



Legislative Council Staff
Nonpartisan Services for Colorado's Legislature

Final Fiscal Note

Drafting Number: LLS 23-0271
Prime Sponsors: Sen. Fenberg, Rep. Amabile
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Bill Status: Signed into Law
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Bill Topic: NATURAL MEDICINE REGULATION AND LEGALIZATION

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

The bill modifies the regulation of certain natural psychedelics and updates the criminal provisions related to the administration Proposition 122. Starting in FY 2023-24, the bill increases state revenue and expenditures.

Appropriation Summary: For FY 2023-24, the bill requires and includes an appropriation of \$1.6 million to multiple state agencies. See State Appropriations section.

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

Table 1
State Fiscal Impacts Under SB 23-290^1

Table with 4 columns: Category, Budget Year FY 2023-24, Out Year FY 2024-25, Out Year FY 2025-26. Rows include Revenue (General Fund, Cash Funds, Total Revenue), Expenditures (General Fund, Cash Funds, Centrally Appropriated, Total Expenditures, Total FTE), Transfers, and Other Budget Impacts (TABOR Refund, General Fund Reserve).

^1 These impacts represent the total costs for the implementation of Proposition 122, as the budget currently does not include money for its implementation. The amounts are in place of, rather than in addition to, what was shown in the Blue Book fiscal note for Proposition 122.

## **Summary of Legislation**

In 2022, Colorado voters passed Proposition 122, which required the Department of Regulatory Agencies (DORA) to establish a regulatory frame work for the administration of certain natural psychedelics (mainly psilocybin and psilocin, which are found in certain mushrooms) in licensed facilities and to decriminalize the use of certain natural psychedelics (psilocybin, psilocin, dimethyltryptamine, ibogaine, and mescaline excluding peyote). This bill modifies provisions related to how state departments regulate natural psychedelics and updates the criminal provisions related to the measure, as described below.

**DORA.** Proposition 122 required DORA to establish and regulate the manufacture, cultivation, testing, storage, transfer, transport, delivery, sale, and purchase of certain natural psychedelics. The bill instead requires DORA to regulate facilitators, who are professionals who oversee the administration of the natural psychedelic substances. DORA is also charged with establishing facilitator licenses and fees, reviewing facilitator license applications, conducting investigations, taking disciplinary actions, maintaining an online list of licensees, and publishing a report on implementation. DORA must start accepting applications by December 31, 2024. The bill requires licensing fees be deposited into the Natural Medicine Facilitator Cash Fund and continuously appropriates money in the fund to DORA.

**Natural Medicine Board.** Proposition 122 created the Natural Medicine Advisory Board in DORA to advise DORA in establishing regulations, to review and evaluate research, and to make recommendations to the General Assembly and state agencies. The bill clarifies the duties of the board and creates the Indigenous Community Working Group to identify issues related to the commercialization of the regulated psychedelics for indigenous people, provide advice and recommendations to the board and DORA, and work with federally recognized American tribes and the Indigenous Community Working Group to recommend a definition and criteria for social equity.

**Colorado Department of Public Health and Environment.** The bill requires the Department of Public Health and Environment (CDPHE), in coordination with the Department of Revenue (DOR), to promulgate rules concerning testing standards and certification requirements of regulated natural psychedelics, including the establishment of an independent testing and certification program.

**Department of Revenue.** The bill establishes the Natural Medicine Division in the DOR to regulate the cultivation, manufacturing, testing, storage, distribution, transport, transfer, and dispensation of regulated natural psychedelics, including requiring a license for each of these activities. Beginning December 31, 2024, the division must grant or refuse licenses, promulgate rules, conduct investigations into any complaints, take disciplinary actions, develop forms, licenses, identification cards, and applications; publish report on implementation; and develop and promote a public education campaign.

The bill outlines types of business licenses, which include a health center license, cultivation facility license, manufacturer license, testing facility license, and any other licenses determined necessary by the division, and occupation licenses and registrations for owners, staff, and contractors who work or have access to restricted areas. The bill establishes the requirements around each license type and allows the division to establish licensing fees, a fingerprint background check fee, and a subpoena fee, with revenue from these fees deposited into the newly created Regulated Natural Medicine Division Cash Fund.

