

Colorado Legislative Council Staff Fiscal Note

**FINAL
FISCAL NOTE**

Drafting Number: LLS 13-0929
Prime Sponsor(s): Rep. Singer
 Sen. Jahn

Date: July 25, 2013
Bill Status: Signed into Law
Fiscal Analyst: Clare Pramuk (303-866-2677)

TITLE: CONCERNING THE RECOMMENDATIONS MADE IN THE PUBLIC PROCESS FOR THE PURPOSE OF IMPLEMENTING CERTAIN STATE TAXES ON 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>\$33,494,890</u>	<u>\$66,989,781</u>
General Fund	19,729,867	39,459,734
Cash Funds		
Public School Capital Construction Assistance Fund	13,765,023	27,530,047
State Transfers		
Transfer from the General Fund to:	<u>\$19,729,867</u>	<u>\$39,459,734</u>
Marijuana Cash Fund	16,770,387	33,540,774
Local Jurisdictions	2,959,480	5,918,960
State Expenditures		<u>\$1,300,866</u>
General Fund		20,816
Cash Funds		
Marijuana Cash Fund	\$4,258,166	1,280,050
FTE Position Change	11.5 FTE	21.9 FTE
Effective Date: The bill was signed into law by the Governor and took effect on May 28, 2013; taxes apply on and after January 1, 2014, but only if approved by voters.		
Appropriation Summary for FY 2013-2014: See State Appropriations section.		
Local Government Impact: See Local Government Impact section.		

Summary of Legislation

Amendment 64, passed by the voters in November 2012, allows for an adult 21 years or older to consume or possess up to 1 ounce of marijuana and requires that a regulatory structure be established. Beginning January 1, 2014, the cultivation, processing, and retail sale of marijuana are allowed in Colorado. This bill creates an excise tax and special sales tax to be levied on retail marijuana beginning January 1, 2014, and refers a ballot question to the voters at the 2013 general election for approval to increase taxes by \$70,000,000 per year. These taxes, if approved, are not subject to the limitations on revenue, spending, or appropriations contained in Section 20 of Article X of the State Constitution (TABOR). The tax revenues are to be used for the enforcement

of regulations on the retail marijuana industry and the Department of Revenue has rulemaking authority over implementation of these taxes. Marijuana businesses are required to post a surety bond equal to two months of anticipated tax liability. Retail marijuana licensees that fail to remit sales and excise taxes, or unlicensed individuals who sell or transfer marijuana, are subject to criminal penalties.

Excise tax. The bill creates an excise tax of up to 15 percent of the average market rate of the unprocessed retail marijuana on its first sale or transfer from a cultivation facility to a retail store, product manufacturing facility, or other cultivation facility. The DOR will set the average market rate twice a year. Retail marijuana businesses are required to keep detailed electronic records on all transactions of retail marijuana. As required by Amendment 64, the first \$40 million collected annually in excise tax goes to the Public School Capital Construction Assistance Fund. Any amount remaining will be deposited into the Marijuana Cash Fund.

Retail marijuana sales tax. The bill authorizes a sales tax of up to 15 percent, which is initially set at 10 percent. The retail marijuana sales tax is in addition to the current 2.9 percent state sales tax. Local jurisdictions will receive 15 percent of the proceeds of the retail marijuana sales tax apportioned according to the percentage of retail marijuana sales in their areas, distributed monthly. Local governments may also apply local sales taxes to retail marijuana. Retail marijuana businesses are prohibited from maintaining any portion of the retail marijuana sales tax to cover the expenses of collecting and remitting the tax. The General Assembly can raise or lower the retail marijuana sales tax at any time through legislation, but cannot increase it above 10 percent. Beginning April 1, 2014, and annually through April 1, 2016, the House and Senate Finance Committees are required to review the percent of revenue allocated to local governments is set at the appropriate level.

Assumptions

This fiscal note is based on the assumptions shown in Table 1.

