

Joint Budget Committee



Staff Budget Briefing FY 2025-26 Marijuana Policy Overview

JBC Working Document - Subject to Change

Staff Recommendation Does Not Represent Committee Decision

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November 12, 2024

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ADDITIONAL RESOURCES

Brief summaries of all bills that passed during the 2024 legislative session that had a fiscal impact on this department are available in Appendix A of the annual Appropriations Report: <https://leg.colorado.gov/sites/default/files/fy24-25apprept.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 the name of this department's *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

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

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

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 Total revenue from business fees, licenses, and fines collected and credited to this fund, including associated interest and other adjustments, amounted to \$16,799,618 in FY 2023-24.

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.

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.

⁶ Actual patient fee revenues collected and credited to this fund, along with associated interest and other adjustments, totaled \$1,959,184 in FY 2023-24.

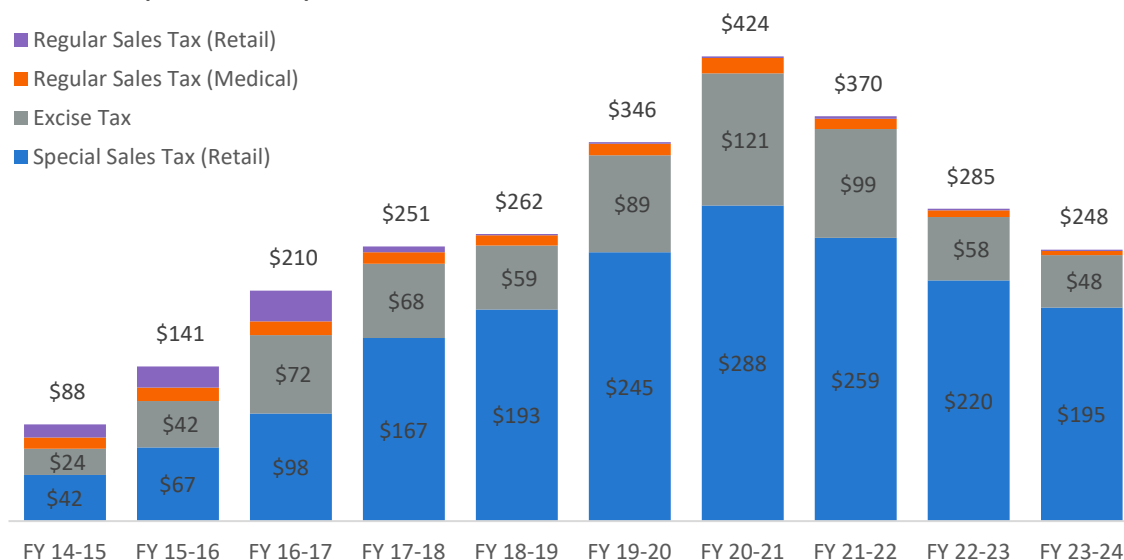
Finally, local governments also have a role in regulating marijuana. Cities and counties may prohibit or place limits on the sale of medical and retail marijuana in their jurisdictions, including the number and location of businesses as well as hours of operation. Cities and counties may establish land 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.

Tax Policy and Revenue Overview

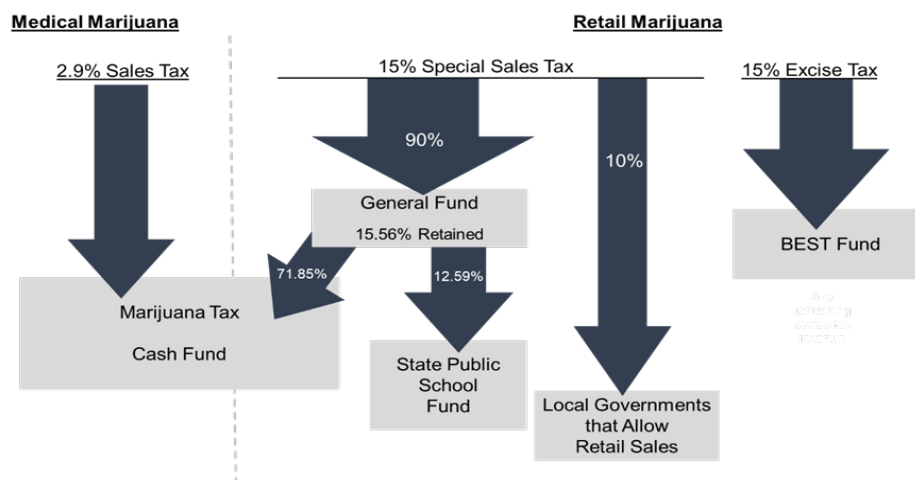
The State collects three types of taxes on marijuana products: (1) a special sales tax on retail marijuana, which accounts for the majority of annual marijuana tax revenues; (2) an excise tax on wholesale transfers of retail marijuana that supports uses related to K-12 education; and (3) the State’s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

In FY 2023-24, the state collected a total of approximately \$248.2 million from those three taxes, with the special sales tax accounting for \$195.0 million (77.1 percent of the total revenues). The excise tax added another \$47.9 million (20.2 percent), while the regular 2.9 percent sales tax generated \$5.3 million (2.7 percent). As shown in the following graphic, marijuana-related revenues increased yearly from FY 2014-15 through FY 2020-21, with special sales tax revenues driving much of that increase. However, total revenues have fallen by \$177 million (41.5 percent) between FY 2020-21 and FY 2023-24.

Marijuana tax revenues have dropped by 41.5 percent since the FY 20-21 pandemic peak



The following graphic (designed by Legislative Council Staff) illustrates the allocation of state tax revenues related to marijuana.⁷ A discussion of each type of tax and the allocation of the associated tax revenue follows the graphic.



In FY 2023-24 the State allocated the total of approximately \$248.2 million in marijuana tax revenue collections as follows:

- \$131.5 million (52.9 percent) was credited to the MTCF and made available for appropriation and transfer for a variety of purposes.
- \$70.9 million (28.5 percent) was allocated to two funds that support K-12 education, including \$48.8 million in excise taxes and \$22.1 million originating as special sales taxes.
- \$27.4 million (11.0 percent) was retained in the General Fund.
- \$19.5 million (7.8 percent) was distributed to local governments.

Special Sales Tax (\$195.0 million in FY 2023-24 and 78.5 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, approved by voters 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. However, as noted above, revenues have sharply fallen over the previous three fiscal years, and the State collected \$195.0 million in FY 2023-24, a decrease of \$24.9.3 million (12.7 percent) from FY 2022-23.

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

⁷ For FY 2020-21 only, H.B. 20-1418 (School Finance) diverted all marijuana excise tax collected above the first \$40.0 million to the State Public School Fund rather than the Public School Capital Construction Assistance (PSCCAF or BEST) Fund as a budget balancing measure. However, as of FY 2021-22 statute again credits all excise tax revenues to the PSCCAF.

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).⁸
- 15.56 percent to the General Fund.

Excise Tax (approximately \$47.9 million in FY 2023-24 and 19.3 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 products based on the median price for recent transactions (for example, transactions between June 1, 2024, and August 31, 2024, determined the rate for October 1, 2024, through December 31, 2024, shown in Table 1 below).⁹

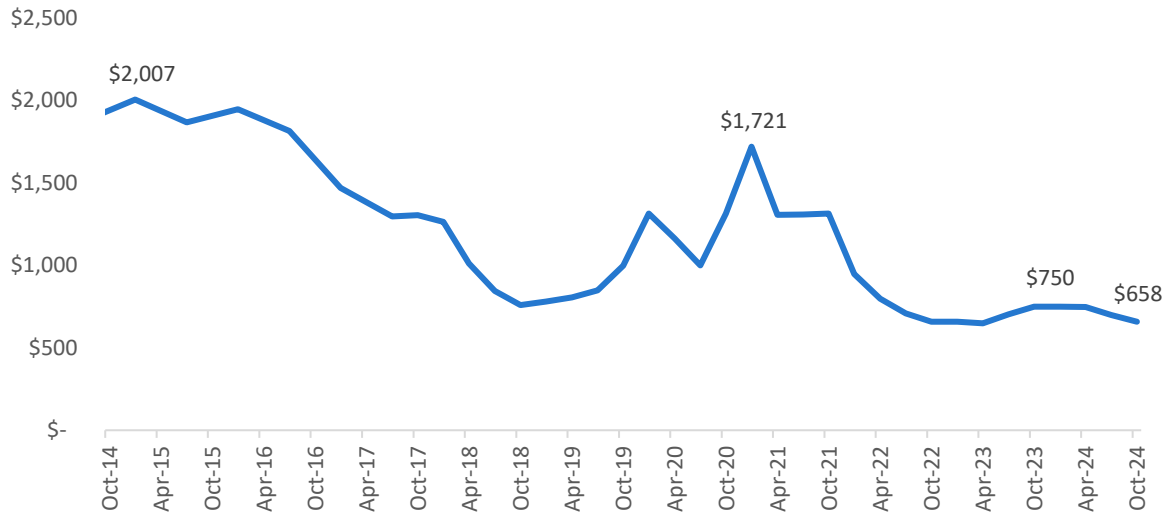
TABLE 1: MED Established Average Market Wholesale Price for Retail Marijuana (effective October 1 through December 31, 2024)			
Product Category	Detailed Description	Price	Measure
Retail bud	Product in the flowering stage	\$658	pound
Retail trim	Any part of a plant other than the bud or wet whole plant	\$192	pound
Retail immature plant	Nonflowering plant no larger than 8 inches tall or wide	\$15	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.	\$75	pound
Seed	Seeds of the marijuana plant	\$8	seed
Trim allocated for extraction	Trim that is designated for the extraction of retail marijuana concentrate and not for direct sale to consumers	\$40	pound
Bud allocated for extraction	Bud that is designated for the extraction of retail marijuana concentrate and not for direct sale to consumers	\$454	Pound

