

Colorado Legislative Council Staff Fiscal Note

**FINAL
FISCAL NOTE**

Drafting Number: LLS 13-0897 **Date:** August 12, 2013
Prime Sponsor(s): Rep. Pabon **Bill Status:** Signed into Law
 Sen. Jahn; Baumgardner **Fiscal Analyst:** Clare Pramuk (303-866-2677)

TITLE: CONCERNING THE RECOMMENDATIONS MADE IN THE PUBLIC PROCESS FOR THE PURPOSE OF IMPLEMENTING RETAIL MARIJUANA LEGALIZED BY SECTION 16 OF ARTICLE XVIII OF THE COLORADO CONSTITUTION, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Fiscal Impact Summary	FY 2013-2014	FY 2014-2015
State Revenue	<u>\$6,545,423</u>	<u>\$11,170,407</u>
General Fund - Reduction	(4,243,187)	(2,711,931)
Cash Funds		
Marijuana Cash Fund - Sales Tax Revenue	8,379,859	10,984,489
Marijuana Cash Fund - Application & Licensing Revenue	2,250,000	2,750,000
CBI Identification Unit Fund	158,751	147,849
<i>Marijuana Cash Fund - Base Revenue*</i>	<i>2,000,000</i>	<i>1,700,000</i>
State Transfers or Diversions		
Transfer from the Marijuana Cash Fund to the General Fund	(\$2,000,000)	(\$2,000,000)
State Expenditures	<u>1,207,786</u>	<u>\$922,862</u>
Cash Funds		
Marijuana Cash Fund - New Expenditures	1,052,026	781,669
CBI Identification Unit Fund	155,760	141,193
<i>Marijuana Cash Fund - Base Expenditures*</i>	<i>5,653,838</i>	<i>5,653,838</i>
FTE Position Change	3.9 FTE	4.0 FTE
<i>FTE Existing Appropriation *</i>	<i>55.2 FTE</i>	<i>55.2 FTE</i>
Effective Date: The bill was signed by the Governor and became law on May 28, 2013. Section 3 was contingent on the passage of SB13-283 which was signed into law on May 28, 2013.		
Appropriation Summary for FY 2013-2014: See State Appropriations section.		
Local Government Impact: See Local Government Impact section.		

* Revenue, expenditures, and FTE from existing medical marijuana program are shown for informational purposes and have been excluded from the total figures.

Summary of Legislation

Amendment 64 was approved by voters in November 2012 and enacted as Article XVIII, Section 16 of the Colorado Constitution. It allows Colorado residents 21 years or older to lawfully use and possess up to one ounce of marijuana and requires that a regulatory structure be established. It also allows the cultivation, processing, and retail sale of marijuana in Colorado on and after January 1, 2014.

This bill implements major provisions of Amendment 64 by creating the Colorado Retail Marijuana Code. It renames the Medical Marijuana Enforcement Division (MMED) in the Department of Revenue (DOR) as the Marijuana Enforcement Division (MED) and gives the MED the authority to regulate both medical and retail marijuana. It creates a regulatory system for retail marijuana under which existing medical marijuana businesses have the option to convert to retail businesses or to operate both medical and retail businesses. Colorado residents may purchase up to 1 ounce of marijuana in a single transaction as allowed by Amendment 64 but this bill limits nonresidents to purchases of no more than 1/4 of an ounce in a single transaction.

The bill includes a severability clause that allows the bill to be implemented even if certain provisions are found to be unconstitutional as long as those provisions are not essential to fulfilling the legislative intent of the bill. The Colorado Retail Marijuana Code is scheduled to repeal July 1, 2016, after a sunset review.

State licensing. As required by Amendment 64, this bill requires that the DOR adopt rules regarding retail marijuana by July 1, 2013, and begin taking license applications no later than October 1, 2013. The MED must act on a license application between 45 and 90 days after receipt of an application. Until September 30, 2014, only medical marijuana businesses in good standing may apply for a retail license. Beginning January 1, 2014, other interested persons may submit a notice of intent to apply for licensure. The MED will create the notice of intent form and may collect a filing fee to be deducted from the licensing fee. The MED will begin accepting applications on July 1, 2014, and give preference to those applicants who submitted a notice of intent.

