# HB 23-1061

Legislative Council Staff

*Nonpartisan Services for Colorado's Legislature*

# Fiscal Note

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|---|---|---|---|
| **Drafting Number:** | LLS 23-0463 | **Date:** | February 6, 2023 |
| **Prime Sponsors:** | Rep. Daugherty<br>Sen. Zenzinger | **Bill Status:** | House Business |
| | | **Fiscal Analyst:** | Anna Gerstle \| 303-866-4375<br>anna.gerstle@coleg.gov |

**Bill Topic:** **ALCOHOL BEVERAGE RETAIL ESTABLISHMENT PERMIT**

**Summary of Fiscal Impact:**

☒ State Revenue
☒ State Expenditure
☐ State Transfer
☒ TABOR Refund
☒ Local Government
☐ Statutory Public Entity

The bill expands the art gallery permit to include retail establishments that meet certain criteria. The bill increases state and local revenue and expenditures on an ongoing basis.

**Appropriation Summary:** For FY 2023-24, the bill requires an appropriation of $98,744 to the Department of Revenue.

**Fiscal Note Status:** The fiscal note reflects the introduced bill.

**Table 1**
**State Fiscal Impacts Under HB 23-1061**

| | | Budget Year FY 2023-24 | Out Year FY 2024-25 |
|---|---|---|---|
| **Revenue** | Cash Funds | $188,813 | $283,219 |
| | **Total Revenue** | **$188,813** | **$283,219** |
| **Expenditures** | Cash Funds | $98,744 | $111,579 |
| | Centrally Appropriated | $22,643 | $28,063 |
| | **Total Expenditures** | **$121,387** | **$139,642** |
| | **Total FTE** | **1.4 FTE** | **1.7 FTE** |
| **Transfers** | | - | - |
| **Other Budget Impacts** | TABOR Refund | $188,813 | $283,219 |

## Summary of Legislation

Under current law, an art gallery permit allows a gallery to offer complimentary alcohol beverages for consumption on the premises. Among other requirements, a permitted art gallery may not serve alcohol more than 4 hours a day on up to 15 days per year, and may not sell alcohol by the drink.

The bill expands the art gallery permit into a retail establishment permit that is available to any business that sells goods or services to the public, has a physical location in Colorado, and receives less than 50 percent of its gross sales from food. The bill also changes the permit to allow the establishment to serve alcohol up to 24 days per year, and to prohibit the sale of alcohol in any form.

## Background and Assumptions

As of January 3, 2023, there are 78 art gallery permits statewide. Art gallery permits are dually issued by the Liquor Enforcement Division (LED) in the Department of Revenue and local licensing authorities.

Based on North American Industry Classification System data, there are approximately 26,500 retailers in Colorado that are eligible for the retail establishment permit and in industries assumed to be potentially pursue the permit. The fiscal note assumes that 10 percent (2,650) in FY 2023-24 and 15 percent (3,975) in FY 2024-25 will obtain the permit.

The fiscal note further assumes that due to the large expansion of eligible businesses and the additional number of days in which alcohol can be served, the LED will conduct compliance checks at 10 percent of permittees, and that current rates of art gallery complaints will apply to the expanded permit.

## Comparable Crime Analysis

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 creates a new factual basis for an existing crime. Using Judicial Department data, the following section outlines crimes that are comparable to the offense in this bill and discusses assumptions on future rates of criminal convictions resulting from the bill.

**Prior conviction data and assumptions.** This bill modifies a factual basis for the existing offense of public consumption of alcohol by expanding the exemption for art gallery permittees to include retail establishment permittees. From FY 2019-20 to FY 2021-22, 24 offenders have been sentenced and convicted for this offense. The fiscal note assumes that these cases did not occur at retail establishments; therefore, there will be minimal or no change in criminal case filings or convictions for this offense under the bill. Because the bill is not expected to have a tangible impact on criminal justice-related revenue or expenditures at the state or local levels, these potential impacts are not discussed further in this fiscal note. Visit leg.colorado.gov/fiscalnotes for more information about criminal justice costs in fiscal notes.

## State Revenue

The bill increases state revenue by $188,813 in FY 2023-24 and $283,219 in FY 2024-25 from permit fees paid to the LED Cash Fund and Old Age Pension Fund.

**Fee impact on retail establishment permittees.** Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. The permit fee is set in statute at $50, which is deposited in the LED Cash Fund. The state also receives a portion of the local permit fee, which is deposited in the Old Age Pension Fund, for a total of $71.25 in state revenue for each permit. Actual revenue will be based on the actual number of permits issued. Table 2 below identifies the fee impact of this bill.

