

**COLORADO GENERAL ASSEMBLY
JOINT BUDGET COMMITTEE**



**FY 2015-16 STAFF FIGURE SETTING
MARIJUANA TAX CASH FUND PROGRAMS**

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

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February 4, 2015**

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MARIJUANA TAX CASH FUND PROGRAMS

Review Current Law

This document incorporates a forecast of the amount of marijuana revenue to be collected during FY 2014-15 that will be available to support programs in several areas authorized by statute. This forecast serves as the basis for the amount of appropriations the Committee may make for these programs in FY 2015-16. This overview is provided to assist the Committee in making decisions during figure setting presentations, where JBC staff will make individual recommendations on budget requests funded with the Marijuana Cash Tax Fund. Staff created a worksheet that is provided in the Appendix for Members to keep a running total because the programs are administered by a variety of executive branch agencies.

Senate Bill 14-215 Summary

- Created the Marijuana Tax Cash Fund. The revenues deposited in the fund are derived from the regular (2.9 percent) sales tax on medical and adult-use marijuana and the special sales tax (10.0 percent) on adult-use marijuana.
- Restricts the General Assembly authority to appropriate marijuana tax revenues the year after in which it was collected.
- Identifies twelve purposes for which moneys may be appropriated from the Marijuana Tax Cash Fund.

Background

Proposition AA authorized a retail marijuana sales tax of up to 15.0 percent, which is currently set at 10.0 percent. This tax is in addition to the current 2.9 percent state sales tax. Local jurisdictions will receive 15.0 percent of the proceeds of the retail marijuana sales tax apportioned according to the percentage of retail marijuana sales in their areas, distributed monthly. The General Assembly can raise or lower the retail marijuana sales tax at any time through legislation, but cannot increase it above 15.0 percent.

Senate Bill 14-215 creates the Marijuana Tax Cash Fund (MTCF) for tax revenue collected in connection with the retail marijuana industry. These taxes include:

- Excise tax revenue on wholesale marijuana in excess of \$40.0 million per year;
- The 10.0 percent sales tax revenue less 15.0 percent to local governments; and
- Sales tax revenue from the 2.9 percent state sales tax on both retail and medical marijuana.

The bill identifies the purposes for which moneys may be appropriated from the MTCF, which include:

- The study of law enforcement's activity and costs related to the legalization of retail marijuana;
- The coordination of the Executive Branch response to the legalization of retail marijuana;
- Increasing the expertise and knowledge among prosecutors and law enforcement officials regarding the legal and regulatory issues surrounding the legalization of marijuana;
- Obtaining health data through surveys or other means regarding marijuana and other drug use and monitoring the health effects of marijuana, including changes in drug use patterns and the emerging science and medical information relevant to the health effects associated with marijuana use;
- Advanced roadside impaired driving enforcement training and drug recognition expert training for peace officers;
- Developing and implementing marijuana education and prevention campaigns;
- Providing inpatient treatment for adults who suffer from co-occurring disorders at the Colorado Mental Health Institute at Pueblo;
- Increasing the availability of school-based prevention, early intervention, and health care services and programs to reduce the risk of marijuana and other substance use and abuse by school-aged children;
- Funding community-based programs to provide marijuana prevention and intervention services to youth;
- Funding local judicial district-based programs to provide marijuana prevention and intervention services to pre-adjudicated and adjudicated youth;
- Expanding the provision of jail-based behavioral health services in underserved counties and to enhance the provision of jail-based behavioral health services to offenders transitioning from jail to the community to ensure continuity of care;
- Providing substance use disorder treatment services for adolescents and pregnant women; and
- Provide child welfare training specific to issues arising from marijuana use and abuse.