New license types are created for retail marijuana stores, products manufacturers, cultivation facilities, and testing facilities. All owners, officers, managers, and employees of a retail marijuana business must meet certain requirements, including Colorado residency, and pass a fingerprint-based criminal history check. The bill includes limitations for licensing of individuals with certain felony convictions. Law enforcement personnel are prohibited from being licensed by the MED as are locations currently licensed as retail food or wholesale food businesses. A licensed retail marijuana store is prohibited from selling retail marijuana or retail marijuana products over the Internet or to a person not physically present in the retail marijuana store's licensed premises. Licensed retail marijuana testing facilities are prohibited from having an interest in any other type of medical or retail marijuana business. All licensed retail marijuana businesses must procure a \$5,000 surety bond as a guarantee that the business will pay its sales and excise taxes.

Testing of retail marijuana by licensed laboratories is required to verify potency and to ensure that products sold for human consumption do not contain harmful contaminants. The bill gives the DOR rulemaking authority over a variety of issues including licensing, fees, security, labeling, health and safety standards, advertising, enforcement, penalties, inspection procedures, and audits. DOR may limit the number of licenses that it issues as well as limit the amount of production permitted by a retail marijuana cultivation licensee. Any limits on licenses and production may be changed by DOR in the future.

Retail marijuana cannot contain nicotine or alcohol and retail stores must put each item sold in a sealed, opaque container. Retail stores may not sell any products that do not contain marijuana such as soda, candies, baked goods, and cigarettes.

Vertical integration. Until September 30, 2014, the bill requires a retail marijuana store to only sell marijuana grown in its own retail marijuana cultivation facility with some exceptions. Beginning October 1, 2014, a licensed retail marijuana store or products manufacturer may either grow its marijuana at its own retail marijuana cultivation facility or purchase it from a facility with which it does not share common ownership.

Tracking and reporting. The MED is required to develop and maintain a tracking system to track retail marijuana from the immature plant stage until the marijuana is sold to a customer at a retail store. Beginning April 1, 2014, and annually thereafter, the MED is required to report to the House and Senate Finance Committees on licensing activities as well as an overview of the retail marijuana market that includes actual and anticipated market supply and demand.

Retail marijuana stores must track all retail marijuana and marijuana product sales from when the items are transferred from a retail marijuana cultivation facility or retail marijuana products manufacturer to the consumer. No transfers of retail marijuana from cultivation or production facilities can be made without proof that the excise tax has been paid on the product.

Testing and certification standards. The Department of Public Health and Environment (CDPHE) is required to provide the MED with standards for licensing the laboratories that will be responsible for the testing and certification of marijuana.

Local licensing. Unlike the state and local licensing requirements for medical marijuana businesses, local jurisdictions are not required to set up a licensing program for retail marijuana businesses. The MED will forward all applications for original or renewal licenses to the applicable local jurisdiction to determine whether the application complies with local restrictions on the time, place, manner, and number of retail marijuana businesses allowed. The local jurisdiction notifies the MED if the application is compliant. Public hearings may be held for all new license applications. Local jurisdictions are also permitted to prohibit such businesses entirely. If a local jurisdiction does choose to license retail marijuana businesses, new businesses will not be permitted to operate until both the state and local licenses are issued. If the local license is not issued within 1 year of the conditional state license being issued, the conditional state license expires; if the local application is denied, the conditional state license is revoked. Local jurisdictions are permitted to charge operational fees for inspection, administration, and enforcement of retail marijuana businesses.

Funding sources for marijuana regulation. House Bill 13-1317 requires that all sales taxes from medical and retail marijuana sales, plus application and licensing fees from marijuana businesses, be used to fund the MED in the DOR. This includes the existing 2.9 percent sales taxes that would otherwise be credited to the General Fund. The application fee for existing medical marijuana businesses that want to apply for a retail marijuana licence is set at \$500. All other applicants are required to pay a \$5,000 application fee. The MED must remit 50 percent of any application fee to the local jurisdiction where the business will be located within 7 days of receipt.

