



## Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

# Fiscal Note

**Drafting Number:** LLS 21-0814 **Date:** May 17, 2021  
**Prime Sponsors:** Rep. Esgar; Holtorf **Bill Status:** House Agriculture  
 Sen. Coram; Moreno **Fiscal Analyst:** Clare Pramuk | 303-866-2677  
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**Bill Topic:** CANNABIS OUTDOOR CULTIVATION MEASURES

**Summary of Fiscal Impact:**

|   |  |
|---|--|
| <input checked="" type="checkbox"/> State Revenue     | <input 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 addresses how medical and retail marijuana cultivation licensees handle adverse weather events that impact outdoor growing, cross pollination between marijuana and industrial hemp, and preparing the state in the event of the federal legalization of marijuana. It increases state revenue and expenditures on an ongoing basis.

**Appropriation Summary:** For FY 2021-22, the bill requires an appropriation of \$383,973 to multiple state agencies.

**Fiscal Note Status:** The fiscal note reflects the introduced bill.

**Table 1**  
**State Fiscal Impacts Under HB 21-1301**

|                     |                           | Budget Year<br>FY 2021-22 | Out Year<br>FY 2022-23 |
|---------------------|---------------------------|---------------------------|------------------------|
| <b>Revenue</b>      | Cash Funds                | \$148,000                 | \$198,000              |
|                     | <b>Total Revenue</b>      | <b>\$148,000</b>          | <b>\$198,000</b>       |
| <b>Expenditures</b> | Marijuana Tax Cash Fund   | \$52,390                  | \$318,958              |
|                     | Cash Funds                | \$331,583                 | -                      |
|                     | Centrally Appropriated    | \$66,752                  | \$51,498               |
|                     | <b>Total Expenditures</b> | <b>\$450,725</b>          | <b>\$370,456</b>       |
|                     | <b>Total FTE</b>          | <b>2.9 FTE</b>            | <b>3.4 FTE</b>         |
| <b>Transfers</b>    |                           | -                         | -                      |
| <b>TABOR Refund</b> |                           | -                         | -                      |

## Summary of Legislation

This bill addresses the cross pollination of marijuana and industrial hemp, adverse weather events as they relate to the outdoor growing of medical marijuana and retail marijuana, and preparing the state in the event of the federal legalization of marijuana.

**Cross Pollination Working Group.** This working group will be convened by the Department of Agriculture (CDA) by November 1, 2021, in collaboration with the state licensing authority, the Governor's Deputy Legal Counsel, and the Governor's Special Advisor on Cannabis. The group must include affected businesses, scientists and agronomists with expertise in cross-pollination. The working group will study:

- minimizing volunteer plants growing outside of registered hemp farms or licensed outdoor marijuana farms;
- sharing farm data and the proximity between registered hemp farms or licensed outdoor marijuana farms;
- best practices for preventing cross-pollination; and
- the feasibility of conducting and financing field studies to examine cross-pollination between farms and areas of lands with volunteer plants.

The working group is required to submit a report of its findings and recommendations to the General Assembly by June 1, 2022, and the CDA and the Department of Revenue (DOR) are required to post the report on their websites.

**Marijuana Cultivation Rules and Tax Laws Working Group.** This working group will be convened by the state licensing authority by November 1, 2021, in collaboration with the Governor's Deputy Legal Counsel, and the Governor's Special Advisor on Cannabis. The working group will study how existing rules and tax laws could be amended to better position businesses in the state to be competitive in interstate commerce if marijuana is legalized at the federal level. The report from this working group is due to the Executive Director of the DOR and the General Assembly by June 1, 2022.

**Rulemaking.** By January 1, 2022, the state licensing authority is required to promulgate rules on the process, procedures, and requirements for contingency plans for outdoor marijuana cultivation operations. By March 1, 2022, rules are required to establish procedures for outdoor cultivation facilities to temporarily cover crops. In addition, the state licensing authority may establish procedures for the conditional issuance of an employee license identification card.

**Contingency plans.** Prior to January 1, 2022, outdoor marijuana cultivation operations may take reasonable and necessary actions under a contingency plan to prevent or ameliorate crop loss due to an adverse weather event without the action being a violation of any state or local law, rules, or regulations. After January 1, 2022, outdoor cultivators may file contingency plans with the state licensing authority for approval. Once approved, outdoor marijuana cultivation operations may follow their contingency plans in the case of an adverse weather event. The plan must be maintained on the licensed premises and provided to local licensing authorities. The bill applies to both medical and retail marijuana outdoor cultivation operations.

