

Proposition BB

Colorado *Legislative Council Staff*
FISCAL IMPACT STATEMENT

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TITLE: RETAIN REVENUE IN EXCESS OF BLUE BOOK ESTIMATE

Ballot Issue: May the state retain and spend state revenues that would otherwise be refunded for exceeding an estimate included in the ballot information booklet for Proposition AA and use these revenues to provide forty million dollars for public school building construction and for other needs, such as law enforcement, youth programs, and marijuana education and prevention programs, instead of refunding these revenues to retail marijuana cultivation facilities, retail marijuana purchasers, and other taxpayers?

Fiscal Consequences of the Passage or Failure of Proposition BB

The following table summarizes the consequences of the passage or failure of Proposition BB. If the measure is approved, the state will have more money available to spend on government programs. If the measure fails, \$66.1 million will be refunded to taxpayers.

If Proposition BB Passes ("Yes" Vote)	If Proposition BB Fails ("No" Vote)
<ul style="list-style-type: none">• \$40.0 million will be spent on school construction;• \$12.0 million will be spent to fund the state programs listed on page 5; and• \$14.1 million has not yet been allocated and will be available for future appropriation.	<ul style="list-style-type: none">• \$25.0 million will be refunded to Colorado residents who file a 2015 state income tax return;• \$24.0 million will be refunded to retail marijuana cultivators; and• \$17.1 million will be refunded to retail marijuana purchasers through a temporary reduction in the retail marijuana sales tax rate.

The passage or failure of Proposition BB determines specific changes to state law. The paragraphs below describe the changes to state fiscal policy under either outcome.

If Proposition BB passes. If Proposition BB passes, the state will not be required to refund \$66.1 million to taxpayers. Spending on state and local programs in state fiscal year (FY) 2015-16 will increase by \$52.0 million, including \$40.0 million for public school capital construction projects and \$12.0 million for the education, health care, and public safety programs listed on page 5. The remaining \$14.1 million is not yet allocated within the state budget, but will be available for future use.

If Proposition BB fails. If Proposition BB fails, the state will be required to refund \$66.1 million in FY 2015-16. The refund will occur as follows:

- \$25.0 million, averaging \$8 per taxpayer, will be available as a refund to all year-round resident taxpayers on 2015 state income tax forms;
- \$24.0 million will be refunded to retail marijuana cultivators; and

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- \$17.1 million will be refunded via a temporary reduction in the retail marijuana sales tax rate from 10.0 percent to 0.1 percent effective January 1, 2016. The rate reduction will continue until taxes are reduced by \$17.1 million.

The remainder of this fiscal impact statement summarizes changes in revenue, transfers between government funds, and department expenditures to state and local governments by fiscal year. For the purposes of this document, the fiscal impact of Proposition BB's passage is presented relative to its failure. Without Proposition BB, the Colorado Constitution requires a refund to taxpayers in FY 2015-16. Because refunds are accounted for as expenditures, Proposition BB is reflected as reducing state spending in the table below. Additionally, the \$40.0 million that Proposition BB designates for public school capital construction is shown as a transfer; to the extent that this amount is spent in FY 2015-16, the amount by which state spending is reduced will be less than shown.

Fiscal Impact Summary*	Fiscal Year 2015-16	Fiscal Year 2016-17
State Revenue	<u>\$1.5 million</u>	<u>\$0</u>
Marijuana Tax Cash Fund	1.5 million	
State Transfers		
General Fund	(32.8 million)	
Public School Capital Construction Fund	40.0 million	
Marijuana Tax Cash Fund	(7.2 million)	
State Spending	<u>(\$51.1 million)</u>	<u>\$3.6 million</u>
General Fund	(37.0 million)	
Marijuana Tax Cash Fund	(14.1 million)	3.6 million
FTE Position Change	0.9 FTE	(0.2 FTE)
Local Government Impact: Increased retail marijuana special sales tax distributions and potential retail marijuana impact grants from the Department of Local Affairs.		

* This summary shows changes attributable to the passage of Proposition BB relative to its failure. State fiscal years run from July 1 to June 30. Transfers result in no net change to state revenue. Parentheses indicate a decrease in funds.

Summary of Measure

Under current law, the state is required to refund \$66.1 million in FY 2015-16 because FY 2014-15 state spending exceeded the estimate provided to voters in the 2013 ballot information booklet (Blue Book) for Proposition AA. Proposition BB, if approved, allows the state to retain and spend this amount.