Table 1. Assumptions Related to Amendment 64 and HB 13-1318		
	FY 2013-14	FY 2014-15
Gross Retail Sales (for sales taxes)	\$197,298,670	\$394,597,340
Value of Wholesale Product (for excise taxes)	91,766,823	183,533,646

State Revenue

If voters approve the ballot question, this bill is expected to increase state revenue from taxes by \$33,494,890 in FY 2013-14 and \$66,989,781 in FY 2014-15. Of this, the retail marijuana sales tax represents \$19,729,867 in FY 2013-14 and \$39,459,734 in FY 2014-15 and is deposited initially into the General Fund. The remainder, \$13,765,023 in FY 2013-14 and \$27,530,047 in FY 2014-15 is from the excise tax and is deposited into the Public School Capital Construction Assistance Fund.

Fines. Failure to pay the required taxes may result in additional fine revenue if businesses or individuals are convicted of this offense. Per Section 18-1.3-401 (III) (A), C.R.S., the fine penalty for a class 5 felony is \$1,000 to \$100,000. Unless otherwise provided by law, the fines are to be deposited in 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, the impact to the cash fund and the General Fund cannot be determined.

State Transfers

The bill requires that all proceeds from the retail marijuana sales tax be deposited first into the General Fund and then transferred from the General Fund to the Marijuana Cash Fund (85 percent) and local jurisdictions (15 percent). Transfers to the Marijuana Cash Fund are expected to be \$16,770,387 in FY 2013-14 and \$33,540,774 in FY 2014-15. The remaining funds, \$2,959,480 in FY 2013-14 and \$5,918,960 in FY 2014-15, are transferred to local jurisdictions for their share of the retail marijuana sales tax.

State Expenditures

If voters approve the ballot question, the Department of Revenue (DOR) is expected to have increased expenditures of \$4,258,166 in FY 2013-14 and \$1,280,050 in FY 2014-15 and thereafter. Because the taxes will go into effect January 1, 2014, if approved by the voters, costs for FY 2013-14 represent 6 months of expenditures for personal services, operating expenses, and capital outlay. These expenditures are shown in Table 2 and explained below.

Table 2. Expenditures Under HB 13-1318		
Cost Components	FY 2013-14	FY 2014-15
Personal Services	\$730,428	\$1,232,552
FTE	11.5	21.9
Operating Expenses and Capital Outlay	114,391	20,805
Travel	13,347	26,693
Contract Computer Programming	3,400,000	
TOTAL	\$4,258,166	\$1,280,050

Information technology costs. The DOR will have \$3,400,000 in costs in FY 2013-14 to make modifications to the GenTax system. These costs are for 17,000 hours of programming at the contract rate of \$200 per hour. These programming changes will allow for the collection, monitoring, and reporting of both the excise tax and the retail marijuana sales tax.

Tax administration. Once the taxes are being collected in January 2014, the DOR will have staff in place to work determine the average market rate for unprocessed retail marijuana and work with marijuana businesses to understand and comply with the new tax laws. Revenue agents, tax examiners, and criminal investigators will do onsite audits and investigations to ensure that the taxes paid match reports from the DOR inventory tracking system. Multiple staff will be required to participate when large tax collection transactions are made in cash. Total staff are estimated at 11.5 FTE in FY 2013-14 and 21.9 FTE in FY 2014-15 and thereafter.

Judicial Branch. This bill establishes a new offense for failure to pay the retail marijuana taxes under the bill which applies to licensed owners and operators and retail medical marijuana businesses as well as sellers outside of the regulated system. Any new offense carries with it the potential for additional cases to be filed with the courts. It is anticipated that licensed retail marijuana businesses will comply with the law, and that other offenders will be black-market providers of marijuana. The number of licenced providers who violate the law is anticipated to be relatively small, and these new cases can be absorbed within existing resources. The Judicial Branch is anticipated to see a minimal number of new probation cases annually; however, the associated cost of these cases can also be absorbed within existing resources.