Summary: FY 2014-15 Revenue and FY 2015-16 Request

Requested FY 2015-16 Spending from the Marijuana Tax Cash Fund (MTCF)			
Marijuana Tax Cash Fund (MTCF) Revenue Projected to be Collected in FY 2014-15		December Forecast	
State Share of 10% Special Sales Tax on Retail Marijuana		\$33,500,000	
2.9% Sales Tax on Retail Marijuana		11,400,000	
2.9% Sales Tax on Medical Marijuana		<u>11,400,000</u>	
Total Tax Revenue - Legislative Council Forecast		\$56,300,000	
FY 2015-16 Request (In Arrears)	Department	January 15, 2015 Request	JBC Decision
Required Reserve Equivalent to 6.5% of Available Revenue	None	\$3,659,500	pending
Request to Fund Prior Year SB 14-215 Appropriations with Current Revenue	Multiple	6,424,672	4,744,254
Annualized Appropriations from Prior Legislation			
Study Health Effects of Marijuana (S.B. 13-283)	PHE	320,388	pending
Scientific study of marijuana law enforcement activities (S.B. 13-283)	PBS	159,983	pending
Peace Officers Standards Training Board--Train the Trainer (S.B. 13-1317)	LAW	76,000	pending
Continuation of FY 2014-15 Appropriations from SB 14-215			
Behavioral Health Treatment in Schools	EDU	2,280,444	pending
Governor's Office of Marijuana Coordination	GOV	190,097	pending
Tony Gramscas for the Prevention of Youth Marijuana Use	HUM	2,000,000	pending
Circle Program	HUM	2,000,000	pending
School-Based Prevention and Intervention Services for Medicaid	HCPF	2,130,000	pending
Develop In-House Legal Expertise and Training	LAW	436,766	pending
Local Law Enforcement Training for DUID through the POST Board	LAW	1,168,000	pending
Marijuana Public Awareness Campaign	PHE	4,650,000	pending
Healthy Kids Colorado Survey	PHE	789,322	pending
Marijuana Enforcement Division (FY 2014-15 in S.B. 14-215)	REV	7,600,000	7,600,000
New Spending Requested			
CDOT R-01 Marijuana-Impaired Driving Campaign	TRA	450,000	pending
DPS R-03 Public Safety Intelligence Support	PBS	138,012	pending
DPHE BA-03 Marijuana Lab Certification (January 15 Budget Amendment)	PHE	111,583	pending
Set Aside for Potential Legislative Initiatives	Multiple	400,000	pending
Supplemental Request for Reduction to DOR Appropriation FY 2014-15 only	REV	<u>(6,424,672)</u>	<u>(6,424,672)</u>
Total all FY 2015-16 Requests/Total of Committee Decisions		\$28,560,095	\$6,399,953
Forecast Ending Marijuana Tax Cash Fund Balance if Governor's Request Approved		27,739,905	
Proposition AA Rebate			
Proposition AA Tax Projected to be Collected in FY 2014-15 (State Share of 10% Special Sales Tax + Local Share of 10% Special Sales Tax + Excise Tax from Legislative)		58,700,000	
Less Requested MTCF Transfer to General Fund		(27,739,905)	pending
Additional General Fund needed for Rebate		\$30,960,095	

JBC Staff Figure Setting – FY 2015-16
Staff Working Document – Does Not Represent Committee Decision

The Governor requested a total spending plan of \$28,560,095 from the Marijuana Tax Cash Fund (MTCF) for FY 2015-16. The plan includes continuation funding for many of the programs created in S.B. 14-215, discontinuation of several, and a total of three new funding requests. Several decisions have been made concerning appropriations from the FY 2015-16 MTCF, these include the Department of Revenue’s \$7.6 million appropriation for administration and enforcement activities in FY 2014-15. Because funds in the MTCF may be appropriated to that Department in the fiscal year they are collected, the FY 2014-15 appropriation reduces the amount of MTCF available for appropriation in FY 2015-16. The Joint Budget Committee introduced legislation via S.B. 15-167 that reduces this appropriation by \$6.4 million dollars in FY 2014-15 only, which is identified in the table below as the “Supplemental Request for Reduction to DOR Appropriation FY 2014-15 only.” Also included in that bill is authority to spend \$4.7 million received in FY 2014-15 to cover the difference between appropriations from the MTCF in FY 2014-15 and the amount of FY 2013-14 revenue available. Lastly, the spending plan includes continuation funding for two programs funded by S.B. 13-283 and one funded by H.B. 13-1317. The table below summarizes the requests for programs that have no change in their funding request:

Programs Requested FY 2015-16 to be Continued with no Change in Appropriation from MTCF				
	Department	FY 2014-15 Appropriation	FY 2015-16 Request	Change
Office of Marijuana Coordination	GOV	\$190,097	\$190,097	\$0
Tony Gramscas youth service program	HUM	2,000,000	2,000,000	0
Peace Officer Standards and Training (POST) Board expanded training activities	LAW	1,168,000	1,168,000	0
Peace Officer Standards Training Board Support	LAW	76,000	76,000	0
Cannabis health environmental and epidemiological training, outreach, and surveillance	PBH	320,388	320,388	0
Division of Criminal Justice implementation of S.B. 14-215	PBS	<u>159,983</u>	<u>159,983</u>	<u>0</u>
Total		\$3,914,468	\$3,914,468	\$0

Also included in the request are several programs that are to be continued but the amount requested has been reduced in the second year of the program. These are summarized below:

