

Colorado Legislative Council Staff Fiscal Note

**STATE and LOCAL
FISCAL IMPACT**

Drafting Number: LLS 15-1093
Prime Sponsor(s): Rep. Pabon
 Sen. Hill

Date: April 28, 2015
Bill Status: House Business, Affairs and Labor
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BILL TOPIC: MARIJUANA PERMITTED ECONOMIC INTEREST REGISTRATION

Fiscal Impact Summary*	FY 2015-2016	FY 2016-2017
State Revenue	up to \$1,035,980	up to \$1,445,023
Cash Funds	up to 1,035,980	up to 1,445,023
State Expenditures	\$1,094,158	\$1,134,537
Cash Funds	952,467	971,993
Centrally Appropriated Costs**	141,691	162,544
TABOR Set Aside	up to \$1,035,980	up to \$1,445,023
FTE Position Change	7.4 FTE	8.4 FTE
Appropriation Required: \$952,467 - Department of Revenue (FY 2015-16)		

* This summary shows changes from current law under the bill for each fiscal year.

** These costs are not included in the bill's appropriation. See the State Expenditures section for more information.

This fiscal note should be considered preliminary. It will be revised when new information becomes available.

Summary of Legislation

This bill creates a permitted economic interest (PEI) registration to be issued by the Marijuana Enforcement Division (MED) in the Department of Revenue. A PEI registrant that invests in an established licensed medical or retail marijuana business would be characterized as an owner except the PEI registrant cannot have or exercise any control over the licensed marijuana business. A PEI applicant is required to file personal history information and submit fingerprints for a fingerprint-based background check. This information is made available to state and local licensing authorities. A PEI applicant, a PEI registrant, and the related marijuana licensee must disclose all written and oral agreements upon request of the MED.

While an application is pending, a PEI applicant may provide the applicable licensed marijuana business with all or part of the proposed investment. If the registration is denied, the investment is returned and no dividends are paid. If the PEI registration is approved, dividends can be paid to the PEI registrant.

The MED may charge fees to cover its administrative and investigative costs. Fees may vary depending on the type of application, the complexity of the investigation, or the costs for reviewing the information.

A person who has or receives a benefit from a PEI without being registered, or a PEI registrant who has or exercises control over a licensed marijuana business commits a class 2 misdemeanor.

Background

Currently owners of marijuana businesses in Colorado must be residents of Colorado for at least two years prior to seeking a license to operate the business. One factor used in determining ownership is who bears the risk of loss and opportunity for profit. A non-controlling ownership through equity or revenue sharing would be considered an ownership interest and requires Colorado residency.

As of April 1, 2015, there are 1,425 licensed medical marijuana businesses and 854 licensed retail marijuana establishments that could have investments from one or more PEI registrants under this bill.

Revenue

This bill increases state revenue from fees and penalties by up to \$1,035,980 in FY 2015-16 and up to \$1,445,023 in FY 2016-17.

Fee Impact on PEIs. Section 2-2-322, C.R.S., requires legislative service agency review of measures which create or increase any fee collected by a state agency. Actual fees will be determined by the MED and will be adjusted up or down to ensure that sufficient fees are collected to cover program costs. Table 1 below identifies the potential fee impact of this bill.

Assumptions. The fiscal note assumes that 20 percent of 2,279 (446) total marijuana businesses will have PEI participation in FY 2015-16 and 30 percent (684) in FY 2016-17. Renewals are not included in the fee impact.

Table 1. Fee Impact on PEIs						
	FY 2015-16			FY 2016-17		
Type of Fee	Proposed Fee	Number Affected	Total Fee Impact	Proposed Fee	Number Affected	Total Fee Impact
PEI Registration	\$1,600	446	\$713,600	\$1,600	684	\$1,094,400
Investigations	65/hr	varies	300,000	65/hr	varies	300,000
TOTAL			\$1,013,600			\$1,394,400

Fingerprint-based criminal background checks. This bill will increase state cash fund revenue by \$17,380 in FY 2015-16 and \$45,623 in FY 2016-17 to the MED and reappropriated to the Colorado Bureau of Investigation (CBI) for fingerprint-based criminal background checks. Revenue increases assume a fee of \$39.50 per applicant for fingerprinting. Of this amount, \$22.25 is retained by the CBI and \$17.25 is passed through to the Federal Bureau of Investigation (FBI), as shown in the State Expenditures section.

Penalties. Beginning in FY 2015-16, this bill is anticipated to increase state revenue by less than \$5,000 per year, credited to the Fines Collection Cash Fund in the Judicial Department. The fine penalty for a class 2 misdemeanor is \$250 to \$1,000. Because the courts have the discretion of incarceration, imposing a fine, or both, the precise impact to state revenue cannot be determined. However, based on the low number of fines imposed in 2014, the fiscal note assumes that any revenue generated is likely to be less than \$5,000.

TABOR Impact

This bill increases state revenue from fees and penalties, which will increase the amount required to be refunded under TABOR. TABOR refunds are paid from the General Fund.

State Expenditures

This bill increases state expenditures by \$1,094,158 and 7.7 FTE in FY 2015-16 and by \$1,134,537 and 8.5 FTE in FY 2016-17 from the Marijuana Cash Fund. Costs are shown in Table 2 and explained below.