**Criminal provisions.** Proposition 122 decriminalized the personal use of certain natural psychedelics if the person is twenty-one years of age or older and only within the context of counseling, spiritual guidance, beneficial community based use and healing, supported use, or related services. In addition, the proposition created penalties for the use of psychedelics by a person under the age of 21 and when someone over the age of 21 fails to prevent access for someone under the age of 21.

The bill allows those under the age of 21 to be fined up to \$100 or attend four hours of substance use education or counseling, and creates new crimes including:

- facilitating without a license (a class 2 misdemeanor);
- open consumption of natural psychedelics (drug petty offense and a fine of up to \$100 and up to 24 hours of public service);
- illegal cultivation (drug petty offense and a fine of up to \$1,000); and
- unlicensed and illegal manufacturing (level 2 drug felony).

The bill also clarifies that an individual on parole or probation are not in violation of their parole or probation if they use a natural psychedelic substance as authorized under the bill.

**Sunset review.** The bill repeals the regulation of certain natural psychedelics on September 1, 2032, and requires DORA to conduct a sunset review.

**General Fund loan.** Proposition 122 required that any money taken from the General Fund to pay for regulation startup costs to be paid back when revenue was collected. The bill removes this requirement.

**Income tax.** Federal regulation 26 U.S. Code Section 280E disallows businesses from taking deductions or credits aside from direct cost of goods sold if the business involves trafficking controlled substances that are prohibited under federal law. The bill allows a taxpayer who is licensed pursuant to the Colorado Natural Medicine Code to subtract an amount equal to any expenditure that is eligible to be claimed as a federal income tax deduction, but disallowed under 26 U.S. Code Section 280E, from their state taxes. The bill allows businesses to deduct other expenses, such as rent and personnel costs.

## **Comparable Crime Analysis**

Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or creates a new factual basis for an existing crime. The following section outlines crimes that are comparable to the offense in this bill and discusses assumptions on future rates of criminal convictions resulting from the bill.

**Unlawful practice of facilitation.** This bill creates the new offenses for facilitating without a license, a class 2 misdemeanor. To form an estimate on the prevalence of this new crime, the fiscal note analyzed the existing offense of unlawful practice of a mental health professional without a license as a comparable crime. From FY 2019-20 to FY 2021-22, 2 individuals have been convicted and sentenced for this existing offense. Of the persons convicted, both were white females. The fiscal note assumes a high degree of compliance in the profession and thus, there will continue to be minimal or no additional criminal case filings or convictions for this offense under the bill.

**Unlawful manufacturing or cultivation.** This bill creates the new offenses for unlawful manufacturing and unlawful cultivation, a level 2 drug felony and drug petty offense respectively. To form an estimate on the prevalence of this new crime, the fiscal note analyzed the existing offense of prohibited acts related to regulated marijuana as a comparable crime. From FY 2019-20 to FY 2021-22, zero offenders have been sentenced and convicted for this offense; therefore, the fiscal note assumes that there will continue to be minimal or no additional criminal case filings or convictions for this offense under the bill.

**Open consumption.** This bill creates the new offenses for open consumption of natural psychedelics, a drug petty offense. To form an estimate on the prevalence of this new crime, the fiscal note analyzed the existing offense of unlawful use of a controlled substance. From FY 2019-20 to FY 2021-22, 17,893 have been convicted and sentenced for this existing offense. Of the persons convicted, 12,113 were male, 5,744 were female, and 36 did not have a gender identified. Demographically, 15,100 were White, 1,771 were Black/African American, 691 were Hispanic, 94 were Asian, 78 were American Indian, 120 were classified as "Other," and 39 did not have a race identified. However, the fiscal note assumes that natural psychedelics represent a small portion of these offenses, therefore, the fiscal note assumes that there will continue to be minimal or no additional criminal case filings or convictions for this offense under the bill.

**Assumptions.** Because the bill is not expected to have a tangible impact on criminal justice-related revenue or expenditures at the state or local levels, these potential impacts are not discussed further in this fiscal note. Visit [leg.colorado.gov/fiscalnotes](https://leg.colorado.gov/fiscalnotes) for more information about criminal justice costs in fiscal notes.