⁸ 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.

⁹ Current average market rates and a description of the Department’s methodology are available at: <https://tax.colorado.gov/average-market-rate>

According to the Department of Revenue, a majority 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, with a direct impact on excise tax revenues (see the chart below for an illustration of the changes in the AMR for “retail bud” since 2014). 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.

The Average Market Rate (AMR) for retail bud has fluctuated over time but is currently at its all-time low (\$ per pound)



Changes in wholesale sales, both price and quantity, create volatility in the collection of excise tax revenues. The bullet points below outline trends in excise tax revenues in recent years, which are highly correlated with fluctuations in AMR.

- 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.
- With increases in both the AMR and in marijuana sales, excise tax revenues rebounded to \$81.1 million in FY 2019-20 and increased again to \$120.8 million in FY 2020-21.
- Demand and price have declined since then, with excise tax revenues falling to \$97.3 million in FY 2021-22, a year-over-year decrease of 19.4 percent. In FY 2022-23, excise tax revenue continued to drop, falling by \$39.5 million to \$57.8 million, a decrease of 40.5 percent compared to the previous fiscal year.
- The September 2024 revenue forecast for OSPB shows preliminary excise tax revenue of \$47.9 million for FY 2023-24. The OSPB forecast further projects excise tax revenue growing annually by approximately 7.0 percent in FY 2024-25 and FY 2025-26 (see the Marijuana Revenue Outlook section below).
- 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).*¹⁰ 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.¹¹
- 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 2023-24, the State has collected a total of approximately \$770.6 million from marijuana excise tax revenue, directing \$622.2 million to the PSCCAF¹², \$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 \$5.3 million in FY 2023-24 and 2.1 percent of marijuana taxes

Finally, the State’s **2.9 percent regular state sales tax** 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.

TABOR Implications

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

¹⁰ See Article XVIII, Section 16 (5)(d), of the State Constitution.

¹¹ The bill specifically required the transfer of the greater of 90.0 percent of excise tax revenues or \$40.0 million.

¹² 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.

State Constitution (the Taxpayer’s Bill of Rights or TABOR)¹³. 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 2023-24, the marijuana-related tax and fee revenue that is subject to TABOR totaled \$16.8 million (including \$5.3 million in sales tax revenue and \$16.8 million in fee revenue).

Marijuana Revenue Outlook

Looking toward the 2025 Session, the Committee should note that marijuana revenue projections have decreased since the General Assembly finalized the FY 2024-25 budget. In general, marijuana revenue projections have been revised downward by both LCS and OSPB in recent fiscal years. As illustrated in the graphic below, the September 2024 OSPB revenue projection represents a \$20 million downward revision in FY 2024-25 revenue from the March forecast that the Committee used to balance the MTCF. Revenue in the out years was also significantly revised downward from the March forecast.

The September OSPB forecast for marijuana tax revenue in FY 2024-25 is 14.2 percent lower than the March OSPB forecast.

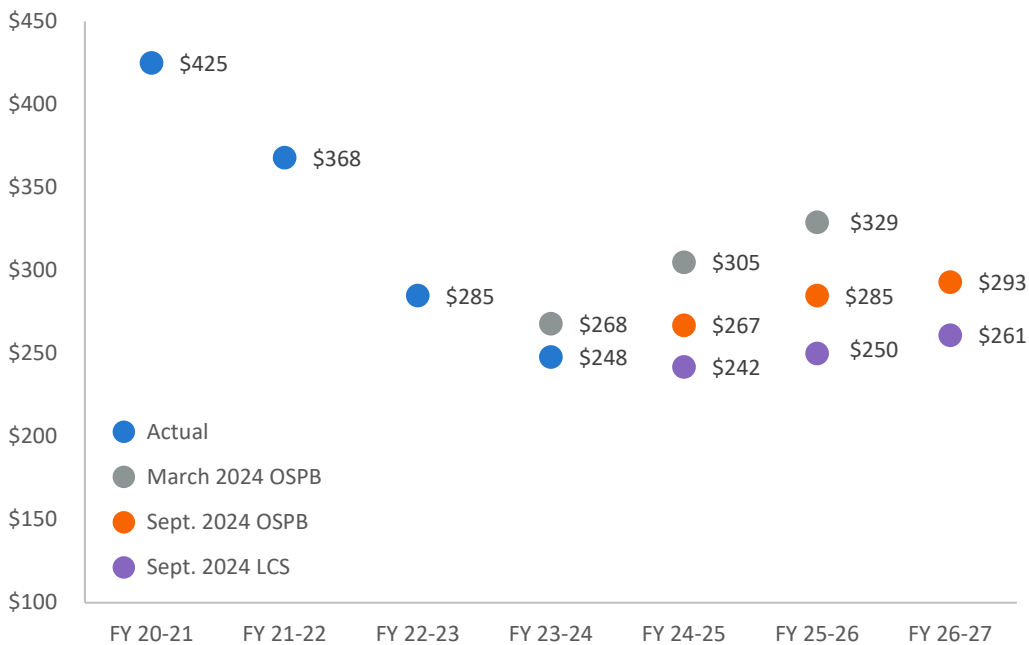


Table 2 below presents the September revenue forecasts for the MTCF as provided by both OSPB and LCS. Current estimates for special sales tax collections for fiscal year 2024-25, which support the MTCF, indicate that the fund will be able to meet its obligations and maintain adequate reserves according to the OSPB forecast. However, according to their September

¹³ See Sections 39-28.8-204 and 39-28.8-307, C.R.S., respectively.

projections, the MTCF will encounter challenges in fiscal year 2025-26 that will necessitate action to balance. The Governor has proposed a balancing plan, which is discussed in an issue brief on page 23 of this document. It is important to note that the MTCF faces even greater challenges under LCS's revenue projections. The differences between the two forecasts are detailed in the table below.

Table 2: State Tax Revenues Forecasts Related to Retail and Medical Marijuana

LCS Forecast	Actuals		LCS Forecast (9/2024)		
	FY 22-23	FY 23-24	FY 24-25	FY 25-26	CAGR
Proposition AA Taxes (Not Subject to TABOR)					
Total Special Sales Tax on Retail Marijuana ^a	\$219.9	\$195.0	\$189.9	\$195.2	0.1 %
State Share of Special Sales Tax	197.9	175.4	170.1	175.3	
Local Share of Special Sales Tax	21.9	19.4	18.9	19.5	
15.0 Percent Excise Tax on Retail Marijuana	57.8	47.9	47.6	50.4	2.5 %
Total Proposition AA Tax Revenues	\$277.7	\$242.9	\$237.5	\$245.6	0.5 %
Regular 2.9 Percent Sales Taxes + Interest on TABOR Reserve					
Retail & Medical Sales Tax Revenue ^b + Interest	\$6.9	5.3	4.9	4.8	-4.8 %
Total State Taxes on Marijuana	\$284.6	\$248.2	\$242.5	\$250.3	0.4 %
Portion Credited to Marijuana Tax Cash Fund ^c	\$149.0	\$131.5	\$127.8	\$131.0	-0.2 %
Annual % Change: MTCF		-11.7 %	-2.8 %	2.5 %	

OSPБ Forecast	Actuals		OSPБ Forecast (9/2024)		
	FY 2022-23	FY 2023-24	FY 2024-25	FY 2025-26	CAGR
Proposition AA Taxes (Not Subject to TABOR)					
Total Special Sales Tax on Retail Marijuana ^a	\$219.9	\$195.0	\$213.6	\$226.5	7.0 %
State Share of Special Sales Tax	197.9	178.2	192.2	205.4	
Local Share of Special Sales Tax	21.9	19.5	21.4	22.6	
15.0 Percent Excise Tax on Retail Marijuana	57.8	47.9	51.9	51.9	4.1 %
Total Proposition AA Tax Revenues	\$277.7	\$242.9	\$260.7	\$278.3	7.0 %
Regular 2.9 Percent Sales Taxes + Interest on TABOR Reserve					
Retail & Medical Sales Tax Revenue ^b + Interest	\$6.9	\$5.3	\$6.8	\$6.9	14.1 %
Total State Taxes on Marijuana	\$284.6	\$248.2	\$267.5	\$285.3	7.2 %
Portion Credited to Marijuana Tax Cash Fund ^c	\$149.0	\$131.5	\$144.7	\$153.2	7.9 %
Annual percent Change: MTCF		-11.7 %	10.0 %	5.9 %	

^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.