Programs Requested in FY 2015-16 to be Continued with a Reduced Appropriation from MTCF				
	Department	FY 2014-15 Appropriation	FY 2015-16 Request	Change
Marijuana Special Prosecutions Unit	LAW	\$456,760	\$436,766	(\$19,994)
School Health Profession Grant Program	EDU	2,500,000	2,280,444	(219,556)
Public awareness campaign	PBH	5,683,608	4,650,000	(1,033,608)
Healthy Kids Colorado survey	PBH	<u>903,561</u>	<u>781,789</u>	<u>(121,772)</u>
Total		\$9,543,929	\$8,148,999	(\$1,394,930)

JBC Staff Figure Setting – FY 2015-16
Staff Working Document – Does Not Represent Committee Decision

There are also three new funding requests and a placeholder for potential legislation included in the overall spending plan. Each of these new requests will be individually analyzed during figure setting and staff will bring recommendations on them during each department’s figure setting presentation.

New Funding Requests in FY 2015-16 from the MTCF				
	Department	FY 2014-15 Appropriation	FY 2015-16 Request	Change
TRA R1 Marijuana-impaired driving campaign	TRA	\$0	\$450,000	\$450,000
PBS R3 Public safety intelligence support	PBS	0	145,328	145,328
DPHE BA-03 Marijuana Lab Certification	PBH	0	111,583	111,583
Placeholder for potential legislative proposals	other	<u>0</u>	<u>400,000</u>	<u>400,000</u>
Total		\$0	\$1,106,911	\$1,106,911

Request and Recommendation: The Governor requested \$400,000 from the MTCF to be set aside in his spending plan for potential legislative proposals. Staff recommends the Committee set aside \$400,000 for potential legislation.

Analysis: As of February 1, 2015, the members of the General Assembly proposed seven bills that have the potential to increase appropriations to programs that already receive at least a portion of their funding from the MTCF. The majority of these bills have not received fiscal notes from Legislative Council staff and therefore it is difficult to determine whether any of the bills currently proposed will require an appropriation from the MTCF. Of the bills that have received fiscal notes, S.B 15-040 (County Authority to Levy Retail Marijuana Sales Tax), H.B 15-1007 (Local Government Retail Marijuana Taxes), and H.B. 1036 (Warn Pregnant Women Med Marijuana Dangers), none have a fiscal note with a fiscal impact. The table below summarizes the bills that have been introduced:

Bills Proposed in 2015 Session with Potential MTCF Impacts as of February 1, 2015					
Bill No	Short Title	House Sponsor	Senate Sponsor	Fiscal Impact	
S.B. 014	Medical Marijuana	Singer	Aguilar	Undetermined	
S.B. 040	County Authority to Levy Retail Marijuana Sales Tax	Priola and Moreno	Hodge	No	
S.B. 115	Sunset Medical Marijuana Programs	Pabon	Hill	Undetermined	
S.B. 136	Labeling of Retail Marijuana Packaging	Pabon	Hill	Undetermined	
H.B. 1007	Local Government Retail Marijuana Taxes	Singer	None	No	
H.B. 1036	Warn Pregnant Women Med Marijuana Dangers	Tate	None	No	
H.B. 1090	County Retail Marijuana Impacts Grant Program	Dore	None	Undetermined	

JBC Staff Figure Setting – FY 2015-16
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JBC Staff also anticipates additional legislation coming related to edible marijuana products that could increase the workload of the Department of Revenue. A placeholder for marijuana-related legislation will also allow the Chairs of each of the Appropriations Committees to keep track of how potential legislation affects the total spending plan for the MTCF. Staff believes it is likely potential legislation could surpass the \$400,000 placeholder but it is based in speculation. Staff concludes it is prudent to designate a set aside for potential legislation.

The total spending plan also includes discontinuation of MTCF funding of several programs. All of these programs are administered by the Department of Human Services and many of the programs will continue with other fund sources that were already funding the programs before the infusion of additional funding from the MTCF included in S.B. 14-215. The programs that were funding with MTCF appropriations in FY 2014-15 with no request for continued MTCF funding are summarized below:

Programs Funded in FY 2014-15 with no Request in FY 2015-16				
	Department	FY 2014-15 Appropriation	FY 2015-16 Request	Change
Substance use disorder treatment services for adolescents and pregnant women	HUM	\$1,500,000	\$0	(\$1,500,000)
Expansion and enhancement of jail-based behavior health services	HUM	2,000,000	0	(2,000,000)
Enhancement of S.B. 91-094 programs	HUM	2,000,000	0	(2,000,000)
Child welfare training	HUM	<u>100,000</u>	<u>0</u>	<u>(100,000)</u>
Total		\$5,600,000	\$0	(\$5,600,000)

Again, the goal of this document is to provide a foundation for making funding decisions during each department’s figure setting presentation. Staff created a worksheet provided in the appendix that the Committee may use to keep a running total of decisions made. Some of the decisions that have already been made by the Committee have been entered into the worksheet, however, many of those could be revisited at the Committee’s discretion.

