

**JBC STAFF FISCAL ANALYSIS
SENATE APPROPRIATIONS COMMITTEE**

CONCERNING REGULATION OF MEDICAL MARIJUANA, AND MAKING AN APPROPRIATION THEREFOR.

Prime Sponsors: Reps. Massey and Summers
Sens. Romer and Spence

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Summary of Amendments Made to the Bill After the 04/28/10 Legislative Council Staff Revised Fiscal Note Was Prepared

None.

JBC Staff Concurrence with Legislative Council Staff Fiscal Note

Concurs **XXX Does Not Concur** **Updated Analysis**

Reason for the Non-Concurrence

As is standard practice, the Legislative Council Staff Revised Fiscal Note dated April 28, 2010 does not provide for an appropriation for health, life and dental insurance, short-term disability insurance, supplemental employee retirement payments, and leased space. However, due to the significant number of FTE required by the bill, JBC Staff has included these expenses in the appropriation to the Department of Revenue, increasing the cash funds appropriation by \$332,915 over the appropriation identified in the Legislative Council Staff Revised Fiscal Note. These costs are detailed in Table 1 below.

Table 1: Centrally Appropriated Line Items Included in Appropriation Clause	
Cost Element	FY 2010-11 Amount
Employee Health, Life, Dental, and Short-term Disability Insurance	\$173,240
Supplemental Employee Retirement Payments (Amortization Equalization and Supplemental Amortization Equalization Disbursements)	45,095
Leased Space	<u>114,580</u>
Total	\$332,915

Amendments/Appropriation Status

The reengrossed bill includes two appropriations clauses for FY 2010-11. Section 13 of the bill is contingent upon H.B. 10-1033 becoming law, while Section 14 becomes effective if H.B. 10-1033 does not become law. The table below details the current appropriations clauses.

Table 2: House Bill 10-1284 Appropriations Clauses					
Department	Section 13 /1		Section 14 /1		Fund Source
	Appropriation	FTE	Appropriation	FTE	
Human Services /2	\$334,227	0.0	\$668,454	0.0	General Fund
Revenue	2,772,700	23.2	2,772,700	23.2	Medical Marijuana License Cash Fund
Law	113,070	1.0	113,070	1.0	Reappropriated Funds from the Department of Revenue
Public Safety	260,700	1.2	260,700	1.2	Reappropriated Funds from the Department of Revenue
Public Health and Environment	271,467	1.2	271,467	1.2	Medical Marijuana Program Cash Fund
Public Safety	<u>211,720</u>	<u>0.9</u>	<u>211,720</u>	<u>0.9</u>	Reappropriated funds from the Department of Public Health and Environment
Total	\$3,963,884	27.5	\$4,298,111	27.5	

/1 Section 13 is effective if H.B. 10-1033 is enacted into law. Section 14 is effective if H.B. 10-1033 is not enacted into law.

/2 Please see Points to Consider #2 for a discussion of appropriations to the Department of Health Care Policy and Financing and the Department of Human Services.

The bill, as amended by the Senate Local Government and Energy Committee no longer has a requirement that the Department of Public Health and Environment (DPHE) conduct background checks on caregivers, which reduces funding to DPHE by \$211,720 cash funds from the Medical Marijuana Program Cash Fund, and eliminates the need for a corresponding appropriation to the Department of Public Safety. Staff has prepared amendment **J.006** (attached) to adjust the appropriation accordingly. **J.006** also corrects the appropriation to the Department of Revenue to correspond to the Legislative Council Staff Revised Fiscal Note dated April 28, 2010 and makes technical corrections in both Sections 13 and 14.

Amendment J.006 should not be passed if Sponsor Amendment L.135 is adopted. Its provisions are incorporated into Amendment J.007.

Bill Sponsor Amendments

Sponsor amendment **L.135** (attached):

- Specifies the types of operations that must obtain a license;
- Provides that a person who has applied for a local license or is already operating a medical marijuana center with an optional premises cultivation operation on July 1, 2010 shall apply for a state license on or before July 15, 2010, pay application fees, and certify that the center will be cultivating at least seventy percent of the medical marijuana necessary for the center's operation;
- Requires each local jurisdiction to close all medical marijuana centers and optional premises cultivation operations that have not applied for a license by September 15, 2010 and certify that it has done so to the State Licensing Authority (Authority). Also provides that if the local jurisdiction does not comply, the Authority will not process any applications from that jurisdiction;
- Changes the date by which a local jurisdiction may adopt and enforce a resolution or ordinance licensing, regulating, or prohibiting the cultivation or sale of medical marijuana from July 1, 2011 to July 1, 2010;
- Requires the Authority to employ, at a minimum, 1.0 FTE for each 10 medical marijuana centers licensed by the authority;
- Eliminates provisions in the Senate Local Government and Energy Committee report which would have changed references to "medical marijuana center" to "locally licensed business"; and,
- Changes the effective date of the bill from July 1, 2011 to July 1, 2010.

Fiscal Impact

This amendment requires the Authority to employ 1.0 FTE for each 10 medical marijuana centers. The Department of Revenue estimates that there will be 1,100 medical marijuana centers licensed, which would require 110.0 FTE. Staff assumes that the requirement is total FTE, including administrative staff. Currently, the bill's appropriation clause has authorized 23.1 FTE.

