



**Colorado  
Legislative  
Council  
Staff**

**HB16-1079**

**FISCAL NOTE**

**FISCAL IMPACT:**  State  Local  Statutory Public Entity  Conditional  No Fiscal Impact

**Drafting Number:** LLS 16-0512 **Date:** February 8, 2016  
**Prime Sponsor(s):** Rep. Becker K.; Singer **Bill Status:** House Public Health Care and Human Services  
**Fiscal Analyst:** Clare Pramuk (303-866-2677)

**BILL TOPIC:** PESTICIDE-FREE CANNABIS CERTIFICATION PROGRAM

<b>Fiscal Impact Summary</b>	<b>FY 2016-2017</b>	<b>FY 2017-2018</b>
<b>State Revenue</b>		<b><u>at least \$47,250</u></b>
Cash Funds	Potential increase.	47,250
<b>State Expenditures</b>	<b><u>\$62,731</u></b>	<b><u>\$46,576</u></b>
General Fund	56,139	0
Cash Funds	0	39,612
Centrally Appropriated Costs	6,592	6,964
<b>TABOR Impact</b>	Potential increase.	\$47,250
<b>FTE Position Change</b>	0.6 FTE	0.5 FTE
<b>Appropriation Required:</b> \$56,139 - Department of Agriculture (2016-17).		
<b>Future Year Impacts:</b> Ongoing revenue and expenditure increases.		

**Summary of Legislation**

This bill directs the Commissioner of Agriculture to promulgate rules, in consultation with the Marijuana Enforcement Division (MED) in the Department of Revenue (DOR), for a program to enable consumers to identify retail and medical marijuana and industrial hemp that have been cultivated and processed without the use of pesticides. The Colorado Department of Agriculture (CDA) will certify third parties that can determine whether the marijuana or hemp that is cultivated or processed at a particular premises or land area is free of pesticides. In addition, this bill allows marijuana product labels to include a standardized notification that the marijuana has been certified as being pesticide-free. The CDA may seek, accept, and expend gifts, grants, or donations from private or public sources for the certification program and set and collect fees to authorize a certifier.

**Background**

The CDA is a United States Department of Agriculture (USDA) accredited agency with the authority to certify crop, wild crop, process handling, and livestock categories as USDA-certified Organic. The USDA also authorizes private certification agents. Currently about 4 percent of the

food grown in the United States is certified as organically grown. Because marijuana is illegal under federal law and federal law governs whether a product can be labeled as organic, marijuana cannot be labeled as organic. Although the Controlled Substances Act does not differentiate between hemp and marijuana, the latest federal Farm Bill gave hemp a legal definition and allows hemp to be grown. As a result, hemp can be certified as organic if it complies with the USDA regulations.

### **Assumptions**

The revenue and expenditures in this fiscal note are based on the following assumptions:

- there are 750 marijuana cultivation sites statewide;
- 5 percent (38) of cultivation sites will seek certification under the bill;
- there will be an increase of 1 percent (8) cultivation sites per year;
- hemp cultivation sites will not require certification under the bill;
- bill implementation and rulemaking will begin July 1, 2016, and be completed in 12 months;
- the program will begin by July 1, 2017;
- there are currently three companies providing a pesticide-free certification that will seek state certification;
- demand for certification is not expected to expand the need for certifiers in the near term; and
- CDA will field audit certifiers annually.

### **State Revenue**

Beginning in FY 2017-18, this bill will **increase cash fund revenue from fees by at least \$47,250 deposited into the Plant Health, Pest Control, and Environmental Protection Cash Fund in the CDA.** The CDA may accept, gifts, grants, and donations as of FY 2016-17 but, as of this writing, no source of such funds has been identified.

**Fee impact on individuals and business.** State law requires legislative service agency review of measures which create or increase any fee collected by a state agency. Table 1 below identifies the fee impact of this bill given the assumptions above to cover the program costs beginning in FY 2017-18. Actual fees will be set by the CDA and may differ from the table.

<b>Table 1. Fee Impact on Individuals and Business Under HB16-1079</b>			
<b>Type of Fee (Beginning FY 2017-18)</b>	<b>Proposed Fee</b>	<b>Number Affected</b>	<b>Total Fee Impact</b>
Pesticide Free Certifying Agent Certification Fee	\$15,750	3	\$47,250
<b>TOTAL</b>			<b>\$47,250</b>

### **TABOR Impact**

This bill increases state revenue from fees and potentially grants, which will increase the amount of money required to be refunded under TABOR. TABOR refunds are paid out of the General Fund. Gifts or donations are exempt from TABOR.

