



**Legislative Council Staff**

*Nonpartisan Services for Colorado's Legislature*

**Revised Fiscal Note**

(replaces fiscal note dated March 29, 2022)

|                         |                                    |                        |   |
|-------------------------|------------------------------------|------------------------|---|
| <b>Drafting Number:</b> | LLS 22-0128                        | <b>Date:</b>           | April 25, 2022  |
| <b>Prime Sponsors:</b>  | Sen. Ginal; Coram<br>Rep. Sullivan | <b>Bill Status:</b>    | House Health & Insurance                              |
|                         |                                    | <b>Fiscal Analyst:</b> | Matt Bishop   303-866-4796<br>Matt.Bishop@state.co.us |

**Bill Topic:**                   **REGULATION OF KRATOM PROCESSORS**

|                                  |   |  |
|----------------------------------|---|--|
| <b>Summary of Fiscal Impact:</b> | <input checked="" type="checkbox"/> State Revenue     | <input checked="" type="checkbox"/> TABOR Refund |
|                                  | <input checked="" type="checkbox"/> State Expenditure | <input type="checkbox"/> Local Government        |
|                                  | <input type="checkbox"/> State Transfer               | <input type="checkbox"/> Statutory Public Entity |

The bill requires the Department of Revenue to regulate kratom processors. It increases state revenue and expenditures beginning in FY 2022-23.

**Appropriation Summary:** For FY 2022-23, the bill requires an appropriation of \$241,341 to the Department of Revenue.

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

**Table 1  
State Fiscal Impacts Under SB 22-120**

|                             |                           | <b>Budget Year<br/>FY 2022-23</b> | <b>Out Year<br/>FY 2023-24</b> |
|-----------------------------|---------------------------|-----------------------------------|--------------------------------|
| <b>Revenue</b>              | Cash Funds                | \$558,100                         | \$579,720                      |
|                             | <b>Total Revenue</b>      | <b>\$558,100</b>                  | <b>\$579,720</b>               |
| <b>Expenditures</b>         | General Fund              | \$241,341                         | -                              |
|                             | Cash Funds                | -                                 | \$478,022                      |
|                             | Centrally Appropriated    | \$31,231                          | \$80,082                       |
|                             | <b>Total Expenditures</b> | <b>\$272,572</b>                  | <b>\$558,104</b>               |
|                             | <b>Total FTE</b>          | <b>2.5 FTE</b>                    | <b>6.1 FTE</b>                 |
| <b>Transfers</b>            |                           | -                                 | -                              |
| <b>Other Budget Impacts</b> | TABOR Refund              | \$558,100                         | \$579,720                      |
|                             | General Fund Reserve      | \$36,201                          | -                              |

## **Summary of Legislation**

The bill creates a program in the Department of Revenue (DOR) to regulate kratom processors, which are people who sell, prepare, or maintain products made from the plant *mitragyna speciosa*, excluding retailers. Beginning July 1, 2023, each kratom processor must register with DOR and pay an annual registration fee. The bill creates the Kratom Consumer Protection Cash Fund, which is continuously appropriated to DOR.

The bill specifies additional requirements and restrictions by which kratom processors must abide in order to prepare or sell kratom products. Any kratom processor who violates these restrictions is subject to a fine of \$500 for the first offense, \$2,500 for a second offense, and \$5,000 for each subsequent offense, and the department may revoke their registration.

Kratom processors are also required to notify DOR of any adverse event for one of their products, and must comply with any subsequent investigation. DOR must maintain and publish a list of kratom processors, collect sales data from kratom processors, and promulgate rules as necessary for the administration of the registration program. Kratom retailers are prohibited from distributing, selling, or offering to sell kratom products to anyone under 21 years of age, or selling any product manufactured by a processor that is not registered.

## **Assumptions**

Kratom processors are largely unregulated in Colorado, and the number of total businesses that qualify as kratom processors under the bill is unknown. Utah has a similar program, and registered 80 kratom processors in the program's first year. Adjusting this number upwards to account for state population differences, the fiscal note assumes that 120 businesses will apply for registration as a kratom processor, with 100 applying in FY 2022-23 and 20 applying in FY 2023-24. To the extent that the number of registrations differs from this assumption, state revenue and expenditures will differ from the estimate below, and DOR may request additional resources through the annual budget process.

## **State Revenue**

The bill increases state revenue by \$558,100 in FY 2022-23 and \$579,720 in FY 2023-24 to the Kratom Consumer Protection Cash Fund from kratom processor registration fees, as described below.

**Fee impact on kratom processors.** 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, and the fiscal note assumes that fees will be set at a level that recoups the bill's implementation costs. Actual fees will be set administratively by DOR based on estimated program costs and the estimated number of registrations subject to the fee. Table 2 below identifies the bill's fee impact.

