

**JBC STAFF FISCAL ANALYSIS
HOUSE APPROPRIATIONS COMMITTEE**

CONCERNING REGULATION OF MEDICAL MARIJUANA.

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

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Date Prepared: April 14, 2010

Summary of Amendments Made to the Bill After the 04/05/10 Legislative Council Staff Revised Fiscal Note Was Prepared

None.

JBC Staff Concurrence with Legislative Council Staff Fiscal Note

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

Reason for the Update

1. Staff has updated the sales and use tax projections for the sale of medical marijuana as they apply to this bill and the appropriation in the Fiscal Note has been adjusted to reflect those projections. The Fiscal Note identifies \$1 million appropriations to both the Department of Health Care Policy and Finance and the Department of Human Services. The update is explained in point number 2 of the Points to Consider section below.
2. The Fiscal Note does not provide for an appropriation of centrally appropriated expenses for health, life, dental, and short-term disability insurance, supplemental employee retirement payments, indirect costs, and leased space. Because of the number of additional FTE provided for in the bill, staff has included those expenses in the appropriation to the Department of Revenue, increasing the appropriation by \$332,915 cash funds.

Amendments/Appropriation Status

This bill requires but does not contain an appropriation clause. Staff has prepared amendment **J.004** (attached) to add provisions appropriating, for FY 2010-11:

- \$334,227 General Fund to the Department of Human Services, Alcohol and Drug Abuse Division for substance abuse programs;
- \$2,719,422 cash funds and 23.2 FTE from the Medical Marijuana License Cash Fund to the Department of Revenue, Enforcement Business Group to fund the licensing and regulatory functions of the authorized in the bill;

- \$113,070 reappropriated funds from the Department of Revenue and 1.0 FTE to the Department of Law for the provision of legal services to the Department of Revenue;
- \$260,700 reappropriated funds from the Department of Revenue and 1.2 FTE to the Department of Public Safety, Colorado Bureau of Investigation for conducting background checks for the Department of Revenue;
- \$271,467 cash funds and 1.2 FTE from the Medical Marijuana Program Cash Fund to the Department of Public Health and Environment for registering and conducting background checks on caregivers; and,
- \$211,720 reappropriated funds from the Department of Public Health and Environment and 0.9 FTE to the Department of Public Safety, Colorado Bureau of Investigation, for conducting background checks on persons in the caregiver registry.

Amendment J.004 has a technical defect that is addressed by L.077 (discussed in the Bill Sponsor Section). In addition to the appropriation in the first bullet point above, the bill requires that one-half, up to \$1 million, of the sales tax collected from medical marijuana sales, be appropriated to Health Care Policy and Finance. Those moneys are appropriated in H.B. 10-1033, which is currently in conference committee. If that bill fails, and Amendment L.077 is not adopted, J.004 only appropriates half of the moneys required by this bill to be appropriated substance abuse programs. If L.077 is not adopted, J.004 should still be adopted because it contains the appropriations required to establish the enforcement mechanisms enacted in the bill. **If amendment L.077 is not adopted, J.004 should be adopted.**

Bill Sponsor Amendments

Amendment **L.077** (attached) ties the bill to H.B. 10-1033 becoming law and creates a target for the appropriation to the Department of Human Services. If H.B. 10-1033 fails to become law, this amendment allocates the full \$2 million from this bill to substance abuse programs in the Department of Human Services. The amendment also provides two appropriations clauses, one to be effective if H.B. 10-1033 becomes law, and the other to be effective if H.B. 10-1033 does not become law. **If amendment L.077 is adopted, J.004 should not be adopted.**

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 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 being authorized 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 this bill (H.B. 10-1284) to SBIRT.

2. Under the provisions in the bill, the appropriations clause could provide up to \$1 million each to both HCPF and the Department of Human Services. The Legislative Council Staff Revised Fiscal Note assumes an appropriation of \$1,000,000 General Fund to each Department. However, the Department of Revenue 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. 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, and therefore the appropriation to Human Services in this bill will be identical to that in H.B. 10-1033. If additional sales taxes are received from the sale of medical marijuana, the Departments can request supplemental appropriations for the programs.
3. As noted in the Legislative Council Staff Revised Fiscal Note dated April 5, 2010, the Department of Revenue (DOR) has requested additional appropriations and FTE to implement the bill. The Legislative Council Staff Revised Fiscal Note dated April 5, 2010, lays out the reasons for reducing the request submitted by the Department of Revenue. Staff's recommendation is to use the Legislative Council Staff estimate. 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), even though each medical marijuana license is expected to take more staff time. The bill appropriates 23.2 FTE to DOR for medical marijuana licensing, while the Liquor Enforcement Division in DOR currently has 21.0 FTE.

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 that industry. Based on the DOR estimate of monthly sales tax collections of \$51,000, the industry has gross sales of \$21.1 million per year. The DOR request of \$5.3 million in fees, when combined with the appropriation to the Department of Public Health and Environment of \$271,000, represents 26.6 percent of the industry's gross revenues. Staff recognizes that the industry is likely fraught with high levels of fraud and abuse, but, regulatory fees in excess of 25.0 percent of gross revenues would represent a very high level of regulatory oversight. Even at the fee levels envisioned in the Legislative Council Staff Revised Fiscal Note, the fees will be \$2.7 million, still almost 12.9 percent of the industry's revenue. If it is the General Assembly's intent to impose such a high level of regulatory oversight on the industry, the Appropriations Committee could adopt the Department's request, which includes an additional \$784,495 cash funds and 8.3 FTE.