
Statutory Transfers:				
FY 2020-21 Transfer to General Fund (H.B. 20-1401)	\$136,989,750	\$0	\$0	\$0
Transfer to Pay for Success Contracts Fund (H.B. 18-1323)	1,725,066	0	0	0
Transfer to Marijuana Entrepreneur Fund (S.B. 21-111)	4,000,000	0	0	0
Transfer to State Public School Fund (H.B. 20-1418)	2,500,000	0	0	0
Transfer from Marijuana Cash Fund to MTCF to support CBI Task Force (S.B. 19-213)	(890,901)	0	0	0
Transfer to Public School Capital Construction Assistance Fund (S.B. 21-207)	0	100,000,000	39,000,000	(61,000,000)
Transfer to First Time Drunk Driving Offender Account (H.B. 21-1317)	0	2,000,000	0	(2,000,000)
Transfer to Marijuana Cash Fund (S.B. 21-283)	0	1,805,317	0	(1,805,317)
Transfers to Licensing Services Cash Fund (H.B. 21-1314)	0	912,000	0	(912,000)
Transfers to various criminal justice related funds (H.B. 21-1315)	<u>0</u>	<u>598,000</u>	<u>598,000</u>	<u>0</u>
Total Statutory Transfers	\$144,323,915	\$105,315,317	\$39,598,000	(\$65,717,317)
Total Appropriations and Transfers from the Marijuana Tax Cash Fund	\$265,939,471	\$256,484,689	\$205,790,193	(\$50,694,496)