The bill appropriates the balance of the Medical Marijuana License Cash Fund as of July 1, 2013, to the MED and allows the MED to receive moneys from the General Fund if revenues from other sources are insufficient. If the MED receives a General Fund appropriation, the MED

will repay that amount when it becomes self sufficient and generates excess revenue. Beginning September 30, 2014, and annually thereafter, the DOR must report to the Joint Budget Committee and the House and Senate Finance Committees detailing the amount of state revenue generated by medical and retail marijuana, including excise taxes, sales taxes, application and license fees, and any other fees. The report must also discuss the progress in establishing the regulatory environment for marijuana in Colorado.

Unlawful acts. The bill identifies a number of unlawful acts including consuming marijuana in a licensed retail marijuana business, buying or selling marijuana outside of the regulated system, selling to a person under 21, distributing marijuana using a mobile distribution center, and failing to pay the lawful excise tax. A person who commits any of these acts commits a Class 2 misdemeanor. In addition, state and local agencies are not required to care for any retail marijuana or retail marijuana product belonging to or seized from a licensed business.

Background

The regulatory program for medical marijuana is currently appropriated nearly \$6 million annually with 55.2 FTE, but only collects about \$1.7 million annually in revenue. The current fund balance is approximately \$3.5 million. Due to this inadequate revenue stream, only 14 positions are currently filled and the MMED has been operating at significantly less than its appropriated amount. Because this bill builds the new enforcement system with the existing system as its base, revenue increases have been calculated to address both new expenditures for implementing the bill and the revenue shortfall of the existing program.

Type of Marijuana Sales*	FY 2013-2014	FY 2014-2015
Medical Marijuana	\$146,316,782	\$93,514,849
Retail Marijuana	135,685,085	271,344,377
TOTAL	\$282,001,867	\$364,859,226

**Assumes that retail marijuana sales begin January 1, 2014.*

State Revenue

This bill is expected to increase state revenue by a total of \$6,545,423 in FY 2013-14 and \$11,170,407 in FY 2014-15. The revenue sources are described below.

Sales Tax Revenue. This bill is expected to increase revenue to the Marijuana Cash Fund by \$8,379,859 in FY 2013-14 and \$10,984,489 in FY 2014-15. These totals include a net increase in sales taxes on retail marijuana sales, plus a diversion of existing sales taxes from sales of medical marijuana. Based data from the Substance Abuse and Mental Health Association's National Survey on Drug Use and Health, sales of retail marijuana under the bill are expected to increase tax revenue by \$4,136,672 in FY 2013-14 and \$8,272,558 in FY 2014-15 under the state's existing 2.9 percent sales tax. Table 2 shows the estimated sales tax generated from medical and retail marijuana.

Table 2. Estimated Marijuana Sales Taxes by Fiscal Year		
Type of Marijuana Sales*	FY 2013-2014	FY 2014-2015
Medical Marijuana	\$4,243,187	\$2,711,931
Retail Marijuana	4,136,672	8,272,558
TOTAL	\$8,379,859	\$10,984,489

*Assumes that retail marijuana sales begin January 1, 2014, and excludes vendor fee for tax processing.

Sales taxes from medical marijuana will be diverted from the General Fund to the Marijuana Cash Fund, so the General Fund will see a decrease in revenue of \$4,243,187 in FY 2013-14 and \$2,711,931 in FY 2014-15.

Fee Impact on Individuals, Families, or Business. Section 2-2-322, C.R.S., requires legislative service agency review of measures which create or increase any fee collected by a state agency. This fiscal note illustrates total expected fee revenue in Table 3. The DOR will set specific fees by rule, so actual collections may vary. **It is important to note that fees may be raised or lowered to ensure the programs are adequately funded.**

Because this bill requires licence applicants to obtain fingerprint-based criminal history record checks, the Department of Public Safety (DPS) is expected to have an increase in revenue to the CBI Identification Unit Fund of \$158,751 in FY 2013-14 and \$147,849 in FY 2014-15. This is also shown in Table 3.

