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Final Fiscal Note

Drafting Number: LLS 23-0029 Date: July 19, 2023
Prime Sponsors: Rep. Ricks; English Bill Status: Deemed Lost
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Bill Topic: SOCIAL EQUITY LICENSES IN REGULATED MARIJUANA

- Summary of Fiscal Impact:
[X] State Revenue [ ] TABOR Refund
[X] State Expenditure [X] Local Government
[ ] State Transfer [ ] Statutory Public Entity

The bill would have expanded eligibility criteria for social equity licensees, expanded the categories of marijuana accelerator licenses for which social equity licensees may apply, and required additional incentives for social equity licensees and accelerator-endorsed licensees. The bill would have increased state revenue and expenditures and local workload on an ongoing basis.

Appropriation Summary: For FY 2023-24, the bill would have required an appropriation of \$160,989 to the Department of Revenue. The Marijuana Entrepreneur Fund is continuously appropriated to the Office of Economic Development. See State Appropriations section for detail.

Fiscal Note Status: The fiscal note reflects the reengrossed bill. The bill was deemed postponed indefinitely in the Senate Appropriations Committee on May 9, 2023; therefore, the impacts identified in this analysis do not take effect.

Table 1
State Fiscal Impacts Under HB 23-1020

Table with 4 columns: Category, Budget Year FY 2023-24, and Out Year FY 2024-25. Rows include Revenue, Expenditures (General Fund, Cash Fund, Centrally Appropriated, Total Expenditures, Total FTE), Transfers, and Other Budget Impacts.

1 The fiscal note assumes that the DOR program costs can be funded from the Marijuana Cash Fund; however, the current appropriation provides funding from the General Fund, reappropriated to the Marijuana Cash Fund.

## Summary of Legislation

Under current law, retail marijuana store, cultivation facility, and manufacturing accelerator licenses are awarded to social equity applicants that meet certain criteria. Existing licensees can receive accelerator endorsements to host social equity licensees in these categories. Social equity licensees may also hold any regular marijuana license. The bill makes the following changes to the social equity marijuana program:

- creates an independent delivery license for social equity licensees that allows for purchase of marijuana and marijuana products for sale and delivery to consumers, beginning March 1, 2024;
- adds transporter, hospitality business, and independent delivery licenses as accelerator marijuana licenses for which social equity licensees may apply;
- allows social equity licensees with a retail marijuana transporter license and a delivery permit to convert their license to an independent delivery license prior to February 29, 2024;
- expands eligibility criteria for social equity licensees beginning March 1, 2024;
- specifies that social equity licensees and accelerator-endorsed licensees may be eligible for incentives, which are determined by the Department of Revenue (DOR) through rule and may include a reduction or waiver of application and license fees;
- requires the DOR to report annually to the legislature on the social equity program starting January 2025, including recommendations for social equity funding sources or license types that were developed by either a new or existing working group;
- requires the DOR to promulgate rules implementing new license types; and
- prohibits the DOR from issuing new social equity licenses from the effective date of the bill until March 1, 2024.

The bill also creates a program grant committee in the Office of Economic Development and International Trade (OEDIT) to review applications, select recipients, and determine award amounts for the existing Cannabis Business Grant program. OEDIT's director must appoint 15 persons to serve on the committee by September 1, 2023.

## Background

Under current law, Colorado residents may apply as a social equity licensee if they meet the following criteria:

- resided for at least 15 years between 1980 and 2010 in an area designated as an opportunity zone, or as a disproportionate impacted area as defined in rule by the Marijuana Enforcement Division;
- the applicant or the applicant's immediate family was arrested for or convicted of a marijuana offense or was subject to civil asset forfeiture related to a marijuana investigation; or
- the applicant's household income in the previous year did not exceed an amount determined by the Department of Revenue (DOR).

As of January 2023, there are 84 active social equity licensees and 119 pending social equity applications. Fees for regulated marijuana licenses are set through DOR rule.

## Assumptions

The bill prohibits the DOR from issuing new social equity licenses from the effective date of the bill until March 1, 2024; however, the DOR would still be required to accept applications in this time frame. Without authority to issue new licenses, the fiscal note assumes that DOR would be required to deny applications, which may result in additional legal services costs. This fiscal note assumes that DOR is permitted to stop accepting applications through March 1, 2024, and thus, no additional appropriations are required for this purpose.

## State Revenue

The bill impacts revenue to the Marijuana Cash Fund in the DOR starting in FY 2023-24. The precise revenue impact has not been estimated, primarily because the amount of social equity incentives are unknown.

