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**FINAL
FISCAL NOTE**

Drafting Number: LLS 18-0325 **Date:** September 6, 2018
Prime Sponsors: Rep. Pabon; Van Winkle **Bill Status:** Vetoed by Governor
 Sen. Neville T.; Jahn **Fiscal Analyst:** Clare Pramuk | 303-866-2677
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Bill Topic: MARIJUANA BUSINESS ALLOW PUBLICLY TRADED OWNERS

Summary of Fiscal Impact:

<input checked="" type="checkbox"/> State Revenue	<input checked="" type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure	<input checked="" type="checkbox"/> Local Government
<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

This bill would have allowed a publicly traded corporation to invest or go into business as a medical or retail marijuana businesses. The bill would have increased state revenue and expenditures on an ongoing basis.

Appropriation Summary: In FY 2018-19, the bill would have required an appropriation of \$1,037,452 to the Department of Revenue.

Fiscal Note Status: The fiscal note reflects the vetoed bill. This bill was not enacted into law; therefore, the impacts identified in this analysis do not take effect.

**Table 1
State Fiscal Impacts Under HB 18-1011**

		FY 2018-19	FY 2019-20
Revenue	Cash Funds	\$1,810,388	\$4,082,826
	Total	\$1,810,388	\$4,082,826
Expenditures	Cash Funds	\$1,037,452	\$1,915,509
	Centrally Appropriated	\$143,562	\$305,472
	Total	\$1,181,014	\$2,220,981
	Total FTE	7.8 FTE	16.8 FTE
Transfers		-	-
TABOR Refund	General Fund	\$1,810,388	\$4,082,826

Summary of Legislation

This bill modifies the statutory ownership and investment definitions for medical and retail marijuana licensees, removes the limit of 15 out-of-state owners, and allows a publicly traded corporation to invest in a marijuana business or become a marijuana business. The bill creates two new ownership licenses, controlling beneficial owner and passive beneficial owner, and a new investment type, indirect financial interest holder.

Controlling beneficial owner means a person (individual, partnership, association, joint-stock company, corporation, limited liability company, or any other unincorporated organization that is not a governmental association) that is the beneficial owner of 5 percent or more of the securities of a marijuana business; is an affiliate; or is otherwise in a position to exercise control of the marijuana business. A person intending to apply to become a controlling beneficial owner must receive a finding of suitability or an exemption from the Marijuana Enforcement Division (MED) in the Department of Revenue prior to submitting a marijuana business application. The person must disclose: all of its beneficial owners of 5 percent or more; all of its officers, directors and affiliates; and all officers, directors, and beneficial owners of more than 5 percent of any of its affiliates. The MED will determine which individual controlling beneficial owners and affiliates of each controlling beneficial owner are required to obtain a finding of suitability and a fingerprint-based criminal history record check.

Passive beneficial owner means a person that is not an affiliate of a marijuana business, does not exercise control, and owns less than 5 percent of the securities of a marijuana business. This ownership type requires a finding of suitability, a fingerprint-based criminal history record check, and a license from the MED.

Indirect financial interest holder means a person that is not an affiliate or in a position to exercise control over the marijuana business, and that holds a commercially reasonable royalty interest; holds a permitted economic interest issued prior to January 1, 2019, that has not been converted to an ownership interest; or is a contract counterparty that has a direct nexus to the business. This ownership type does not require a finding of suitability and does not require a license from the MED.

Publicly traded corporation. The bill has specific requirements for publicly traded corporations that are marijuana businesses or controlling beneficial owners. Publicly traded corporations must have a class of securities that constitute "covered securities" under the federal Securities Act of 1933, or are qualified and listed for trading on the OTCQX tier of the Over-the-Counter (OTC) markets and required to file reports or voluntarily file reports with the federal Securities and Exchange Commission as if the listed securities constituted "covered securities". Alternately, a publicly traded corporation can be a foreign private issue or identified by rule by the MED as a publicly traded corporation. Quoted securities constituting penny stocks are excluded under the bill.

Publicly traded corporations are required to report to the MED on any change in directors or officers; provide notice when a filing is made with a securities exchange; disclose a complete list of all beneficial owners upon request of the MED; notify the MED and provide a copy of a comment letter or exchange notice from a securities exchange; and notify the MED of an offering of securities. A publicly traded corporation is required to provide a deposit to cover the direct and indirect costs of any investigation necessary to evaluate the finding of suitability. A publicly traded corporation that is a marijuana business or a controlling beneficial owner of 50 percent or more of the securities of a marijuana business is required to include language in its bylaws specified in the bill regarding securities.