**Table 2**
**Fee Impact on Retail Establishment Permittees**

| Fiscal Year | Type of Fee | Actual Fee | Number Affected | Total Fee Impact |
|---|---|---|---|---|
| FY 2023-24 | Retail Establishment Permit Fee | $71.25 | 2,650 | $188,813 |
| FY 2024-25 | Retail Establishment Permit Fee | $71.25 | 3,975 | $283,219 |

**Fine revenue.** The expanded permit may result in additional fine revenue from violations. The fiscal note assumes that most permittees will comply with the permit requirements, and that any fine revenue will be minimal.

## State Expenditures

The bill increases state expenditures in DOR by $121,387 in FY 2023-24 and $139,642 in FY 2024-25 and each year thereafter, paid from the LED Cash Fund. Expenditures are shown in Table 2 and detailed below.

**Table 3**
**Expenditures Under HB 23-1061**

| | FY 2023-24 | FY 2024-25 |
|---|---|---|
| **Department of Revenue** | | |
| Personal Services | $77,154 | $99,744 |
| Operating Expenses | $1,890 | $2,295 |
| Capital Outlay Costs | $13,340 | - |
| Minor Contractors | $6,360 | $9,540 |
| Centrally Appropriated Costs[1] | $22,643 | $28,063 |
| **Total Cost** | **$121,387** | **$139,642** |
| **Total FTE** | **1.4 FTE** | **1.7 FTE** |

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

**Department of Revenue.** LED requires 1.4 FTE in FY 2023-24 and 1.7 FTE in FY 2024-25 and ongoing to handle permit applications, administer online trainings, log additional event dates, conduct compliance checks, and enforce complaints. Staffing levels in the first year are prorated for a September 1 start date, and standard operating and capital outlay expenses are included. In addition, LED will require minor contractors for underage service checks at permittee locations, paid at a rate of $24 per check. Should compliance checks reveal a high level of non-compliance, resources for additional compliance checks may be requested through the annual budget process. Finally, in FY 2023-24 only, DOR will require additional hours of legal services for rulemaking, which can be accomplished within current resources. Legal services are provided by the Department of Law.

**Judicial Department.** To the extent the bill increases cases challenging an agency permit decision, workload for the trial courts will increase by a minimal amount. No change in appropriations is required.

**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. These costs, which include employee insurance and supplemental employee retirement payments, are shown in Table 3.

## Other Budget Impacts

**TABOR refunds.** The bill is expected to increase the amount of state revenue required to be refunded to taxpayers by the amounts shown in the State Revenue section above. This estimate assumes the December 2022 LCS revenue forecast. A forecast of state revenue subject to TABOR is not available beyond FY 2024-25. Because TABOR refunds are paid from the General Fund, increased cash fund revenue will reduce the amount of General Fund available to spend or save.

## Local Government

The bill increases workload for local licensing authorities to process additional permit applications, and will increase revenue from the portion of permit fee ($3.75) that is retained by the local licensing authority. The impact will vary among jurisdictions based on the number of new permit applications received.

## Effective Date

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed.

## State Appropriations

For FY 2023-24, the bill requires an appropriation of $98,744 from the Liquor Enforcement Division Cash Fund to the Department of Revenue, and 1.4 FTE.

## Departmental Difference

The Department of Revenue estimates that 5.2 FTE and $512,989 will be required to implement the bill. The estimate is based on the assumption that the population of potential permit applicants is 70,400, based on data from the National Retail Federation, for a population of 7,040 permit applications in the first year. The DOR assumes that compliance checks will be completed at 40 percent of permittees and that 30 minutes of training and outreach will be provided to each permittee. Costs also include equipment and vehicles for 3.0 FTE Criminal Investigator I.

The fiscal note estimates that 1.4 FTE in FY 2022-23 and 1.7 FTE in subsequent years are required to implement the bill. This estimate assumes a smaller population of businesses that are likely to apply for the permit (26,500), for a population of 2,650 permit applications in the first year. The fiscal note also assumes the LED will adopt a virtual webinar model for training, and that compliance checks will be completed at 10 percent of permittees. Equipment and vehicle costs for Criminal Investigator are not included, as the required investigator FTE is less than 0.5 FTE.

## State and Local Government Contacts

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| Counties | Information Technology | Judicial |
| Law | Municipalities | Revenue |