

Colorado Legislative Council Staff Fiscal Note

**STATE and LOCAL
REVISED FISCAL IMPACT**

(replaces fiscal note dated March 3, 2010)

Drafting Number: LLS 10-0773	Date: April 5, 2010
Prime Sponsor(s): Rep. Massey; Summers Sen. Romer; Spence	Bill Status: House Appropriations Fiscal Analyst: Sara McPhee (303-866-4782)

TITLE: CONCERNING REGULATION OF MEDICAL MARIJUANA.

Fiscal Impact Summary	FY 2010-2011	FY 2011-2012
State Revenue		
Cash Funds		
Medical Marijuana License Cash Fund	\$2,721,000	\$2,721,000
Fines Collection Cash Fund	Less than \$5,000	Less than \$5,000
State Expenditures		
General Fund*	Up to \$2,000,000	Up to \$2,000,000
Cash Funds		
Medical Marijuana License Cash Fund	\$2,386,507	\$2,002,864
Medical Marijuana Program Cash Fund	\$271,467	\$259,506
FTE Position Change	27.5 FTE	27.6 FTE
Effective Date: July 1, 2010, except sections 3, 4, 5, 6, and portions of section 1 take effect on July 1, 2011.		
Appropriation Summary for FY 2010-2011: See State Appropriations section.		
Local Government Impact: See Local Government Impact section.		

* *The bill earmarks money that would otherwise be credited to the General Fund and appropriated for other purposes; however, this is not a net increase in spending.*

Summary of Legislation

As amended by the House Judiciary Committee, the bill regulates medical marijuana by creating the state and local medical marijuana licensing authority. It also amends the statute concerning the medical marijuana program to regulate the role of caregivers.

Medical marijuana licensing authority. The bill creates the state medical marijuana licensing authority within the enforcement division of the Department of Revenue (DOR) as well as local licensing authorities throughout the state. In order to operate a medical marijuana center, the owner of the potential center must obtain a license from the local licensing authority and then the state licensing authority. In addition, if an operator plans to grow marijuana off-site, he or she must obtain a separate premises cultivation license and if the operator plans to produce edible marijuana products, he or she must obtain an infused product manufacturer's license.

The local licensing authority may restrict the number and location of medical marijuana centers and premises cultivation licenses issued in the locality; however, if a locality does not adopt ordinances concerning medical marijuana centers, the state law will apply. The applicant must provide required information concerning the specifications for the building and information on the employees. Owners, officers, and employees of the center must undergo a criminal background check. The local licensing authority may hold a public hearing prior to approving any license. After receiving a local license, the owner of a center or a premises cultivator must apply for a state license.

The bill restricts the location of medical marijuana centers and limits the amount of marijuana that a center may have at any given time. In order to obtain a state license, the owner of the center must pay a \$5,000 bond. The state licensing authority is authorized to adopt rules, forms, and applications. Rules may include the following:

- enforcement and violations of the medical marijuana code;
- instructions for local licensing authorities and law enforcement officers;
- inspections and investigations of medical marijuana facilities;
- penalties associated with violations;
- development of identification cards for employees; and
- security requirements for medical marijuana centers.

The bill specifies that certain individuals are prohibited from operating a medical marijuana center, such as physicians, people under 21 years of age, or a member of law enforcement. Licenses are issued for up to 2 years. Owners are required to keep records on all transactions for 3 years and provide them to the state licensing authority upon request for inspection. The medical marijuana centers, cultivators, manufacturers, and employees are required to pay a fee which is set to cover the costs for operating the state and local licensing authorities. The costs for the bill related to state licensing are to be paid from the Medical Marijuana License Cash Fund.

Both the local and the state licensing authorities have the authority to suspend and revoke licenses and issue fines for violations of the medical marijuana code. The bill also specifies violations of the medical marijuana code, such as smoking medical marijuana at a center, operating a center outside of the prescribed business hours, or possessing more than 6 plants and 2 ounces of marijuana for each patient who is registered with the center. Violations of the code are a class 2 misdemeanor.

The bill specifies that the first \$2 million collected in sales and use taxes from medical marijuana is to be appropriated to the Department of Human Services and the Department of Health Care Policy and Financing for substance abuse programs.