**State Expenditures**

This bill will increase state expenditures by \$62,731 and 0.6 FTE in FY 2016-17 and cash fund expenditures by \$46,576 and 0.5 FTE in FY 2017-18 and thereafter. Expenditures are shown in Table 2 and explained below.

<b>Table 2. Expenditures Under HB16-1079</b>		
<b>Cost Components</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>
Personal Services	\$30,119	\$32,857
FTE	0.6 FTE	0.5 FTE
Operating Expenses and Capital Outlay Costs	5,178	475
Travel Costs	1,840	2,480
Legal Services	19,002	3,800
Centrally Appropriated Costs*	6,592	\$6,964
<b>TOTAL</b>	<b>\$62,731</b>	<b>\$46,576</b>

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

**Colorado Department of Agriculture.** The CDA will conduct stakeholder meetings and research during the rule development process in FY 2016-17. This will require meetings around the state with associated travel costs. Rulemaking will require 200 hours of legal services from the Department of Law at a rate of \$95.01 per hour. This number of legal services hours requires the allocation of 0.1 FTE to the Department of Law in FY2016-17 only. Beginning in FY 2017-18, the CDA will require 40 hours of legal services to support program implementation. Because the CDA has insufficient cash funds in FY 2016-17, General Fund moneys are required.

An additional 0.5 FTE in the CDA staff will develop an application form and begin accepting applications by July 1, 2017. Once certifications are processed, CDA staff will conduct onsite audits of cultivation sites seeking to have their marijuana certified as pesticide-free to evaluate the effectiveness of the certifiers.

**Marijuana Enforcement Division, Department of Revenue.** The MED will have a workload increase to assist the CDA in the development of rules required by the bill. This workload can be addressed within existing appropriations.

**Colorado Department of Public Health and Environment (CDPHE).** The bill will increase the workload of the CDPHE when certifying licensed medical and retail marijuana testing labs. The amount of the workload increase will depend on the final rules adopted by the CDA but are expected to be addressed within existing appropriations.

**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.

<b>Table 3. Centrally Appropriated Costs Under HB16-1079</b>		
<b>Cost Components</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$4,015	\$4,020
Supplemental Employee Retirement Payments	2,577	2,944
<b>TOTAL</b>	<b>\$6,592</b>	<b>\$6,964</b>

### **Technical or Mechanical Defects**

The addition of the pesticide-free labels conflicts with existing labeling statutes and authority to promulgate rules on the matter. As the regulating body of pesticides in Colorado, CDA has the subject matter expertise regarding correct terminology for pesticides and other substances used in the production of agricultural products that impact the concept of "organic." However, existing language in both marijuana codes constrains CDA's and DOR's ability to develop rules due to existing statutory language that is inaccurate or contradicts with other pesticide enforcement priorities. For example, the term "nonorganic" is not used and does not have meaning in the pesticide industry but is included in both the Medical Marijuana and Retail Marijuana Codes. Furthermore, the existing pesticide labeling statutes are different between the two codes. The difference in statutes also impedes the ability to develop consistent rules.

### **Effective Date**

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

### **State Appropriations**

For FY 2016-17, the Department of Agriculture requires a General Fund appropriation of \$56,139 and an allocation of 0.5 FTE. The Department of Law requires \$19,002 in reappropriated funds and an allocation of 0.1 FTE.

### **Departmental Difference**

The assumptions used by the CDA and the fiscal impact based on those assumptions differ from this fiscal note. The CDA assumes that a higher number of cultivation sites (1,500) will seek certification and that 24 certifiers will be required to meet the demand. They suggest that implementation of the bill requires 1.0 FTE, 500 hours of legal services, and a vehicle for making quarterly site visits to audit the certifiers at a total cost of \$134,421 in FY 2016-17 and \$110,894 in FY 2017-18. This fiscal note assumes that the 1,500 cultivation sites represent 750 sites that are dual licensed and that only 5 percent will want to pursue pesticide-free certification.

### **State and Local Government Contacts**

Agriculture	Information Technology	Law
Public Health and Environment	Revenue	

**Research Note Available**

An LCS Research Note for House Bill16-1079 is available online and through the iLegislate app. Research notes provide additional policy and background information about the bill and summarize action taken by the General Assembly concerning the bill.