Table 2. Expenditures Under HB15-1379		
Cost Components	FY 2015-16	FY 2016-17
Personal Services	\$506,834	\$567,323
FTE	7.7 FTE	8.5 FTE
Operating Expenses and Capital Outlay Costs	44,686	7,980
Legal Services	56,706	28,353
Law Enforcement Expenses	23,108	3,948
Pass-through Investigation Costs	300,000	300,000
Information Technology Costs	3,753	18,766
Fingerprint Fees to CBI	9,790	19,924
Fingerprint Pass Through to the FBI	7,590	25,699
Centrally Appropriated Costs*	141,691	162,544
TOTAL	\$1,094,158	\$1,134,537

* Centrally appropriated costs are not included in the bill's appropriation.

MED, Department of Revenue. Expenditures for the MED will increase by \$1,065,547 and 7.3 FTE in FY 2015-16 and \$1,043,739 and 8.0 FTE in FY 2016-17.

To implement the provisions of the bill, the MED will establish a new team that specializes in investigating PEI registration applicants. This will involve the addition of staff to conduct specialized financial investigations including evaluating economic and business practices involving individuals seeking PEI registration. Additional staff will include 4.0 FTE criminal investigators, 3.0 FTE compliance investigators, and 1.0 FTE administrative assistant. The criminal investigators also require law enforcement supplies including guns, badges, and ammunition. Costs are prorated in FY 2015-16 to account for the August 5, 2015, effective date.

The MED will have an increase in legal services of 600 hours, or \$56,706, in FY 2015-16, and 300 hours, or \$28,353 in FY 2016-17 and ongoing. The legal services expenditures are for general counsel, rulemaking, and legal resources for denials of PEI applications. The Department of Law also requires an allocation of 0.3 FTE in FY 2015-16 and 0.1 FTE in FY 2016-17.

The MED requires \$300,000 in FY 2015-16 and beyond to provide spending authority to conduct investigations of applicants. The applicants will be charged an hourly investigation rate of \$65 to reimburse actual investigation expenses which includes travel and staff time. This enables the MED to charge a flat application fee supplemented by a fee based on the complexity of the application.

CBI, Department of Public Safety. To accommodate the anticipated increase in fingerprint-based background checks, the CBI will have an increase in staffing and technology costs of \$11,232 and 0.1 FTE in FY 2015-16 and \$45,176 and 0.4 FTE in FY 2016-17.

Judicial Department. The bill is anticipated to increase workload within the trial courts by a minimal amount for criminal violations of the bill. This increase in workload can be accomplished within existing appropriations. Probation revenue may also increase which is \$50 per month per offender. In the event that a defendant is indigent, costs may increase for the Office of the State Public Defender and the Office of the Alternate Defense Counsel.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. The centrally appropriated costs subject to this policy are estimated in the fiscal note for informational purposes and summarized in Table 3.

Cost Components	FY 2015-16	FY 2016-17
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$59,925	\$67,706
Supplemental Employee Retirement Payments	39,284	48,548
Indirect Costs	594	594
Leased Space	41,888	45,696
TOTAL	\$141,691	\$162,544

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

Local Government Impact

This bill will affect local governments in several ways, as discussed below.

Review of PEIs. This bill will increase the workload for local licensing authorities and local governments to determine whether an applicant is qualified under local regulations to hold a PEI registration. The amount of increase will depend on the interest in investment in each area that allows marijuana businesses.

Misdemeanor offenses in county courts. The bill may increase workload for district attorneys to prosecute any new offenses under the bill. To the extent that this bill increases misdemeanor convictions and offenders are sentenced to jail, costs will increase. Because the courts have the discretion of incarceration or imposing a fine, the precise impact at the local level cannot be determined. The cost to house an offender in county jails varies from about \$53 to \$114 per day. For the current fiscal year, the state reimburses county jails at a daily rate of \$52.74 to house state inmates. It is assumed that the impact of this bill will be minimal.

Denver County Court. For cases arising in the City and County of Denver, the bill results in an increase in workload for the Denver County Court, managed and funded by the City and County of Denver. The court will try misdemeanor cases under the bill where a person who has or receives a benefit from a PEI without being registered or a PEI registrant who has or exercises control over a licensed marijuana business. Probation services in the Denver County Courts may also experience a minimal increase in workload and revenue to supervise persons convicted under the bill.

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 bill 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. This bill adds a class 2 misdemeanor for a person who has or receives a benefit from a PEI without being registered or a PEI registrant who has or exercises control over a licensed marijuana business. Between January 1, 2011 through December 31, 2014, 29 cases that contained at least one charge under the medical marijuana statute. The 29 cases included 3 females, 26 males and the following breakdown by race and ethnicity shown in Table 4.

	Number	Percentage
Asian	0	0
Black	1	3
Hispanic	3	10
Other	1	3
White	24	83
TOTAL	29	100

Effective Date

The bill takes effect August 5, 2015, if the General Assembly adjourns on May 6, 2015, as scheduled, and no referendum petition is filed.

State Appropriations

For FY 2015-16, the following appropriations are required:

Department of Revenue - \$952,467 from the Marijuana Cash Fund and an allocation of 7.3 FTE;

Department of Law - \$56,706 reappropriated funds and an allocation of 0.3 FTE; and

Department of Public Safety - \$11,232 reappropriated funds and an allocation of 0.1 FTE.

State and Local Government Contacts

Revenue

Public Safety

Law

Judicial Department