**Fine revenue.** To the extent that kratom processors incur fines for violations, state revenue will increase. The fiscal note assumes that kratom processors will generally abide by the law and that any fine revenue will be minimal.

**Table 2  
 Fee Impact on Kratom Processors**

| <b>Fiscal Year</b> | <b>Type of</b>          | <b>Proposed</b> | <b>Number</b> | <b>Total Fee</b> |
|--------------------|-------------------------|-----------------|---------------|------------------|
| <b>FY 2022-23</b>  | Initial Registration    | \$5,581         | 100           | \$558,100        |
|                    | <b>FY 2022-23 Total</b> |                 |               | <b>\$558,080</b> |
| <b>FY 2023-24</b>  | Initial Registration    | \$5,581         | 20            | \$111,620        |
|                    | Registration Renewal    | \$4,681         | 100           | \$468,100        |
|                    | <b>FY 2023-24 Total</b> |                 |               | <b>\$579,720</b> |

**State Expenditures**

The bill increases state expenditures in DOR by \$272,572 in FY 2022-23 and \$558,104 in FY 2023-24 from the General Fund. Expenditures are shown in Table 3 and detailed below.

**Table 3  
 Expenditures Under SB 22-120**

|   | <b>FY 2022-23</b> | <b>FY 2023-24</b> |
|---|-------------------|-------------------|
| <b>Department of Revenue</b>              |                   |                   |
| Personal Services                         | \$124,858         | \$301,082         |
| Operating Expenses                        | \$2,970           | \$7,425           |
| Capital Outlay Costs                      | \$24,800          | \$12,400          |
| Fleet Vehicle Leases                      | -                 | \$9,260           |
| Legal Services                            | \$88,713          | \$147,855         |
| Centrally Appropriated Costs <sup>1</sup> | \$31,231          | \$80,082          |
| FTE – Personal Services                   | 2.0 FTE           | 5.3 FTE           |
| FTE – Legal Services                      | 0.5 FTE           | 0.8 FTE           |
| <b>Total Cost</b>                         | <b>\$272,572</b>  | <b>\$558,104</b>  |
| <b>Total FTE</b>                          | <b>2.5 FTE</b>    | <b>6.1 FTE</b>    |

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

**Department of Revenue.** The bill will increase expenditures for the department to process applications, promulgate rules, establish a new kratom testing program, investigate registrations and complaints, perform compliance checks, and enforce standards established by the bill or by rule. Based on the assumed size of the regulated population, this requires 3.5 FTE for registration administration, registration investigations, and data analysis, plus an additional 2.0 FTE for field enforcement beginning in FY 2023-24. Standard operating and capital outlay costs are included, and costs in FY 2022-23 and FY 2023-24 account for the bill's effective date, a staggered hiring timeline, and the General Fund pay date shift. The fiscal note assumes that General Fund is required in FY 2022-23, and that this program will be cash-funded beginning in FY 2023-24 after registration fees are collected.

- **Fleet vehicle leases.** The department will lease two field enforcement investigator vehicles from the state fleet, which is managed by the Department of Personnel and Administration. Each vehicle is estimated at \$4,630 annually beginning in FY 2023-24.
- **Legal services.** DOR requires 900 hours of legal services in FY 2022-23 and 1,500 hours in subsequent years to conduct extensive rulemaking for the program, to handle administrative cases that arise, and general counsel. Legal services are provided by the Department of Law at a rate of \$98.57 per hour. The additional hours equate to 0.5 FTE in FY 2022-23 and 0.8 FTE in FY 2023-24.

**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 shown in Table 2.

## Other Budget Impacts

**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. This estimate assumes the December 2021 LCS revenue forecast. A forecast of state revenue subject to TABOR is not available beyond FY 2023-24. Because TABOR refunds are paid from the General Fund, increased cash fund revenue will reduce the amount of General Fund available to spend or save.

## Effective Date

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed, and applies to conduct occurring on or after the bill's effective date.

## State Appropriations

For FY 2022-23, the bill requires an appropriation of \$241,341 to the Department of Revenue from the General Fund, and 2.0 FTE. Of this, \$88,713 is reappropriated to the Department of Law with 0.5 FTE.

## Departmental Difference

DOR estimates the regulatory program to require \$0.5 million and 5.6 FTE in FY 2022-23 and \$1.3 million and 15.0 FTE in FY 2023-24, in order to develop expertise in a new office focused on unique subject matter. The fiscal note differs from these estimates based on assumptions of a smaller regulated population and a simpler registration-based regulatory structure where enforcement is complaint-based.

## State and Local Government Contacts

|                              |         |
|------------------------------|---------|
| Information Technology       | Law     |
| Personnel and Administration | Revenue |

---

The revenue and expenditure impacts in this fiscal note represent changes from current law under the bill for each fiscal year. For additional information about fiscal notes, please visit: [leg.colorado.gov/fiscalnotes](http://leg.colorado.gov/fiscalnotes).