

**STATE and LOCAL
FISCAL IMPACT**

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Prime Sponsor(s): Rep. Pabon

Bill Status: House SVMA

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TITLE: 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.

Fiscal Impact Summary	FY 2013-2014	FY 2014-2015
State Revenue	<u>\$5,053,774</u>	<u>\$8,187,896</u>
General Fund - Reduction	(1,509,736)	(3,019,472)
Cash Funds		
Marijuana Cash Fund - Sales Tax Revenue	4,154,759	8,309,519
Marijuana Cash Fund - Application & Licencing Revenue	2,250,000	2,750,000
CBI Identification Unit Fund	158,751	147,849
<i>Marijuana Cash Fund - Base Revenue*</i>	<i>2,000,000</i>	<i>1,700,000</i>
State Expenditures	<u>\$829,440</u>	<u>\$959,698</u>
Cash Funds		
Marijuana Cash Fund - New Expenditures	673,680	818,505
CBI Identification Unit Fund	155,760	141,193
<i>Marijuana Cash Fund - Base Expenditures*</i>	<i>5,653,838</i>	<i>5,653,838</i>
FTE Position Change	3.9 FTE	4.0 FTE
<i>FTE Existing Appropriation *</i>	<i>55.2 FTE</i>	<i>55.2 FTE</i>
Effective Date: Upon signature of the Governor, or upon becoming law without his signature.		
Appropriation Summary for FY 2013-2014: See State Appropriations section.		
Local Government Impact: See Local Government Impact section.		

** Revenue, expenditures, and FTE from existing medical marijuana program are shown for informational purposes and have been excluded from the total figures.*

Summary of Legislation

Amendment 64, passed by the voters in November 2012, allows for an adult 21 years or older to consume or possess up to 1 ounce of marijuana and requires that a regulatory structure be established. Beginning January 1, 2014, the cultivation, processing, and retail sale of marijuana are allowed in Colorado. This bill implements major provisions of Amendment 64 by creating the Colorado Retail Marijuana Code. It renames the Medical Marijuana Enforcement Division (MMED) in the Department of Revenue (DOR) as the Marijuana Enforcement Division (MED) and gives the MED the authority to regulate both medical and retail marijuana. It creates a regulatory system for

retail marijuana under which existing medical marijuana businesses have the option to convert to retail businesses or to operate both medical and retail businesses. Colorado residents may purchase up to 1 ounce of marijuana in a single transaction but nonresidents are limited to purchases of no more than 1/4 of an ounce in a single transaction. Retail marijuana cannot contain nicotine or alcohol. Retail stores must put each item sold in a sealed, opaque container. The Colorado Retail Marijuana Code is scheduled to repeal July 1, 2015, after a sunset review.

State licensing. As required by Amendment 64, this bill requires that the DOR adopt rules regarding retail marijuana by July 1, 2013, and begin taking license applications no later than October 1, 2013. The MED must act on a license application between 45 and 90 days after receipt of an application. Until January 1, 2013, only medical marijuana businesses in good standing may apply for a retail license. New license types are created for retail marijuana stores, products manufacturers, cultivation facilities, and testing facilities. All owners, officers, managers and employees of a retail marijuana business must meet certain requirements, including Colorado residency, and pass a fingerprint-based criminal history check. Licensed retail marijuana testing facilities are prohibited from having an interest in any other type of medical or retail marijuana business. All licensed retail marijuana businesses must procure a \$5,000 surety bond as a guarantee that the business will pay its sales and excise taxes.

While medical marijuana regulation requires common ownership between dispensaries and cultivation facilities, the retail marijuana code allows licensed retail marijuana stores and products manufacturers to either grow their own marijuana or purchase it from a retail marijuana cultivation facility. Testing of retail marijuana by licensed laboratories is optional. No transfers of retail marijuana from cultivation or production facilities can be made without proof that the excise tax has been paid on the product. DOR rules may address a range of topics including licensing, fees, security, labeling, health and safety standards, advertising, enforcement, penalties, inspection procedures, and audits. DOR may limit the number of licenses that it issues as well as limit the amount of production permitted by a retail marijuana cultivation licensee. Any limits on licenses and production may be changed by DOR in the future.

Local licensing. Unlike the state and local licensing requirements for medical marijuana businesses, local jurisdictions are not required to set up a licensing program for retail marijuana businesses. The MED will forward all applications for original or renewal licenses to the applicable local jurisdiction to determine whether the application complies with local restrictions on the time, place, manner, and number of retail marijuana businesses allowed. The local jurisdiction notifies the MED if the application is compliant. Public hearings may be held for all new license applications. Local jurisdictions are also permitted to prohibit such businesses entirely. If a local jurisdiction does choose to license retail marijuana businesses, new businesses will not be permitted to operate until both the state and local licenses are issued. If the local license is not issued within 1 year of the conditional state license being issued, the conditional state license expires; if the local application is denied, the conditional state license is revoked. Local jurisdictions are permitted to charge operational fees for inspection, administration and enforcement of retail marijuana businesses.

