

**JBC STAFF FISCAL ANALYSIS
SENATE APPROPRIATIONS COMMITTEE**

CONCERNING THE RECOMMENDATIONS MADE IN THE PUBLIC PROCESS FOR THE PURPOSE OF IMPLEMENTING RETAIL MARIJUANA LEGALIZED BY SECTION 16 OF ARTICLE XVIII OF THE COLORADO CONSTITUTION, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Prime Sponsors: Representative Pabon
Senator Jahn

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Fiscal Impact of Bill as Amended to Date

The most recent Legislative Council Staff Revised Fiscal Note (attached) reflects the fiscal impact of the bill as of 05/02/13.

	No Change: Attached LCS Fiscal Note accurately reflects the fiscal impact of the bill
XXX	Update: Fiscal impact has changed due to <i>new information or technical issues</i>
XXX	Update: Fiscal impact has changed due to <i>amendment adopted</i> after LCS Fiscal Note was prepared
	Non-Concurrence: JBC Staff and Legislative Council Staff disagree about the fiscal impact of the bill

New Information/Technical Issues

Table 5 of the Legislative Council Staff Revised Fiscal Note lists expenditures in the Department of Revenue (DOR) totaling \$1,052,026 cash funds and 2.7 FTE from the Marijuana Cash Fund (MCF). In addition to this amount, the Department has provided new information that it requires \$175,000 for leased space, bringing the total DOR appropriation to \$1,227,026.

The Revised Fiscal Note does not include costs for the Department of Law totaling \$76,000 from the P.O.S.T. Board Cash Fund, required by S.B. 13-283, for the provision of training to drug recognition experts in the Advanced Roadside Impaired Driving Enforcement Program (ARIDE Program) who will provide ARIDE Program training to peace officers.

Legislative Council Staff agrees with this JBC Staff assessment.

Senate Finance Committee Report

The Senate Finance Committee Report (05/03/13) includes two provisions that affect the fiscal impact of the bill, as well as a number of technical changes that do not affect the fiscal impact of the bill.

The first provision clarifies the revenues and appropriations permitted from the MCF. This provision also permits the MCF to be the funding source for a \$2.0 million transfer to the General Fund to provide funding for the Circle program in the Department of Human Services and the

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Screening, Brief Intervention, and Referral to Treatment program in the Department of Health Care Policy and Finance as specified in Section 39-26-123 (6), C.R.S.

The second provision specifies that the Department of Public Health and Environment (CDPHE) will recommend standards and criteria for independent testing and certification of independent testing laboratories *instead of establishing* the standards and criteria and then *regulating* entities providing those services. This provision affects CDPHE appropriations in future years.

Amendments in This Packet for Consideration by Appropriations Committee

Amendment	Description
J.003	Staff-prepared appropriation amendment

Current Appropriations Clause in Bill

The bill includes an appropriation clause for FY 2013-14 that is summarized in the table below and described in detail:

Summary of Current FY 2013-14 Appropriation Clause in Bill					
Department	Total	General Fund	Cash Funds	Reappropriated Funds	FTE
Revenue	\$4,783,785	\$4,154,759	\$629,026	\$0	2.7
Governor's OIT	56,492	0	0	56,492	0.0
Law	70,684	0	0	70,684	0.5
Judicial	12,000	12,000	0	0	0.0
Public Safety	<u>155,760</u>	<u>0</u>	<u>155,760</u>	<u>0</u>	<u>0.7</u>
Total	\$5,078,721	\$4,166,759	\$784,786	\$127,176	3.9

- \$4,154,759 General Fund to the Marijuana Cash Fund (MCF);
- \$629,026 cash funds and 2.7 FTE from the MCF to the Department of Revenue for the direct and indirect expenses to fund the operations of the Marijuana Enforcement Division, the purchase of Computer Center Services from the Governor's Office of Information Technology (OIT), and the purchase of legal services from the Department of Law;
- \$70,684 reappropriated funds to the Department of Law for the provision of legal services to the Department of Revenue;
- \$56,492 reappropriated funds to the OIT for the provision of Computer Center Services to the Department of Revenue;
- \$155,760 cash funds and 0.7 FTE from the Colorado Bureau of Investigation Identification Unit Fund to the Department of Public Safety, Colorado Bureau of Investigation for fingerprint-based criminal history record checks; and

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- \$12,000 General Fund to the Judicial Department, Office of the Public Defender for retesting and expert witness testimony expenses;
- A total of \$26,367 General Fund to the Department of Corrections for FY 2014-15 and FY 2015-16 to cover the increased correctional facility operational costs anticipated in the first five fiscal years following passage of the bill.

The appropriation clause in the bill no longer reflects the impact of the bill, as amended. The required changes to the appropriation from the reengrossed bill are the result of floor amendments in the House or amendments in the Senate Finance Committee. These changes for FY 2013-14 are described below:

1. The General Fund appropriation to the Marijuana Cash Fund (MCF) is no longer required because the bill specifies that all sales taxes from medical marijuana and retail marijuana will be diverted to the Cash Fund.
2. The appropriations from the MCF required by the Department of Revenue (DOR) have increased from \$629,026 to \$1,052,026 (per the Fiscal Note). This includes an increase of \$250,000 for the annual contract marijuana market study. In addition to this amount, the Department requires an additional appropriation (not included in the Fiscal Note) of \$175,000 from the MCF for leased space. This brings the total appropriation to DOR \$1,227,026.
3. The reappropriated funds appropriation to OIT has been increased to \$73,700.
4. The Department of Public Health and Environment requires an appropriation of \$87,615 cash funds and 1.0 FTE from the Laboratory Cash Fund to develop standards and criteria for independent testing and certification to recommend to the State Licensing Authority. Of this amount, \$14,800 is reappropriated to OIT.
5. The Department of Law requires an appropriation of \$76,000 cash funds from the P.O.S.T. Board Cash Fund, required by S.B. 13-283, subject to the availability of sufficient moneys, for the provision of training to drug recognition experts in the Advanced Roadside Impaired Driving Enforcement Program (ARIDE Program) who will then provide ARIDE Program training to peace officers.