## **State Revenue**

The bill increases state revenue by an estimated \$1.5 million in FY 2024-25 and \$3.0 million in FY 2025-26 from the licensing fees and fingerprint background checks. In addition, General Fund revenue will decrease by an indeterminate amount on an ongoing basis beginning in FY 2024-25.

**Fee impact on regulated natural psychedelic professionals and businesses.** 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, based on estimated populations and expenditures to implement the bill. Actual fees will be set administratively by DORA and the DOR based on cash fund balance, program costs, and the number of licenses. subject to the fee. To provide an idea of potential fees, the fiscal note based the population of each license type on the license applications received in Oregon through April 10<sup>th</sup> and projected out for a full year impact. The number of applications filed in Oregon can be found [here](#). The table below identifies the fee impact of this bill. Revenue in FY 2024-25 is prorated for a half year impact.

**Table 2  
Fee Impact on Various Natural Psychedelic Professions and Businesses**

<b>Fiscal Year</b>	<b>Type of Fee</b>	<b>Proposed Fee</b>	<b>Number Affected</b>	<b>Total Fee Impact</b>
<b>FY 2024-25</b>	Facilitator License	\$3,489	125	\$436,125
	Healing Center License	\$2,116	35	\$74,060
	Cultivation/ Manufacturer License	\$2,116	40	\$84,640
	Testing License	\$2,116	5	\$10,580
	Employee License	\$2,116	425	\$899,300
<b>FY 2023-24 Total</b>				<b>\$1,504,705</b>
<b>FY 2025-26</b>	Facilitator License	\$3,489	250	\$872,250
	Healing Center License	\$2,116	70	\$148,120
	Cultivation/ Manufacturer License	\$2,116	80	\$169,280
	Testing License	\$2,116	10	\$21,160
	Employee License	\$2,116	850	\$1,798,600
<b>FY 2024-25 Total</b>				<b>\$3,009,410</b>

**Fingerprint-based background checks.** This bill increases state cash fund revenue from fingerprint-based criminal history background checks to the CBI Identification Unit Cash Fund in the Department of Public Safety by \$33,575 per year. Revenue in FY 2024-25 is prorated by half a January 1<sup>st</sup> start date. This assumes 850 checks will be conducted for employee registration/licenses. The current fee for background checks is \$39.50, which includes \$11.25 for a Federal Bureau of Investigation (FBI) fingerprint based check, which is passed on to that federal agency. The federal portion of this fee, or \$9,563 of the revenue, is excluded from the state TABOR limit.

**Income tax deductions and credits.** The bill decreases General Fund revenue on an ongoing basis beginning in FY 2024-25 by allowing credits and deductions for state income taxes that are disallowed under U.S. Code Section 280E. The amount of expenses able to be deducted under this provision are not able to be determined due to the lack of available data on how licensed facilities will be structured.

**State Expenditures**

The bill increases state expenditures by \$2.4 million in FY 2023-24, \$3.7 million in FY 2024-25, and \$4.0 million in FY 2025-26, paid from the General Fund and cash funds in the DOR, DORA, and the CDPHE. Expenditures are shown in Table 3 and detailed below.

