

FINAL
FISCAL NOTE

Drafting Number: LLS 13-1020
Prime Sponsor(s): Sen. Cadman; Morse

Date: July 22, 2013
Bill Status: Deemed Lost
Fiscal Analyst: Clare Pramuk (303-866-2677)

TITLE: SUBMITTING TO THE REGISTERED ELECTORS OF THE STATE OF COLORADO AMENDMENTS TO THE COLORADO CONSTITUTION CONCERNING MARIJUANA, AND, IN CONNECTION THEREWITH, ALLOWING THE REGISTERED ELECTORS TO VOTE ON TWO SEPARATE BUT RELATED QUESTIONS: 1) IMPOSING A STATE EXCISE TAX OF 15% ON THE FIRST SALE OR TRANSFER OF UNPROCESSED RETAIL MARIJUANA BY A RETAIL MARIJUANA CULTIVATION FACILITY, IMPOSING AN ADDITIONAL STATE SALES TAX OF 15% ON THE SALE OF RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCTS, ALLOWING THE GENERAL ASSEMBLY TO DECREASE OR INCREASE THE RATE OF EITHER OR BOTH TAXES WITHOUT FURTHER VOTER APPROVAL SO LONG AS THE RATE OF EITHER TAX DOES NOT EXCEED 15%, AND ALLOWING THE RESULTING TAX REVENUES TO BE COLLECTED AND SPENT REGARDLESS OF ANY LIMITATIONS IMPOSED BY LAW; AND 2) IF A MAJORITY OF THE ELECTORS VOTING ON THE QUESTION FAIL TO APPROVE THE IMPOSITION OF A STATE EXCISE TAX AND A STATE SALES TAX ON RETAIL MARIJUANA AT THE ELECTION HELD IN NOVEMBER OF 2013, SUSPENDING THE PROVISIONS OF SECTION 16 OF ARTICLE XVIII OF THE COLORADO CONSTITUTION RELATING TO THE REGULATION OF MARIJUANA UNTIL A MAJORITY OF THE ELECTORS APPROVE THE IMPOSITION OF NEW STATE TAXES OR INCREASES IN STATE TAX RATES SUFFICIENT TO ANNUALLY FUND THE ESTIMATED COSTS OF STATE REGULATION OF MARIJUANA.

Fiscal Impact Summary	FY 2013-2014	FY 2014-2015
State Revenue	\$34,154,764	\$68,309,525
General Fund	22,230,407	44,460,813
Cash Funds		
Public School Capital Construction Assistance Fund	11,924,356	23,848,712
State Expenditures		
General Fund	\$4,246,090	\$1,315,853
FTE Position Change	11.5 FTE	21.9 FTE
Effective Date: The bill was heard in the Senate Business, Labor, and Technology Committee on May 6, 2013 but not heard on the Senate floor, so was deemed lost.		
Appropriation Summary for FY 2013-2014: Appropriations cannot be made in a resolution.		
Local Government Impact: None.		

Summary of Legislation

This concurrent resolution submits 2 questions concerning marijuana to the voters of the state at the statewide election to be held in November 2013. If the voters approve the first question, the concurrent resolution will impose a state sales tax of 15 percent on the sale of retail marijuana or retail marijuana products and an excise tax of 15 percent of the average market rate of unprocessed retail marijuana. If the voters approve the first question, the state will be able to collect and spend any revenues generated by the sales and excise taxes. The General Assembly can change the sales or excise tax rates without further voter approval as long as the rate does not exceed 15 percent.

If the voters do not approve the first question, but approve the second question, the concurrent resolution will suspend all provisions of Section 16 of Article XVIII of the state constitution relating to the regulation of marijuana until such time as voters approve the imposition of new state taxes or increases in state tax rates sufficient to fund the estimated costs of state regulation of marijuana.

Assumptions

This fiscal note is based on the assumptions shown in Table 1.

Table 1. Assumptions Related to Amendment 64 and SCR 13-003		
	FY 2013-14	FY 2014-15
Gross Retail Sales (for sales taxes)	\$136,278,355	\$272,556,709
Value of Wholesale Product (for excise taxes)	\$79,450,281	\$158,900,571

State Revenue

If voters approve the first ballot question, this concurrent resolution is expected to increase state revenue from taxes by \$34,154,764 in FY 2013-14 and \$68,309,525 in FY 2014-15. Of this, the retail marijuana sales tax represents \$22,230,407 in FY 2013-14 and \$44,460,813 in FY 2014-15. The remaining revenues, \$11,924,356 in FY 2013-14 and \$23,848,712 in FY 2014-15 are from the excise tax and will be deposited into the Public School Capital Construction Assistance Fund.

State Expenditures

If voters approve the ballot question, the Department of Revenue (DOR) is expected to have increased expenditures of \$4,246,090 in FY 2013-14 and \$1,280,050 in FY 2014-15 and thereafter. Because the taxes will go into effect January 1, 2014, if approved by the voters, costs for FY 2013-14 represent 6 months of expenditures for personal services, operating expenses, and capital outlay. These expenditures are shown in Table 2 and explained below.

