

**COLORADO GENERAL ASSEMBLY
JOINT BUDGET COMMITTEE**



INTERIM SUPPLEMENTAL REQUEST FOR FY 2010-11

**DEPARTMENT OF PUBLIC HEALTH AND
ENVIRONMENT**

(Administrative and Health Divisions)

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

**Prepared By:
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June 17, 2010**

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Interim Supplemental, Medical Marijuana

	Request	Recommendation
Total	\$2,022,229	\$2,009,377
FTE	<u>0.0</u>	<u>0.0</u>
Cash Funds	1,892,495	1,844,443
Reappropriated Funds	129,734	164,934

<p>Does JBC staff believe the request satisfies the interim supplemental criteria of Section 24-75-111, C.R.S.? [The Controller may authorize an overexpenditure of the existing appropriation if it: (1) Is approved in whole or in part by the JBC; (2) Is necessary due to unforeseen circumstances arising while the General Assembly is not in session; (3) Is approved by the Office of State Planning and Budgeting (except for State, Law, Treasury, Judicial, and Legislative Departments); (4) Is approved by the Capital Development Committee, if a capital request; (5) Is consistent with all statutory provisions applicable to the program, function or purpose for which the overexpenditure is made; and (6) Does not exceed the unencumbered balance of the fund from which the overexpenditure is to be made.]</p>	YES
<p>Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? [An emergency or act of God; a technical error in calculating the original appropriation; data that was not available when the original appropriation was made; or an unforeseen contingency.]</p>	YES
<p>JBC staff and the Department agree that this request satisfies several criteria. It is the result of <i>an emergency, data that was not available when the original appropriation was made, and an unforeseen contingency.</i></p>	

Department Request: The Department requests an appropriation of \$2,022,229 for FY 2010-11, comprised of \$1,892,495 cash funds and \$129,734 reappropriated funds. This appropriation will allow the Department to hire 56.6 temporary workers who will (1) process the 60,000-plus backlog of applications for Medical Marijuana Registry cards that has accumulated since last November, and (2) augment the Department's daily new-application processing capacity so it can keep up with the daily flow of new applications, which averages approximately 1000 pieces of mail per work day. Because the employees are temporary, an FTE appropriation is not requested. The funding source for the cash funds is the Medical Marijuana Program Cash Fund, which is supported by a \$90 annual fee paid by those who receive Medical Marijuana Registry cards; the reappropriated funds come from indirect cost assessments paid by the Medical Marijuana Registry program.

Staff Recommendation: Staff recommends that the Committee approve an appropriation of \$2,009,377 for FY 2010-11 comprised of \$1,844,443 cash funds and \$164,934 reappropriated funds. Staff further recommends that the Committee send a letter to CDPHE requesting that it

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explore the possibility of contracting with the Division of Central Services at the Department of Personnel and Administration as an alternative to the outside employment agency envisioned in this recommendation.

Background and Staff Analysis:

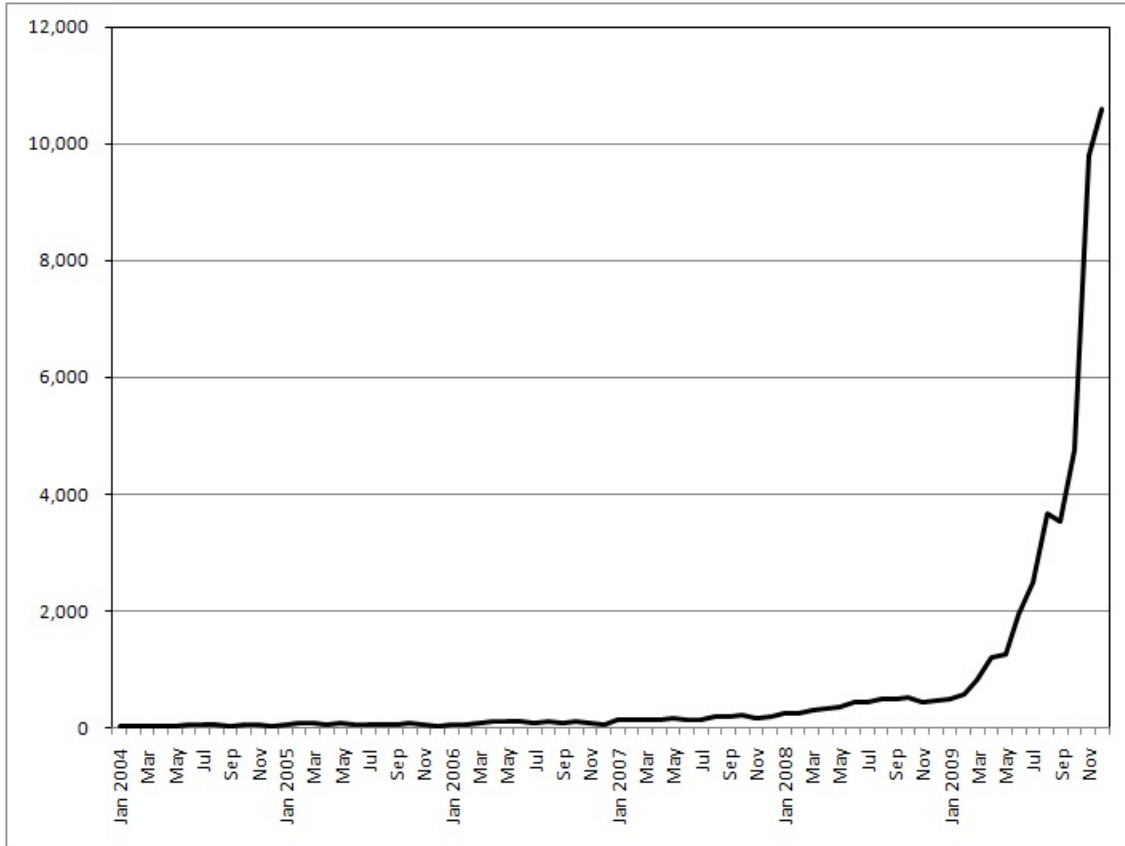
Constitutional Provisions: The appendix to this document contains detailed information on relevant medical marijuana constitutional provisions.

Summary of the problem: The Department has a large backlog of Medical Marijuana Registry applications to which it has not responded and a large backlog of unprocessed requests to change information (patient address and/or the care giver name) that is contained in the Registry. It is exceeding by a wide margin the Constitution's requirement that it respond to applications within 35 days. Because the Department is unable to keep up with the large number of incoming applications and requests for changes, the backlog continues to grow at a rapid pace.

Relationship to S.B. 10-109 and H.B. 10-1284: The General Assembly approved two medical marijuana bills, S.B. 10-109 and H.B. 10-1284, during the 2010 session. This request would fund the operation of the Medical Marijuana Registry, it would not provide funding for those bills. However, it will be difficult for CDPHE, the Department of Regulatory Agencies, and the Department of Revenue to carry out duties assigned by those bills if the Registry is out-of-date.

Growth of applications: The following graph shows the explosive growth of Registry applications in the last half of calendar year 2009:

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The graph ends in December because data are not available for calendar year 2010. In February 2010, the number of pieces of incoming medical-marijuana mail reached approximately 1000 per workday or about 20,000 pieces per month -- up from 13,737 pieces received in November 2009. Approximately 85 percent of this mail contains applications; the remainder contains other correspondence, such as change-of-address requests from patients who are already on the Registry. The Department estimates that this daily mail contains about 850 applications or about 17,000 applications per month. Of the applications received, approximately 75 percent are accepted and 25% are rejected due to some deficiency (lack of notarization, lack of payment, improperly filled out forms, etc.) and are returned to the applicant. Most rejected applications are corrected, resubmitted and ultimately accepted.

The backlog is large: As of June 9, the Department possess approximately 63,000 pieces of mail that have not been opened; this mail probably contains about 54,000 applications. In addition the

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Department has a backlog of 31,000 applications that it has evaluated for acceptance or rejection but the data has not been entered into the computer system and the Department has not yet sent a response to the applicant. In addition, the Department possesses 38,000 requests for various changes to the information in the Registry that it has not processed.

Processing capacity is inadequate: The Department's current staff evaluates about 350 applications per day and issues about 200 cards per day to accepted applicants. The Department is completely unable to process change requests. The backlog of unevaluated applications (some of which will be rejected) is probably growing by about 500 per day. The backlog of cards that need to be sent to approved applicants is probably growing by about 450 per day. The backlog of unprocessed change requests is probably growing by about 150 per day.

