

MEMORANDUM



JOINT BUDGET COMMITTEE

TO Joint Budget Committee Members
 FROM Craig Harper, JBC Staff (303-866-3481)
 DATE May 20, 2020
 SUBJECT Updated Projection of Funds in the Marijuana Tax Cash Fund Available for Appropriation and JBC Actions to Date

This memorandum provides updated information concerning the Marijuana Tax Cash Fund (MTCF) and the resources available for appropriation or transfer in FY 2020-21. This memorandum reflects Committee actions to date (as of May 20, 2020) for FY 2020-21, as well as updated projections of funds available based on the OSPB May 2020 revenue forecast update. **Table 1 provides a summary of the most significant year-over-year changes in MTCF appropriations and transfers.** Including the Committee's budget balancing actions to date, overall appropriations and transfers for FY 2020-21 *that do not require statutory change* will be \$33.1 million lower than for FY 2019-20.

TABLE 1
 JBC APPROVED CHANGES IN APPROPRIATIONS AND TRANSFERS FROM THE MARIJUANA TAX CASH FUND: FY 2020-21 LONG BILL

DEPARTMENT	PROGRAM	ANNUAL CHANGE
Labor and Employment	Colorado Veterans' Service to Career Program	\$300,000
Human Services	Building Substance Use Disorder Treatment Capacity in Underserved Communities Grant Program	(5,000,000)
Local Affairs	One-time reduction to gray and black market marijuana enforcement grants (R5)	(4,000,000)
Public Health and Environment	Annualize one-time appropriation for school nurse program (H.B. 19-1203)	(2,944,089)
Education	Reduce Behavioral Health Care Professionals Matching Grant Program	(2,989,006)
Education	Annualize one-time transfer to High Cost Special Education Trust Fund (S.B. 19-066)	(2,500,000)
Public Health and Environment	Annualize one-time appropriation for distribution to local public health agencies (S.B. 19-228)	(1,582,432)
Human Services	Reduction related to access to effective substance use disorder services, including evaluation of intensive residential treatment (S.B. 16-202)	(1,655,769)
Public Health and Environment	Refinance marijuana testing laboratory from Marijuana Tax Cash Fund to Marijuana Cash Fund	(1,322,760)
Human Services	Annualize one-time disability application assistance funding (H.B. 19-1223)	(1,292,010)
Human Services	Mental health services for juvenile and adult offenders	(1,057,108)
Law	Local law enforcement training through the P.O.S.T. Board	(1,036,766)
Education	Annualize one-time appropriation for Comprehensive Quality Physical Education Instruction Pilot	(1,100,000)
Education	Reduce Appropriation to School Bullying Prevention Cash Fund	(1,000,000)
Transportation	Annualize one-time appropriation for impaired driving campaign	(1,000,000)
Health Care Policy and Finance	Training for health professionals to provide Screening, Brief Intervention, and Referral for Treatment (SBIRT) services for Medicaid clients at risk for substance abuse (H.B. 18-1003)	(1,000,000)
Higher Education	Institute of Cannabis Research at CSU-Pueblo	(800,000)
Human Services	Tony Gramscas Youth Services Program grants for the prevention of youth marijuana use	(750,000)
Human Services	Treatment and Detoxification Programs	(652,367)

MARIJUANA TAX CASH FUND UPDATE
MAY 20, 2020

DEPARTMENT	PROGRAM	ANNUAL CHANGE
Public Health and Environment	Retail marijuana health research grants (FY 2016-17 BA5)	(550,737)
Public Safety	Reserve Peace Officer Academy Grant Program	(516,224)
Human Services	Appropriation to the Youth Mentoring Services Cash Fund (Tony Grampsas Youth Services Program)	(500,000)
Transportation	Marijuana impaired driving campaign	(500,000)
Public Safety	Division of Criminal Justice, Reduction to Civil Asset Forfeiture Reforms Grant (Public Safety R20)	(495,703)
Public Health and Environment	Health survey data collection (S.B. 19-228)	(364,000)
	Other changes (e.g., provider rate increases, employee benefits, indirect costs, etc.)	1,252,491
Total		(\$33,056,480)

Table 2 summarizes State tax revenues related to marijuana, including actual revenues for the last four fiscal years and projected revenues for FY 2019-20 and FY 2020-21. This table reflects projected revenues based on the Office of State Planning and Budgeting (OSP) May 2020 forecast update.

