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Final Fiscal Note

Drafting Number: LLS 21-0814 Date: September 21, 2021
Prime Sponsors: Rep. Esgar; Holtorf Bill Status: Signed into Law
Sen. Coram; Moreno Fiscal Analyst: Clare Pramuk | 303-866-2677
clare.pramuk@state.co.us

Bill Topic: CANNABIS OUTDOOR CULTIVATION MEASURES

- Summary of Fiscal Impact:
[X] State Revenue [] TABOR Refund
[X] State Expenditure [X] Local Government
[] State Transfer [] 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 and includes an appropriation of \$383,973 to multiple state agencies.

Fiscal Note Status: The fiscal note reflects the enacted bill.

Table 1
State Fiscal Impacts Under HB 21-1301

Table with 4 columns: Category, Sub-category, Budget Year FY 2021-22, and Out Year FY 2022-23. Rows include Revenue (Cash Funds, Total Revenue), Expenditures (Marijuana Tax Cash Fund, Cash Funds, Centrally Appropriated, Total Expenditures, Total FTE), Transfers, and TABOR Refund.

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 regulated marijuana and hemp, 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 legislators, representatives from a variety of marijuana and agricultural businesses, scientists, geneticists, and agronomists. The working group will study:

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

The working group is required to submit a report of its findings and recommendations to the General Assembly by November 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. The bill authorizes state licensing authority to promulgate rules on the process, procedures, requirements, and restrictions of contingency plans for outdoor marijuana cultivation operations. In addition, the state licensing authority may establish procedures for the conditional issuance of an employee license identification card.

Contingency plans. Beginning January 1, 2022, outdoor marijuana cultivation operations 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. Beginning January 1, 2023, a local licensing authority may require that a contingency plan be included in a local license application for review and approval.

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**

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

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**

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

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

Cost Components	FY 2021-22	FY 2022-23
Department of Revenue		
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 ¹	\$31,383	\$51,498
FTE – Personal Services	1.9 FTE	3.0 FTE
FTE – Legal Services	0.2 FTE	0.4 FTE
DOR Subtotal	\$310,577	\$370,456
Total	\$450,725	\$370,456
Total FTE	2.9 FTE	3.4 FTE

¹ 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 is expected to increase the amount of state revenue required to be refunded to taxpayers by [the amounts shown in the State Revenue section above. TABOR refunds are paid from the General Fund. This estimate is based on the June 2021 LCS revenue forecast, which incorporates the revenue impacts of bills passed during the 2021 session. A forecast of state revenue subject to TABOR is not available beyond FY 2022-23.

Federal ARPA funds. This bill [increases/decreases] state revenue, which may impact the state's flexibility in spending federal American Rescue Plan Act (ARPA) funds. For more information, see the LCS memo, titled "Legislative Changes and Flexibility in Use of American Rescue Plan Funds," available online at: <https://leg.colorado.gov/node/2211881>.

Local Government

Local governments that have regulated marijuana growing outdoors in their jurisdictions will have an increase in workload to develop internal regulatory processes to evaluate and enforce contingency plans.

Effective Date

The bill was signed into law by the Governor on June 23, 2021, and it took effect on September 7, 2021.

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	County Assessors
County Clerks	Governor
Information Technology	Law
Municipalities	Public Safety
Regulatory Agencies	Revenue