Table 3 below highlights the differences between the most recent September forecasts from the Office of State Planning and Budgeting (OSPБ) and the Legislative Council Staff (LCS). The OSPБ forecast anticipates a growth rate of 10.0 percent in MTCF revenue in FY 2024-25, which translates to approximately \$17 million more in MTCF revenue compared to the LCS forecast, which predicts a growth rate of -2.8 percent for the same fiscal year.

For FY 2025-26, the OSPB forecast projects a growth rate of 5.9 percent in MTCF revenue, while the LCS forecast assumes a growth rate of 2.5 percent. Consequently, OSPB anticipates \$22.2 million more in MTCF revenue than LCS for FY 2025-26.

Table 3:
September Forecast Variance: LCS - OSPB (millions)

Item	FY 24-25	FY 25-26
Total State Taxes on Marijuana	-\$25.0	-\$35.0
Marijuana Tax Cash Fund	-\$16.9	-\$22.2

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.

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

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 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 and allowed the General Assembly to appropriate MTCF revenues in the same year in which they are collected beginning in FY 2020-21. 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.

With respect to the amount appropriated from the MTCF, the statute includes a reserve requirement. Prior to FY 2022-23, the provision limited annual appropriations from the MTCF to no more than 93.5 percent of the “amount of moneys in the fund available for appropriation.” House Bill 22-1341 (Marijuana Tax Cash Fund) modified this provision to require the General Assembly to maintain a reserve of 15.0 percent of expenditures from the fund and clarified that the reserve had to be in addition to any amounts designated as a portion of the TABOR emergency reserve. In addition, for FY 2021-22 through FY 2024-25 the General Assembly has designated \$100.0 million of the MTCF fund balance as part of the State Emergency Reserve under TABOR.

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*.

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

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

- (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*.
- (J) Repealed.
- (K) Repealed.
- (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.

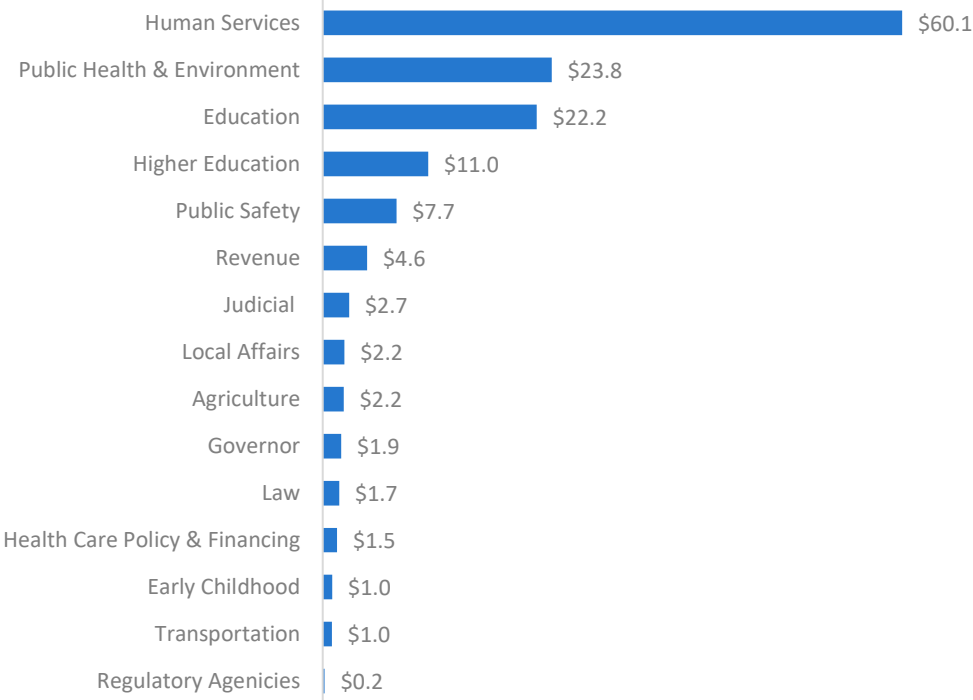
The General Assembly appropriates money in the MTCF based on the most recent revenue projections from either LCS or OSPB, depending on the Committee's choice of forecast for General Fund balancing purposes (the March 2024 OSPB revenue forecast for FY 2024-25).

- For FY 2024-25, the General Assembly has appropriated or transferred a total of \$145.1 million from the MTCF, a decrease of approximately \$10.9 million from the amended FY 2023-24 appropriation.
- In order to begin FY 2024-25 with a sufficient balance, H.B. 24-1395 (Public School Capital Construction Assistance Fund Transfer Date) delayed a \$20 million transfer from the marijuana tax cash fund to the Public School Capital Construction Assistance Fund from June 1, 2024, to June 1, 2026. The Public School Capital Construction Assistance Fund supports the Building Excellent Schools Today (BEST) program in the Department of Education.

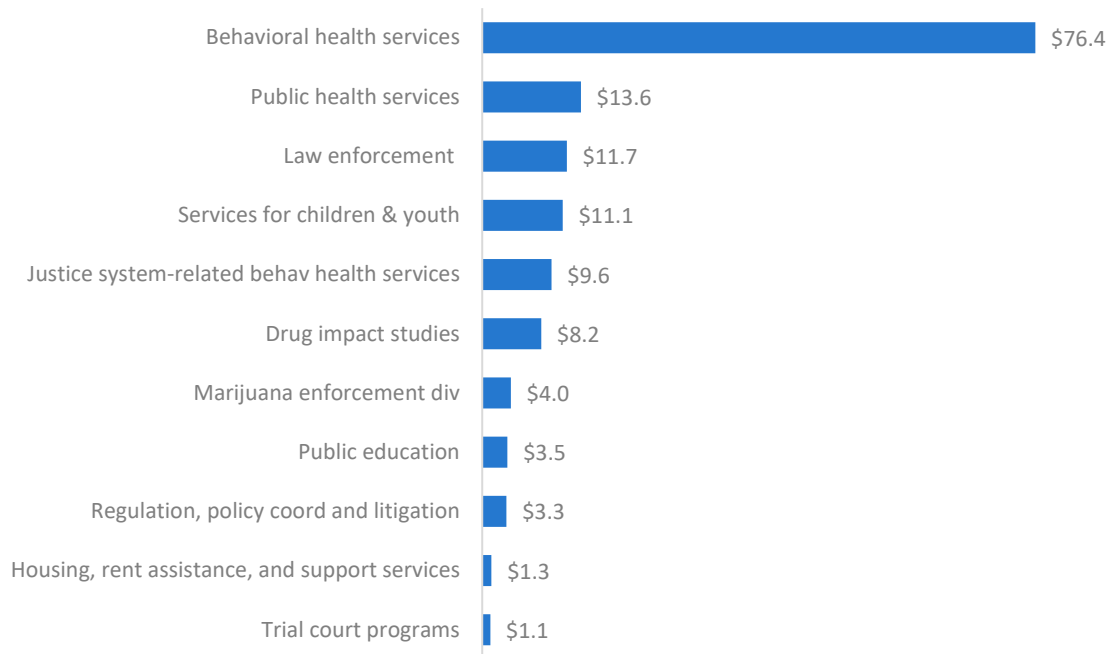
- Note that S.B. 23-220 (Public School Capital Construction Assistance Grants) previously repealed a \$30 million FY 2022-23 transfer from the Marijuana Tax Cash Fund to the Building Excellent Schools Today (BEST) program in the Department of Education. This action was implemented as a budget-balancing measure resulting from the ongoing decline in MTCF revenue.
- Finally, as noted above, the General Assembly continued to designate \$100.0 million of the fund balance as a portion of the TABOR emergency reserve for FY 2023-24.