	ACTUALS				OSP FORECAST (5/2020)	
	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21
Proposition AA Taxes (Not Subject to TABOR)						
Total Special Sales Tax on Retail Marijuana ^a	\$67.3	\$98.3	\$167.2	\$193.2	\$213.8	\$208.1
State Share of Special Sales Tax	57.2	83.6	150.5	173.9	192.5	187.3
Local Share of Special Sales Tax	10.1	14.8	16.7	19.3	21.3	20.8
15.0 Percent Excise Tax on Retail Marijuana	42.5	71.6	67.8	58.5	76.4	74.4
Total Proposition AA Tax Revenues	\$109.8	\$169.9	\$234.9	\$251.7	\$290.2	\$282.5
Regular 2.9 Percent Sales Taxes (Subject to TABOR)						
Regular Sales Tax on Medical Marijuana	\$12.2	\$12.4	\$10.6	\$9.4	\$9.9	\$9.7
Regular Sales Tax on Retail Marijuana ^b	19.4	28.1	5.2	1.1	1.3	1.3
Interest	0.2	0.3	0.3	0.3	N/A	N/A
Total 2.9 Percent Sales Tax Revenues	\$31.8	\$40.9	\$16.1	\$10.8	\$11.2	\$11.0
Total State Taxes on Marijuana	\$141.6	\$210.8	\$251.0	\$262.5	\$301.4	\$293.5
Portion Credited to Marijuana Tax Cash Fund ^c	\$89.0	\$124.5	\$124.2	\$135.7	\$149.5	\$145.6

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.

Finally, Table 3 details the total funds available in the MTCF for appropriation or transfer in FY 2020-21. Based on the OSPB May 2020 revenue forecast update, a total of \$158.6 million is available for appropriations and transfers in FY 2020-21.

TABLE 3

FUNDS AVAILABLE FOR APPROPRIATION FROM THE MARIJUANA TAX CASH FUND FOR FY 2020-21

DESCRIPTION	AMOUNT
Beginning fund balance as of July 1, 2019 (per Department of Revenue)	\$179,271,029
LESS: FY 2019-20 Appropriations for various departments from prior year revenues, as amended by supplemental bills	(154,652,067)
LESS: FY 2019-20 transfer to a cash fund for H.B. 18-1323 (Pay for Success Contracts)	(1,717,764)
LESS: FY 2019-20 transfer to High-cost Special Education Trust Fund (S.B. 019-066)	(2,500,000)
PLUS: Transfer from Marijuana Cash Fund to MTCF to support CBI Task Force (S.B. 19-213)	914,416
PLUS: Total projected MTCF share of revenue to be collected in FY 2019-20 per OSPB (MAY 2020 forecast)	<u>149,542,771</u>
<i>State share of special sales tax on retail marijuana (71.85 percent of total State share)</i>	<i>138,275,772</i>
<i>Regular sales tax on retail and medical marijuana</i>	<i>11,266,999</i>
LESS: FY 2019-20 Appropriations to the Department of Revenue	(1,278,416)
EQUALS: Total funds available in the Fund for FY 2020-21	169,579,968.54
LESS: Statutorily required reserve (6.5 percent)	<u>(11,022,698)</u>
EQUALS: Funds available for appropriation or transfer for FY 2020-21	\$158,557,271
LESS: Transfers to a cash fund for H.B. 18-1323 (Pay for Success Contracts) in FY 2020-21	(1,725,066)
PLUS: Transfer from Marijuana Cash Fund to MTCF to support CBI Task Force (S.B. 19-213)	890,901
<i>FY 2020-21 Appropriations to the Department of Revenue (non-add because from FY 2020-21 revenues)</i>	<i>(1,063,130)</i>
LESS: FY 2020-21 Recommended/Approved appropriations to various departments	<u>(124,280,056)</u>
EQUALS: Funds remaining available above statutorily required reserve (Long Bill/current law)	\$33,443,050
Amounts Associated with Additional Statutory Changes Approved by the Committee	
PLUS: Estimated reversions from previous appropriations for Law Enforcement Assistance Grant Program (Public Safety)	2,700,000
PLUS: Delay of K-5 Social and Emotional Health Pilot Program (H.B. 19-1017)	2,500,000
PLUS: Reductions to opioid awareness campaign (C.U.)	750,000
PLUS: Reductions to substance use disorder treatment (H.B. 19-1287) - also reducing 2.5 FTE	546,013
PLUS: Suspend PERA direct distribution for FY 2020-21	61,725
LESS: Transfer to General Fund (from Reduction to CDPHE Primary Care Office)	<u>(511,038)</u>
EQUALS: Total Estimated Amount Available Above Statutorily Required Reserve (with bills)	\$39,489,750

Based on JBC actions to date, the FY 2020-21 Long Bill will include appropriations totaling \$125.3 million from the MTCF. Based on the OSPB forecast, this would leave \$33.4 million available above the statutorily required reserve for other purposes (e.g., transfers to the General Fund or other funds, refinance General Fund appropriations, pending 2020 legislation, appropriations in future fiscal years, or amounts to be held as reserves).

- If enacted, statutory changes approved by the Committee to date would: (1) make an additional \$6.6 million available in the MTCF and (2) transfer \$511,038 to the General Fund (originating as a reduction in the Department of Public Health and Environment).

Thus, including all changes approved to date would leave an estimated \$39.5 million available above the statutorily required reserve in FY 2020-21. Please note, however, that the General Assembly should consider at least a portion of this amount as one-time in nature, based on the following:

- Some of the reductions and balancing actions approved by the Committee are one-time reductions (including, for example, a \$4.0 million reduction to gray and black market enforcement efforts in the Department of Local Affairs).
- Many existing appropriations from the MTCF support community provider services and state employees. Those appropriations will likely require future increases.

