

Amendment 64

Colorado Legislative Council Staff
FISCAL IMPACT STATEMENT

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TITLE: USE AND REGULATION OF MARIJUANA

Ballot Title: Shall there be an amendment to the Colorado constitution concerning marijuana, and, in connection therewith, providing for the regulation of marijuana; permitting a person twenty-one years of age or older to consume or possess limited amounts of marijuana; providing for the licensing of cultivation facilities, product manufacturing facilities, testing facilities, and retail stores; permitting local governments to regulate or prohibit such facilities; requiring the general assembly to enact an excise tax to be levied upon wholesale sales of marijuana; requiring that the first \$40 million in revenue raised annually by such tax be credited to the public school capital construction assistance fund; and requiring the general assembly to enact legislation governing the cultivation, processing, and sale of industrial hemp?

Fiscal Impact Summary	Year 1	Year 2
State Revenue*		
Sales Taxes	\$3.4 to \$21.3 million	\$3.4 to \$21.3 million
Licensing Fees	<u>\$1.3 million</u>	<u>\$0.7 million</u>
Total	\$4.7 to \$22.6 million	\$4.1 to \$22.0 million
State Spending		
Regulation	\$1.3 million	\$0.7 million
Local Government Impact: Increased revenue from sales taxes and licensing fees. Increased spending for regulating marijuana businesses.		

* Excise tax increases are not included in this summary because the tax rate must first be set by the state legislature and then approved by voters in a statewide election.

Summary of Measure

Amendment 64 amends the Colorado Constitution to establish a regulatory system for the growth, manufacture, testing and sale of up to one ounce of marijuana to any person 21 years of age and older.

Regulation by the state. The measure requires the Colorado Department of Revenue (DOR) to adopt regulations by July 1, 2013, concerning licensing and security requirements for marijuana establishments, the prevention of marijuana sales to individuals under the age of 21, requirements for marijuana products, health and safety standards for marijuana manufacturing, advertising restrictions, and civil penalties for violations. The measure specifies that the regulations may not prohibit marijuana establishments or make the operation of such establishments unreasonably impracticable.

The DOR must also develop a schedule of application, licensing, and renewal fees. The application fees may not exceed \$5,000, adjusted annually for inflation, unless the DOR determines that a greater fee is necessary. If a licensed medical marijuana business applies for a separate license created by the measure, the application fee may not exceed \$500. The measure does not limit the amounts that may be charged for licensing and renewal fees. After the DOR receives a license application from a prospective marijuana establishment, it must forward the application and half of the application fee to the local government involved. The DOR must issue or deny the license within 90 days. If the DOR denies the license, it must notify the applicant in writing of its reason for doing so.

Regulation by local governments. In the event that the DOR does not adopt regulations by July 1, 2013, the measure states that marijuana establishment applicants may apply for an annual license with a local government. Applicants may only apply for a locally issued license after October 1, 2013, which is the deadline for local governments to identify which local agency will process marijuana license applications if necessary. Applicants may also apply for a locally issued license if the DOR adopts regulations but has not issued any licenses by January 1, 2014. While operating under a locally issued license, the marijuana establishments are not subject to regulation by the DOR.

Local governments may enact regulations concerning the time, place, manner, and number of marijuana establishments in their community. In addition, local governments may prohibit the operation of marijuana establishments through an ordinance or a referred ballot measure; citizens may pursue such a prohibition through an initiated ballot measure. Even if marijuana establishments are prohibited by a local government, individuals in that community who are at least 21 years old may still possess, grow, and use marijuana as allowed by the measure.

Types of licenses. Under Amendment 64, marijuana growth, processing, testing, and sales are authorized to be carried out by four types of regulated marijuana establishments — marijuana cultivation facilities, marijuana product manufacturers, testing facilities, and retail stores. The measure directs the DOR to implement procedures for issuing, renewing, suspending, and revoking licenses for the establishments.

Taxes. Under the measure, marijuana is subject to existing state and local sales taxes and a new state excise tax to be set by the legislature. The state sales tax rate is 2.9 percent and is currently charged on medical marijuana sales. Local sales taxes vary by taxing authority. An excise tax is a tax on the use or consumption of certain products such as gasoline, alcohol, or cigarettes. The tax is generally collected at the wholesale level and passed on to consumers in the retail price. Marijuana cultivation facilities will pay the excise tax when selling marijuana to either marijuana product manufacturing facilities or to retail marijuana stores.

Amendment 64 requires the legislature to enact the state excise tax; however, the Taxpayer's Bill of Rights (TABOR) requires a separate statewide vote to approve the tax and any future tax increases. Under the measure, the excise tax is limited to 15 percent until January 1, 2017, when the legislature may set it at any rate. Each year, the first \$40 million in revenue raised by the excise tax will be credited to a state fund used for constructing public schools. Medical marijuana is not subject to the state excise tax required by the measure, or to any existing state excise tax.

Effect on medical marijuana laws. Amendment 64 does not change existing state medical marijuana laws, which allow Colorado citizens who have certain debilitating medical conditions to use medical marijuana. Medical marijuana patients and primary caregivers register with the Colorado Department of Public Health and Environment (CDPHE), and businesses that grow, manufacture, and sell medical marijuana are regulated by the DOR and by local licensing authorities throughout the state. Medical marijuana patients are permitted to possess up to two ounces of marijuana and to grow up to six marijuana plants, with three or fewer being mature, flowering plants. Caregivers are subject to the same possession and growth limitations as patients and may serve up to five patients.