The following two graphics illustrate the current FY 2024-25 allocation of MTCF *appropriations* among state agencies and among the statutorily authorized purposes. With respect to the charts, it is important to note that they only include appropriations from the MTCF and, therefore, do 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.

The Department of Human Services received 42 percent of MTCF appropriations for FY 24-25 (\$ in millions)



In terms of use, behavioral health services for children and youth received the largest appropriations for FY 24-25 (\$ in millions)



The following issue briefs provide additional detail regarding marijuana sales at the state level as well as the status of the MTCF looking toward the 2025 session. Please note that Appendix C outlines the appropriations from the MTCF for fiscal years 2023-24 and 2024-25, along with the requested appropriations for fiscal year 2025-26, categorized by department and purpose.

Issue: National Marijuana Market Trends

This issue brief outlines the national trends regarding state-level legalization of adult-use marijuana. Currently, 24 states, along with Washington, DC, have established legalized and regulated recreational marijuana markets, with further expansion anticipated. Moreover, the 2018 Farm Bill, which legalized hemp, has facilitated the swift development of an intoxicating hemp market, resulting in significant disruptions within the regulated marijuana sector and negatively impacted Colorado's marijuana tax revenue.

Summary

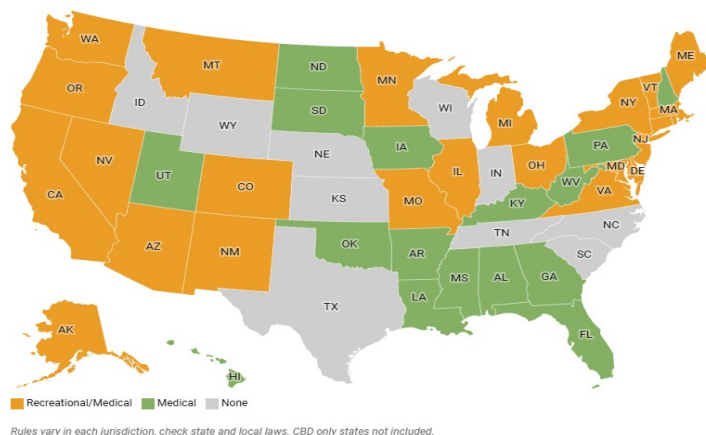
- In 2014 Colorado became a first mover in establishing and regulating marijuana. Colorado benefited from its position as the only state with a legalized adult use marijuana market. Over the ensuing decade, dozens of other states followed Colorado in establishing and taxing adult-use marijuana within their states.
- Colorado has experienced a 41 percent decline in marijuana tax revenue in recent years due to a number of factors including increasing competition, pandemic demand surge, excess supply, the rapid emergence of a disruptive intoxicating hemp market, and additional variables perhaps not yet fully understood.
- Nationally, regulated adult use marijuana market revenue continues to grow, but the growth is uneven across the country, with in general, older more established markets experiencing stagnating or negative growth, while newer state markets have experienced robust year over year growth.

Discussion

The map provided below¹⁷ depicts the current legal status of marijuana across the country at the state level. Since 1996, when California became the first state to establish a regulated medical marijuana industry, there have been significant changes in legislation. In 2014, Colorado and Washington paved the way for a regulated recreational marijuana market for adult use. In the subsequent decade, numerous states have followed and enacted their own regulations for legalized marijuana at the state level. In 2022

¹⁷ <https://mjbizdaily.com/map-of-us-marijuana-legalization-by-state/>

State legal status of recreational and medicinal marijuana as of November, 5, 2024. Twenty-four states and Washington DC currently have a regulated adult-use marijuana market.



Colorado is not alone in experiencing a downturn in adult-use marijuana sales revenue. Among the fifteen largest state marijuana markets analyzed, four are expected to experience negative growth rates in 2024. These states—California, Colorado, Washington, and Arizona—represent some of the older and more established adult-use marijuana markets in the country.

Table 4¹⁸ below illustrates the projected adult-use marijuana sales, along with the anticipated market growth rates for 2024. Colorado is predicted to see the most significant decline in year-over-year sales, with a contraction of 8 percent in 2024.

State	Adult-Use Sales Launch	Projected 2024 Total Sales	Year-over-Year Growth
California	Jan. 2018	\$4,724,817,118	-3.4%
Michigan	Dec. 2019	3,319,270,984	8.6%
Florida	Medical	2,148,400,000	6.1%
Illinois	Jan. 2020	1,995,987,065	1.8%
Massachusetts	Nov. 2018	1,795,826,907	0.2%
Pennsylvania	Medical	1,673,945,914	9.4%
Missouri	Feb. 2023	1,441,335,000	7.7%
Colorado	Jan. 2014	1,407,065,694	-8.0%
Arizona	Jan. 2021	1,335,551,095	-7.5%
Washington	Jul. 2014	1,204,584,216	-3.3%
Maryland	Jul. 2023	1,133,515,252	43.8%
Oregon	Oct. 2015	966,237,117	1.1%

¹⁸ <https://www.cannabisbusinesstimes.com/us-states/arizona/news/15686436/11-states-projected-to-be-billiondollar-cannabis-markets-in-2024>

State	Adult-Use Sales Launch	Projected 2024 Total Sales	Year-over-Year Growth
New Jersey	Apr. 2022	\$958,783,536	19.8%
Nevada	Jul. 2017	861,097,492	4.4%

While Colorado is expected to experience the largest year-over-year decline in marijuana sales in 2024, it is still projected to have the fourth highest per capita sales in the country. Table 5¹⁹ below outlines the per capita sales by state for 2024.

State	Adult-Use Sales Launch	Projected 2024 Total Sales
Michigan	Dec. 2019	\$331
Nevada	Jul. 2017	268
Massachusetts	Nov. 2018	256
Colorado	Jan. 2014	238
Missouri	Feb. 2023	232
Oregon	Oct. 2015	229
Maryland	Jul. 2023	183
Arizona	Jan. 2021	178
Illinois	Jan. 2020	159
Washington	Jul. 2014	154
*Pennsylvania	Medical	129
California	Jan. 2018	121
New Jersey	Apr. 2022	103
*Florida	Medical	94
Average	n/a	\$191

State Level Marijuana Tax Policy

State-level taxation on adult-use marijuana exhibits significant variation between states, with each state employing distinct metrics for assessment. Some states levy a wholesale tax, others do not. Nearly all states apply taxes on retail sales of marijuana, yet the applicable tax rates can differ depending on the type of product. Furthermore, certain states utilize a tiered taxation system that correlates with the THC concentration of various products, adding another layer of complexity. This diverse structure of marijuana tax policies across states vastly complicates any meaningful comparative analysis. A detailed table outlining the marijuana tax policies of all states with an adult-use marijuana market can be found in Appendix B on page 27 of this document.

Intoxicating Hemp

The 2018 Farm Bill introduced substantial modifications to the federal classification of hemp, revising the Controlled Substances Act to exclude specific products from the marijuana

¹⁹ cannabisbusinesstimes.com/us-states/arizona/news/15686436/11-states-projected-to-be-billion-dollar-cannabis-markets-in-2024, worldpopulationreview.com/states

definition. This legislation exempted hemp containing 0.3% or less delta-9 tetrahydrocannabinol (THC) by dry weight from the list of controlled substances. It was anticipated that this legislation would provide farmers with a new source of income through markets for textiles, supplements, and non-intoxicating products, as plants with THC levels below 0.3 percent were deemed non-intoxicating.

A significant unintended outcome of this federal legislation was the rapid emergence of a \$2.2 billion quasi-legal market for hemp and wholesale CBD that are chemically converted to psychoactive compounds, primarily Delta-8, Delta-10, and THC-0²⁰. While hemp products are legal in Colorado, chemically converted THC derived from hemp does not meet the criteria for legality, and products that contain more than 1.75 milligrams of THC per serving and contain a CBD to THC ratio of less than 15:1, sales of which are prohibited under Colorado law.

States have been largely caught off guard by the swift rise of the intoxicating hemp market, resulting in diverse responses. Over eleven states, including Colorado, which recently enacted S.B. 23-271 (Intoxicating Cannabinoid Hemp and Marijuana), have implemented legislation to address this largely unregulated and virally expanding market. Nonetheless, intoxicating hemp products are prolific across the internet. This situation has significantly disrupted the adult-use marijuana industry and adversely impacted the associated marijuana tax revenue to the State.

