HB15-1367

Colorado Legislative Council Staff Fiscal Note

STATE and LOCAL FISCAL IMPACT

Drafting Number:	LLS 15-1100	**Date:**	April 22, 2015
Prime Sponsor(s):	Rep. Hamner Sen. Steadman	**Bill Status:**	House Appropriations
		Fiscal Analyst:	Greg Sobetski (303-866-4105)

BILL TOPIC: RETAIL MARIJUANA TAXES

Fiscal Impact Summary*	FY 2015-2016	FY 2016-2017	FY 2017-2018
State Revenue	**($3.7 million)**		**($14.6 million)**
Revenue Change Cash Funds	(3.7 million)		(14.6 million)
State Expenditures	**$325,305**	**$236,119**	**($3.6 million)**
Cash Funds	237,809	146,819	(3.6 million)
Centrally Appropriated Costs**	87,496	89,300	89,300
FTE Position Change	2.0 FTE	2.0 FTE	2.0 FTE
Appropriation Required: $237,809 - various agencies (FY 2015-16).			

* *This summary shows changes from current law under the bill for each fiscal year. Parentheses indicate a decrease in funds. Changes to state transfers and expenditures conditioned on approval or failure of the ballot issue in the bill are described in the State Revenue and State Expenditures sections, respectively.*
** *These costs are not included in the bill's appropriation. See the State Expenditures section for more information.*

Summary of Legislation

This bill, ***recommended by the Joint Budget Committee***, refers a ballot issue to voters on November 3, 2015, asking whether the state may retain and spend revenue collected from the Proposition AA excise and special sales taxes on retail marijuana in FY 2014-15.

The bill creates a Proposition AA refund account (refund account) in the General Fund. The refund account comprises $58.0 million, the amount expected to be collected from Proposition AA taxes in FY 2014-15. Of this, $27.7 million is a transfer from the Marijuana Tax Cash Fund (MTCF) pursuant to Senate Bill 15-249, and $30.3 million is from the General Fund. If voters approve the ballot issue, the bill apportions the amount in the refund account for expenditure during FY 2015-16. If voters reject the ballot issue, the bill establishes mechanisms to refund the account to taxpayers in FY 2015-16.

Independent of whether the voters approve the ballot issue, the bill:

- lowers the retail marijuana excise and special sales tax rates to zero effective September 16, 2015, and raises them back to 15 percent and 10 percent, respectively, effective September 17, 2015;
- lowers the retail marijuana special sales tax rate from 10 percent to 7 percent beginning July 1, 2017;
- reduces the local government share of retail marijuana special sales tax revenue from 15 percent to 10 percent beginning July 1, 2017;

- repeals current law requiring the finance committees of the General Assembly to review tax rates by April 1, 2016;
- transfers any marijuana excise tax revenue collected in excess of $40 million during a single fiscal year to the Public School Fund rather than the MTCF;
- broadens the purposes for which funds in the MTCF can be expended and requires the Marijuana Enforcement Division to report on its website how tax revenue is spent; and
- creates a Local Government Retail Marijuana Impact Grant Program in the Department of Local Affairs (DOLA), described below.

The bill requires that the General Fund be reimbursed between FY 2014-15 and FY 2019-20 for the $30.3 million deposited in the Proposition AA refund account. The schedule and amount of the reimbursement depends on whether voters approve or reject the ballot issue.

Contingencies if the ballot issue is approved. If voters approve the ballot issue, the $58.0 million in the refund account is apportioned in FY 2015-16 as follows:

- transfers from the General Fund to the MTCF are reduced by $6.06 million, to repay 20 percent of the General Fund revenue deposited in the refund account;
- $40 million is transferred to the Public School Capital Construction Assistance Fund, known as the BEST Fund; and
- $12 million is transferred to the MTCF and appropriated for FY 2015-16 (see state expenditures section); of this amount, $1 million is appropriated to the DOLA for the Local Government Retail Marijuana Impact Grant Program.

For each of FY 2016-17 through FY 2019-20, General Fund transfers of retail marijuana special sales tax revenue to the MTCF are reduced by $6.06 million to repay the $30.3 million deposited from the General Fund to the refund account.