Application response exceeds the mandated 35 days: The turn around time for applications in now approximately 6 months. The Constitution states that "the patient's application for such card will be deemed to have been approved" if no response is received within 35 days. A patient who is questioned by law enforcement officials after 35 days have elapsed can provide a copy of the submitted application along with proof of the date of submission, and the law enforcement official must accept this as the equivalent of a registry identification card. CDPHE interprets the constitution to mean that the application it is deemed to have been approved until the Department notifies the patient that it has been denied, though the constitution does not say this explicitly. Because of this constitutional provision, the Department prioritizes responses to rejected applications. However, staff estimates that the 63,000 pieces of unevaluated mail that the Department currently possesses contain approximately 7,500 applications that will be rejected when evaluated but are now deemed approved due to the 35-day provision.

Recent subpoenas: Earlier this month, the Department was issued subpoenas to verify that two alleged patients on the Registry were truly registered. The subpoenas came from counsel representing defendants who were arrested for marijuana violations. Neither patient is on the Registry, but it is possible that their applications are in the backlog of unopened mail. The Department is unable to respond to the subpoenas and has moved to have them quashed. If the court orders that the Department produce the applications, the Department will have to stop processing applications and search for the applications submitted by the alleged patients. The backlog would grow at an even faster rate during the search.

How many applications will be received in the future? In January 2010, when the Department also submitted a supplemental request for increased Medical Marijuana Registry funding, it projected that it would receive 70,000 applications during FY 2010-11. In light of subsequent developments,

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the Department now projects 150,000 annual applications during FY 2010-11. Staff accepts this projection, noting that it is subject to substantial uncertainty and noting that the uncertainty is compounded by the passage of S.B. 10-109 (Medical Marijuana Doctor-Patient Relations) and H.B. 10-1284 (Medical Marijuana Regulations), both of which may reduce applications. Yet another unknown is the re-application rate – registry card holders must reapply for a new card once per year.

The Department's Request: The Department proposes to hire 56.6 people through a private-sector temporary agency to eliminate the backlog and augment the Department's capacity to deal with the high volume of medical marijuana applications and other mail that continues to arrive on a daily basis. Of this total, 29.6 "backlog" employees will take 8 months to deal with the backlog while 27.0 "capacity" employees will work the entire year and will deal with the daily volume of mail. The Department is reluctant to hire additional capacity employees on a permanent basis because it believes that the number of medical marijuana applications will decline once S.B. 10-109 and H.B. 10-1284 are fully in effect.

Details of the personal services request are as follows:

Problem Addressed	Number of temp employees	Months employed	Cost
Backlog	29.6	8.0	\$750,080
Lack of capacity to handle daily incoming applications and mail	27.0	12.0	1,028,400
Total for personal services	56.6		\$1,778,480

The 56.6 temporary employees include 4.0 temporaries who will serve as supervisors, two for the backlog group and two for the capacity group. The Department proposes to house these workers in furnished space that it will lease on the campus where its offices are located. The lease rate is the same as the rate the Department is paying on other space. Operating expenses are based on standard costs that Legislative Council staff uses for fiscal notes. This leads to the following cost for the project, which is the request.

Item	Cost
Personal Services - CF	\$1,778,480
Operating Expenses - CF	114,015
Leased space - RF	129,734
Total	\$2,022,229

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Staff recommendation with adjustments to the cost of the "backlog" FTE and postage: A close analysis of productivity data provided by the Department suggests that workers will be able to process the backlog somewhat faster than the 8 months indicated by the Department. Using this productivity data and assuming that (1) the pile of unopened mail will grow by 500 pieces per day until the temps start processing, and (2) the temps start processing mail an average of 20 working days into FY 2010-11, staff concludes that the temporary workers will be able to eliminate the backlog in 7.5 months. This leads to the following recommendation for personal services:

Problem Addressed	Number of temp employees	Months employed	Cost
Backlog	29.6	7.5	\$703,200
Lack of capacity to handle daily incoming applications and mail	27.0	12.0	1,028,400
Total for personal services	56.6		\$1,731,600

Staff also notes that this request does not include a request for postage, an item that was included in the supplemental request/budget amendment that was submitted to the JBC in January 2010. Staff suspects that this was an oversight on the part of CDPHE. The current request envisions about 80,000 more applications per year than were envisioned at the time the FY 2010-11 Long Bill was approved, which leads to a postage appropriation of $\$0.44 * 80,000 = \$35,200$.