²⁰ <https://www.newsweek.com/unintended-consequences-legalizing-hemp-opinion-1627595#:~:text=All%20to%20the%20legalization%20of,%2C%20quasi%2Dlegal%20psychoactive%20substances.>

Issue: FY 2024-25 Marijuana Tax Cash Fund Status and the FY 2025-26 Request

For context, the MTCF is relatively unique as a cash fund with a defined revenue source that also provides discretionary appropriations to a wide variety of departments. This situation requires the Committee and the General Assembly to carefully balance the fund's revenues and appropriations among different departments and priorities. Currently, this presents unique challenges, as revenues have significantly declined over the past four fiscal years, and the two forecasts provide differing outlooks for the fund.

This issue brief provides an overview of the status of the Marijuana Tax Cash Fund (MTCF) in FY 2024-25 and FY 2025-26 based on the current revenue projections provided by both LCS and OSPB. Additionally, the brief discusses the Governor's Marijuana Tax Cash Fund balancing requests for FY 2025-26.

Summary

- Ongoing declines in medical and recreational marijuana revenue and different forecast assumptions by LCS and OSPB continue to leave significant uncertainty around cash flow to the MTCF in FY 2024-25 and FY 2025-26.
- Marijuana tax revenue has fallen by over 40 percent since the peak in FY 2021-22 and dozens of states have now legalized recreational and/or medical marijuana, while others continue to explore doing so. The shifting national landscape of marijuana legalization coupled with the rapid emergence and growth of intoxicating hemp has complicated the market outlook for marijuana.
- OSPB expects MTCF revenue to rebound by 10.0 percent in FY 2024-25 and grow throughout the forecast period, albeit at a slower rate. LCS forecasts MTCF revenue to decline by 2.8 percent in FY 2024-25, followed by modest 2.5 percent growth in FY 2025-26.
- Based on the OSPB September forecast, the MTCF can meet all of its obligations in FY 2024-25. However, under the LCS projections, appropriations and transfers will deplete \$15.7 million of the 15.0 statutory reserve.
- The \$20.0 million transfer to BEST scheduled for June 1, 2026 does not currently appear viable under either forecast without significant risk to MTCF solvency. The Governor's balancing proposal eliminates this transfer.

MTCF Solvency in FY 2024-25

The General Assembly balanced appropriations and transfers from the MTCF for FY 2024-25 based on the revenue expectations in the March 2024 OSPB forecast. Based on these projections, the General Assembly implemented the following actions for fiscal year 2023-24:

- Continued to designate \$100.0 million of the MTCF balance as part of the TABOR emergency reserve (first designated in FY 2021-22).

- Due to the ongoing uncertainty regarding MTCF revenue, the Committee sponsored legislation, H.B. 24-1395 (Public School Capital Construction Assistance Fund Transfer Date), to postpone a \$20 million transfer from the Marijuana Tax Cash Fund to the Public School Capital Construction Assistance Fund from June 1, 2024, to June 1, 2026.
 - Background: S.B. 23-220 (Public School Capital Construction Assistance Grants) repealed a FY 2022-23 \$30.0 million transfer from the MTCF to the PSCCAF to support the BEST program. Senate Bill 21-207 (Public School Capital Construction Assistance Fund Transfer) had previously directed a transfer of \$100.0 million in FY 2021-22. However, responding to solvency concerns for FY 2021-22, H.B. 22-1341 (Marijuana Tax Cash Fund) reduced the FY 2021-22 transfer to \$50.0 million and then directed transfers of \$30.0 million in FY 2022-23 and \$20.0 million in FY 2023-24. The total transfer of \$100.0 million was intended as “repayment” of a transfer of that amount from the PSCCAF to the State Public School Fund in FY 2020-21 as a budget-balancing measure.
- Transferred \$598,000 to other cash funds related to juveniles in the criminal justice system, as enacted in H.B. 21-1315 (Costs Assessed to Juveniles in the Criminal Justice System).
- Appropriated a total of \$145.1 million to various state agencies. A breakdown of these appropriations at the departmental level is available in Appendix C, starting on page 30.

As shown in Table 5 below, the Committee’s actions left the MTCF with a balance of approximately \$22.1 million above the 15.0 percent statutory reserve (Note that the fund had essentially no balance above the statutory reserve based on the LCS forecast). The excess fund balance was left available in part to fund a \$20.0 million transfer to BEST that was shifted out two years to June 1, 2026, but also as a hedge against continued MTCF revenue volatility.

Note that the fund's beginning balance for July 1, 2024 (FY 2024-25) is approximately \$7.8 million lower than what was anticipated in the March forecast. This decrease in balance is mainly due to lower-than-expected MTCF revenue entering the fund during the last quarter of FY 2023-24, along with a combination of reversions and the effects of roll-forward spending authority for specific appropriations.

Description	March OSPB	September OSPB	September LCS
Beginning fund balance as of July 1, 2024 (per Department of Revenue)	\$128,348,448	\$120,578,628	\$120,578,628
PLUS: Total MTCF share of revenue	157,963,380	144,716,979	127,800,000
LESS: Amount designated as TABOR emergency reserve	-100,000,000	-100,000,000	-100,000,000
LESS: Annual appropriations to a variety of departments	-143,542,398	-143,542,398	-143,542,398
LESS: Estimated reserve (15.0 percent of appropriations)	-21,531,360	-21,531,360	-21,531,360
LESS: Current Law transfers to Various Justice Funds (HB 21-1315)	-598,000	-598,000	-598,000
LESS: Transfer IT Capital - MED Seed-to-Sale Software	-1,000,000	-1,000,000	-1,000,000
LESS: Proposed Transfer IT Capital CDPS Placeholder	0	0	0
PLUS: Estimated Budget Reversion Amounts	2,500,000	2,500,000	2,500,000
EQUALS: Estimated available balance above/(deficit below) 15.0 percent statutory reserve	\$22,140,070	\$1,123,849	-\$15,793,130
PLUS: Total reserve amounts	121,531,360	121,531,360	121,531,360
Year-end fund balance (including reserves)	\$146,171,430	\$122,655,209	\$105,738,230

FY 2025-26 Request

Looking toward the future, staff notes that existing *appropriations and statutory transfers* from the MTCF are not sustainable under either the OSPB or LCS forecast. As outlined in Table 6 below, if MTCF revenues trend with the OSPB forecast, then the MTCF is projected to finish FY 2024-25 just above the 15 percent statutory reserve. However, with no further budget balancing measures, the fund is projected to finish FY 2025-26 \$19.6 million below the statutory reserve.

Table 6: FY 2025-26 Marijuana Tax Cash Fund Projections - Sept 2024 OSPB Forecast

Description	FY 2024-25 Appropriated	FY 2025-26 Request
Beginning fund balance as of July 1, 2024 (per Department of Revenue)	\$120,578,628	\$122,655,209
PLUS: Total MTCF share of revenue (September OSPB)	144,716,979	153,193,859
LESS: Amount designated as TABOR emergency reserve	-100,000,000	-100,000,000
LESS: Appropriations approved FY 2024-25; FY 2025-26 base appropriations	-143,542,398	-149,367,769
LESS: Estimated reserve (15.0 percent of appropriations)	-21,531,360	-22,405,165
LESS: Current Law transfers to Various Justice Funds (HB 21-1315)	-598,000	-598,000
LESS: Transfer to BEST	0	-20,000,000
LESS: Transfer IT Capital - MED Seed-to-Sale Software	-1,000,000	-3,080,000
PLUS: Estimated Budget Reversion Amounts	2,500,000	0
EQUALS: Estimated available balance above/(deficit below) 15.0 percent statutory reserve	\$1,123,849	-\$19,601,866
PLUS: Total reserve amounts	121,531,360	122,405,165
Year-end fund balance (including reserves)	122,655,209	102,803,299

The LCS forecast projects approximately \$16.9 million less MTCF revenue in FY 2024-25 than OSPB, and \$22.2 million less in FY 2025-26. Consequently, the fund faces substantial challenges over the next two fiscal years based on LCS’s revenue projections, and the budget balancing actions proposed by the Governor in this submission will be inadequate to maintain the funds solvency in FY 2025-26.

Staff notes that the General Assembly will have additional information available from the December 2024 and March 2025 revenue forecasts to inform final decisions about the current transfers and appropriations from the MTCF and recommends basing final decisions on the March revenue forecast selected for balancing.

Note, staff does not expect to recommend making potentially disruptive reductions to programs that the General Assembly has intended to be ongoing in the current fiscal year. Additionally, staff is very reluctant to recommend reducing the portion of the fund balance designated as part of the TABOR emergency reserve.

