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Fiscal Note

Drafting Number:	LLS 24-0669	Date:	February 22, 2024
Prime Sponsors:	Sen. Van Winkle; Gonzales Rep. Lindstedt	Bill Status:	Senate Finance
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Bill Topic: **STREAMLINE MARIJUANA REGULATION**

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

The bill makes various changes to the regulation of marijuana businesses. The bill increases state revenue and expenditures and may impact local revenue and expenditures beginning in FY 2024-25.

Appropriation Summary: For FY 2024-25, the bill requires an appropriation of \$1,760,742 to multiple state agencies.

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

**Table 1
State Fiscal Impacts Under SB 24-067**

		Budget Year FY 2024-25	Out Year FY 2025-26
Revenue¹	Cash Funds	\$1,657,811	\$1,596,300
	Total Revenue	\$1,657,811	\$1,596,300
Expenditures	General Fund	\$1,518,959	-
	Cash Funds	\$241,782	\$1,709,143
	Centrally Appropriated	\$178,554	\$222,337
	Total Expenditures	\$1,939,295	\$1,931,480
	Total FTE	10.6 FTE	12.6 FTE
Transfers		-	-
Other Budget Impacts	TABOR Impact	\$1,657,811	\$1,596,300
	General Fund Reserve	\$227,844	-

¹ The revenue amount included in Table 1 reflects the fee increase required to cover the Department of Revenue's costs under the bill. The biennial renewal cycle is assumed to be revenue neutral.

Summary of Legislation

The bill makes a series of changes to the regulation of marijuana businesses.

Regulation of marijuana contaminants. The bill changes the testing requirements for the Marijuana Enforcement Division (MED) in the Department of Revenue (DOR) regarding contaminants in marijuana products. Under current law, MED must test to ensure that products do not contain any contaminants that are injurious to health. The bill requires MED to ensure that products do not contain contaminants in an amount that is determined to be injurious.

Current law requires any business that is found to have a contaminant to document and destroy the contaminated product. The bill allows the business to retest and remediate the product.

Frequency of testing. MED may not require that a product pass a test multiple times before it is transferred to another business or sold to a consumer, with certain exceptions. MED must adopt rules allowing a business to conduct less testing of its products if the business consistently passes tests over a specific time period. Businesses that participate in a reduced testing program may be charged a fee, not exceed \$4,000 per facility. Participating businesses may have reduced testing for up to three years.

License renewal. The bill extends the license renewal period, currently annually, for marijuana businesses to once every two years. Renewal applications do not need to repeat the required fingerprint-based criminal history check for initial applications. If a business possesses multiple types of marijuana licenses, MED must allow that business to submit a unified application renewal and coordinate the performance review of the single business renewing multiple licenses.

Identification cards. The bill removes the requirement that passive marijuana business owners obtain an identification card from the MED. It also requires that conditional employee licenses be issued after a review of the application, rather than an initial investigation.

Transfer of marijuana products. The bill specifies that RFID tags are not required to track marijuana products, and makes the following changes to the transfer of marijuana products:

- requires DOR to allow a marijuana business that transports products to use an electronic manifest system;
- allows medical and retail marijuana cultivation facilities to obtain or deliver genetic material to other persons who are licensed to possess or cultivate marijuana plants, accept payments online for these transfers, and are not required to use inventory for these transfers unless they are between licensed marijuana businesses; and
- specifies that a tax is not levied the first time unprocessed retail marijuana is transferred exclusively for microbial control.

Violations. The bill requires DOR to classify each violation for a marijuana business as either a safety violation or a technical violation. Technical violations are removed from a licensee's record either one year after the violation is reported or upon renewal of the license.

Record keeping. Current law requires marijuana licensees to retain a record of all business transactions for the past three years. The bill changes this requirement to the past two years.

Definitions. The bill changes the definition of “immature plant” by increasing the height from eight to 15 inches and establishes a definition for “genetic material” related to marijuana.

Background

The MED is responsible for licensing and regulating medical and retail marijuana businesses, their owners, and their employees. The MED operates testing facilities in conjunction with the Colorado Department of Public Health and Environment (CDPHE) to determine safety standards and requirements for marijuana products. The MED also employs criminal investigators to enforce requirements to marijuana businesses.

Assumptions

There are currently no reference standards to determine an amount of a pesticide in marijuana that can be determined to be injurious to public health. The fiscal note assumes that the DOR and CDPHE will research and set rules based on currently available research. However, should new research be required in order to implement the bill, these costs are estimated at approximately \$2,000,000 per pesticide based on EPA studies on non-marijuana pesticide products, and would require a multi-year research project.

State Revenue

The bill is anticipated to increase fee revenue by about \$1.6 million annually to the Marijuana Cash Fund to cover the new expenditures in the Department of Revenue. The bill also changes revenue collections to the Marijuana Cash Fund by creating a biennial licensing renewal period in place of the current annual renewal, which this analysis assumes will have a neutral revenue impact.

Fee impact on marijuana licensees. Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. The bill is anticipated to double all fees collected by MED to account for the change from annual to biennial renewal, which will have a neutral impact over a two-year period. These fees are expected to apply to marijuana business licenses, owner and owner entity licenses, and modification of the premises applications. The bill will also increase fee revenue to cover the costs outlined in the State Expenditures section. Finally, the bill may decrease testing fee revenue, which has not been estimated. Actual fees will be set administratively by MED based on cash fund balance, program costs, and the number of licenses subject to the fee. Table 2 below identifies the impact of the biennial renewal fee.