Table 2. Expenditures Under SCR 13-003		
Cost Components	FY 2013-14	FY 2014-15
Personal Services	\$718,871	\$1,232,552
FTE	11.5	21.9
Operating Expenses and Capital Outlay	127,219	47,498
Contract Computer Programming	3,400,000	
TOTAL	\$4,246,090	\$1,280,050

Information technology costs. The DOR will have \$3,400,000 in costs in FY 2013-14 to make modifications to the GenTax system. These costs are for 17,000 hours of programming at the contract rate of \$200 per hour. These programming changes will allow for the collection, monitoring, and reporting of both the excise tax and the retail marijuana sales tax.

Tax administration. Once the taxes are being collected in January 2014, the DOR will have staff in place to determine the average market rate for unprocessed retail marijuana and work with marijuana businesses to understand and comply with the new tax laws. Revenue agents, tax examiners, and criminal investigators will do onsite audits and investigations to ensure that the taxes paid match reports from the DOR inventory tracking system. Multiple staff will be required to participate when large tax collection transactions are made in cash. Total staff are estimated at 11.5 FTE in FY 2013-14 and 21.9 FTE in FY 2014-15 and thereafter.

Judicial Branch. Failure to pay the retail marijuana taxes under the measure is a criminal offense that applies to licensed owners and operators and retail medical marijuana businesses as well as sellers outside of the regulated system. Any new offense carries with it the potential for additional cases to be filed with the courts. It is anticipated that licensed retail marijuana businesses will comply with the law, and that other offenders will be black-market providers of marijuana. The number of licensed providers who violate the law is anticipated to be relatively small, and these new cases can be absorbed within existing resources. The Judicial Branch is anticipated to see a minimal number of new probation cases annually; however, the associated cost of these cases can also be absorbed within existing resources.

Department of Corrections. Beginning in FY 2014-15, the Department of Corrections is expected to admit 1 new offender every 5 years under this measure for failure to pay taxes. To the extent this occurs, this analysis assumes the department will request an increase in appropriations through the annual budget process.

Offenders sentenced under this measure to DOC may be placed in either a state-run or a private contract prison, depending on several factors. As state-run facilities are currently at or near capacity, any such offenders that *must* be housed in a state-run prison will likely require a shift of other inmates in that facility to private contract prisons. Therefore, this fiscal note assumes that the impact of this measure will be accommodated through the use of private contract prisons, and that no new capital construction funds are necessary. Offenders placed in a private contract prison cost the state about \$57.03 per offender per day, including the current daily rate of \$52.69 and an estimated \$4.34 per offender per day for medical care provided by the DOC. Table 3 shows the estimated cost of the measure over the next six fiscal years (in order to show the full impact).

Table 3. Five-Year Fiscal Impact On Correctional Facilities				
Fiscal Year	Inmate Bed Impact	Construction Cost	Operating Cost	Total Cost
FY 2013-14	0.0	\$0	\$0	\$0
FY 2014-15	1.0	0	20,816	20,816
FY 2015-16	0.7	0	14,987	14,987
FY 2016-17	0.0	0	0	0
FY 2017-18	0.0	0	0	0
Total		\$0	\$35,803	\$35,803

Election Expenditure Impacts (For Informational Purposes Only)

The resolution refers a measure to the voters at the November 2013 general election. This measure will be published in newspapers and an analysis of the measure will be included in the Blue Book mailed to all registered voter households prior to the election. Under current law, costs for these functions will be paid through a General Fund line item in the Long Appropriations Bill. Table 4 below identifies the anticipated costs for the 2013 Blue Book.

Table 4. Cost to Produce and Distribute the 2013 Blue Book to All Registered Voter Households	
Printing	\$300,000
Postage	\$450,000
Translation	\$4,000
Newspaper Publication (English & Spanish)	\$150,000
Total Cost (3 issues)	\$904,000
Average Cost per Issue	\$301,333

Comparable Crime

Pursuant to Section 2-2-322 (2.5), C.R.S., Legislative Council Staff is required to include certain information in the fiscal note for any measure that creates a new crime, changes the classification of an existing crime, or changes an element of the existing crime that creates a new factual basis for the offense. SCR 13-003 adds a class 5 felony for failure to pay the 2 new taxes that are being referred to the voters. The fiscal note assumes that the majority of retail marijuana licensees and their employees will comply with the measure in order to maintain their licenses and avoid criminal penalties. Individuals selling marijuana on the black market may now be charged with a new class 5 felony for tax evasion, which depending on enforcement, may result in a significant increase in cases.

Expenditures Not Included

Pursuant to a Joint Budget Committee policy, certain costs associated with this measure are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this measure. The centrally appropriated costs subject to this policy are summarized in Table 5.

Table 5. Expenditures Not Included Under SCR 13-003*		
Cost Components	FY 2013-14	FY 2014-15
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$77,273	\$147,164
Supplemental Employee Retirement Payments	39,566	85,594
TOTAL	\$116,839	\$232,758

**More information is available at: <http://colorado.gov/fiscalnotes>*

Departments Contacted

Corrections
Municipalities

Counties
Judicial Branch

Law
Revenue