Rulemaking. The MED has rulemaking authority over ownership and financial interest requirements including parameters of, qualifications of, disclosure of, requirements for, and suitability of controlling beneficial owners; passive beneficial owners; indirect financial interest holders; and publicly traded corporations.

Background

As of January 1, 2018, there are 1,534 licensed medical marijuana businesses, 1,539 licensed retail marijuana establishments, 11,660 key occupational licenses, and 1,616 direct beneficial interest owners in Colorado. Each license must be renewed annually. The MED conducted 1,260 investigations on new applicants in 2017. The MED is required by the Colorado Constitution to take action on a retail license within 90 days of application.

Assumptions

This fiscal note assumes a 25 percent increase (315) in investigations over 2017 levels in FY 2018-19 and a 50 percent increase (630) in FY 2019-20.

State Revenue

This bill will increase state cash fund revenue by \$1,810,388 in FY 2018-19 and \$4,082,826 in FY 2019-20 to the Marijuana Cash Fund in DOR. The three sources of revenue under the bill are described below.

Fee impact on marijuana business investors. Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. Table 2 below identifies the fee impact of this bill. These fee amounts reflect current fees charged by the MED. Note these fee amounts may change during annual fee setting based on actual workload and projected applicants; this estimate is for illustration purposes only.

Table 2
Fee Impact on Marijuana Business Investors

Fiscal Year	Type of Fee	Fee	Number Affected	Total Fee Impact
FY 2018-19	Beneficial Owner Pre-suitability	\$5,000	315	\$1,575,000
	Marijuana Store License	\$4,500	0	0
	Change of Ownership	\$1,600	0	0
	Due Diligence Investigations			\$220,788
	Criminal Background Checks	\$46.35	315	\$14,600
			FY 2018-19 Total	\$1,810,388

**Table 2
Fee Impact on Marijuana Business Investors (Cont.)**

Fiscal Year	Type of Fee	Fee	Number Affected	Total Fee Impact
FY 2019-20	Beneficial Owner Pre-suitability	\$5,000	630	\$3,150,000
	Marijuana Store License	\$4,500	15	\$67,500
	Change of Ownership	\$1,600	300	\$480,000
	Due Diligence Investigations			\$356,125
	Criminal Background Checks	\$46.35	630	\$29,201
FY 2019-20 Total				\$4,082,826

Due diligence investigations. The MED will charge applicants for the direct costs of conducting due diligence investigations into the suitability of businesses and individuals. The revenue from applicants will offset the cost of the investigations; this includes an hourly rate for investigator time. The number of hours required will depend on the complexity of an application. The fiscal note estimates these fees will total \$220,788, in FY 2018-19 and \$356,125 in FY 2019-20.

Fingerprint-based criminal background checks. This bill will increase state cash fund revenue by \$14,600 in FY 2018-19 and \$29,201 in FY 2019-20 collected by the MED and reappropriated to the Colorado Bureau of Investigation (CBI) in the Department of Public Safety (DPS) for fingerprint-based criminal background checks. Revenue increases are based on a fee of \$46.35 per applicant for fingerprinting and name check. Of this amount, \$36.35 is retained by the CBI and \$10.00 is passed through to the Federal Bureau of Investigation (FBI).

TABOR Refund

This bill increases state revenue from fees, which will increase the amount of money required to be refunded under TABOR for FY 2018-19 and FY 2019-20. Since the bill increases the TABOR refund obligation without a corresponding change in General Fund revenue, the amount of money available in the General Fund for the budget will decrease by an identical amount. State revenue subject to TABOR is not estimated for years beyond FY 2019-20.

State Expenditures

This bill increases expenditures by \$1,181,014 and 7.8 FTE in FY 2018-19 and \$2,220,981 and 16.3 FTE in FY 2019-20 from the Marijuana Cash Fund. These expenditures are shown in Table 3 and explained below.