This leads to the following revised cost estimate, which is the staff recommendation:

Item	Cost
Personal Services - CF	\$1,731,600
Operating Expenses - postage (appropriated in the Administration and Support Division) - RF	\$35,200
Operating Expenses - other (appropriated to the Health Statistics and Vital Records Section) - CF	112,843
Leased space - RF	129,734
Total	\$2,009,377

Because of the uncertainty regarding the number of Registry applications to be issued in the future, staff agrees that it is wise to only hire temporary workers at this time.

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The Central Services Alternative: As an alternative to a private employment agency, staff contacted the Division of Central Services at the Department of Personnel and Administration, which does short-term work for many state agencies, and asked whether they could do this job. The Division Director told me that they could. He stated that his division routinely deals with issues of extreme confidentiality and security and also has the expertise to securely link into any internal state system. Based on the data in CDPHE's supplemental request, he prepared an estimate indicating that Central Services can perform the work for approximately \$350,000 less than the cost estimate for a private employment agency presented above. Note that the work would be done at Central Services, rather than at CDPHE.

Staff asked CDPHE to talk to Central Services about this estimate and received the following response moments before this document was completed:

The Department is planning a meeting with Central Services to discuss the possibilities, but was not able to schedule it in time for this response. Possible barriers could include transporting documents to the Central Services Facility, the complexity and technical nature of the work and the need for training and expertise. Additionally, the program would like to consider any possible implications that outsourcing might have on the efforts to automate the process

Additional staff recommendation: In view of this development, staff recommends that the Committee approve the recommendation outlined above but that it also send a letter to the CDPHE requesting that CDPHE thoroughly explore the feasibility of contracting with Central Services before entering into a contract with a private employment agency. Because this is an interim supplemental, further adjustments to the appropriation are possible during the consideration of regular supplementals in January 2010. For this reason, Staff recommends that the letter also request that CDPHE submit to the JBC revised cost estimates for the supplemental in January 2010 if Central Services does the work. This will provide the information needed to align the appropriation with amounts paid to Central Services.

Future processing efficiencies are likely but not imminent: The Department is currently looking at measures that may decrease the future cost of processing applications. For example, CDPHE is now exploring a web-based application process that would shift data-entry to the applicant. After completing an on-line form, applicants would print it out and mail it to CDPHE along with their other application materials. A quick scan of the printed form's bar code by a CDPHE employee would bring up the relevant information on a computer screen for verification against the other application materials. Since some applicants would not have access to computers, the Department

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would retain a paper application option. It is unlikely that innovations of this sort will be implemented during FY 2010-11.

Recent Registry Funding History: Long Bill appropriations for the Medical Marijuana Registry are combined with the appropriations for other programs run by the Health Statistics and Vital Records section. The numbers pages show the complete appropriations for personal services and operating expenses for this section. The following table shows the recent history of funding for the Registry alone and shows how it would be increased by this request.

Note that CDPHE received a FY 2009-10 supplemental appropriation of \$157,689 for the Health Statistics and Vital Records Section that has allowed it to hire 10.0 temporary employees for the months of April, May and June 2010; the appropriation for FY 2010-11 continues funding for the 10.0 temporary workers. The General Assembly approved funding for these temporaries so the Department could work through the application backlog that began accumulating in 2009. The FY 2010-11 appropriation also added 12.0 FTE who will deal with what is expected to be a permanently higher level of Medical Marijuana Registry applications.

Medical Marijuana Registry funding by fiscal year	Appropriation*	FTE	Temporary employees
FY 2007-08	\$41,950	1.0	None
FY 2008-09	58,224	1.0	None
FY 2009-10 appropriation in the enacted Long Bill	139,466	3.0	None
FY 2009-10 appropriation in the Long Bill as amended by H.B. 10-1311 (Supplemental appropriation for CDPHE)	297,155	3.0	10.0 for 3 months
FY 2010-11 appropriation in the enacted Long Bill	1,299,353	15.0	10.0 for 1 year
FY 2010-11 appropriation in the Long Bill as it would be amended by the Department's \$2,022,229 request	3,321,582	15.0	37.0 for 1 year 29.6 for 8 months

*All appropriations are from the Medical Marijuana Program Cash Fund.