Request: The Governor requested \$3,659,500 to be reserved in the MTCF to account for the 6.5 percent statutory reserve. This amount equal 6.5 percent of the anticipated revenue collected during FY 2014-15, which Legislative Council’s December Revenue Forecast projects to total \$56.3 million. **Staff recommends the Governor’s request and further recommends the reserve figure be modified to total 6.5 percent of the forecasted revenue total once Legislative Council presents its March Revenue Forecast.**

Governor’s Request: Set Aside \$58.7 million General Fund for Refund

The Governor requests that the Joint Budget Committee reserve \$58.7 million General Fund in anticipation of the Proposition AA refund forecasted to be reserved in FY 2014-15 and returned to the people in FY 2015-16.

Amongst other things, TABOR has provisions regarding estimates of revenue from new taxes approved by voters. In November of 2013, voters approved excise and special sales taxes on retail marijuana in Proposition AA on the election ballot. Revenue generated from these taxes was estimated at \$67 million in the “Blue Book” voting guide that was distributed to voters prior to the election, as specified by the Colorado Constitution. The most recent forecasts for retail marijuana tax collections estimated that retail marijuana tax revenue would be less than this amount, though projections are highly uncertain and are subject to substantial revisions.

Based on a legal analysis produced by the Office of Legislative Legal Services, if the excise and special sales tax revenue exceed \$67 million, as estimated in the Blue Book, the excess would have to be refunded to voters, unless voters decide that the State can retain the revenue, and the tax rate reduced. The most recent forecast projects the total of excise and special sales tax to be approximately \$58.7 million.

The legal analysis produced by the Office of Legislative Legal Services also concludes that the provisions of TABOR indicate a refund must occur if revenue subject to TABOR that is collected by the State in FY 2014- 15 exceeds the estimate of \$12.08 billion that was shown in the Blue Book analysis of Proposition AA. The December Legislative Council Revenue Forecast indicates that revenue will exceed that estimate by \$219.1 million, meaning that a refund to taxpayers should occur unless voters decide that the State can retain the revenue. The legal analysis, however, specifies that any refund associated with the estimates for Proposition AA should not exceed the actual amount of new marijuana tax revenue collected, which will likely be below this amount and is currently estimated at \$58.7 million. State law does not currently stipulate how any refund for this money to taxpayers must occur.

FY 2014-15 TABOR Election Provision Outlook Summary	
Blue Book Revenue Estimate for Proposition AA State Fiscal Year Spending	\$12,080,000,000
Blue Book Revenue Estimate for Proposition AA Taxes Only	\$67,000,000
Estimate Revenue to Exceed Bluebook Estimate	\$219,100,000
Estimated Proposition AA Taxes Collected	\$58,700,000

TABOR requires the General Assembly reserve the funding for anticipated refunds during the fiscal year the taxes are collected. While TABOR does not specify that the refund be funded with General Fund, there are a number of constitutional and statutory transfers that occur to revenue derived from the marijuana taxes that reduce the availability of Marijuana Tax Cash

Fund (MTCF) revenue that could be used to fund the rebate. These include the transfer to Building Excellent Schools Today (BEST) Program and the transfers to local governments. The December Legislative Council Revenue Forecast projects these transfer to total \$25.2 million with \$19.3 million estimated to be transferred to BEST and \$5.9 million transferred to local governments. Staff has not included any of these transfers in tables calculating the availability of MTCF revenues.

Staff Recommends the Committee approve the Governor’s request to set aside General Fund in FY 2014-15 to fund the TABOR Election Provision rebate, however, the staff recommends the Committee postpone setting the total amount to be reserved until after Legislative Council has presented its March Revenue Forecast.