**Table 3
Expenditures Under HB 18-1011**

	FY 2018-19	FY 2019-20
Department of Revenue		
Personal Services	\$562,544	\$1,181,791
Operating Expenses and Capital Outlay Costs	\$39,571	\$37,765
Legal Services	\$144,922	\$241,358
Due Diligence Investigations	\$220,788	\$356,125
CBI/FBI Pass Through Background Checks	\$14,600	\$29,201
Law Enforcement Equipment	\$5,777	\$12,541
Vehicles and Mileage	\$49,250	\$56,728
Centrally Appropriated Costs*	\$143,562	\$305,472
FTE – Personal Services	7.0 FTE	15.0 FTE
FTE – Legal Services	0.8 FTE	1.3 FTE
Total Cost	\$1,181,014	\$2,220,981
Total FTE	7.8 FTE	16.3 FTE

* Centrally appropriated costs are not included in the bill's appropriation.

Personal services. The MED will add the following staff to its Background Investigation Unit (BIU) to implement this bill:

- 1.0 FTE Policy Advisor IV;
 - 5.0 FTE Financial Credit Examiner II;
 - 1.0 FTE Financial Credit Examiner III;
 - 1.0 FTE Financial Credit Examiner IV;
 - 3.0 FTE Compliance Investigator II;
 - 3.0 FTE Criminal Investigator II; and
 - 1.0 FTE Legal Assistant.
- 15.0 FTE

The MED staff will address a significant increase in the number and complexity of applications and a wider array of applicant types. They will be responsible for conducting pre-suitability analyses. Applicants found suitable will require staff to conduct the intake, background investigation, and processing of business applications; change of ownership; and renewal applications. MED staff may travel nationwide and internationally for verification of assets and investigative oversight. Staff will prepare and report investigative findings for approved and denied applications. Salaries are estimated above the minimum level to enable the MED to hire more experienced staff. As discussed in the assumptions section, staff hiring will ramp up in line with the expected increase in applications.

Operating expenses and capital outlay costs. The fiscal note includes expenses for 15.0 FTE for office furniture, telephones, computers, and supplies, which represents the number of new FTE when all staff are hired.

Legal services. The MED is expected to require 1,360 hours of legal services in FY 2018-19 and 2,265 hours in FY 2019-20 at a rate of \$106.56 per hour. In FY 2018-19, the Department of Law will provide general counsel, and rulemaking support. In FY 2019-20, the department will provide regulatory representation for disputed denials of licensure as well as compliance actions against licensees.

Law enforcement equipment. The three criminal investigators employed by the MED are law enforcement officers who require badges, guns, radios, at a one-time cost of \$4,790 per person, and ammunition, fees, and contracts at an annual cost of \$987 per person.

Vehicles and mileage. The MED requires seven vehicles for staff working in the field. These costs are prorated for FY 2018-19 and will be ongoing. The Department of Personnel and Administration, which will administer the vehicle leases, will be reappropriated \$3,204 per vehicle per year. The remainder of the costs are for mileage at a rate of \$.49 per mile.

Due diligence investigations. As noted in the State Revenue section, the MED will charge applicants for the direct costs of conducting due diligence investigations into the suitability of businesses and individuals. The applicants will be charged an hourly investigation rate, to be set by the MED, and actual investigation expenses, which will include travel costs.

CBI/FBI pass-through background checks. These costs are for the CBI in the DPS to conduct background checks and to pass-through funds to the federal government for the FBI portion of the background checks. This covers the costs of conducting additional background checks, including fingerprint examiner and data specialist time, postage, and per-print software and equipment costs, as well as the pass through costs of the FBI component of the background check. These costs are based on an estimated 315 checks in FY 2018-19, and 630 checks in FY 2019-20.

Centrally appropriated costs. 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. These costs, which include employee insurance, supplemental employee retirement payments, and leased space, are estimated to be \$143,562 in FY 2018-19 and \$305,472 in FY 2019-20.

Local Government Impact

Local governments that regulate marijuana businesses will have an increase in revenue and expenditures to process new applications. This amount will depend on a variety of factors and has not been estimated for this fiscal note.

Effective Date

The bill was vetoed by the Governor on June 5, 2018.

State Appropriations

For FY 2018-19, the bill included an appropriation of:

- \$1,037,452 to the Department of Revenue from the Marijuana Cash Fund and an allocation of 7.0 FTE. From this amount, the following reappropriations are required:
- \$144,922 to the Department of Law and an allocation of 0.8 FTE;
 - \$16,020 to the Department of Personnel and Administration; and
 - \$14,600 to the Department of Public Safety, of which \$3,150 is passed through to the federal government for FBI background checks.

State and Local Government Contacts

Law Local Affairs Public Safety Revenue