Regulation of caregivers. The bill also amends the statute concerning the medical marijuana program to regulate the role of caregivers as follows:

- A caregiver is required to register with the Department of Public Health and Environment (DPHE) for each patient for whom he or she is a caregiver with a limit of 5 patients at any time, except a caregiver may serve up to 16 patients if the locality where the caregiver lives has banned medical marijuana centers;

- a patient may only have 1 caregiver at any time;
- a caregiver must submit to a criminal history background check to determine that he or she has not been convicted of a felony or misdemeanor drug offense within the past 5 years;
- the DPHE must create a confidential registry of caregivers and, with the caregiver's permission, provide the caregiver's information to a patient or physician seeking a caregiver;
- an individual who is not currently a caregiver can submit his or her information to the registry to be considered to be a caregiver for a patient who does not have one; and
- patients and caregivers are required to have their registry cards in their possession at any time that they possess medical marijuana.

The costs of the bill related to caregivers are to be paid from the Medical Marijuana Program Cash Fund.

State Revenue

Medical Marijuana License Cash Fund. The bill increases revenue by \$2,721,000 beginning in FY 2010-11. The fiscal note assumes that the estimated 1,900 medical marijuana centers, premises cultivators, and infused products manufacturers will require licensing annually. The DOR is to pay for the direct and indirect costs associated with the state licensing authority from the fund. Section 2-2-322, C.R.S., requires legislative service agency review of measures which create or increase any fee collected by a state agency. Estimated license fees are provided in Table 1.

Table 1. License Fees for Medical Marijuana				
Type of License	License Fee	Number of Licenses	FY 2010-11 Revenue	FY 2011-12 Revenue
Medical Marijuana Center	\$1,800	1,100	\$1,980,000	\$1,980,000
Optional Premises Cultivation	500	700	350,000	350,000
Infused Products Manufacturing	500	100	50,000	50,000
Key License for Employees	125	2,200	275,000	275,000
Support License for Employees	20	2,200	44,000	44,000
Employee Registration	10	2,200	22,000	22,000
TOTAL			\$2,721,000	\$2,721,000

Business licenses. The bill establishes licenses for medical marijuana centers, optional premises cultivation, and infused-products manufacturers. The fiscal note assumes that 1,100 medical marijuana centers will undergo the state licensing process. Of these, 700 will also apply for the optional premises cultivation license so that the center may grow marijuana at a site other than the center and 100 will apply for the infused products manufacturing license to make edible medical marijuana products.

Employee licenses. Each medical marijuana center employee is required to be licensed. The fiscal note assumes 3 different types of employee licenses depending upon the role of the employee. All licenses require a fingerprint background check. The fiscal note estimates that the 1,100 centers will have about 6,600 employees requiring licenses.

Judicial Branch. Per Section 18-1.3-401 (III) (A), C.R.S., the fine penalty for a class 2 misdemeanor is \$250 to \$1000. Unless otherwise provided by law, the fines are to be deposited in the state Fines Collection Cash Fund for annual appropriations to cover associated administrative and personnel costs. All unexpended balances of the cash fund revert to the state General Fund at the end of each fiscal year. Because the courts have the discretion of incarceration, imposing a fine, or both, the impact to the cash fund and the General Fund cannot be determined, but less than \$5,000 is anticipated.

State Expenditures

The bill increases expenditures by up to \$2,657,974 and 27.5 FTE in FY 2010-11 and up to \$2,262,370 and 27.6 FTE in FY 2011-12. It also earmarks up to \$2,000,000 that would otherwise be credited to the General Fund and appropriated for other purposes. Costs to specific agencies are provided below.

Department of Human Services (DHS) and Department of Health Care Policy and Financing (HCPF). The bill requires that the first \$2,000,000 in sales and use tax from medical marijuana is appropriated to the DHS and HCPF to fund substance abuse programs. The money is to be split equally between the two departments. If less than \$2,000,000 is generated, the departments will split the amount collected.

Department of Revenue. The bill creates the state licensing authority for medical marijuana centers in the Department of Revenue (DOR). To implement this licensing authority, the DOR requires \$2,386,507 and 23.2 FTE in FY 2010-11 and \$2,002,864 and 23.1 FTE in FY 2011-12. The specific costs to the DOR are provided in Table 2. The fiscal note assumes that the DOR will begin to hire staff beginning in September 2010 in order to begin licensing centers and employees prior to the July 1, 2011, deadline.

