MEMORANDUM

JOINT BUDGET COMMITTEE

TO	Joint Budget Committee Members
FROM	Craig Harper, JBC Staff (303-866-3481)
DATE	March 15, 2022
SUBJECT	Marijuana Tax Cash Fund Solvency and Appropriations Approved to Date

This memorandum provides a general update on the Committee's actions to date (as of March 11, 2022) regarding appropriations from the Marijuana Tax Cash Fund (MTCF) for FY 2022-23 and recommends a framework for legislation to support appropriations from the MTCF in FY 2022-23. Staff recommends that the Committee sponsor the legislation as part of the Long Bill package, in part because statutory change is necessary to authorize the anticipated appropriations from the MTCF.[1]

Staff is framing this as a "general" update on the status of the fund because: (1) Committee decisions may change; (2) staff expects minor changes to appropriations as analysts work with departments to specify "fund splits" between specific fund sources for FY 2022-23; and (3) the Committee will receive updated revenue estimates with the March 2022 revenue forecasts on March 17, 2022. Thus, staff is recommending a legislative framework for the Committee's consideration today and recommends basing specific funding adjustments on the March 2022 revenue forecast.

FY 2022-23 APPROPRIATIONS

Based on the Committee's actions as of March 11, 2022, the FY 2022-23 Long Bill would include approximately $157.8 million in appropriations from the MTCF (an increase of $6.6 million above the *appropriations* for FY 2021-22). **Table 1 provides a summary of the most significant year-over-year changes in MTCF *appropriations (individual changes of at least $250,000)*.**

TABLE 1: MAJOR JBC-APPROVED CHANGES IN *APPROPRIATIONS* FROM THE MARIJUANA TAX CASH FUND: FY 2022-23		
DEPARTMENT	PROGRAM	ANNUAL CHANGE
Public Health and Environment	Public awareness campaign funding restoration	$3,706,281
Higher Education	Institute of Cannabis Research at CSU-Pueblo (Request R3)	1,000,000
Public Safety	State toxicology lab (Request R5)	1,084,062
Law	Peace Officers Standards and Training (P.O.S.T.) Board	1,036,766
Human Services	Treatment and Detoxification Programs	776,224
Judicial	Trial court programs refinance (HB 21-1314)	553,862
Human Services	Increasing Access to Effective Substance Use Disorder Services (Provider Rate)	316,132
Higher Education	CU School of Public Health - regulating marijuana concentrates (annualize HB 21-1317)	(3,000,000)
Total		**$5,473,327**

Staff is aware of at least two potentially outstanding items related to MTCF appropriations for FY 2022-23:

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[1] As discussed in the FY 2022-23 JBC Staff Briefing Document on Marijuana Policy, an apparent drafting error in S.B. 21-059 (Juvenile Justice Code Reauthorization) restored a requirement to make all MTCF appropriations from prior year revenues, thus requiring statutory change to appropriate current year revenues. The document is available at: https://leg.colorado.gov/sites/default/files/fy2022-23_marbrf.pdf

- Department of Agriculture request R3 (Hemp Decortication) proposes an increase of $5.1 million to support a grant program related to hemp decortication.
- The Committee's decisions to date would provide a continuation funding amount of $750,000 for training for health professionals to provide Screening, Brief Intervention, and Referral for Treatment (SBIRT) services for Medicaid clients at risk for substance abuse. The Committee has expressed an interest in restoring funding for this program to pre-pandemic levels (such as the $1.5 million provided in FY 2019-20).

Looking strictly at *appropriations* and revenues, appropriations from the MTCF appear to be sustainable. As shown in Table 2, anticipated annual revenues (based on the December 2021 Legislative Council Staff revenue forecast, which was the lower forecast of MTCF revenues in December) to the fund exceed appropriations for both FY 2021-22 and FY 2022-23.

TABLE 2 – ANNUAL MARIJUANA TAX CASH FUND REVENUES (DECEMBER 2021 LCS REVENUE FORECAST) VS. CURRENTLY APPROVED APPROPRIATIONS

	FY 2021-22	FY 2022-23
Annual "New" Revenues	$173,288,882	$181,086,881
Appropriations (Current Law for FY 2021-22 and Approved for FY 2022-23)	151,169,362	157,807,312
Revenue Above/(Below) Appropriation	$22,119,520	$23,279,569

However, as outlined in the following section, it does not appear that the fund can support all of its existing requirements (appropriations, transfers, and TABOR reserve designation) for FY 2021-22.