## Background

**Adverse weather events.** Adverse weather events in Colorado can include high winds, tornadoes, hail, freezes, flooding, earthquakes, drought, blizzards, and thunderstorms. Examples of violations of law, rule, and regulation that may occur as a result of an action taken to prevent or ameliorate crop loss from an adverse weather event include, but are not limited to, the following:

- relocating marijuana plants to an unlicensed facility or to a jurisdiction that does not permit commercial marijuana operations;
- inventory tracking violations;
- possession and transportation of marijuana by persons not licensed to engage in such activities; and
- storage of plants at a facility without required security and surveillance.

All outdoor medical and retail marijuana cultivation operations are also subject to the same video surveillance requirements applicable to indoor limited access areas.

**Industrial Hemp Program.** The CDA administers the registration of hemp growers, hemp acreage, and indoor hemp grows. In 2019, the CDA had 1,947 registrants farming 88,743 acres of industrial hemp outdoors. An additional 15.4 million square feet (about 354 acres) of indoor space was registered to 2,634 registrants. Presumably due to the COVID-19 pandemic, the numbers for 2020 were significantly lower for outdoor registrations with 981 registrants farming 36,225 acres, while 1,254 registrants registered 11.0 million square feet (about 253 acres) of indoor space. The United States Department of Agriculture (USDA) released its final rules and regulations for the establishment of a domestic hemp production program on January 19, 2021.

## Assumptions

As of May 3, 2021, Colorado has a total of 1,208 licensed medical marijuana and retail marijuana cultivation facilities. The Marijuana Enforcement Division in the DOR does not track the number of cultivation facilities that are outdoors. The fiscal note is based on the assumption that 10 percent (120) of licensed cultivation facilities are outdoors and that 30 percent of outdoor facilities (40) will submit contingency plans to the state licensing authority in FY 2021-22 and FY 2022-23.

## State Revenue

This bill will increase revenue from fees by \$148,000 in FY 2021-22 and \$198,000 in FY 2022-23 to the Marijuana Cash Fund. In addition, the fiscal note assumes that the Department of Revenue will increase fees for all licenses to cover the additional expenditures necessary to implement the bill. This revenue is subject to TABOR.

**Fee impact.** Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. These fee amounts are estimates only, actual fees will be set administratively by Department of Revenue based on cash fund balance, estimated program costs, and the estimated number of licenses and plans subject to the fee. The table below identifies the fee impact of the conditional employee licenses and the fee to submit a contingency plan for review.

**Table 2  
 Fee Impact on Outdoor Marijuana Cultivations**

| <b>Fiscal Year</b> | <b>Type of Fee</b>           | <b>Proposed Fee</b> | <b>Number Affected</b> | <b>Total Fee Impact</b> |
|--------------------|------------------------------|---------------------|------------------------|-------------------------|
|                    | Conditional Employee License | \$100               | 1,000                  | \$100,000               |
| <b>FY 2021-22</b>  | Contingency Plan Review      | \$1,200             | 40                     | \$48,000                |
|                    | <b>FY 2021-22 Total</b>      |                     |                        | <b>\$148,000</b>        |
|                    | Conditional Employee License | \$100               | 1,500                  | \$150,000               |
| <b>FY 2022-23</b>  | Contingency Plan Review      | \$1,200             | 40                     | \$48,000                |
|                    | <b>FY 2022-23 Total</b>      |                     |                        | <b>\$198,000</b>        |

**State Expenditures**

This bill increases cash fund expenditures by \$450,725 and 2.9 FTE in FY 2021-22 and \$370,456 and 3.4 FTE in FY 2022-23 and thereafter. These expenditures are shown in Table 3 and explained below. Funding is from the Industrial Hemp Registration Cash Fund, the Marijuana Cash Fund, and the Marijuana Tax Cash Fund.