This table pertains only to funding for the Medical Marijuana Registry, it does not include the medical marijuana funding for the Health Statistics and Vital Records Section that was contained in S.B. 10-109 or in H.B. 10-1284.

Fund balance should be adequate: As the following table shows, the balance in the Medical Marijuana Program Fund is likely to be more than adequate to support this appropriation.

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Medical Marijuana Program Fund Balance	
Projected balance at end of FY 2009-10	5,000,690
FY 2010-11 Long Bill appropriation including POTS and Indirect cost assessments	(1,711,949)
Appropriations in S.B. 10-109 and H.B. 10-1284	(874,971)
Transfer to General Fund on June 30, 2011 (HB 10-1388 Cash Fund Transfers to Augment General Fund)	(3,000,000)
This supplemental request	(1,892,495)
Revenue during FY 2010-11 if 150,000 applications are receives (\$90 each)	<u>13,500,000</u>
Projected balance at end of FY 2010-11	11,021,275

This table does not include a \$1,000,000 loan to the Department of Revenue for implementation of H.B. 10-1284 that is supposed to be repaid during FY 2010-11. Even if the loan is not repaid, fund balance should be adequate to support this supplemental. Even if the number of FY 2010-11 applications falls as low as 40,000, fund balance should be adequate.

Appendix
Constitutional Medical Marijuana Provisions

In 2000, Colorado voters added Section 14 to Article XVIII of the state Constitution, which permits the medical use of marijuana if:

1. A patient was diagnosed by a Colorado-licensed physician in good standing as having one of the following debilitating medical conditions:
 - a. Cancer, glaucoma, HIV or AIDS; or
 - b. A chronic or debilitating disease or medical condition, or treatment for such condition, which produces one the following, and for which, in the professional opinion of the patient's physician, such condition or conditions reasonably may be alleviated by the medical use of marijuana: cachexia; severe pain; severe nausea; seizures, including epileptic seizures; or persistent muscle spasms, including those that are characteristic of multiple sclerosis; or
 - c. Other conditions that the Department may add in response to petitions.

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2. The patient was advised by his or her physician, in the context of a bonafide physician-patient relationship, that the patient might benefit from the medical use of marijuana in connection with a debilitating medical conditions; and
3. The patient and his or her primary care-giver together possess no more than the permissible amount of marijuana. (Two ounces of usable marijuana; up to six plants, with three or fewer being flowering, mature plants. Larger amounts are permissible if medically necessary.)
4. The patient doesn't use the marijuana in a public place or in a way that endangers others.

If an individual satisfies these "diagnosis - benefit - amount - use" conditions, he or she is exempt from the state's criminal marijuana laws.

The Constitution also requires a state health agency, which has been designated in statute as the Colorado Department of Public Health and Environment (CDPHE), to establish and maintain a confidential medical marijuana registry of patients authorized to use marijuana for medical purposes. To be placed on the registry and issued an identification card, an individual must submit to CDPHE a form, signed by the individual's physician, stating that in the physician's opinion conditions 1 and 2 (diagnosis-benefit) have been satisfied. The form must be submitted within 60 days of physician signature. The patient must also submit the following information

1. Patient name, address, date of birth, and social security number;
2. Name, address, and telephone number of the patient's physician; and
3. Name and address of the patient's primary care-giver, if one is designated at the time of application.
4. A \$90 non-refundable application fee.

Patients must reapply for cards annually and pay the \$90 application fee when they renew.

Note that an individual isn't required to possess a registry identification card to use medical marijuana; once the "diagnosis - benefit - amount - use" conditions are met, a medical marijuana patient is exempt from the state's criminal marijuana laws. However, a registry card is useful because it provides a patient with a convenient means of demonstrating to law-enforcement officials and to his care givers who provide marijuana that the diagnosis - benefit - amount - use conditions have been met.

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CDPHE is required by the Constitution to accept or reject medical marijuana applications within 35 days of submission. If more than 35 days elapse and the Department has not accepted or rejected the application, the Constitution states that "the patient's application for such card will be deemed to have been approved." CDPHE interprets this to mean the application it is deemed to have been approved until the Department notifies the patient that it has been denied. A patient who is questioned by law enforcement officials after 35 days have elapsed can provide a copy of the submitted application along with proof of the date of submission, and the law enforcement official must accept this as the equivalent of a registry identification card.