The bill requires that the General Assembly appropriate at least $1 million in FY 2015-16 to the Department of Public Health and Environment (CDPHE) to allow for the dissemination of poison control information via text messaging, instant messaging, or email. This appropriation is made from the $12 million transferred to the MTCF.

Contingencies if the ballot issue is rejected. If voters reject the ballot issue, the $58.0 million in the refund account is used to refund revenue to taxpayers as required by the Colorado Constitution. Three refund mechanisms are utilized:

For tax year 2015, $25 million is refunded with the TABOR surplus that the state is expected to incur in FY 2014-15. This amount will be refunded via either the *six-tier sales tax refund* in current law, or the *three-tier sales tax refund* in SB 15-001, should that bill pass.

An amount equal to FY 2014-15 marijuana excise tax revenue, currently estimated at $19.7 million, will be *refunded directly to marijuana cultivators*. The bill directs the Department of Revenue to develop a mechanism for this refund, and specifies that cultivators will not need to apply in order to receive a refund.

The remainder of the refund required, currently estimated at $13.3 million, will be refunded via a *temporary marijuana special sales tax rate reduction*. Beginning January 1, 2016, the special sales tax on retail marijuana will be reduced from 10 percent to 0.1 percent. On the last business day of each month beginning February through May, 2016, the Department of Revenue will determine whether the mechanism has refunded the required amount of revenue. Once this occurs, the special sales tax rate reduction will expire on the fifth day after the determination is made. If the total refund does not occur before May 31, 2016, the rate reduction will expire June 30, 2016. On January 1, 2016, $13.3 million is transferred from the refund account to the MTCF to offset the revenue loss expected to result from the tax rate reduction.

Beginning January 1, 2016, the local share of marijuana special sales tax revenue is reduced by half from 15 percent to 7.5 percent. The local share remains at 7.5 percent until the dollar amount by which the local share is reduced equals the total local share apportioned during FY 2014-15, which is expected to be $5.7 million. If the reduction does not reach this amount by July 1, 2017, the local share is reduced to 5 percent, or half of the 10 percent local apportionment effective FY 2017-18.

For each of FY 2015-16 through FY 2018-19, General Fund transfers of retail marijuana special sales tax revenue to the MTCF are reduced by $6.06 million to partially repay the $30.3 million deposited from the General Fund to the refund account.

Local Government Retail Marijuana Impact Grant Program. Independent of the result of the ballot issue, the bill creates a Local Government Retail Marijuana Impact Grant Program in the DOLA's Division of Local Government. The following local governments are eligible to receive grants from the program:

- local governments that permit the sale of retail marijuana but do not impose a tax, except sales taxes that apply uniformly to all products;
- counties where no retail marijuana is sold in unincorporated areas, but where retail marijuana is sold in one or more municipalities within the county;
- counties where no marijuana is sold, but where retail marijuana is sold in a contiguous county; and
- municipalities where no retail marijuana is sold, but where retail marijuana is sold in another municipality or unincorporated area of the same county, or in any part of a contiguous county.

The division is directed to award grants through the program in order to offset local government costs associated with retail marijuana sales. The bill specifies that grants may be used to pay for law enforcement activities, youth services, or other costs associated with the impact of retail marijuana on government services.

Background

The Colorado Constitution requires voter approval of new taxes. When a new tax is presented to voters for approval, the state is required to provide estimates of state spending without the new tax and the amount of revenue that the tax will generate during its first full fiscal year of implementation. If the tax is approved and state spending or new tax revenue exceeds the estimate, the Constitution requires the state to refund the combined excess to taxpayers, unless it receives voter approval to keep this money. The refund occurs during the following fiscal year and is capped at the amount of revenue generated from the new tax. Additionally, the Constitution requires the tax rate to be reduced up to 100 percent in proportion to the revenue collected in excess of the two estimates.