Funding sources for marijuana regulation. House Bill 13-1317 requires that all sales taxes from retail marijuana sales, plus application and licensing fees from marijuana businesses, be used to fund the MED in the DOR. This includes sales taxes that would otherwise be credited to the General Fund. The application fee for existing medical marijuana businesses that want to apply for a retail marijuana licence is set at \$500. All other applicants are required to pay a \$5,000 application fee. The MED must remit 50 percent of any application fee to the local jurisdiction where the business will be located. The bill appropriates the balance of the Medical Marijuana License Cash Fund as of July 1, 2013, to the MED and allows the MED to receive moneys from the General Fund if revenues from other sources are insufficient. If the MED receives a General Fund appropriation, the MED will repay that amount when it becomes self sufficient and generates excess revenue. Beginning September 30, 2014, and annually thereafter, the DOR must report to the Joint Budget Committee and the House and Senate Finance Committees detailing the amount of revenue generated by medical and retail marijuana, including excise taxes, sales taxes, application and license fees, and any other fees. The report must also discuss the progress in establishing the regulatory environment for marijuana in Colorado.

Unlawful acts. The bill identifies a number of unlawful acts including consuming marijuana in a licensed retail marijuana business, buying or selling marijuana outside of the regulated system, selling to a person under 21, and failing to pay the lawful excise tax. A person who commits any of these acts commits a Class 2 misdemeanor. In addition, state and local agencies are not required to care for any retail marijuana or retail marijuana product belonging to or seized from a licensed business.

Background

The regulatory program for medical marijuana is currently appropriated nearly \$6 million annually with 55.2 FTE, but only has revenues of about \$1.7 million annually. The current fund balance is approximately \$3.5 million. Due to this inadequate revenue stream, only about 14 positions are currently filled and the MMED has been operating at significantly less than its appropriated amount. Because this bill builds the marijuana enforcement system with the medical marijuana enforcement system as its base, revenues will need to increase to both address new expenditures for implementing the bill and the revenue shortfall of the existing medical marijuana program. As such, the revenue generated by this bill will be used to address the funding shortfall in the existing medical marijuana program.

State Revenue

This bill is expected to increase state revenue by a total of \$5,053,774 in FY 2013-14 and \$8,187,896 in FY 2014-15. The revenue sources are described below.

Sales Tax Revenue. Based on data from the Substance Abuse and Mental Health Association's National Survey on Drug Use and Health, sales of retail marijuana under the bill is expected to increase revenue by \$4,154,759 in FY2013-14 and \$8,309,519 in FY 2014-15 under the state's existing 2.9 percent sales tax. The bill allocates this revenue to the Marijuana Cash Fund instead of the General Fund.

Because an estimated 54 percent of medical marijuana sales are expected to shift to the retail marijuana market, General Fund revenue from the 2.9 percent sales tax levied on medical marijuana purchases is expected to be reduced by \$1,509,736 in FY 2013-14 and \$3,019,472 in FY 2014-15.

Fee Impact on Individuals, Families or Business. 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. This fiscal note illustrates total fee revenue in Table 1. The DOR will set specific fees by rule, so actual collections may vary.

Because this bill requires licence applicants to obtain fingerprint-based criminal history record checks, the Department of Public Safety is expected to have an increase in revenue to the CBI Identification Unit Fund of \$158,751 in FY 2013-14 and \$147,849 in FY 2014-15. This is also shown in Table 1.

Table 1. Fee Impact on Marijuana Businesses		
Type of Fee	FY 2013-2014	FY 2014-2015
Application Fee Revenue	250,000	250,000
License Fee Revenue	2,000,000	2,500,000
Fingerprint-based Criminal History Record Check	158,751	147,849
TOTAL	\$2,408,751	\$2,897,849

Fines. This bill may increase state cash fund revenue credited to the Fines Collection Cash Fund in the Judicial Department. Per Section 18-1.3-501 (1)(a), C.R.S., the fine penalty for a class 2 misdemeanor is \$250 to \$1,000. Unless otherwise provided by law, the fines are to be deposited into the state Fines Collection Cash Fund for annual appropriations to cover associated administrative and personnel costs. All unexpended balances of the cash fund revert to the state General Fund at the end of each fiscal year. Because the courts have the discretion of incarceration or imposing a fine, and the timing of payments are established on a per-offender basis, the actual impact cannot be determined.

State Expenditures

This bill is expected to increase cash fund expenditures by \$829,440 and 3.9 FTE in FY 2013-14 and \$949,698 and 4.0 FTE in FY 2014-15 and thereafter. Expenditure details are shown in Table 2 and described below.