Therefore, if the General Assembly chooses to appropriate or transfer the full amount anticipated to be available for FY 2020-21 for ongoing programs, fund revenues may not be sufficient to sustain those efforts in subsequent years.

ADDITIONAL BALANCING OPTIONS

Given the amount anticipated to be available and the current budgetary challenges, staff offers three basic categories of options to use the MTCF to assist with budget balancing:

- *Transfer to the General Fund:* The General Assembly could transfer a portion of the funds to the General Fund to assist with General Fund balancing. Those funds would augment anticipated General Fund revenues. Staff notes that MTCF revenues originate as taxes and a portion of those taxes is already diverted to the General Fund.
- *Transfers to Other Funds to Offset General Fund Reductions:* Alternatively, the General Assembly could transfer funds elsewhere to offset reductions to General Fund currently approved for other uses. For example transferring funds to the State Public School Fund could reduce the need for General Fund in school finance.
- *Refinance Existing General Fund Appropriations:* Where appropriate, the General Assembly could appropriate directly from the MTCF to offset additional General Fund reductions. For example, the General Assembly could offset reductions in the Office of Behavioral Health (Department of Human Services) with direct appropriations from the MTCF. Staff notes that this refinancing option could take place in the Long Bill and would not require statutory change.

OSPB COMEBACKS RELATED TO MTCF

Staff notes that the Office of State Planning and Budgeting has proposed three potential alternatives related to the MTCF as part of the May 11 OSPB Comeback Package (see page 40 of the shorter comeback document).

Statutory Distribution Formula for Special Sales Tax: First, OSPB proposed changing the statutory distribution formula for the 15.0 percent special sales tax on retail marijuana (see Sec. 39-28.8-203, C.R.S.) to divert additional revenues to the General Fund starting in FY 2020-21.

- Current law makes the following distributions of *total* special sales tax revenues: (1) 10.0 percent to local governments; (2) approximately 14.0 percent to the General Fund; (3) approximately 64.7 percent to the MTCF; and (4) approximately 11.3 percent to the State Public School Fund.¹

¹ Please note that the statute actually details the percentages retained by the state as percentages of the 90.0 percent state share of revenues. Staff has framed these percentages as shares of total revenues to align with the OSPB comeback.

- OSPB is proposing to roughly double the amount credited to the General Fund to 30.0 percent of total revenues, starting in FY 2020-21 and to reduce the share credited to the MTCF by the same amount.

Based on the OSPB May 2020 forecast, staff estimates that this OSPB proposal would increase the diversion to the General Fund by approximately \$29.0 million in FY 2020-21, augmenting FY 2020-21 General Fund revenues by that amount. However, the proposal would inherently reduce deposits to the MTCF by that amount. Staff notes the following:

- The OSPB proposal would both augment General Fund revenues by an estimated \$29.0 million and make those revenues available for appropriation in FY 2020-21 (rather than in FY 2021-22 if the funds are deposited to the MTCF and not available for appropriation until the following year).
- However, while the revenues would be available immediately, the reduction in MTCF revenues may require reductions to programs supported by the MTCF in FY 2021-22.

Staff is not making a specific recommendation on this comeback.

Elimination of the MTCF Reserve: OSPB is also proposing to strike the statutory requirement to maintain a 6.5 percent reserve in the MTCF (see Sec. 39-28.8-501 (5), C.R.S.). As shown in Table 3 above, staff is projecting a required reserve of \$11.0 million for FY 2020-21, and the OSPB comeback would make that amount available for appropriation or transfer in FY 2020-21. The OSPB comeback argues that the statutory reserve requirement is redundant because statute already requires appropriation in the year after collection of MTCF revenues. Staff notes the following:

Rather than striking the reserve requirement, staff would recommend that the Committee consider incorporating the MTCF reserve into the TABOR emergency reserve as a liquid source of emergency reserves. Staff also notes that eliminating the reserve requirement would be a one-time source of funds.

Transfer Unallocated FY 2020-21 Balance of MTCF to the General Fund: Finally, OSPB is proposing to transfer “all funds available for appropriation in FY 2020-21 that are otherwise unallocated to the various programs” to the General Fund. Based on staff’s estimates above, that would equate to \$33.4 million (above the reserve requirement) based on Long Bill actions to date and \$39.5 million after accounting for the statutory changes approved by the Committee. Eliminating the reserve requirement would increase each of those amounts by \$11.0 million in FY 2020-21.

Staff is not making a specific recommendation on this item but does note that eliminating the entire unallocated balance of the MTCF in FY 2020-21 would reduce the amount available for all MTCF programs in subsequent years. Particularly in combination with OSPB’s proposed changes to the statutory distribution formula (in the first comeback above), the proposals would greatly reduce the amount that would otherwise be available for appropriation or transfer in FY 2021-22.