**Fee impact on marijuana licenses.** Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. The bill will increase fees paid by social equity applicants utilizing expanded licensing options. In addition, the bill may:

- increase marijuana fees and revenue to cover expenditures required to implement the bill (see Departmental Difference); and
- potentially decrease fees as incentives for social equity licensees.

Actual fees will be set administratively by the DOR based on cash fund balance, program costs, and the number of marijuana licenses subject to the fee. The fiscal note assumes that new social equity applications will occur after March 1, 2024.

## State Expenditures

The bill increases state expenditures by \$197,415 in FY 2023-24 and \$163,087 in FY 2024-25. Costs are in the DOR and OEDIT, and are paid from the Marijuana Cash Fund and Marijuana Entrepreneur Fund, respectively. Expenditures are detailed below and shown in Table 2.

**Table 2**  
**Expenditures Under HB 23-1020**

	FY 2023-24	FY 2024-25
<b>Department of Revenue</b>		
Personal Services	\$82,250	\$98,700
Operating Expenses	\$1,485	\$1,755
Capital Outlay Costs	\$6,670	-
Legal Services	\$76,133	\$38,066
Mapping Fees	\$1,000	\$1,000
Centrally Appropriated Costs <sup>1</sup>	\$19,821	\$23,566
FTE – Personal Services	1.1 FTE	1.3 FTE
FTE – Legal Services	0.4 FTE	0.2 FTE
<b>DOR Subtotal</b>	<b>\$187,359</b>	<b>\$163,087</b>
<b>Office of Economic Development &amp; International Trade</b>		
Personal Services	\$8,187	-
Centrally Appropriated Costs <sup>1</sup>	\$1,869	-
FTE – Personal Services	0.1 FTE	-
<b>OEDIT Subtotal</b>	<b>\$10,056</b>	<b>-</b>
<b>Total</b>	<b>\$197,415</b>	<b>\$163,087</b>
<b>Total FTE</b>	<b>1.6 FTE</b>	<b>1.5 FTE</b>

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

**Department of Revenue.** The bill increases workload for the DOR to implement changes to the social equity licensing program and handle an increase in applications for social equity and accelerator-endorsed licenses.

- **Staffing.** The DOR requires 0.8 FTE Compliance Investigator II and 0.5 FTE Statistical Analyst II. The investigator will conduct more complex licensing investigations based on new eligibility criteria, as well as handle an increase in applications and implement the new license. The analyst will collect data related to eligibility requirements and reports on social equity program activity. Costs include standard operating and capital outlay expenses and are prorated for a September 1 start date in the first year.
- **Legal services.** The DOR will require 720 hours (0.4 FTE) of legal services in FY 2023-24 and 360 hours (0.2 FTE) in subsequent years to support the DOR with additional rulemaking for the social equity program and an overall increase in administrative case work as a result of expanding the social equity program. Legal services are provided by the Department of Law at a rate of \$105.74 per hour.

- **Mapping fees.** The DOR uses maps created by the Department of Local Affairs (DOLA) to determine if social equity applicants reside in criteria-matching locations. Based on the current volume of social equity program activity, the DOR pays for each use of DOLA's maps. The DOR anticipates moving to a flat-fee model to accommodate the expanded eligibility criteria and increase in social equity applications.

**Office of Economic Development and International Trade.** The bill increases workload for OEDIT to staff a grant program application review committee. OEDIT requires 0.1 FTE Program Management I in FY 2023-24 only to support the committee by recruiting members, managing meetings, and assisting with application review and disposition.

**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 3.

## Local Government

The bill may minimally increase workload for local licensing authorities that offer marijuana licenses to update local licensing regulations.

## Effective Date

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

## State Appropriations

Based on a prior version of the bill, for FY 2023-24, the bill includes an appropriation of \$330,625 from the General Fund to the Marijuana Cash Fund, and in the same amount from the Marijuana Cash Fund to the DOR, and 1.1 FTE. Of this amount, \$114,199 is further reappropriated to the Department of Law, with 0.4 FTE. All funding not expended prior to July 1, 2024, is further appropriated to the departments in FY 2024-25 for the same purpose.

No appropriation is required for OEDIT. The Marijuana Entrepreneur Fund is continuously appropriated to OEDIT.

## Departmental Difference

**Marijuana Cash Fund.** The Marijuana Cash Fund is currently in a cash fund deficit of approximately \$4 million. While the DOR has the ability to adjust fees or make other programmatic adjustments, it has concerns about doing so given the current economic conditions in the marijuana industry, and requests a General Fund appropriation for this bill. This fiscal note assumes that a regulatory program must operate using a cash fund, and does not include funding from the General Fund.

**State and Local Government Contacts**

Counties	Economic Development & International Trade	Law
Municipalities	Public Health & Environment	Revenue