Table 3. Fee Impact on Marijuana Businesses		
Type of Fee	FY 2013-2014	FY 2014-2015
Application Fee Revenue - DOR	250,000	250,000
License Fee Revenue - DOR	2,000,000	2,500,000
Fingerprint-based Criminal History Record Check - DPS	158,751	147,849
TOTAL	\$2,408,751	\$2,897,849

Fines. This bill may increase state cash fund revenue credited to the Fines Collection Cash Fund in the Judicial Department. Per Section 18-1.3-501 (1)(a), C.R.S., the fine penalty for a class 2 misdemeanor is \$250 to \$1,000. Unless otherwise provided by law, the fines are to be deposited into the state Fines Collection Cash Fund for annual appropriations to cover associated administrative and personnel costs. All unexpended balances of the cash fund revert to the state General Fund at the end of each fiscal year. Because the courts have the discretion of incarceration or imposing a fine, and the timing of payments are established on a per-offender basis, the actual impact cannot be determined.

State Transfers or Diversions

This bill transfers \$2,000,000 from the Marijuana Cash Fund to the General Fund on or before June 30 each year. This transfer satisfies a substance abuse funding requirement from the Medical Marijuana Code that, under current law, is paid from the 2.9 percent state sales tax on medical marijuana.

State Expenditures

This bill is expected to increase state expenditures by \$1,207,786 and 3.9 FTE in FY 2013-14 and \$922,862 and 4.0 FTE in FY 2014-15. Expenditure details are shown in Table 4 and described below.

Table 4. Expenditures Under HB 13-1317		
Cost Components	FY 2013-14	FY 2014-15
Department of Revenue		
Personal Services	\$129,547	\$129,547
FTE*	3.9	4.0
Operating Expenses and Capital Outlay	15,263	2,565
Legal Services	70,684	88,451
Computer Programming & Support (OIT)	73,700	58,774
Contract Programming & Support	512,832	252,332
Contract Marijuana Market Study	250,000	250,000
<i>TOTAL- Marijuana Cash Fund</i>	<i>\$1,052,026</i>	<i>\$781,669</i>
Department of Public Safety		
Personal Services	\$34,387	\$34,387
FTE	0.7	0.7
Operating Expenses and Capital Outlay	3,957	665
Fingerprint Equipment and Services	48,088	41,574
FBI Background Check (pass through)	69,328	64,567
<i>TOTAL - CBI Identification Unit Fund</i>	<i>\$155,760</i>	<i>\$141,193</i>
TOTAL Costs	\$1,207,786	\$922,862

Includes FTE for Department of Law.

Marijuana Enforcement Division, Department of Revenue. The MED is expected to have increased expenditures of \$1,052,026 and 2.7 FTE over its currently appropriated \$5.98 million and 55.2 FTE in FY 2013-14, and \$781,669 and 2.7 FTE over the appropriated amount in FY 2014-15. These costs will be paid from the Marijuana Cash Fund, are shown in Table 4, and described below.

The increased staffing for the MED will support the maintenance of separate financial records for medical and retail marijuana and ensure compliance with procurement codes and fiscal rules. Programming services purchased from vendors and the Office of Information Technology total \$586,532 in FY 2013-14 and \$311,106 in FY 2014-15 and thereafter. This will cover changes to the GenTax system and the MED inventory tracking and licensing systems to include retail marijuana. It will also allow the MED to establish connectivity to 3 new satellite offices. Leased space expenditures for expanding the Denver office are shown below in the Expenditures Not Included section and will be centrally appropriated.

Adding the authority to regulate retail marijuana to the DOR is expected to require additional legal services support for developing rules, enforcing disciplinary actions, resolving appeals of negative license actions, and participating in the sunset review. Provided by the Department of Law, legal services costs are estimated to be \$70,684 in FY 2013-14 for 915 hours at a rate of \$77.25 per hour and 1,145 hours in FY 2014-15 at a cost of \$88,451. The Department of Law requires an additional 0.5 FTE in FY 2013-14 and 0.6 FTE in FY 2014-15 and thereafter.