TRANSFERS, TABOR RESERVE, AND FUND SOLVENCY

The MTCF does not appear to be able to meet all of the requirements in current law for FY 2021-22.[2] Based on revenue estimates from March 2021, in addition to $151.2 million in appropriations from the fund in FY 2021-22, the General Assembly:

- Enacted $105.3 million in transfers from the fund, including $100.0 million to the Public School Capital Construction Assistance Fund (PSCCAF) scheduled for June 1, 2022 (enacted in S.B. 21-207 (Public School Capital Construction Assistance Fund Transfer), a JBC Bill).
- Designated $100.0 million of the fund balance as part of the TABOR Emergency Reserve.

As shown in Table 3, current revenue estimates would not allow the fund to meet all of those requirements in FY 2021-22 as anticipated revenue will no longer support all of those obligations.

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

DESCRIPTION	DECEMBER LCS FORECAST	DECEMBER OSPB FORECAST
Beginning fund balance as of July 1, 2021 (per Department of Revenue)	$145,499,720	$145,499,720
PLUS: Total MTCF share of revenue collected in FY 2021-22	173,288,882	186,088,080
LESS: Statutorily required reserve (6.5 percent of total balance)	(20,721,259)	(21,553,207)

2 See the issue brief beginning on page 17 of the briefing document.

TABLE 3 - MARIJUANA TAX CASH FUND PROJECTIONS BASED ON DECEMBER 2021 REVENUE FORECASTS AND CURRENT APPROPRIATIONS		
DESCRIPTION	DECEMBER LCS FORECAST	DECEMBER OSPB FORECAST
LESS: Amount designated as TABOR emergency reserve	(100,000,000)	(100,000,000)
LESS: S.B. 21-207 (Pub School Cap Const Assistance Fund Transfer) Transfer to Education	(100,000,000)	(100,000,000)
LESS: H.B. 21-1317 (Regulating Marijuana Concentrates) Transfer to CDOT	(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)
LESS: H.B. 21-1314 (DOR Action Against Certain Documents) Transfers to Various Cash Funds	(912,000)	(912,000)
LESS: H.B. 21-1315 (Costs Assessed to Juveniles in the Criminal Justice System) Transfers	(598,000)	(598,000)
LESS: FY 2021-22 appropriations to a variety of departments	(151,169,362)	(151,169,362)
EQUALS: Estimated *deficit below required reserve* amount for FY 2021-22	**($58,417,336)**	**($46,450,086)**

Staff is not aware of any transfers from the fund in FY 2022-23 under current law, although the staff recommended framework would make a yet-to-be-determined transfer to the PSCCAF as part of the adjustments to the FY 2021-22 transfer.

RECOMMENDED LEGISLATIVE FRAMEWORK

Looking toward maintaining the solvency of the fund in FY 2021-22 and the FY 2022-23 budget process, staff recommends that the Committee sponsor legislation as part of the FY 2022-23 Long Bill package based on the following framework: (1) delaying a portion of the transfer to the Public School Capital Construction Assistance Fund (PSCCAF) to maintain solvency in FY 2021-22 and beyond; (2) restoring the ability to appropriate current year revenues (correcting the technical error in S.B. 21-059); and (3) modifying the fund's reserve requirement to reflect 15.0 percent of *annual appropriations* rather than the current 6.5 percent of *available revenues* and to clarify that the reserve requirement is over and above any amount designated as part of the TABOR Emergency Reserve.

FY 2021-22 TRANSFER AND SOLVENCY: Barring a dramatic and unexpected increase in revenue estimates for FY 2021-22, the fund simply cannot sustain the current transfers, appropriations, and TABOR reserve designation for FY 2021-22. In alignment with the Governor's proposals, staff recommends delaying a portion of the transfer to the PSCCAF and spreading that transfer over at least two and probably three years.