Department of Corrections. Beginning in FY 2014-15, the Department of Corrections is expected to admit 1 new offender every 5 years under this bill. To the extent this occurs, this analysis assumes the department will request an increase in appropriations through the annual budget process.

Current law prohibits the General Assembly from passing any bill to increase periods of imprisonment in state correctional facilities without appropriating an amount sufficient to cover the increased capital construction and operating costs of the bill in each of the first five fiscal years. However, current law also allows the DOC to place offenders classified as medium custody and below in private contract prisons, for which no state capital construction costs are incurred.

Offenders sentenced under this bill to DOC may be placed in either a state-run or a private contract prison, depending on several factors. As state-run facilities are currently at or near capacity, any such offenders that *must* be housed in a state-run prison will likely require a shift of other inmates in that facility to private contract prisons. Therefore, this fiscal note assumes that the impact of this bill will be accommodated through the use of private contract prisons, and that no new capital construction funds are necessary. Offenders placed in a private contract prison cost the state about \$57.03 per offender per day, including the current daily rate of \$52.69 and an estimated \$4.34 per offender per day for medical care provided by the DOC. Table 3 shows the estimated cost of the bill over the next six fiscal years (in order to show the full impact). The bill includes an appropriation for FY 2014-15.

Table 3. Five-Year Fiscal Impact On Correctional Facilities				
Fiscal Year	Inmate Bed Impact	Construction Cost	Operating Cost	Total Cost
FY 2013-14	0.0	\$0	\$0	\$0
FY 2014-15	1.0	0	20,816	20,816
FY 2015-16	0.7	0	14,987	14,987
FY 2016-17	0.0	0	0	0
FY 2017-18	0.0	0	0	0
Total		\$0	\$35,803	\$35,803

Election Expenditure Impacts (For Informational Purposes Only)

The bill refers a measure to the voters at the November 2013 general election. This measure will be published in newspapers and an analysis of the measure will be included in the Blue Book mailed to all registered voter households prior to the election. Under current law, costs for these functions will be paid through a General Fund line item in the Long Appropriations Bill. Table 4 below identifies the anticipated costs for the 2013 Blue Book.

Table 4. Cost to Produce and Distribute the 2013 Blue Book to All Registered Voter Households	
Printing	\$300,000
Postage	\$450,000
Translation	\$4,000
Newspaper Publication (English & Spanish)	\$150,000
Total Cost (3 issues)	\$904,000
Average Cost per Issue	\$301,333

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 13-1318 adds a class 5 felony for failure to pay the 2 new taxes that are being referred to the voters. The fiscal note assumes that the majority of retail marijuana licensees and their employees will comply with the bill in order to maintain their licenses and avoid criminal penalties. Individuals selling marijuana on the black market may now be charged with a new class 5 felony for tax evasion, which depending on enforcement, may result in a significant increase in cases.

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 HB13-1318*		
Cost Components	FY 2013-14	FY 2014-15
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$77,420	\$147,164
Supplemental Employee Retirement Payments	44,834	85,594
TOTAL	\$122,254	\$232,758

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

Local Government Impact

Local governments that allow retail marijuana stores to operate in their jurisdiction will receive an allocation of the retail marijuana sales tax. The total amount allocated to local governments is estimated to be \$2,959,480 in FY 2013-14 and \$5,918,960 in FY 2014-15. The exact distributions among local governments will depend on the amount of sales in each jurisdiction.

State Appropriations

For FY 2013-14, the Department of Revenue requires an appropriation of \$4,258,166 and 11.5 FTE from the Marijuana Cash Fund.

For FY 2014-15, the Department of Corrections requires a General Fund appropriation of \$20,816.

Departments Contacted

Corrections
Municipalities

Counties
Judicial Branch

Law
Revenue