**Table 3  
 Expenditures Under HB 21-1301**

| <b>Cost Components</b>                    | <b>FY 2021-22</b> | <b>FY 2022-23</b> |
|---|-------------------|-------------------|
| <b>Department of Agriculture</b>          |                   |                   |
| Personal Services                         | \$75,326          | -                 |
| Operating Expenses                        | \$945             | -                 |
| Capital Outlay Costs                      | \$6,200           | -                 |
| Legal Services                            | \$21,268          | -                 |
| Travel                                    | \$1,040           | -                 |
| Centrally Appropriated Costs <sup>1</sup> | \$35,369          | -                 |
| FTE – Personal Services                   | 0.7 FTE           | -                 |
| FTE – Legal Services                      | 0.1 FTE           | -                 |
| <b>CDA Subtotal</b>                       | <b>\$140,148</b>  | <b>-</b>          |

**Table 3  
 Expenditures Under HB 21-1301 (Cont.)**

| <b>Cost Components</b>                    | <b>FY 2021-22</b> | <b>FY 2022-23</b> |
|---|-------------------|-------------------|
| <b>Department of Revenue</b>              |                   |                   |
| Personal Services                         | \$136,863         | \$237,605         |
| Operating Expenses                        | \$2,565           | \$4,050           |
| Capital Outlay Costs                      | \$18,600          | \$0               |
| Protective Equipment                      | \$14,264          | \$2,865           |
| Legal Services                            | \$31,902          | \$74,438          |
| Facilitator and Market Study              | \$75,000          | -                 |
| Centrally Appropriated Costs <sup>1</sup> | \$31,383          | \$51,498          |
| FTE – Personal Services                   | 1.9 FTE           | 3.0 FTE           |
| FTE – Legal Services                      | 0.2 FTE           | 0.4 FTE           |
| <b>DOR Subtotal</b>                       | <b>\$310,577</b>  | <b>\$370,456</b>  |
| <b>Total</b>                              | <b>\$450,725</b>  | <b>\$370,456</b>  |
| <b>Total FTE</b>                          | <b>2.9 FTE</b>    | <b>3.4 FTE</b>    |

<sup>1</sup> Centrally appropriated costs are not included in the bill's appropriation.

**Department of Agriculture.** The CDA will hire a temporary employee or contractor to support the Cross Pollination Working Group in FY 2021-22 only. This individual will facilitate the working group, compile and distribute notes, research best practices to include in recommendations, compile findings and suggestions from the group, and write the final report. The Department of Law will provide 200 hours of legal services to support the working group.

**Department of Revenue.** When the bill is fully implemented, the Marijuana Enforcement Division will increase staff by 3.0 FTE, including two criminal investigators and a legal assistant to review contingency plans, handle the increase in employee license applications, and enforce the bill's provisions. Hiring of these staff will be staggered in FY 2021-22 to account for the bill's effective date and the outdoor marijuana growing season.

The division also requires \$75,000 for a facilitator and market study related to the Marijuana Cultivation Rules and Tax Laws Working Group. In FY 2021-22, the Department of Law will provide 200 hours of legal services to support the working group, and 100 hours to support rulemaking. Beginning in FY 2022-23, the Department of Law will provide 700 hours of legal services for regulatory actions related to new violations.

**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 and supplemental employee retirement payments, are estimated to be \$66,752 in FY 2021-22 and \$51,498 in FY 2022-23.

**TABOR refunds.** The bill increases state revenue subject to TABOR. For FY 2022-23, the March 2021 LCS forecast projects revenue to fall short of the TABOR limit by \$28.6 million, or 0.2 percent of the limit. If actual revenue exceeds the limit, the bill will increase the amount required to be refunded to taxpayers from the General Fund in FY 2023-24.

## Local Government

Local governments that have regulated marijuana growing outdoors in their jurisdictions will have an increase in workload to investigate mitigation efforts taken in response to adverse weather events. This will be mainly between the effective date of the bill and January 1, 2022, when contingency plans are required to be submitted to state and local authorities in order to temporarily cover crops.

## Technical Note

The bill requires an appropriation from the Marijuana Tax Cash Fund to the CDA due to a limited cash fund balance in Industrial Hemp Registration Cash Fund.

## Effective Date

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed.

## State Appropriations

For FY 2021-22, the bill requires the following appropriations:

### *Department of Agriculture*

- \$52,390 from the Industrial Hemp Registration Cash Fund and 0.7 FTE; and
- \$52,390 from the Marijuana Tax Cash Fund; of this \$21,268 and an additional 0.1 FTE are reappropriated to the Department of Law.

### *Department of Revenue*

- \$279,194 from the Marijuana Cash Fund and 1.9 FTE; of this \$31,902 and an additional 0.2 FTE are reappropriated to the Department of Law.

## State and Local Government Contacts

Agriculture

Information Technology

Public Safety

Counties

Law

Revenue

County Assessors

Municipalities