Description of Amendments in This Packet

J.003 Staff has prepared amendment **J.003** (attached) to change the existing clause to incorporate the changes described in the previous section and listed in the following table:

Summary of FY 2013-14 Appropriations in Amendment J.003					
Department	Total	General Fund	Cash Funds	Reappropriated Funds	FTE
Revenue	\$1,227,026	\$0	\$1,227,026	\$0	2.7
Governor's OIT	88,500	0	0	88,500	0.0
Law	146,684	0	76,000	70,684	0.5
Judicial	12,000	12,000	0	0	0.0
Public Health	87,615	0	87,615	0	1.0
Public Safety	<u>155,760</u>	<u>0</u>	<u>155,760</u>	<u>0</u>	<u>0.7</u>
Total	\$1,717,585	\$12,000	\$1,546,401	\$159,184	4.9

Points to Consider

General Fund Impact

1. The bill diverts all general sales tax revenues from the sales of medical and retail marijuana from the General Fund to the Marijuana Cash Fund. Sales taxes on retail marijuana are new revenues, but the diversion of medical marijuana taxes will result in a reduction in General Fund revenue by \$4.2 million in FY 2013-14 (assuming retail marijuana sales start on January 1, 2014) and by \$2.7 million in FY 2014-15.
2. The bill includes a provision that "upon determination that the Department of Revenue has established a sufficient revenue stream to fund the State Licensing Authority's regulatory efforts and all other programs to be funded by the fund, the General Assembly shall direct the State Treasurer to transfer any excess balance in the Fund to the General Fund to repay any appropriation made from the General Fund to initially support the spending authority of the State Licencing Authority." How does the General Assembly make this determination and notify the State Treasurer? Does the Treasurer transfer the entire excess balance or is the excess balance the amount in excess of the 16.5 percent target reserve specified in Section 24-75-402 (2) (g), C.R.S.?
3. The Joint Budget Committee has proposed a budget package for FY 2013-14 based on the March 2013 Office of State Planning and Budgeting revenue forecast. The budget package allocates all but approximately \$9.0 million of General Fund revenues projected to be available. Pursuant to S.B. 13-236, this \$9.0 million General Fund will be transferred to the Colorado Water Conservation Board (CWCB) Construction Fund. This bill requires a General Fund appropriation of \$12,000 and reduces General Fund revenues by \$4.2 million for FY 2013-14 and thus will reduce the transfer to the CWCB Construction Fund by those amounts.

4. Section 39-26-123 (6) specifies that the first \$2.0 million dollars of revenues from the sales tax on medical marijuana be equally appropriated to the Department of Human Services for the Circle Program and to the Department of Health Care Policy and Financing for the Screening, Brief Intervention, and Referral to Treatment Program. This bill diverts all sales tax revenue for both medical and retail marijuana sales to the Marijuana Cash Fund, leaving funding for these programs uncertain. The bill, with amendments adopted in the Senate Finance Committee Report, allows the use of these funds for the programs, but lacks a transfer mechanism to allocate the \$2.0 million to the General Fund. Legal Services has prepared several amendments (L.087 and L.088) that address this by transferring \$2.0 million from the MCF to the General Fund. One of these two amendments (or another amendment that makes the transfer) should be adopted.

Related Budget Information

5. In addition to the appropriations from the Medical Marijuana License Cash Fund that are already in the Long Bill, and those that are required by this bill, H.B. 13-1318 (Retail Marijuana Taxes) and S.B. 13-283 (Implement Amendment 64 Consensus Recommendations) require appropriations from the Marijuana Cash Fund (MCF). The FY 2013-14 MCF revenues and appropriations are described in the following table:

Marijuana Cash Fund FY 2013-14 Revenues and Appropriations (Assumes Enactment of H.B. 13-1318 and S.B. 13-283)		
	Referendum Passes	Referendum Fails
<u>Revenues</u>		
Transfer from the Medical Marijuana Cash Fund	\$3,500,000	\$3,500,000
Base Medical Marijuana Fee Revenues	2,000,000	2,000,000
Retail Marijuana Application and Licensing Fees	2,250,000	2,250,000
Sales Tax Revenues	8,379,859	8,379,859
Additional Sales Tax Revenues	12,597,230	0
Retail Marijuana Excise Tax Proceeds	<u>11,924,356</u>	<u>0</u>
Total Revenues	\$40,651,445	\$16,129,859
<u>Department of Revenue</u>		
S.B. 13-230 (Long Bill) Appropriations - Base Appropriation	\$5,980,677	\$5,980,677
H.B. 13-1317 Appropriation	1,227,026	1,227,026
H.B. 13-1318 Appropriation	4,246,090	0
<u>Department of Public Health and Environment</u>		
S.B. 13-283 Appropriation	186,906	186,906
<u>Department of Public Safety</u>		
S.B. 13-283 Appropriation	89,398	89,398
Transfer of Sales Tax Revenues pursuant to Section 39-26-123 (6), C.R.S.	2,000,000	2,000,000
Transfer of Excise Tax to Public School Capital Construction Assistance Fund	<u>11,924,356</u>	<u>0</u>
Total Appropriations and Transfers	\$25,654,453	\$9,484,007
Projected Ending Fund Balance	\$14,996,992	\$6,645,852