Governor's FY 2025-26 MTCF Balancing Proposal:

The Governor's FY 2025-26 request is based on the September 2024 OSPB revenue forecast. Major components of the request (including those from the Governor, the Judicial Branch, and the Department of Law) are outlined below.

Proposed Reductions and Refinancing Measures:

Education: The proposal includes the elimination of a \$20 million transfer to the Building Excellent Schools Today (BEST) scheduled for FY 2025-26. According to the Governor's office, BEST cash grants are currently expected to be higher than all new General Fund funding for statewide capital assets in FY 2025-26. Additionally, there is a subsequent proposal in the Governor's budget to cap new BEST cash grants at their five-year average of \$129 million, and grow at the rate of the TABOR cap.

Considering the potential effects on BEST program revenues—particularly in light of decreased marijuana excise tax revenues—staff recommends that the Committee address these issues during the briefing and hearing processes for the Department of Education. The JBC Staff briefing for the Department of Education is currently scheduled for December 3, 2024.

Education: The proposal includes one-time refinance of the \$5.4 million appropriation for early literacy funding from the MTCF to the Early Literacy Cash fund for use by the Colorado Department of Education. The department also has two decision items that would draw additional funding from the Early Literacy Cash Fund. Note that this refinance proposal may require an additional one-time transfer of State Education Fund (SEF) dollars of \$4.5 million in FY 2025-26 above the ongoing \$34 million transfer the fund receives from the SEF in order to maintain fund solvency. The JBC Staff briefing for the Department of Education is currently scheduled for December 3, 2024.

Judicial: The proposal includes a refinance of \$1.6 million on a one-time basis for the Judicial appropriation to the Correctional Treatment Cash Fund. Instead of utilizing the MTCF appropriation, this proposal would increase the cash fund appropriation from the existing fund balance of the Correctional Treatment Cash Fund. The JBC Staff briefing for the Judicial Department is currently scheduled for December 9, 2024.

Human Services: The proposal includes a reduction of \$0.4 million on an ongoing basis within the Colorado Department of Human Services specifically for the Behavioral Health Crisis System Telephone Hotline due to overlapping services offered by the department. The JBC Staff briefing for the Department of Human Services is currently scheduled for December 10, 2024.

Proposed New Funding Requests:

Public Safety: The proposal includes \$3.4 million and 1.0 term-limited FTE position as a one-time investment in the Crime Prevention Through Safer Streets (CPTSS) program within the Department of Public Safety. The CPTSS program, originally established through S.B. 22-001 (Crime Prevention Through Safer Streets), aims to reduce and deter crime by enhancing the

visibility and usability of community spaces, potentially making them less conducive to crime and violent behavior. The JBC Staff briefing for the Department of Public Safety is currently scheduled for December 4, 2024.

IT Capital: The proposal includes \$3.1 million to continue an IT Capital Project approved by the JBC in FY 2024-25 for the Marijuana Enforcement Division for Seed-to-Sale Tracking Systems. The JBC Staff briefing for IT Capital is currently scheduled for December 16, 2024.

Corrections: The proposal includes \$2.0 million and 1.0 FTE ongoing for Youth Delinquency Prevention Grants. Established through H.B. 22-1003 (Youth Delinquency Prevention and Intervention Grants), this program serves as an early intervention initiative for youth who have entered or are at risk of entering the juvenile justice system. It provides grants to eligible recipients for collaborative projects aimed at reducing violence, crime, and delinquency among young people. The JBC Staff briefing for Corrections is currently scheduled for December 4, 2024.

IT Capital, Legislative Placeholder: The proposal includes a \$1.6 million transfer to the IT Capital Construction Fund to update the Colorado Gangs Database, operated by the Colorado Bureau of Investigation. The Governor’s Office plans to include this as part of the January 2 supplemental submission. The JBC Staff briefing for IT Capital is currently scheduled for December 16, 2024.

Office of Economic Development and International Trade, Legislative Placeholder: The proposal includes \$1.5 million on an ongoing basis to fund *Cannabis Business Office Modifications and Funding*. This legislation would provide an ongoing funding mechanism to the Cannabis Business Office. The JBC Staff briefing for The Office of Economic Development and International Trade is currently scheduled for December 12, 2024.

Table 6 below presents the Governor’s MTCF request for FY 2025-26, which incorporates various budget balancing strategies. These strategies consist of the elimination of specific transfers, the refinancing of cash fund sources, reductions in appropriations, and the introduction of several new appropriations. Overall, the Governor’s request includes a net-total reduction of \$19.9 million from the base budget.

Description	FY 2024-25 Appropriated	FY 2025-26 Request
Beginning fund balance as of July 1, 2024 (per Department of Revenue)	\$120,578,628	\$122,655,209
PLUS: Total MTCF share of revenue (September OSPB)	144,716,979	153,193,859
LESS: Amount designated as TABOR emergency reserve	-100,000,000	-100,000,000
LESS: Appropriations approved FY 2024-25; FY 2025-26 base appropriations	-143,542,398	-149,367,769
PLUS: CDE Early Literacy Refinance	0	5,378,678
PLUS: Judicial Correctional Treatment CF Refinance	0	1,626,967
PLUS: Reduction to CDHE's CU School of Public Health	0	1,000,000
PLUS: BHA R-03 MTCF Reduction	0	367,316
LESS: CDPS Crime Prevention through Safer Streets Funding	0	-3,400,000
LESS: CDPS Youth Delinquency Prevention Grants	0	-2,000,000
LESS: OEDIT Cannabis Business Office Funding Legislative Placeholder	0	-1,500,000
LESS: Estimated reserve (15.0 percent of appropriations)	-21,531,360	-22,184,221

Description	FY 2024-25 Appropriated	FY 2025-26 Request
LESS: Current Law transfers to Various Justice Funds (HB 21-1315)	-598,000	-598,000
LESS: Transfer to BEST	0	0
LESS: Transfer IT Capital - MED Seed-to-Sale Software	-1,000,000	-3,080,000
LESS: Proposed Transfer IT Capital CDPS Placeholder	0	-1,600,000
<i>PLUS: Estimated Budget Reversion Amounts</i>	<i>2,500,000</i>	<i>0</i>
EQUALS: Estimated available balance above/(deficit below) 15.0 percent statutory reserve	\$1,123,849	\$492,039
PLUS: State Emergency Reserve Cash	100,000,000	100,000,000
PLUS: Total reserve amounts	21,531,360	22,184,221
Year-end fund balance (including reserves)	\$122,655,209	\$122,676,260

It is important to note that the Governor's MTCF balancing request is contingent upon the OSPB forecast. As previously discussed, the OSPB projection anticipates a compound average growth rate of 7.9 percent in MTCF revenue for fiscal years 2024-25 and 2025-26, including significant anticipated **growth of 10.0 percent** for the current fiscal year. In contrast, alternative assumptions utilized by LCS result in a notably lower revenue forecast. The LCS forecast anticipates a **2.8 percent decline** in MTCF revenue for the current budget year, followed by modest growth of 2.5 percent in FY 2025-26.

Table 7 below outlines the Governor's proposal for balancing the MTCF alongside the LCS revenue projections for MTCF for FY 2024-25 and FY 2025-26. Based on these assumptions, the MTCF is projected to finish FY 2024-25 with a shortfall of \$15.8 million below the required 15.0 percent statutory reserve. This challenging situation would roll into FY 2025-26, and according to LCS's projections, expenditures and transfers would exhaust the entire 15.0 percent statutory reserve and begin to significantly erode the TABOR emergency reserve.