In 2013, voters approved Proposition AA, which imposed two taxes on retail (adult-use) marijuana. Proposition AA levies a 15 percent excise tax on the value of marijuana when it is first transferred at the wholesale level, and a 10 percent special sales tax on marijuana purchased by a consumer. It allows the General Assembly to raise or lower each tax rate, so long as neither rate exceeds 15 percent.

The Proposition AA ballot information booklet, commonly called the Blue Book, estimated revenue from the new taxes to total $67 million, and state spending without the new taxes to total $12.08 billion, in FY 2014-15. As of March 2015, state spending is expected to equal $12.35 billion in FY 2014-15, or $267.3 million more than what was published in the Proposition AA Blue Book. Because actual collections exceed the Blue Book estimate, the state will incur a refund obligation for FY 2015-16 equal to the amount collected from Proposition AA taxes in FY 2014-15, currently estimated at $58.0 million. Additionally, both the excise and special sales tax rates will be reduced to zero.

State Revenue

Cash Fund revenue will decrease by $3.7 million in FY 2015-16 and by $14.6 million in FY 2017-18. Cash fund revenue and transfers will absorb additional fiscal impacts conditional on the approval or rejection of the ballot issue.

Public School Capital Construction Assistance Fund. Revenue to the BEST Fund will decrease by $3.6 million in FY 2015-16. The bill reduces the retail marijuana excise tax rate from 15 percent to zero for one day, September 16, 2015. However, because the excise tax is assessed when retail marijuana is first transferred from a cultivator to a processor or retailer, producers can adjust their transfer schedule to take advantage of a tax-free transfer. This analysis assumes that transfers that would otherwise be conducted in the month preceding or following September 16 will be shifted to that date, resulting in a loss of two months of excise tax revenue currently forecast for FY 2015-16.

Marijuana Tax Cash Fund. Revenue to the MTCF will decrease by $0.1 million in FY 2015-16, and by $14.6 million in FY 2017-18.

The MTCF receives 85 percent of revenue collected from the 10 percent special sales tax on retail marijuana. For FY 2015-16, this amount is expected to be $35.8 million, or about $100,000 per day. On September 16, 2015, the special sales tax rate will be temporarily reduced to zero, and the MTCF will receive no special sales tax revenue from marijuana sold on this date. Relative to current law, the revenue loss is expected to equal at least $100,000, and will be greater to the extent that purchases that would otherwise occur during surrounding weeks are shifted to September 16.

Beginning FY 2017-18, the special sales tax rate will be reduced from 10 percent to 7 percent, and revenue to the MTCF will decrease by $14.6 million. Of this, $10.7 million is revenue that would otherwise be retained by the state, and $3.9 million is revenue that would otherwise be expended to local governments. The current marijuana tax forecast period ends after FY 2016-17, when the state share of special sales tax revenue is estimated at $38.1 million. This estimate assumes that retail marijuana sales grow by a similar rate in FY 2017-18 as expected in FY 2015-16 and FY 2016-17. For FY 2017-18, the state share of MTCF revenue will decrease by 26 percent, the net impact of the special sales tax rate reduction and an increase in the state apportionment from 85 percent to 90 percent of special sales tax revenue.

State transfers. Beginning FY 2015-16, for any year in which retail marijuana excise tax revenue exceeds $40 million, the excess amount is transferred from the General Fund to the Public School Fund rather than the MTCF. Excise tax revenue is not expected to reach $40 million in any fiscal year during the forecast period.

Conditional fiscal impact — ballot issue approved. If the ballot issue is approved, General Fund transfers to the MTCF are reduced by 20 percent of the General Fund amount paid to the refund account, estimated at $6.06 million, in each of FY 2015-16 through FY 2019-20. In FY 2015-16, $40 million is transferred from the refund account to the BEST Fund.