Cost Components	FY 2013-14	FY 2014-15
Personal Services	\$163,934	\$163,934
FTE	3.9	4.0
Operating Expenses and Capital Outlay	19,220	3,230
Legal Services	83,338	104,287
Information Technology Services	445,532	582,106
Fingerprint Equipment and Services	48,088	41,574
FBI Background Check (pass through)	69,328	64,567
TOTAL	\$829,440	\$959,698

Marijuana Enforcement Division, Department of Revenue. The MED is expected to increase expenditures over the currently appropriated \$5.98 million and 55.2 FTE by \$673,680 and 2.7 FTE in FY 2013-14 and \$818,505 and 2.7 FTE in FY 2014-15 from the Marijuana Cash Fund.

The increased staffing for the MED will support the maintenance of separate financial records for medical and retail marijuana and ensure compliance with procurement codes and fiscal rules. Programming services purchased from vendors and the Office of Information Technology total \$445,532 in FY 2013-14 and \$582,106 in FY 2014-15 and thereafter. This will cover changes to the GenTax system and the MED inventory tracking and licensing systems to include retail marijuana. It will also allow the MED to establish connectivity to 3 new satellite offices. Leased space expenditures for expanding the Denver office are shown below in the Expenditures Not Included section and will be centrally appropriated.

Adding the authority to regulate retail marijuana to the DOR is expected to require additional legal services support for developing rules, enforcing disciplinary actions, resolving appeals of negative license actions, and participating in the sunset review. Provided by the Department of Law, these are estimated at 915 hours in FY 2013-14 at a rate of \$91.08 per hour for a total of \$83,338 and 1,145 hours in FY 2014-15 at a cost of \$104,287. The Department of Law requires an additional 0.5 FTE in FY 2013-14 and 0.6 FTE in FY 2014-15 and thereafter.

Colorado Bureau of Investigation, Department of Public Safety. The CBI will have additional expenditures of \$155,760 and 0.7 FTE in FY 2013-14 and \$141,193 and 0.7 FTE in FY 2014-15 and thereafter. The CBI will increase staff to address an increase in the number of fingerprint-based criminal history record checks that will be required as retail marijuana license applications are made. This increase in checks is estimated to be approximately 4,000 per year. The increased costs include training and specialized equipment used by fingerprint examiners, as well as funds transferred to the FBI for the federal background check.

Judicial Branch. Because this bill creates a new Class 2 misdemeanor for illegal acts related to retail marijuana, the Office of the State Public Defender will have an increase in clients and the Probation Division will have an increase in caseload. Trial courts may be required to conduct judicial reviews of MED decisions. Workload increases in the Judicial Branch are expected to be addressed within existing appropriations. If that is not the case, the fiscal note assumes that the Judicial Branch will request additional appropriations during the annual budget process.

Expenditures Not Included

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 summarized in Table 3.

Table 3. Expenditures Not Included Under HB13-1317*		
Cost Components	FY 2013-14	FY 2014-15
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$22,802	\$22,802
Supplemental Employee Retirement Payments	10,063	11,384
Indirect Costs	3,439	3,439
Leased Space	175,000	175,000
TOTAL	\$211,304	\$212,625

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

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. House Bill 13-1317 adds 22 new crimes based primarily on the new regulatory structure for retail marijuana. The fiscal note assumes that the majority of retail licensees and their employees will comply with the bill in order to maintain their licenses and avoid penalties or will be subjected to administrative rather than criminal penalties. As such, the increase in cases resulting from these new crimes is expected to be minimal.

Local Government Impact

This bill is expected to increase both revenue and expenditures to local governments as described below.

Licensing. Local governments that allow the licensing of retail marijuana facilities, regardless of whether they require local licensing, will share in the application fees submitted by applicants and will have increased revenue from local sales tax on retail marijuana sales. For local governments that require local licensing, they will be able to collect operational fees from licensed marijuana businesses to fund their licensing systems. Revenue increases are dependent on how local governments choose to address the implementation of Amendment 64 and this bill.

Misdemeanor Offenses. By adding 22 new crimes, this bill may increase the number of individuals incarcerated in county jails. The penalty for a class 2 misdemeanor is 3 to 12 months imprisonment in a county jail, a fine of \$250 to \$1,000, or both. Because the courts have the discretion of incarceration or imposing a fine, the impact at the local level cannot be determined. The cost to house an offender in county jails varies from \$45 to \$50 per day in smaller rural jails to \$62 to \$65 per day for larger Denver-metro area jails.

State Appropriations

For FY 2013-14, the following appropriations are required:

- \$673,680 and 2.7 FTE to the Department of Revenue from the Marijuana Cash Fund;
- \$83,338 in reappropriated funds to the Department of Law with an allocation of 0.5 FTE; and
- \$155,760 and 0.7 FTE to the Department of Public Safety from the CBI Identification Unit Fund.

Departments Contacted

Agriculture	District Attorneys
Counties	Municipalities
Corrections	Education
Higher Education	Governor
Human Services	Judicial Branch
Law	Revenue
Public Safety	Secretary of State
State Auditor	Transportation
Sheriffs	Regulatory Agencies
Personnel and Administration	Public Health and Environment