Table 2. DOR Expenditures Under HB 10-1284		
Cost Components	FY 2010-11	FY 2011-12
Personal Services	\$1,139,996	\$1,350,318
FTE	23.2	23.1
Operating Expenses and Capital Outlay	455,191	98,154
Legal Services	113,070	135,684
Background Checks	260,700	260,700
Travel and Vehicle Costs	100,254	120,584
Licensing Costs	265,143	37,424
Online reporting application	52,153	0
TOTAL	\$2,386,507	\$2,002,864

Personal services. The bill creates the state medical marijuana licensing authority which requires the DOR to license and regulate the medical marijuana industry. To do this, the DOR will need to employ additional staff within a newly created medical marijuana division to perform these functions.

- **Investigation staff:** The DOR requires 12 criminal investigators to license centers, other premises where marijuana is grown, and infused products manufacturers. This licensing activity will consist of inspections, background checks, and continual monitoring to ensure that the marijuana code is followed. Investigators will be located at 4 facilities throughout the state to ensure statewide coverage.
- **Auditing staff:** 3.5 auditors are required to ensure that centers, growers, and manufacturers are complying with the requirements concerning the amounts of medical marijuana that may be legally grown. Specific provisions apply for selling marijuana to a center and for centers to provide marijuana to infused products manufacturers to make products on the center's behalf. It is estimated that these staff will conduct audits on 10 to 15 percent of the facilities annually to ensure compliance and assist in enforcement efforts.
- **Administrative staff:** The DOR requires 7.7 administrative and other support staff to implement the bill. Administrative staff will process licenses and applications and provide administrative support to the new medical marijuana division and the satellite offices. Additionally, the DOR requires staff to perform budgeting functions, legal assistance, and management oversight for the medical marijuana division.

Legal services. Due to the legal complexities of regulating medical marijuana, the DOR will have legal expenses of \$113,070 in FY 2010-11 and \$135,684 in FY 2011-12. This is equivalent to 1.0 FTE in FY 2010-11 and 1.2 FTE in FY 2011-12. These expenses must be reappropriated to the Department of Law. In FY 2010-11, it is assumed that these expenses will begin in September 2010 and have been prorated accordingly.

Background checks. The DOR is required to perform background checks on all of the employees at a medical marijuana center. The fiscal note assumes that 6,600 background checks will be performed annually at an expense of \$260,700 and 1.2 FTE which must be reappropriated to the Department of Public Safety.

Travel and vehicle costs. The criminal investigators and auditors will travel throughout the state to regulate, inspect, and audit medical marijuana centers, premises cultivators, and infused products manufacturers. To maintain this presence, these employees require 12 vehicles and mileage and hotel costs.

Licensing costs. The DOR will have capital outlay costs of \$265,143 associated with processing and printing licenses both for the medical marijuana businesses and for the employees. These costs are to purchase badge processing stations, fingerprint machines for each of the satellite offices responsible for licensing throughout the state and a computer application specific to licensing. The fingerprint machines also require annual maintenance costs of \$7,400 and the licensing computer application requires annual maintenance costs of \$20,000.

Online reporting application. The DOR will develop an online reporting system for centers, cultivators, and infused products manufacturer to submit information concerning their inventory, at a one-time cost of \$52,153. This online reporting system will help the department's enforcement efforts when auditing and investigating medical marijuana centers.

Department of Public Health and Environment. The DPHE requires \$271,467 and 1.2 FTE in FY 2010-11 and \$259,506 and 1.2 FTE in FY 2011-12 to implement this bill. The specific costs to the department are provided in Table 3.