Conditional fiscal impact — ballot issue rejected. If the ballot issue is rejected, MTCF revenue will decrease by $11.8 million in FY 2015-16, increase by $3.4 million in FY 2016-17, and decrease by $9.0 million in FY 2017-18, relative to current law. These amounts represent the net impacts of five tax policy changes:

- the one-day special sales tax rate cut to zero on September 16, 2015;
- the temporary special sales tax rate reduction beginning January 1, 2016, assumed to expire after May 4, 2016, when at least $13.3 million will have been refunded via the rate reduction;
- the reduced local apportionment of special sales tax revenue, which is halved from 15 percent to 7.5 percent effective January 1, 2016;
- the permanent special sales tax rate reduction from 10 percent to 7 percent effective July 1, 2017; and
- the permanent reduction in the local apportionment of special sales tax revenue from 15 percent to 10 percent effective July 1, 2017, which, because the local apportionment is expected to be halved through FY 2017-18, reduces the local apportionment to an effective 5 percent.

Table 1 shows the state share of retail marijuana special sales tax revenue under current law and House Bill 15-1367. The estimate for FY 2017-18 assumes growth in retail marijuana sales will be consistent with growth forecast for FY 2015-16 and FY 2016-17.

Table 1. State Share of Special Sales Tax Revenue under Current Law and HB15-1367

	FY 2015-2016	FY 2016-2017	FY 2017-2018*
Current Law	$35.8 million	$38.1 million	$41.3 million
House Bill 15-1367			
If ballot issue is approved	$35.7 million	$38.1 million	$30.6 million
If ballot issue is rejected	$24.0 million	$41.5 million	$32.3 million

**For FY 2017-18, assumes retail marijuana sales growth consistent with the forecast for FY 2015-16 and FY 2016-17.*

General Fund transfers to the MTCF will increase by $7.2 million, on net, in FY 2015-16, and decrease by $6.06 million in each of FY 2016-17 and FY 2017-18. General Fund transfers to the MTCF are reduced by 20 percent of the General Fund amount paid to the refund account, estimated at $6.06 million, in each of FY 2015-16 through FY 2018-19. For FY 2015-16 only, $13.3 million is transferred from the refund account to the MTCF to offset the expected loss in revenue attributable to the special sales tax rate reduction beginning January 1, 2016.

State Expenditures

Regardless of the outcome of the ballot issue, Marijuana Tax Cash Fund expenditures will increase by $325,305 and 2.0 FTE in FY 2015-16, and by $236,119 and 2.0 FTE in FY 2016-17. Marijuana Tax Cash Fund expenditures will decrease by $3.6 million in FY 2017-18. Expenditures are summarized in Table 2 and detailed below.

Table 2. Expenditures Under HB15-1367

Cost Components	**FY 2015-16**	**FY 2016-17**	**FY 2017-18**
Personal Services	$111,890	$111,890	$111,890
FTE	2.0 FTE	2.0 FTE	2.0 FTE
Operating Expenses and Capital Outlay Costs	20,709	5,650	5,650
Programming and Information Technology	105,210	29,279	29,279
Centrally Appropriated Costs*	87,496	89,300	89,300
Reduced Local Government Shareback			(3.9 million)
TOTAL	**$325,305**	**$236,119**	**($3.6 million)**

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

Department of Local Affairs. MTCF expenditures for the DOLA will increase by $299,864 and 2.0 FTE for FY 2015-16, and by $236,119 and 2.0 FTE for FY 2016-17. These costs are for the administration of the Local Government Retail Marijuana Impact Grant Program created in the bill.

Of these amounts, $216,344 in FY 2015-16 and $203,090 in FY 2016-17 are for the addition of new staff. The DOLA will require 1.0 FTE at the General Professional IV level, and 1.0 FTE at the Program Assistant I level, for administration of the program. Staff will be responsible for creating the grant management program, preparing grant contract templates, publicizing the program including outreach and travel, producing reports, and managing rulemaking requirements. Additionally, $3,750 in each of FY 2015-16 and FY 2016-17 is for other operating costs, including printing, postage, and travel expenses.

The DOLA also requires $79,770 and $29,279 in FY 2015-16 and FY 2016-17, respectively, to be reappropriated to the Office of Information Technology for information technology expenses related to the administration of the grant program. Costs decrease in the second year after costs associated with the program's creation are absorbed.