	FY 2009-10	FY 2010-11	Fiscal Year 2010-11 Interim Supplemental		
	Appropriation	Appropriation	Requested Change	Recommended Change	New Total with Recommendation
DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT					
Executive Director - Martha Rudolph					
Interim Supplemental - Medical Marijuana					
<i>(1) Administration and Support</i>					
<i>(A) Administration</i>					
Leased Space	<u>5,691,403</u>	<u>5,909,582</u>	<u>129,734</u>	<u>129,734</u>	<u>6,039,316</u>
Cash Funds	198,567	233,106	0	0	233,106
Reappropriated Funds	5,454,448	5,638,088	129,734	129,734	5,767,822
Federal Funds	38,388	38,388	0	0	38,388
Operating Expenses	<u>1,264,072</u>	<u>1,262,707</u>	<u>0</u>	<u>35,200</u>	<u>1,297,907</u>
Cash Funds	0	0	0	0	0
Reappropriated Funds	1,264,072	1,262,707	0	35,200	1,297,907
<i>(2) Center for Health and Environmental Information</i>					
<i>(A) Health Statistics and Vital Records</i>					
Personal Services	2,780,999	4,190,474	1,778,480	1,731,600	5,922,074
FTE	<u>55.2</u>	<u>68.4</u>	<u>0.0</u>	<u>0.0</u>	68.4
Cash Funds	2,188,938	3,143,972	1,778,480	1,731,600	4,875,572
Reappropriated Funds	3,550	3,550	0	0	3,550
Federal Funds	588,511	1,042,952	0	0	1,042,952
<i>Medicaid Cash Funds</i>		3,550	0	0	3,550
<i>GF in Medicaid CF</i>		1,775	0	0	1,775
<i>Net General Fund</i>		1,775	0	0	1,775

	FY 2009-10 Appropriation	FY 2010-11 Appropriation	Fiscal Year 2010-11 Interim Supplemental		
			Requested Change	Recommended Change	New Total with Recommendation
Operating Expenses Services	206,950	484,566	114,015	112,843	597,409
Cash Funds	171,976	299,750	114,015	112,843	412,593
Federal Funds	34,974	184,816	0	0	184,816
Total for Medical Marijuana Supplemental	9,943,424	11,847,329	2,022,229	2,009,377	13,856,706
FTE	<u>55.2</u>	<u>68.4</u>	<u>0.0</u>	<u>0.0</u>	<u>68.4</u>
Cash Funds	2,559,481	3,676,828	1,892,495	1,844,443	5,521,271
Reappropriated Funds	6,722,070	6,904,345	129,734	164,934	7,069,279
Federal Funds	661,873	1,266,156	0	0	1,266,156
<i>Medicaid Cash Funds</i>	0	3,550	0	0	3,550
<i>GF in Medicaid CF</i>	0	1,775	0	0	1,775
<i>Net General Fund</i>	0	1,775	0	0	1,775

	FY 2009-10	FY 2010-11	Fiscal Year 2010-11 Interim Supplemental		
	Appropriation	Appropriation	Requested Change	Recommended Change	New Total with Recommendation
Totals					
DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT					
TOTALS for ALL line items	429,048,743	440,148,279	2,022,229	2,009,377	442,157,656
FTE	<u>1,289.5</u>	<u>1,225.9</u>	<u>0.0</u>	<u>0.0</u>	<u>1,225.9</u>
General Fund	26,626,170	27,094,461	0	0	27,094,461
General Fund Exempt	504,000	447,000	0	0	447,000
Cash Funds	145,304,938	129,530,277	1,892,495	1,844,443	131,374,720
Reappropriated Funds	33,233,774	26,479,698	129,734	164,934	26,644,632
Federal Funds	223,379,861	256,596,843	0	0	256,596,843
<i>Medicaid Cash Funds</i>	<i>5,116,789</i>	<i>5,034,595</i>	<i>0</i>	<i>0</i>	<i>5,034,595</i>
<i>GF in Medicaid CF</i>	<i>1,560,600</i>	<i>1,529,110</i>	<i>0</i>	<i>0</i>	<i>1,529,110</i>
<i>Net General Fund</i>	<i>24,388,626</i>	<i>28,642,206</i>	<i>0</i>	<i>0</i>	<i>28,642,206</i>

Key:

"N.A." = Not Applicable or Not Available