**Table 3  
Expenditures Under SB 23-290**

	FY 2023-24	FY 2024-25	FY 2025-26
<b>Department of Revenue</b>			
Personal Services	\$469,236	\$1,308,380	\$1,554,353
Operating Expenses	\$7,560	\$22,275	\$25,650
Capital Outlay Costs	\$60,030	\$78,300	-
Legal Services	\$190,332	190332	\$190,332
Computer Programing	\$6,500	\$58,969	\$7,328
Vehicle Lease	-	-	\$4,630
Centrally Appropriated Costs <sup>1</sup>	\$95,750	\$293,327	\$354,919
FTE – Personal Services	4.7 FTE	15.5 FTE	19 FTE
FTE – Legal Services	1.0 FTE	1.0 FTE	1.0 FTE
<b>DOR Subtotal</b>	<b>\$829,408</b>	<b>\$1,951,583</b>	<b>\$2,137,212</b>
<b>Department of Regulatory Agencies</b>			
Personal Services	\$443,300	\$606,282	\$606,282
Operating Expenses	\$7,020	\$12,555	\$12,555
Capital Outlay Costs	\$33,350	\$20,010	-
Legal Services	\$101,510	\$10,574	\$148,036
Outreach	\$10,000	\$5,000	\$5,000
Centrally Appropriated Costs <sup>1</sup>	\$98,816	\$159,216	\$159,216
FTE – Personal Services	5.2 FTE	9.3 FTE	9.3 FTE
FTE – Legal Services	0.5 FTE	0.1 FTE	0.8 FTE
<b>DORA Subtotal</b>	<b>\$693,996</b>	<b>\$813,637</b>	<b>\$931,089</b>
<b>Department of Public Health and Environment</b>			
Personal Services	\$351,023	\$417,732	\$449,865
Operating Expenses	\$6,075	\$6,750	\$7,425
Capital Outlay Costs	\$33,350	\$6,670	-
Lab Startup and Operating	\$447,954	\$412,900	\$412,900
Centrally Appropriated Costs <sup>1</sup>	\$78,054	\$93,115	\$102,732
FTE – Personal Services	4.1 FTE	4.9 FTE	5.5 FTE
<b>CDPHE Subtotal</b>	<b>\$916,456</b>	<b>\$937,167</b>	<b>\$972,922</b>
<b>Total</b>	<b>\$2,439,860</b>	<b>\$3,702,387</b>	<b>\$4,041,223</b>
<b>Total FTE</b>	<b>15.5 FTE</b>	<b>30.8 FTE</b>	<b>35.6 FTE</b>

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

**Department of Revenue.** Starting in FY 2023-24, expenditures in the DOR will increase to hire staff, update computer software, and to pay legal service costs, as described below. The fiscal note assumes General Fund will be required for the first two fiscal years to allow for the department to build a reserve in the cash fund; therefore, expenditures from the cash fund will begin in FY 2025-26.

- **Staffing.** Once fully implemented, the fiscal note estimates the DOR will require 19.0 FTE. This includes 7.0 FTE administration and policy staff to stand up, support, and lead the new division, 2.0 FTE data collection and research staff, 6.0 FTE licensing staff, and 4.0 FTE investigation staff. The administration and policy staff, along with 2.0 data collection and licensing staff will start in FY 2023-24 to establish the office and begin work on establishing procedures for the new regulation. The remaining staff will begin in FY 2024-25 with start dates phasing in through January 1, 2025.

Staffing costs include personal services, operating costs, and capital outlay costs, with first year costs prorated for the General Fund paydate shift. In addition, capital outlay costs in FY 2024-25 include standard firearm and body armor costs for the criminal investigators.

- **Computer programming.** The DOR will require various computer programming costs, including updating licensing software to include the new license types (cost in FY 2023-24 only) and programming to update GenTax (starting in FY 2024-25). GenTax programming include 158 hours of contract programming at a rate of \$232 per hour, 467 hours of user acceptance testing at a rate of \$32 per hour and 231 hours at \$32 per hour for changes in the related reporting.
- **Legal services.** The DOR requires 1,800 hours of legal services per year to promulgate rules, for general counsel on implementation and on licensing, and to handle disciplinary decisions. Legal services are provided by the Department of Law at a rate of \$105.74 per hour.
- **Vehicle lease.** Starting in FY 2025-26, the DOR will require a vehicle from the state fleet to provide onsite visits of the various regulated businesses. Vehicle leasing costs are paid to the Department of Personnel and Administration, with reappropriations for fleet vehicles adjusted through the annual budget process.

**Department of Regulatory Agencies.** Starting in FY 2023-24, expenditures in the DORA will increase to hire staff, provide outreach, and to pay legal service costs, as described below. DORA received supplemental funding in the current FY 2022-23 for start-up costs around Proposition 122; the fiscal note assumes this funding will cover startup costs for the department in FY 2023-24.