Governor’s Request: Transfer \$27.7 million Marijuana Tax Cash Fund to General Fund

The Governor requests in his January 15th Supplemental Budget Request Transmittal Letter for the Joint Budget Committee to transfer \$27.7 million from the Marijuana Tax Cash Fund (MTCF) to the General Fund to help offset the estimated \$58.7 million dollar refund as a result of Paragraph (3) (c) of Article X Section 20 of the Colorado Constitution (TABOR Election Provision). The Governor arrived at his requested figure by taking the total amount of tax revenue forecasted to be deposited in the MTCF in FY 2014-15 and reducing that figure by his requested spending plan. The table is a summarized version of the table produced on page 5:

Requested FY 2015-16 Spending from the Marijuana Tax Cash Fund (MTCF)	
Marijuana Tax Cash Fund (MTCF) Revenue Projected to be Collected in FY 2014-15	December Forecast
State Share of 10% Special Sales Tax on Retail Marijuana	\$33,500,000
2.9% Sales Tax on Retail Marijuana	11,400,000
2.9% Sales Tax on Medical Marijuana	<u>11,400,000</u>
Total Tax Revenue - Legislative Council Forecast	\$56,300,000
Total all FY 2015-16 Requests	\$28,560,095
Forecast Ending Marijuana Tax Cash Fund Balance if Governor’s Request Approved	\$27,739,905

Staff agrees that reserving the total amount anticipated to be deposited in the MTCF less the total amount appropriated to programs funded with MTCF appropriations to reduce the General Fund liability for the Tabor Election Provision rebate. Making a transfer to the General Fund will reduce the complexity of funding the rebate by utilizing only one fund source.

Because these figures are estimates of what will actually be collected during FY 2014-15 it is safe to anticipate adjustments to be made in the March Legislative Council Revenue Forecast. Therefore, **Staff recommends the Committee sponsor legislation to make a transfer from the MTCF to the General Fund in FY 2014-15 but postpone setting the amount of the transfer until after the Legislative Council Revenue Forecast in March.**

Appendix: Marijuana Tax Cash Fund Worksheet

Requested FY 2015-16 Spending from the Marijuana Tax Cash Fund (MTCF)			
Marijuana Tax Cash Fund (MTCF) Revenue Projected to be Collected in FY 2014-15		December Forecast	
State Share of 10% Special Sales Tax on Retail Marijuana		\$33,500,000	
2.9% Sales Tax on Retail Marijuana		11,400,000	
2.9% Sales Tax on Medical Marijuana		<u>11,400,000</u>	
Total Tax Revenue - Legislative Council Forecast		\$56,300,000	
FY 2015-16 Request (In Arrears)	Department	January 15, 2015 Request	JBC Decision
Required Reserve Equivalent to 6.5% of Available Revenue	None	\$3,659,500	
Request to Fund Prior Year SB 14-215 Appropriations with Current Revenue	Multiple	\$6,424,672	\$4,744,254
Annualized Appropriations from Prior Legislation			
Study Health Effects of Marijuana (S.B. 13-283)	PHE	\$320,388	
Scientific study of marijuana law enforcement activities (S.B. 13-283)	PBS	159,983	
Peace Officers Standards Training Board--Train the Trainer (S.B. 13-131)	LAW	76,000	
Continuation of FY 2014-15 Appropriations from SB 14-215			
Behavioral Health Treatment in Schools	EDU	\$2,280,444	
Governor's Office of Marijuana Coordination	GOV	190,097	
Tony Gramscas for the Prevention of Youth Marijuana Use	HUM	2,000,000	
Circle Program	HUM	2,000,000	
School-Based Prevention and Intervention Services for Medicaid	HCPF	2,130,000	
Develop In-House Legal Expertise and Training	LAW	436,766	
Local Law Enforcement Training for DUID through the POST Board	LAW	1,168,000	
Marijuana Public Awareness Campaign	PHE	4,650,000	
Healthy Kids Colorado Survey	PHE	789,322	

Appendix: Marijuana Tax Cash Fund Worksheet

Marijuana Enforcement Division (FY 2014-15 in S.B. 14-215)	REV	7,600,000	7,600,000
New Spending Requested			
CDOT R-01 Marijuana-Impaired Driving Campaign	TRA	450,000	
DPS R-03 Public Safety Intelligence Support	PBS	138,012	
DPHE BA-03 Marijuana Lab Certification (January 15 Budget Amendme	PHE	111,583	
Set Aside for Potential Legislative Initiatives	Multiple	400,000	
Supplemental Request for Reduction to DOR Appropriation FY 2014-15 only	REV	(\$6,424,672)	(\$6,424,672)
Total all FY 2015-16 Requests		\$28,560,095	
Forecast Ending Marijuana Tax Cash Fund Balance if Governor's Request Approved		\$27,739,905	
Proposition AA Rebate			
General Fund Requested to be Set Aside for Proposition AA Rebate		\$58,700,000	
Less Requested MTCF Transfer to General Fund		(\$27,739,905)	
Additional General Fund needed for Rebate		\$30,960,095	