Description	FY 2024-25 Appropriated	FY 2025-26 Request
Beginning fund balance as of July 1, 2024 (per Department of Revenue)	\$120,578,628	\$105,738,230
PLUS: Total MTCF share of revenue (September LCS)	127,800,000	131,000,000
LESS: Amount designated as TABOR emergency reserve	-100,000,000	-100,000,000
LESS: Appropriations approved FY 2024-25; FY 2025-26 base appropriations	-143,542,398	-149,367,769
PLUS: CDE Early Literacy Refinance	0	5,378,678
PLUS: Judicial Correctional Treatment CF Refinance	0	1,626,967
PLUS: Reduction to CDHE's CU School of Public Health	0	1,000,000
PLUS: BHA R-03 MTCF Reduction	0	367,316
LESS: CDPS Crime Prevention through Safer Streets Funding	0	-3,400,000
LESS: CDPS Youth Delinquency Prevention Grants	0	-2,000,000
LESS: OEDIT Cannabis Business Office Funding Legislative Placeholder	0	-1,500,000
LESS: Estimated reserve (15.0 percent of appropriations)	-21,531,360	-22,184,221
LESS: Current Law transfers to Various Justice Funds (HB 21-1315)	-598,000	-598,000
LESS: Transfer to BEST	0	0
LESS: Transfer IT Capital - MED Seed-to-Sale Software	-1,000,000	-3,080,000
LESS: Proposed Transfer IT Capital CDPS Placeholder	0	-1,600,000
<i>PLUS: Estimated Budget Reversion Amounts</i>	<i>2,500,000</i>	<i>0</i>

Table 7: MTCF Budget Balancing Proposal - September 2024 LCS Forecast

Description	FY 2024-25 Appropriated	FY 2025-26 Request
EQUALS: Estimated available balance above/(deficit below) 15.0 percent statutory reserve	-\$15,793,130	-\$38,618,799
PLUS: State Emergency Reserve Cash	100,000,000	100,000,000
PLUS: Total reserve amounts	21,531,360	22,184,221
Year-end fund balance (including reserves)	\$105,738,230	\$83,565,422

It is worth reiterating that the Committee will gain substantially more information and clarity from the December 2024 and March 2025 revenue forecasts to inform final decisions regarding transfers and appropriations from the MTCF. Staff recommends basing final decisions on the March revenue forecast selected for balancing.

Appendix A: Online Resources Concerning Marijuana Legalization

Since 1996, forty states, the District of Columbia, and three U.S. territories have legalized the medical use of marijuana. Twenty-four states plus the District of Columbia allow adult-use recreational marijuana, including three that approved adult use through the 2023 election (Delaware, Minnesota, and Ohio). Staff has identified and listed below a several 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/health/state-medical-cannabis-laws>

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/220824_percent20Local_percent20Authority_percent20Status_percent20List-Current_percent20Version_percent20.pdf

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

<https://sbg.colorado.gov/med/regulated-marijuana-reports>

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://dcj.colorado.gov/dcj-offices/ors/dashb-mj>

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: State-Level Marijuana Taxation Policy

State Level Recreational Marijuana Tax Policy, 2024²¹

State	Tax Rate(s)	Notes
Alaska	\$50/oz of Mature Flowers \$25/oz of Immature Flowers and Abnormal Buds \$15/oz of Plant Trims \$1 per Clone Plant	
Arizona	16% on Retail Sales	If a federal excise tax is imposed, AZ caps combined rates to 30% and automatically reduces the combined rate to 30%.
California	15% on Retail Gross Receipts	Counties may impose additional excise taxes, which would be included in the gross receipts for the purposes of the state excise tax.
Colorado	15% on Wholesale Average Market Rate 15% on Retail Sales	Counties and municipalities can impose additional excise taxes on wholesale transactions, up to 5%.
Connecticut	\$0.00625 per milligram of THC in plant material \$0.0275 per milligram of THC in edible products \$0.009 per milligram of THC in other cannabis \$1 per THC Infused Beverage 3% Municipal Tax on Retail Gross Receipts	
Delaware	15% on Retail Sales	The tax was imposed in April 2023, but sales have yet to begin
Illinois	7% on Wholesale Gross Receipts 10% on Retail Sales of Products with 35% or less THC 20% on Retail Sales of Cannabis-Infused Products 25% on Retail Sales of Products with more than 35% THC	Counties and municipalities may impose additional taxes up to 3.75%.
Maine	\$335/lb of Flowers \$94/lb of Plant Trim \$35 per Mature Plant \$1.5 per Immature Plant or Seedling \$0.3 per Seed 10% on Retail Sales	
Maryland	9% on Retail Sales	
Massachusetts	10.75% on Retail Sales	Localities may impose additional taxes up to 3%.
Michigan	10% on Retail Sales	
Minnesota	10% on Retail Gross Receipts	
Missouri	6% on Retail Sales	Cities and counties may impose additional taxes up to 3%, which was interpreted by Missouri courts to mean 3% each to total 6%.
Montana	20% on Retail Sales	Counties may impose additional taxes up to 3%.
Nevada	15% on Wholesale Fair Market Value 10% on Retail Sales	

²¹ <https://taxfoundation.org/data/all/state/recreational-marijuana-taxes/>

State Level Recreational Marijuana Tax Policy, 2024²¹

State	Tax Rate(s)	Notes
New Jersey	\$1.24/oz Social Equity Excise Fee	The Social Equity Excise Fee is calculated to be 0.333% of the Average Retail Price, capped per ounce depending on the Average Retail Price up to \$10/oz. The rate cap increases if the average retail price decreases. Municipalities may impose additional taxes, up to 1% on wholesale receipts or 2% on cultivator, manufacturer, and retailer receipts, totaling 7% before accounting for pyramiding effects.
New Mexico	12% on Retail Sales	Beginning July 1 2025, the tax is set to increase incrementally 1% per year until reaching 18% in July 2030.
New York	9% on Wholesale Sales 9% on Retail Sales 4% Local Tax on Retail Sales	
Ohio	10% on Retail Sales	Legal retail sales began August 2024.
Oregon	17% on Retail Sales	Cities and counties may impose additional taxes up to 3%.
Rhode Island	10% on Retail Sales 3% Local Tax on Retail Sales	
Vermont	14% on Retail Sales	
Washington	37% on Retail Sales	

Appendix C: Summary of Appropriations and Transfers from the MTCF

Summary of Appropriations and Transfers from the Marijuana Tax Cash Fund for FY 2023-24 and FY 2024-25

	FY 2023-24 Appropriation	FY 2024-25 Appropriation	FY 2025-26 Request	Annual Change
Breakdown of Appropriations by Department and Program				
Agriculture:				
Pesticide control and regulation	\$1,247,195	\$1,247,195	\$1,292,141	\$44,946
Colorado State Fair Authority: FFA and 4-H programming	300,000	300,000	300,000	\$0
Centrally appropriated amounts not accounted for above	<u>590,820</u>	<u>569,324</u>	<u>560,769</u>	<u>-\$8,555</u>
Subtotal: Agriculture	2,138,015	2,116,519	2,152,910	36,391
Early Childhood:				
Community and Family Support	119,288	124,682	130,408	5,726
Social-Emotional Learning Programs Grants	801,264	817,289	817,289	0
Centrally appropriated amounts not accounted for above	<u>29,511</u>	<u>48,842</u>	<u>63,860</u>	15,018
Subtotal: Early Childhood	950,063	990,813	1,011,557	20,744
Education:				
School Health Professionals Grant Program	14,968,106	14,959,883	14,984,818	24,935
Early Literacy Competitive Grant Program (refinance recommended)	0	0	0	0
Office of Dropout Prevention and Student Reengagement	2,010,299	2,002,857	2,005,329	2,472
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	1,476,948	1,476,948	0
K-5 Social and Emotional Health Pilot Program	2,502,225	2,493,916	2,493,916	0
Centrally appropriated amounts not accounted for above	<u>202,410</u>	<u>226,757</u>	<u>216,132</u>	-10,625
Subtotal: Education	22,159,936	22,209,095	22,225,877	16,782
Governor:				
Evidence-based policymaking evaluation and support	500,000	500,000	500,000	0
Appropriation to Marijuana Entrepreneur Cash Fund	0	800,000	0	-800,000
Office of Information Technology, Enterprise Solutions	453,812	453,812	453,812	0
Governor's Office	106,912	106,912	117,866	10,954
Centrally appropriated amounts not accounted for above	<u>81,808</u>	<u>49,258</u>	<u>60,844</u>	<u>11,586</u>
Subtotal: Governor	1,142,532	1,909,982	1,132,522	-777,460
Health Care Policy and Financing:				
Training for health professionals to provide Screening, Brief Intervention, and Referral for Treatment (SBIRT) services for Medicaid clients at risk for substance abuse	<u>1,500,000</u>	<u>1,500,000</u>	<u>1,500,000</u>	<u>0</u>
Subtotal: Health Care Policy and Financing	1,500,000	1,500,000	1,500,000	0
Higher Education:				
Regulating marijuana concentrates - CU School of Public Health (H.B. 21-1317)	3,000,000	2,000,000	1,000,000	-1,000,000
Medication-assisted Treatment Pilot Program (S.B. 17-074)	3,000,000	3,000,000	3,000,000	0
Institute of Cannabis Research at CSU-Pueblo (S.B. 16-191)	3,800,000	3,800,000	3,800,000	0
AgrAbility project at CSU (S.B. 21-137)	900,000	900,000	900,000	0
Opioid awareness campaign, grant assistance, and provider education per Section 27-80-118, C.R.S.	<u>1,250,000</u>	<u>1,250,000</u>	<u>1,250,000</u>	<u>0</u>
Subtotal: Higher Education	11,950,000	10,950,000	9,950,000	-1,000,000
Human Services:				