- **Staffing.** Once fully implemented, the fiscal note estimates the department will require 9.3 FTE. This includes 5.2 FTE administration and policy staff to stand up, support, and lead the program, and to support the Natural Medicine Board and the Indigenous Community Working Group; and 4.1 FTE for licensing and investigation staff. The administration and policy staff will start in FY 2023-24 to establish the office and procedures for the new regulation. The remaining staff will begin in FY 2024-25. In addition, depending on the number of applications received, the department may need to hire temporary staff to process an initial influx of applications in FY 2024-25.

Staffing costs include personal services, operating costs, and capital outlay costs. In addition, capital outlay costs in FY 2024-25 include standard firearm and body armor costs for the criminal investigators.

- **Outreach.** Starting in FY 2023-24, expenditures in DORA will increase create and administer a public outreach campaign. The fiscal note assumes that outreach, communication, and training will cost \$10,000 to develop the materials, and \$5,000 per year ongoing to update materials as needed.
- **Legal services.** The DOR require 960 hours in FY 2023-24 and 100 hours in FY 2024-25 of legal services to promulgate rules and for general counsel and 1,400 hours per year starting in FY 2025-26 for litigation, general counsel, and rulemaking. Legal services are provided by the Department of Law at a rate of \$105.74 per hour.

**Department of Public Health and Environment.** Starting in FY 2023-24, expenditures in the CDPHE will increase to hire staff to work with DOR to establish a testing certification program. The fiscal note assumes that the certification program will resemble the marijuana testing certification program, with the department providing guidance to testing facilities and providing certification to labs. It is estimated that the CDPHE will require 5.5 FTE to provide certification, establish testing standards, and provide guidance to testing facilities. In addition, expenditures will increase by \$480,000 in FY 2023-24 and \$412,900 to purchase lab equipment and lab supplies and establish an analytical method to test the regulated substances. Because the CDPHE does not have authority to spend from a cash fund, the fiscal note assumes that expenditures will come from the General Fund.

**Department of Public Safety.** The bill increases cash fund expenditures for fingerprint-based criminal history background checks by 850 per year starting in FY 2024-25 from the CBI Identification Unit Cash Fund in DPS. Due to the low number of background checks, the additional workload can be accomplished within existing appropriations.

**Judicial Department.** Starting in FY 2023-24, workload to the trial courts within the Judicial Department will increase in two ways. First, workload will increase to hear additional record sealing petitions, as the bill allows for record sealing when a conviction has occurred for an offense that was unlawful at the time but is not unlawful under the bill. The fiscal note assumes that the increase in record sealing petitions for the substances outlined in the bill will be minimal. In addition, workload will increase if applicant or licensee choose to appeal a regulatory decision by the DOR and DORA to the courts. The fiscal note assumes that cases appealed to the trial courts will be minimal.

**Parole and probation.** To the extent the bill reduces parole and probation violations, costs to the Department of Corrections and the Probation Division in the Judicial Department will decrease. The fiscal note assumes that violations of parole and probation from using natural psychedelic substances are minimal and no change in appropriation is required.

**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 March 2023 LCS revenue forecast. A forecast of state revenue subject to TABOR is not available beyond FY 2024-25. 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.

**General Fund reserve.** Under current law, an amount equal to 15 percent of General Fund appropriations must be set aside in the General Fund statutory reserve. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve by the amounts shown in Table 1, decreasing the amount of General Fund available for other purposes.

## **Effective Date**

The bill was signed into law by the Governor on May 23, 2023, and takes effect July 1, 2023, and applies to any offenses committed on or after July 1, 2023.

## **State Appropriations**

For FY 2023-24, the bill requires and includes the following General Fund appropriations:

- \$733,658 to the Department of Revenue and 5.6 FTE, of which, \$190,332 is reappropriated to the Department of Law, with 1.0 FTE; and
- \$838,402 to the Colorado Department of Public Health and Environment and 3.7 FTE.

Funding for the Department of Regulatory Agencies is paid from the Natural Medicine Facilitator Cash Fund. The cash fund is continuously appropriated; therefore, no appropriation is required to the department.

## **State and Local Government Contacts**

Agriculture	Counties	District Attorneys
Human Services	Information Technology	Judicial
Law	Personnel	Public Health and Environment
Public Safety	Regulatory Agencies	Revenue