Department of Revenue. MTCF expenditures for the Department of Revenue will increase by $25,440 in FY 2015-16. These expenditures represent 120 hours of programming in the state's GenTax computer system at a cost of $212 per hour, and are required to implement the tax rate reductions on September 16, 2015, the permanent special sales tax rate reduction, and the reduced local government apportionment of special sales tax revenue.

Reduced expenditures to local governments. Because of the reduced special sales tax rate and the reduced local government apportionment of special sales tax revenue, MTCF expenditures to local governments will decrease by $3.9 million in FY 2017-18.

Conditional fiscal impact - ballot issue approved. If the ballot issue is approved, General Fund expenditures will increase by an additional $12 million in FY 2015-16. The following amounts are appropriated from the refund account:

- $2.5 million to the Department of Public Health and Environment (CDPHE) for chronic disease prevention programs;
- $1 million to the CDPHE for the dissemination of information from poison control centers;
- $2 million to the School Bullying Prevention and Education Cash Fund administered by the Colorado Department of Education (CDE);
- $2 million to the CDE via the Student Re-Engagement Program Cash Fund for costs associated with the student re-engagement program;
- $1 million to the Department of Human Services (DHS) via the Youth Mentoring Services Cash Fund for costs associated with youth mentoring services;
- $1 million to the DHS for the provision of grants through the Tony Grampsas youth mentoring program;
- $0.5 million to the Department of Health Care Policy and Financing for substance abuse screening, brief intervention, and referral to treatment;
- $0.3 million to the Department of Agriculture for Future Farmers of America and 4-H programs at the state fair;
- $1 million to the Department of Local Government for grants through the Local Government Retail Marijuana Impact Grant Program; this amount is assumed not to be used for costs associated with the program's administration;
- $0.5 million to the DHS for treatment and detoxification contracts; and
- $0.2 million to the Department of Law for the Peace Officers Standards and Training (POST) Board.

Conditional fiscal impact - ballot issue rejected. If the ballot issue is rejected, FY 2015-16 General Fund expenditures will increase by $44.7 million for refunds to taxpayers, and by an additional $31,800 for programming of the state GenTax computer system. Refund costs include:

- $25 million refunded via either the six-tier sales tax refund mechanism in current law or the three-tier sales tax refund mechanism proposed in Senate Bill 15-001; and
- $19.7 million refunded to marijuana cultivators who paid a retail marijuana excise tax in FY 2014-15.

The remaining $13.3 million is to be refunded by a special sales tax rate reduction, and this amount is transferred to the MTCF in FY 2015-16 to offset the anticipated loss in cash fund revenue.

Additional costs of $31,800 for the Department of Revenue represent 150 hours of programming at a cost of $212 per hour, and are required to implement the temporary special sales tax rate reduction and refunds to marijuana cultivators.

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.

Table 3. Centrally Appropriated Costs Under HB15-1367*		
Cost Components	**FY 2015-16**	**FY 2016-17**
Employee Insurance (Health, Life, Dental, and Short-term Disability)	$16,075	$16,075
Supplemental Employee Retirement Payments	8,672	9,575
Indirect Costs	56,748	57,650
Leased Space	6,000	6,000
TOTAL	**$87,495**	**$89,300**

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

Election expenditure impact (existing appropriations). The bill includes a referred measure that will appear before voters at the November 2015 general election. Although no additional appropriation is required in this bill to cover election costs associated with this ballot measure, certain election costs to the state are appropriated as part of the regular budget process. First, state law requires that the state reimburse counties for costs incurred conducting a ballot measure election paid from the Department of State Cash Fund. Second, the text and title of the measure must be published in one legal newspaper per county and an analysis of the measure must be included in the Ballot Information Booklet (Blue Book) mailed to all registered voter households prior to the election paid from the Ballot Analysis Revolving Fund. Table 4 below identifies the anticipated costs for a single statewide ballot measure election in 2015.