- The Governor's January 3 budget amendment package proposed reducing the transfer by $55.0 million in FY 2021-22 (from $100.0 million to $45.0 million), and then adding transfers of $35.0 million in FY 2022-23 and $20.0 million in FY 2023-24. Staff recommends provisionally approving the requested $55.0 million reduction to the transfer but will return to the Committee with specific details based on the March 2022 revenue forecast as well as any changes in appropriations for FY 2022-23.
- Staff agrees with the Governor's Office that this is the preferred path to maintain solvency. Given the fund balance in the PSCCAF, the B.E.S.T. program can plan for a delayed transfer with little

or no impact on construction funding (and staff would not recommend actually appropriating the additional $100.0 million in one year under any circumstance). Meanwhile, a $55.0 million reduction in appropriations from the MTCF would represent a 36.4 percent reduction to the $151.2 million in operating appropriations from the MTCF in FY 2021-22. That would likely be impossible at this point in the fiscal year and would create severe impacts for operating programs. Finally, staff would not recommend reducing the amount identified as part of the TABOR Emergency Reserve in order to support the transfer when the preferred mechanism of delaying the transfer to the PSCCAF is available.

APPROPRIATION OF CURRENT YEAR REVENUES: As discussed in the FY 2022-23 briefing document, prior to FY 2020-21, statute required all appropriations from the MTCF to be from prior year revenues (in arrears). House Bill 20-1401 (Marijuana Tax Cash Fund Spending and Transfer), a JBC Bill, eliminated that requirement and authorized the appropriation of current year revenues for FY 2020-21 and beyond as a budget balancing measure. Thus, the FY 2020-21 and current FY 2021-22 appropriations both assume the use of current year revenues to support operating appropriations from the fund. However, an apparent drafting error in S.B. 21-059 reversed that change and again requires all appropriations from the fund to be from prior year revenues. <u>As a result, current law would not allow the use of any assumed FY 2022-23 revenues in the FY 2022-23 appropriation.</u>

- The Committee could consider leaving the requirement to appropriate in arrears in place. Staff has previously recommended doing so, specifically in the March 2021 (FY 2021-22) version of this document when FY 2019-20 and FY 2020-21 revenues were well above expectations and had again generated a significant fund balance.
- However, given current circumstances (lower than anticipated revenues and resulting fund insolvency in the current year, along with the TABOR emergency reserve designation), staff recommends restoring the ability to appropriate current year/anticipated revenues. Given the other components of this framework (see reserve requirement discussion below), staff believes that the General Assembly can manage the resources of the MTCF without reverting to the requirement to appropriate in arrears.

MODIFIED RESERVE REQUIREMENT: Current law (Sec. 39-28.8-501 (5), C.R.S.) limits the General Assembly's appropriations from the MTCF to no more than " ninety-three and one-half percent of an amount equal to the beginning balance of the fund plus any money credited to the fund during the state fiscal year." Staff assumes that the intent of this provision is to create a 6.5 percent reserve in the fund. Staff recommends that the Committee's legislation include the following changes to the reserve requirement:

- *Set the reserve equal to 15.0 percent of appropriations from the fund rather than 6.5 percent of revenues.* This would be consistent with the practice for the General Fund reserve and would also create a fixed reserve requirement based on the Committee's decisions regarding appropriations rather than a reserve that would fluctuate based on revenues. Under the current system, the reserve requirement actually decreases when revenues decline, regardless of any changes in appropriations. Based on current revenue estimates and appropriations, the recommendation does not require a dramatic change in the reserve (based on the December 2021 Legislative Council Staff revenue forecast, the current 6.5 percent reserve equates to $20.7 million in FY 2021-22 while 15.0 percent of appropriations would require $22.7 million) but staff suggests that it would improve the General Assembly's ability to manage the fund.
- *Clarify that the reserve requirement applies to the initial appropriation but that the reserve is available for expenditure if necessary to support those appropriations.* Staff recommends that the provision make clear

that the reserve requirement applies to the original appropriation and must incorporate revenue estimates used for budget balancing – but that departments can access those funds during the fiscal year if necessary to support the General Assembly's approved appropriations.

- *Clarify that this reserve requirement is over and above any amount in the fund that is designated as part of the TABOR Emergency Reserve.* Under current law, one could argue that the portion of the fund designated as part of the TABOR reserve more than meets the statutory reserve requirement. However, those funds are simply not available as a functional operating reserve for current appropriations. Staff recommends that the bill make clear that the 15.0 percent reserve requirement consists of funds in excess of any TABOR reserve amounts.