Table 3. DPHE Expenditures Under HB 10-1284		
Cost Components	FY 2010-11	FY 2011-12
Personal Services	\$45,513	\$46,556
FTE	1.2	1.2
Operating Expenses and Capital Outlay	6,834	1,230
Caregiver Background Checks	211,720	211,720
Computer Programming	7,400	0
TOTAL	\$271,467	\$259,506

Caregiver registration. The bill requires a caregiver to register with the DPHE and undergo a criminal background check to ensure he or she has not been convicted of a drug related crime within the last 5 years. The DPHE is required to maintain a registry of caregivers that law enforcement may access at any time. The DPHE currently has a computer database for the medical marijuana registry; however, the department will require \$7,400 in programming costs to alter the database so that the system is able to keep track of caregivers. The DPHE also requires \$39.50 for each background check and an additional administrative assistant to process those background checks. The \$211,720 in fees for the background check and 0.9 FTE must be reappropriated to the Department of Public Safety.

Providing caregiver information to patients. When a caregiver registers with the DPHE, the caregiver may indicate whether he or she is willing to be a caregiver for additional patients. Additionally, an individual who is not a caregiver may register with DPHE and indicate that he or she is willing to provide care for patients. The fiscal note assumes that 10 percent of patients may request information on caregivers. These requests will require staff time and mailing costs to provide a list of potential caregivers to a patient.

Expenditures Not Included

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. The centrally appropriated costs subject to this policy are summarized in Table 4.

Table 4. Expenditures Not Included Under HB 10-1284*		
Cost Components	FY 2010-11	FY 2011-12
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$173,240	\$172,530
Supplemental Employee Retirement Payments	45,095	64,076
Indirect costs	229,462	242,062
Leased Space	114,580	137,500
TOTAL	\$562,377	\$616,168

**More information is available at: <http://www.colorado.gov/cs/Satellite/CGA-LegislativeCouncil/CLC/1200536133924>*

Local Government Impact

Local governments are required to establish local marijuana licensing authorities to provide the initial authorization for medical marijuana centers, cultivators, and manufacturers. The fiscal note assumes that the licensing of employees and regulation and enforcement will be handled by the state licensing authority. Local licensing authorities are authorized to charge a fee to cover any of the costs associated with operating the licensing authority. Licensing authorities may have different costs depending upon the locality; therefore, it is not possible to quantify the costs or the licensing fee that will be set at the local level.

The penalty for a class 2 misdemeanor is 3 to 12 months imprisonment in a county jail, a fine of \$250 to \$1,000, or both. Because the courts have the discretion of incarceration or imposing a fine, the impact at the local level cannot be determined. The cost to house an offender in county jails varies from \$45 to \$50 per day in smaller rural jails to \$62 to \$65 per day for larger Denver-metro area jails. For the current fiscal year, the state reimburses county jails a daily rate of \$50.44 to house state inmates. It is assumed that the impact of any new misdemeanor convictions will be minimal and will not create the need for additional county jail space.

Departmental Differences

It is the position of the DOR that in order to implement the bill, the department requires 31.6 FTE rather than the 23.1 FTE identified in the fiscal note. The FTE estimate used in the fiscal note is based on the current number of employees in the DOR's liquor enforcement division. While the regulation of medical marijuana is likely to be more time consuming than that of an established division, such as liquor enforcement, the number of medical marijuana locations is estimated at about 2,000 (including the optional cultivation premises and the infused products manufacturers) while there are currently about 10,000 liquor licenses in the state. It seems appropriate to allocate similar levels of FTE for medical marijuana as exists for liquor licensing; therefore, the costs associated with these 8.5 FTE are not included in the fiscal note.

State Appropriations

To implement this bill, in FY 2010-11, the following departments require an appropriation:

- Department of Revenue -- \$2,386,507 and 23.2 FTE from the Medical Marijuana License Cash Fund
- Department of Public Health and Environment -- \$271,467 and 1.2 FTE from the Medical Marijuana Program Cash Fund
- Department of Law -- \$113,070 and 1.0 FTE in reappropriated funds from the Medical Marijuana License Cash Fund
- Department of Public Safety -- \$260,700 and 1.2 FTE in reappropriated funds from the Medical Marijuana License Cash Fund and \$211,720 and 0.9 FTE from the Medical Marijuana Program Cash Fund
- Department of Human Services -- up to \$1,000,000 from the General Fund
- Department of Health Care Policy and Financing -- up to \$1,000,000 from the General Fund.

Departments Contacted

Agriculture	Judicial	Law
Public Health and Environment	Public Safety	Regulatory Agencies
Revenue		