Table 4. Projected Costs of a Single Statewide Ballot Measure Election in 2015	
Cost Component	**Amount**
County Reimbursement for Statewide Ballot Measures	$2,400,000
Ballot Information Booklet (Blue Book) & Newspaper Publication	670,000
TOTAL	**$3,070,000**

Local Government Impact

Local governments receive 15 percent of revenue collected from the 10 percent special sales tax on retail marijuana. For FY 2015-16, this amount is expected to be $6.3 million, or about $17,250 per day. On September 16, 2015, the special sales tax rate will be temporarily reduced to zero, and local governments will receive no special sales tax revenue from marijuana sold on this date. Relative to current law, the revenue loss is expected to equal at least $17,250, and will be greater to the extent that purchases that would otherwise occur during surrounding weeks are shifted to September 16.

Beginning FY 2017-18, retail marijuana special sales tax revenue apportioned to local governments will decrease by 53 percent, the net impact of a reduction in the special sales tax rate from 10 percent to 7 percent and a reduction in the local government apportionment from

15 percent to 10 percent of special sales tax revenue. The current marijuana tax forecast period ends after FY 2016-17, when the local share of special sales tax revenue is estimated at $6.7 million. Assuming that marijuana sales grow by a similar rate in FY 2017-18 as expected in FY 2015-16 and FY 2016-17, the local government apportionment will decrease by $3.9 million in FY 2017-18 and by similar amounts in subsequent years.

Beginning FY 2015-16, local governments are eligible to receive grants from the Local Government Retail Marijuana Impact Grant Program established in the DOLA.

Conditional fiscal impact. If the ballot issue is approved, the bill appropriates $1 million to the DOLA in FY 2015-16, and specifies that this appropriation may be used for the Local Government Retail Marijuana Impact Grant Program. To the extent that the amount is used for this purpose, the bill will increase grants to local governments conditional on approval of the ballot issue.

Conditional fiscal impact. If the ballot issue is rejected, the bill further reduces revenue to local governments by $2.7 million, $3.4 million, and $1.7 million in FY 2015-16, FY 2016-17, and FY 2017-18, respectively. These figures represent the net impact of the retail marijuana special sales tax rate reduction and the reduction in the percentage of special sales tax revenue shared with local governments. The special sales tax rate is assumed to be reduced through May 4, 2016, five days after the Department of Revenue determines that sufficient revenue has been refunded on April 29, 2016, and the local share of special sales tax collections is assumed to be halved though FY 2017-18. The estimate for FY 2017-18 assumes growth in retail marijuana sales will be consistent with growth forecast for FY 2015-16 and FY 2016-17.

Expectations for the local share of special sales tax collections under current law and House Bill 15-1367 are summarized in Table 5.

Table 5. Local Share of Special Sales Tax Revenue under Current Law and HB15-1367

	FY 2015-2016	FY 2016-2017	FY 2017-2018*
Current Law	$6.3 million	$6.7 million	$7.3 million
House Bill 15-1367			
If ballot issue is approved	$6.3 million	$6.7 million	$3.4 million
If ballot issue is rejected	$3.6 million	$3.4 million	$1.7 million

**For FY 2017-18, assumes retail marijuana sales growth consistent with the forecast for FY 2015-16 and FY 2016-17.*

Effective Date

The sections requiring the state to fund poison control information dissemination and appropriating funds from the Marijuana Tax Cash Fund take effect only if voters approve the ballot issue in the bill. If the ballot issue is approved, these sections take effect on the date of the official declaration of the vote by the Governor, or on January 1, 2016, whichever is later. The section refunding revenue via a three-tier sales tax refund takes effect only if SB 15-001 becomes law, and, if so, takes effect on the effective date of this bill or SB 15-001, whichever is later.

The remainder of the bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State Appropriations

For FY 2015-16, the bill requires the following Marijuana Tax Cash Fund appropriations:

- $212,369 to the Department of Local Affairs, of which $79,770 is reappropriated to the Office of Information Technology, and an allocation of 2.0 FTE; and
- $25,440 to the Department of Revenue.

State and Local Government Contacts

Agriculture	Counties
Education	Governor's Marijuana Office
Health Care Policy and Financing	Human Services
Joint Budget Committee	Law
Local Affairs	Municipalities
Public Health and Environment	Public Safety
Revenue	State