Table 2
Fee Impact on Marijuana Licensees

License Type	Licensees	Current Annual Fee	SB 24-076 Biennial Fee
Regulated Marijuana Business	2,546	\$2,300	\$4,600
Owner License	1,649	\$550	\$1,100
Owner Entity License	268	\$825	\$1,650
Modifications of Premises	200	\$150	\$300

¹ Table 2 shows how current fees will be modified to maintain consistent revenue on a biennial basis. It does not include the revenue increases that will be required to cover the DOR expenditures in this bill.

State Expenditures

The bill increases state expenditures in the DOR and the CDPHE by about \$1.9 million annually beginning in FY 2024-25. DOR costs are paid from the General Fund in FY 2024-25 and Marijuana Cash Fund in subsequent years. CDPHE costs are paid from the Marijuana Tax Cash Fund. Expenditures are shown in Table 3 and explained below.

Table 3
Expenditures Under SB 24-067

	FY 2024-25	FY 2025-26
Department of Revenue (DOR)		
Personal Services	\$674,519	\$837,132
Operating Expenses	\$8,320	\$10,368
Capital Outlay Costs	\$60,030	-
Legal Services	\$576,090	\$576,090
Information Technology Costs	\$200,000	-
Centrally Appropriated Costs ¹	\$138,852	\$172,710
FTE – Personal Services	6.5 FTE	8.1 FTE
FTE – Legal Services	2.5 FTE	2.5 FTE
DOR Subtotal²	\$1,657,811	\$1,596,300

**Table 3 (Cont.)
Expenditures Under SB 24-067**

	FY 2024-25	FY 2025-26
Department of Public Health and Environment (CDHPE)		
Personal Services	\$226,394	\$282,993
Operating Expenses	\$2,048	\$2,560
Capital Outlay Costs	\$13,340	-
Centrally Appropriated Costs ¹	\$39,701	\$49,627
FTE – Personal Services	1.6 FTE	2.0 FTE
CDPHE Subtotal³	\$281,484	\$335,180
Total	\$1,939,295	\$1,931,480
Total FTE	10.6 FTE	12.6 FTE

¹ Centrally appropriated costs are not included in the bill's appropriation.

² DOR costs are paid from the General Fund in FY 2024-25 and Marijuana Cash Fund in subsequent years.

³ CDPHE costs are paid from the Marijuana Tax Cash Fund.

Department of Revenue. The DOR will have increased expenditures to determine amounts of contaminants that are injurious to public health, conduct additional investigations resulting from reduced testing, determine violations, expunge records, and update the information technology system. All DOR costs come from the General Fund in the first year due to an insufficient balance in the Marijuana Cash Fund. Once licensing fees are changed in out years, these FTE are expected to be funded from the Marijuana Cash Fund.

- **Staffing.** The DOR will require a total of 8.1 FTE to implement the various provisions of the bill, including 1.0 FTE Research Scientist, to determine amounts of contaminants that are injurious to public health; 1.0 FTE Research Scientist Supervisor, to oversee the contamination testing process, adopt new rules, and coordinate investigations with local, state, and federal agencies; 3.0 FTE Environmental Protection Specialist, to conduct an estimated 125 additional investigations into Adverse Health Events resulting from the reduced testing requirements in the bill; 1.0 FTE Environmental Protection Supervisor, to adopt testing program rules, oversee investigations and coordinate with local, state and federal agencies; and 2.1 FTE Legal Assistant, to support the additional number of investigations, coordinate with the Attorney General's Office, and expunge records. Costs include standard operating and capital outlay costs and are prorated to assume a September 2024 start date in FY 2024-25.
- **Legal services.** The DOR requires approximately 4,500 hours annually in legal services from the Department of Law, which equates to 2.5 FTE. These additional hours are required to handle additional violations as a result of the reduced testing requirements. The fiscal note

assumes that the number of active administrative cases investigating businesses will roughly double.

- **Information technology costs.** The MYLO system and inventory tracking systems will require approximately \$200,000 in updates to allow for the additional electronic tracking system, the biannual renewal requirement, the additional categories of technical vs. safety violations, and tracking sales of genetic material from cultivations.

Department of Public Health and Environment. The CDPHE requires a Public Medical Administrator and a Project Manager, totaling 2.0 FTE, to research development on the toxicity levels of contaminants and determine amounts that are injurious to public health. Costs are paid from the Marijuana Tax Cash Fund. Standard capital outlay and operating costs are included and are prorated in FY 2024-25 to assume a September 2024 start date.

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.

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 2023 LCS revenue forecast. A forecast of state revenue subject to TABOR is not available beyond FY 2025-26. Because TABOR refunds are paid from the General Fund, increased cash fund revenue will decrease 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.

Local Government

Local marijuana licensing authorities will have impacts similar to the state to implement a biennial renewal cycle and consolidating licensing renewals.

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 2024-25, the bill requires the following appropriations:

- \$1,518,959 to the Department of Revenue, and 6.5 FTE, paid from the General Fund; of this amount, \$576,090 and 2.5 FTE is reappropriated to the Department of Law; and
- \$241,782 to the Department of Public Health and Environment and 1.6 FTE, paid from the Marijuana Tax Cash Fund

State and Local Government Contacts

Counties	Municipalities
Public Health and Environment	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 the [General Assembly website](#).