The breakdown of Department of Revenue FTE and the costs for the bill as currently identified in the Revised Fiscal Note and Amendment L.135 is detailed in Table 3 below:

Table 3: Department of Revenue FTE Currently Appropriated and FTE Required by Sponsor Amendment L.135 (FY 2010-11)		
	Current Fiscal Note	Required by Amendment L.135
Investigation Staff	12.0	78.3
Auditors	3.5	18.0
Administrative Staff	<u>7.7</u>	<u>13.7</u>
Total Staff	23.2	110.0

The total required appropriation to support this level of FTE is \$9,659,285 cash funds, which are detailed by category in Table 4 below:

Table 4: Breakdown of Department of Revenue Expenditures for Sponsor Amendment L.135	
Cost Element	FY 2010-11 Appropriation
Personal Services /1	\$6,458,345
Operating Expenses	186,387
Leased Space	680,217
Capital Outlay	1,257,110
Travel and Vehicle Costs	413,560
Legal Services /2	113,070
Background Checks /3	260,700
Licensing Costs	237,743
Online Reporting Application	<u>52,153</u>
Total	\$9,659,285

- /1 Personal Services includes salaries for 110.0 FTE, PERA and Medicare contributions, employee insurance, and supplemental employee retirement contributions.
- /2 Funding for legal services is reappropriated to the Department of Law.
- /3 Funding for background checks is reappropriated to the Department of Public Safety.

Staff has prepared Amendment **J.007** (attached) to appropriate the moneys required by Sponsor Amendment **L.135**.

If Sponsor Amendment L.135 is adopted, J.007 should be adopted and J.006 should not be adopted.

The Department of Revenue has not had a chance to thoroughly examine this amendment. The Department may need additional appropriations in FY 2009-10 to ramp up its enforcement efforts in preparation for the implementation of this bill.

Medical Marijuana License Cash Fund

As noted in the Legislative Council Revised Fiscal Note dated April 28, 2010, the fees for the medical marijuana licensees are assumed to be annual fees. The approximate fees required to support the appropriation required by Amendment L.135 are detailed in Table 5 below:

Table 5: Medical Marijuana License Cash Fund Estimated Fees			
Type of License	License Fee /1	Number of Licenses	FY 2010-11 Revenue
Medical Marijuana Center	\$7,200	1,100	\$7,920,000
Optional Premises Cultivation	2,000	700	1,400,000
Infused Products Manufacturing	2,000	100	200,000
Key License for Employees	600	2,200	1,320,000
Support License for Employees	80	2,200	176,000
Employee Registration	40	2,200	<u>88,000</u>
Total			\$11,104,000

/1 The License Fee is calculated by multiplying each fee identified in the Legislative Council Revised Fiscal Note dated April 28, 2010 by a factor of four to maintain the ratio identified by the Department of Revenue. The State Licensing Authority will ultimately set the fees. The fees are intended as an estimate only. The total fees collected allows for a fiscal year end reserve balance of 15.0 percent (\$1,444,715), slightly less than the statutory reserve requirement of 16.5 percent of appropriations.

Points to Consider

1. The bill allocates the first \$2 million in sales tax revenues collected from the sale of medical marijuana equally to the Department of Health Care Policy and Financing (HCPF) and the Department of Human Services (DHS) for substance abuse programs. The appropriation to HCPF is contingent on the creation of the Screening, Brief Intervention, and Referral to Treatment (SBIRT) program that is created in H.B. 10-1033, which is pending in the Senate. The appropriation clause in H.B. 10-1033 will appropriate the moneys authorized in H.B. 10-1284 to SBIRT.

2. A provision in the bill requires that the first \$2 million of sales and use tax collection from medical marijuana be allocated equally to the Departments of HCPF and DHS. The Legislative Council Revised Fiscal Note assumes an appropriation of \$1,000,000 General Fund to each Department. However, the Department of Revenue (DOR) has been collecting about \$51,000 per month in sales and use tax from the sale of medical marijuana, or about \$612,000 per year. The appropriation clause in H.B. 10-1033 appropriates \$334,227 General Fund to SBIRT in FY 2010-11. Based on expected growth in medical marijuana sales, staff projects that sales and use tax collections from medical marijuana will be at least \$668,454 in FY 2010-11, and therefore the appropriation to DHS in this bill will be identical to the appropriation to HCPF in H.B. 10-1033. If additional sales taxes are received from the sale of medical marijuana, the Departments can request supplemental appropriations for their programs.
3. As noted in the Legislative Council Staff Revised Fiscal Note dated April 28, 2010, the DOR has requested an appropriation and FTE in excess of what Legislative Council Staff recommended to implement the bill. The Revised Fiscal Note lays out the reasons for reducing the request submitted by the Department of Revenue. JBC Staff agrees that the number of FTE requested by DOR is too high based on the number of liquor licenses (10,000) and the expected number of medical marijuana licenses (2,000). Enforcement agents will likely require more time for each medical marijuana licensee than each liquor licensee, and 23.2 FTE allows for more than five times the hours for each medical marijuana licensee than for a liquor licensee. The appropriation of 23.2 FTE for medical marijuana enforcement compares to an appropriation of 21.0 FTE for the Liquor Enforcement Division in DOR.

Another test of the reasonableness of the Department's request is to compare the gross revenues of the industry to the cost of regulation of the industry. Based on the DOR estimate of sales tax collections of \$51,000 per month, the industry has gross sales of \$21.1 million per year. The DOR request of \$5.3 million in fees, represents 25.0 percent of the industry's gross revenues. At the fee levels necessary to support staff's recommendation for 23.2 FTE, fee revenues will exceed 13.0 percent of the industries gross revenues.