Under the measure, licensed medical marijuana cultivators, manufacturers, and dispensaries may apply for a separate marijuana establishment license under the measure, and are eligible for a reduced application fee. However, medical marijuana dispensaries may not sell marijuana to retail customers or operate on the same premises as retail marijuana stores. If competition for licenses exists, applicants with prior experience producing or distributing medical marijuana and who have complied with state medical marijuana regulations are granted preference in licensing.

Industrial hemp. The measure requires the state legislature to enact, by July 1, 2014, legislation concerning the growth, processing, and sale of industrial hemp, but does not specify what provisions must be included or even if it should be authorized. The measure defines industrial hemp as the same plant as marijuana, but with a THC concentration of no more than three-tenths percent. THC is the primary psychoactive component of marijuana. Federal law currently prohibits the growth of industrial hemp, although it is legal to sell imported hemp and hemp products in the United States. Hemp seeds are sold as food, and hemp fibers are used to manufacture rope, clothing, and building materials.

Fiscal Impact

The measure will affect state revenue and spending and local government revenue, as described below.

State revenue increases. State revenue from sales taxes and licensing fees is expected to increase between approximately \$5.0 million and \$22.0 million per year, as shown in Table 1. Excise tax revenue may also increase if the legislature and voters approve the excise tax, but the amount of increase cannot be predicted.

Revenue Components	Year 1	Year 2
Sales Taxes	\$3.4 to \$21.3 million	\$3.4 to \$21.3 million
Licensing Fees	\$1.3 million	\$0.7 million
Total	\$4.7 to \$22.6 million	\$4.1 to \$22.0 million

Sales taxes. Amendment 64 is expected to increase state sales tax revenue by between \$3.4 million to \$21.3 million per year. This is above the amount currently collected on medical marijuana sales. The actual amount of sales tax revenue will depend on the amount and value of marijuana sold through retail establishments. According to surveys of current marijuana use by the Substance Abuse and Mental Health Services Administration, an estimated 12.85 to 16.29 percent of the population over 21 use marijuana regularly or between 486,000 and 616,000 Colorado residents. Non-residents coming in to the state to purchase marijuana are not included in this estimate. To develop this estimate of sales tax, the current average price of medical marijuana, \$239 per ounce, was multiplied by the population percentages and a range of usage amounts from one ounce to five ounces. Total usage amounts range from 0.5 million ounces to over 3.0 million ounces.

Licensing fees. Revenue for licensing of the four types of marijuana establishments is expected to be \$1.3 million in the first year and \$0.7 million in the second year and thereafter. This assumes that licensing fees will be sufficient to cover the costs estimated in the spending section below.

Excise taxes. The measure allows a separate excise tax to be levied on wholesale marijuana sales, but that tax has not been included in this analysis because the tax rate must first be set by the state legislature and then be approved by voters in a statewide election. If either of these conditions is not met, the excise tax will not be imposed. Further, the amount of revenue generated by the excise tax will also depend on the price of marijuana at the wholesale level, which is not currently known and will likely change over time.

Medical marijuana registry fees. Currently over 90,000 people are registered as medical marijuana patients with the CDPHE. The cost for registering is \$35 per year. If patients choose to purchase their marijuana from retail establishments rather than medical marijuana businesses, state revenue will decline.

State spending increases. Amendment 64 is expected to increase state spending to regulate marijuana administratively, as shown in Table 2. Because of the uncertainties with how the measure will be implemented, better estimates of spending will be possible after the General Assembly establishes the regulatory structure, the DOR puts rules in place, and the type and number of businesses to be regulated are known.

Table 2. State Spending Increases Under Amendment 64		
Cost Components	Year 1	Year 2
Salaries and Operating Expenses	\$1,166,584	\$592,273
Staff	4.5	4.5
Legal Services	139,050	139,050
Total	\$1,305,634	\$731,323

DOR spending. The fiscal note assumes that marijuana licensing, regulation, and enforcement will be conducted as part of the existing medical marijuana program in the DOR. Spending for the additional responsibilities are expected to increase from the \$5.7 million that is currently budgeted for medical marijuana regulation, by an estimated \$1.3 million and 4.5 staff people in the first year and \$0.7 million and 4.5 staff people annually thereafter, and will likely be paid from fees assessed on marijuana establishments.

There will be costs for the DOR to adopt regulations for licensing four types of marijuana establishments by July 1, 2013. This will include marijuana program staff time, legal services hours and computer programming services to adapt the current medical marijuana systems to work with the new marijuana regulations. Collection of the excise tax will require additional spending for staff time and computer programming but is not included in this estimate.

Savings. Although it is not clear how the state's criminal laws would be changed in response to Amendment 64, if the measure results in fewer drug offenses being charged and prosecuted, costs to the judicial and correctional systems will decrease.

If the number of medical marijuana patients in the registry declines significantly, the fiscal note assumes that the CDPHE will reduce its spending in this area from its current staff of 39 in proportion to the workload reduction.

Local government revenue and spending increases. The measure will increase both revenue and spending in communities where marijuana establishments are located. Revenue will increase from sales taxes and licensing fees, while spending will increase for regulation and enforcement. Due to differences in local tax rates and regulations, the impact to specific local governments has not been estimated.