Summary of Appropriations and Transfers from the Marijuana Tax Cash Fund for FY 2023-24 and FY 2024-25

	FY 2023-24 Appropriation	FY 2024-25 Appropriation	FY 2025-26 Request	Annual Change
Increasing access to effective substance use disorder services, including evaluation of intensive residential treatment (S.B. 16-202)	16,606,437	16,938,566	16,938,566	0
Criminal justice diversion programs (Law Enforcement Assisted Diversion or "LEAD" pilot programs and S.B. 17-207)	6,064,258	6,099,775	6,214,123	114,348
Circle Program and other rural treatment programs for people with co-occurring mental health and substance use disorders	6,039,767	5,741,377	5,829,663	88,286
Mental health services for juvenile and adult offenders	6,088,309	6,210,075	6,210,075	0
Enhance behavioral health crisis response system (S.B. 17-207)	5,204,628	5,308,720	4,941,404	-367,316
Programs that fund service alternatives to placing youth in a correctional facility (S.B. 91-094)	3,288,676	3,346,113	3,346,113	0
Tony Grampsas Youth Services Program grants for the prevention of youth marijuana use	1,635,727	1,649,572	1,657,147	7,575
Community prevention and treatment for alcohol and drug abuse	629,881	642,479	642,479	0
Office of Behavioral Health administrative expenses	843,737	1,016,369	1,190,158	173,789
Treatment and Detoxification Programs	7,177,659	6,825,126	7,325,126	500,000
Substance use disorder treatment at the mental health institutes	627,143	722,041	946,133	224,092
Appropriation to the Youth Mentoring Services Cash Fund (Tony Grampsas Youth Services Program)	500,000	500,000	500,000	0
Mental Health Treatment for Children and Youth at Risk of Out-of-home Placement	445,954	453,698	453,698	0
Medication consistency and health information exchange (S.B. 17-019)	760,700	760,700	760,700	0
Office of Children, Youth, and Families Program Administration	397	437	437	0
Office of Information Technology Services, Behavioral Health Capacity Tracking System	42,611	42,611	42,611	0
Indirect cost assessments and centrally appropriated amounts not accounted for above				
	<u>3,688,526</u>	<u>3,868,015</u>	<u>3,809,681</u>	<u>-58,334</u>
Subtotal: Human Services	59,644,410	60,125,674	60,808,114	682,440
Judicial:				0
Appropriation to the Correctional Treatment Cash Fund for jail-based behavioral health services (administered through the Department of Human Services)	1,626,967	1,626,967	0	-1,626,967
Trial court programs	<u>1,107,724</u>	<u>1,107,724</u>	<u>1,107,724</u>	<u>0</u>
Subtotal: Judicial	2,734,691	2,734,691	1,107,724	-1,626,967
Labor and Employment:				
Colorado Veterans' Service-to-career Pilot Program (H.B. 16-1267)	<u>500,000</u>	<u>0</u>	<u>0</u>	<u>0</u>
Subtotal: Labor and Employment	500,000	0	0	0
Law:				0
Local law enforcement training through the Peace Officers Standards and Training (POST) Board	1,036,766	1,036,766	1,036,766	0
Office of Community Engagement/Safe2Tell	0	0	0	0
Consumer Protection and Antitrust (S.B. 22-205)	583,000	583,000	583,000	0
Centrally appropriated amounts not accounted for above	<u>0</u>	<u>89,787</u>	<u>89,787</u>	<u>0</u>
Subtotal: Law	1,619,766	1,709,553	1,709,553	0
Local Affairs:				0
Affordable Housing Construction Grants and Loans (Tabled)	15,300,000	0	0	0

Summary of Appropriations and Transfers from the Marijuana Tax Cash Fund for FY 2023-24 and FY 2024-25

	FY 2023-24 Appropriation	FY 2024-25 Appropriation	FY 2025-26 Request	Annual Change
Gray and Black Market Marijuana Enforcement Efforts (H.B. 17-1221)	963,668	970,217	970,217	0
Low income rental subsidies	939,649	939,649	939,649	0
Division of Housing Administration	59,830	61,140	61,140	0
Indirect costs and centrally appropriated amounts not accounted for above	<u>315,400</u>	<u>272,096</u>	<u>183,156</u>	<u>-88,940</u>
Subtotal: Local Affairs	17,578,547	2,243,102	2,154,162	-88,940
Public Health and Environment:				0
Substance abuse prevention	10,054,476	10,065,977	10,065,977	0
Public awareness campaign	965,714	976,202	976,202	0
Colorado Health Service Corps Program (S.B. 18-024)	3,566,369	3,605,101	3,605,101	0
Distributions to Local Public Health Agencies	1,949,240	1,988,225	1,988,225	0
Transfer to Harm Reduction Cash Fund	1,800,000	1,800,000	1,800,000	0
Healthy Kids Colorado Survey	759,874	768,127	768,127	0
Marijuana Health Effects Monitoring	371,114	375,426	375,426	0
Health survey data collection	244,134	244,134	244,134	0
Data collection and analysis (S.B. 13-283)	227,302	227,302	227,302	0
Enhanced marijuana data collection through Rocky Mountain Poison and Drug Executive Director's Office, Personal Services	60,100 10,948	60,100 10,948	60,100 10,948	0 0
Marijuana lab certification	1,156,232	1,156,232	1,156,232	0
Indirect cost assessments and centrally appropriated amounts not accounted for above	<u>2,495,972</u>	<u>2,495,972</u>	<u>2,495,972</u>	<u>0</u>
Subtotal: Public Health and Environment	23,661,475	23,773,746	23,773,746	0
Public Safety:				
Black market marijuana interdiction/state toxicology lab	4,353,816	4,524,012	4,651,956	127,944
School Safety Resource Center (Potential Appropriation in 2023 Legislation)	250,000	250,000	250,000	0
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)	1,170,603	502,954	3,911,918	3,408,964
Juvenile diversion programs	400,000	400,000	400,000	0
Youth Delinquency Prevention and Intervention Grants Program	0	0	2,000,000	2,000,000
State Patrol training academy	150,000	150,000	150,000	0
Public Safety Intelligence Support Related to the Illegal Sale and Diversion of Marijuana	85,352	85,352	95,352	10,000
Indirect cost assessments and centrally appropriated amounts not accounted for above	<u>1,423,314</u>	<u>1,736,243</u>	<u>1,771,266</u>	<u>35,023</u>
Subtotal: Public Safety	7,833,085	7,648,561	13,230,492	5,453,987
Regulatory Agencies:				0
Division of Professions and Occupations for medical marijuana enforcement	120,807	120,807	120,807	0
Centrally appropriated amounts not accounted for above	<u>82,000</u>	<u>0</u>	<u>0</u>	<u>0</u>
Subtotal: Regulatory Agencies	202,807	120,807	120,807	0
Revenue:				0
Marijuana Enforcement		3,500,000	3,500,000	0
Centrally appropriated amounts not accounted for above	<u>1,059,297</u>	<u>1,059,855</u>	<u>1,059,855</u>	<u>0</u>
Subtotal: Revenue	1,059,297	4,559,855	4,559,855	0
Transportation:				0
Marijuana impaired driving campaign	950,000	950,000	950,000	0

Summary of Appropriations and Transfers from the Marijuana Tax Cash Fund for FY 2023-24 and FY 2024-25

	FY 2023-24 Appropriation	FY 2024-25 Appropriation	FY 2025-26 Request	Annual Change
Impairment device study (HB 22-1321)	0	0	0	0
Subtotal: Transportation	950,000	950,000	950,000	0
Total Appropriations (including Long Bill and Other Legislation)	\$155,624,624	\$143,542,398	\$146,387,319	\$2,844,921
Statutory Transfers:				
Proposed Transfers for Capital Construction: IT capital Seed to sale (H.B. 24-1425)	0	1,000,000	3,080,000	2,080,000
Proposed Transfer IT Capital CDPS Placeholder	0	0	1,600,000	1,600,000
BEST Transfer to Public School Capital Construction Assistance Fund (S.B. 21-207, H.B. 22-1341, S.B. 23-220, H.B. 24- 1395)	0	0	0	0
Transfers to various criminal justice related funds (H.B. 21-1315)	<u>598,000</u>	<u>598,000</u>	<u>598,000</u>	
Total Statutory Transfers	\$598,000	\$1,598,000	\$5,278,000	\$3,680,000
Total Appropriations and Transfers from the Marijuana Tax Cash Fund	\$156,222,624	\$145,140,398	\$151,665,319	\$6,524,921