Colorado Bureau of Investigation, Department of Public Safety. The CBI will have additional expenditures of \$155,760 and 0.7 FTE in FY 2013-14 and \$141,193 and 0.7 FTE in FY 2014-15 and thereafter from the CBI Identification Unit Fund. These costs are shown in Table 4. The CBI will increase staff to address an increase in the number of fingerprint-based criminal history record checks that will be required as retail marijuana license applications are made. This increase in checks is estimated to be approximately 4,000 per year. The increased costs include training and specialized equipment used by fingerprint examiners, as well as funds transferred to the FBI for the federal background check.

Colorado Department of Public Health and Environment. CDPHE will develop and provide to the DOR the standards for licensing the laboratories that will test marijuana. The fiscal note assumes that the CDPHE can accomplish this task within existing appropriations. In an earlier version of the bill, CDPHE was required to both develop the standards and regulate the laboratories and was appropriated \$87,615 and 1.0 FTE. The appropriation remained in the bill but is no longer required.

Judicial Branch. Because this bill creates a new Class 2 misdemeanor for illegal acts related to retail marijuana, the Office of the State Public Defender will have an increase in clients and the Probation Division will have an increase in caseload. Trial courts may be required to conduct judicial reviews of MED decisions. Workload increases in the Judicial Branch are expected to be addressed within existing appropriations. If that is not the case, the fiscal note assumes that the Judicial Branch will request additional appropriations during the annual budget process.

Expenditures Not Included

Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. The centrally appropriated costs subject to this policy are summarized in Table 5.

Table 5. Expenditures Not Included Under HB13-1317*		
Cost Components	FY 2013-14	FY 2014-15
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$22,802	\$22,802
Supplemental Employee Retirement Payments	10,063	11,384
Indirect Costs	3,439	3,439
Leased Space	175,000	175,000
TOTAL	\$211,304	\$212,625

*More information is available at: <http://colorado.gov/fiscalnotes>

Comparable Crime

Pursuant to Section 2-2-322 (2.5), C.R.S., Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or changes an element of the existing crime that creates a new factual basis for the offense. House Bill 13-1317 adds 22 new crimes based primarily on the new regulatory structure for retail marijuana. The fiscal note assumes that the majority of retail licensees and their employees will comply with the bill in order to maintain their licenses and avoid penalties or will be subjected to administrative rather than criminal penalties. As such, the increase in cases resulting from these new crimes is expected to be minimal.

Local Government Impact

This bill is expected to increase both revenue and expenditures to local governments as described below.

Licensing. Local governments that allow the licensing of retail marijuana facilities, regardless of whether they require local licensing, will share in the application fees submitted by applicants and will have increased revenue from local sales tax on retail marijuana sales. For local governments that require local licensing, they will be able to collect operational fees from licensed marijuana businesses to fund their licensing systems. Revenue increases are dependent on how local governments choose to address the implementation of Amendment 64 and this bill.

Misdemeanor offenses. By adding 22 new crimes, this bill may increase the number of individuals incarcerated in county jails. The penalty for a class 2 misdemeanor is 3 to 12 months imprisonment in a county jail, a fine of \$250 to \$1,000, or both. Because the courts have the discretion of incarceration or imposing a fine, the impact at the local level cannot be determined. The cost to house an offender in county jails varies from \$45 to \$50 per day in smaller rural jails to \$62 to \$65 per day for larger Denver-metro area jails.

State Appropriations

For FY 2013-14, the following appropriations are included in the bill:

- \$1,052,026 and 2.7 FTE to the Department of Revenue from the Marijuana Cash Fund, of which \$70,684 is reappropriated to the Department of Law with an allocation of 0.5 FTE, and \$73,700 is reappropriated to the Office of Information Technology;
- \$155,760 and 0.7 FTE to the Department of Public Safety from the CBI Identification Unit Fund; and
- \$87,615 and 1.0 FTE to the Department of Public Health and Environment from the Laboratory Cash Fund. Due to an amendment, the appropriation to the Department of Public Health and Environment is no longer required.

Departments Contacted

Agriculture	District Attorneys
Counties	Municipalities
Corrections	Education
Higher Education	Governor
Human Services	Judicial Branch
Law	Revenue
Public Safety	Secretary of State
State Auditor	Transportation
Sheriffs	Regulatory Agencies
Personnel and Administration	Public Health and Environment