The measure confers authority to the state to forego refunds of money set aside in the General Fund Proposition AA refund account pursuant to Senate Bill 15-249 and House Bill 15-1367. Instead, \$40 million will be transferred to the Public School Capital Construction Assistance Fund (BEST Fund), \$12 million will be appropriated for expenditure on a collection of state programs, and the remainder will revert to the General Fund.

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Background. The Colorado Constitution requires voters to approve new taxes and to receive the following two estimates in the Blue Book prior to voting:

- state fiscal year spending, defined as overall state revenue under the state's constitutional spending limit (the Referendum C cap); and
- revenue from the new taxes.

If voters approve the tax and either estimate is exceeded, the state must refund the excess up to the amount of revenue collected from the new taxes. The state can ask voters for permission to keep and spend the refund amount. The refund requirement applies only in the first full fiscal year for which taxes are collected.

In 2013, voters approved Proposition AA, which authorized new excise and special sales taxes on retail marijuana. In FY 2014-15, state revenue under the Referendum C cap totaled \$12.35 billion, exceeding the \$12.08 billion estimate published in the Proposition AA Blue Book. The constitution requires that the excess, up to the amount of new taxes collected, be refunded to taxpayers in FY 2015-16. Revenue from Proposition AA taxes totaled \$66.1 million in FY 2014-15.

HB15-1367 referred Proposition BB to voters. The bill established uses for the refund amount should Proposition BB pass, as well as mechanisms to implement the refund should Proposition BB fail. For the purposes of this fiscal note, a scenario in which Proposition BB fails is considered current law. Under this scenario, \$66.1 million will be refunded as follows:

- \$24.0 million will be refunded from the General Fund Proposition AA refund account to marijuana cultivators who remitted retail marijuana excise taxes in FY 2014-15;
- \$17.1 million will be refunded via a reduction on the retail marijuana special sales tax rate from 10.0 percent to 0.1 percent beginning January 1, 2016, and continuing until the month after the Department of Revenue (DOR) determines that the rate reduction completed the disbursement of \$17.1 million; and
- \$25.0 million will be refunded via a sales tax refund available to all full-year resident Colorado taxpayers on income tax returns for tax year 2015.

While the state is required to refund \$66.1 million, the balance of the Proposition AA refund account is \$58.0 million. The difference between these two amounts will be absorbed by the General Fund and the Marijuana Tax Cash Fund (MTCF). To offset the \$17.1 million refunded via the retail marijuana special sales tax rate reduction, \$13.3 million will be transferred from the Proposition AA refund account to the MTCF on January 1, 2016. The remaining \$3.8 million reduction in retail marijuana special sales tax collections will be absorbed by the MTCF. Additionally, the \$4.3 million difference between the \$25.0 million sales tax refund and the \$20.7 million remaining in the Proposition AA refund account after refunds to cultivators and the transfer to the MTCF will be absorbed by the General Fund.

Fiscal Impact

State revenue. The measure is expected to increase state revenue from taxes paid on retail marijuana by \$1.5 million in FY 2015-16. Under current law, \$17.1 million of the \$66.1 million required to be refunded in FY 2015-16 will be refunded via a reduction in the retail marijuana special sales tax rate from 10.0 percent to 0.1 percent beginning January 1, 2016. On the third business day of each month between February and June, 2016, the DOR is required to determine whether the state has foregone \$17.1 million in special sales tax revenue as a result of the rate reduction. The rate reduction expires on the fifth day after this trigger is determined to have been reached.

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Based on the June 2015 Legislative Council Staff forecast, the retail marijuana special sales tax rate reduction is expected to refund \$17.1 million by mid-May of 2016. Because the tax rate will not return to 10.0 percent until June 8, 2016, the state is expected to forego approximately \$1.5 million in revenue beyond what is required to be refunded. Proposition BB eliminates the special sales tax rate reduction, precluding this revenue decrease.

State transfers. Proposition BB requires a \$40.0 million transfer to the BEST Fund on January 1, 2016, and eliminates a current law transfer of \$13.3 million to the MTCF that would otherwise occur on the same day. Under Proposition BB, the reduced General Fund transfer to the MTCF is partially offset by the elimination of a current law requirement reducing the annual transfer of retail marijuana special sales tax revenue to the MTCF by \$6.1 million in FY 2015-16. On net, the measure decreases General Fund transfers to the MTCF by \$7.2 million.

In FY 2019-20, transfers of retail marijuana special sales tax revenue from the General Fund to the MTCF will decrease by \$6.1 million. Under current law, retail marijuana special sales tax revenue is deposited in the General Fund before being transferred to the MTCF. To reimburse the General Fund for its contribution to the Proposition AA refund account, current law reduces transfers by \$6.1 million annually between FY 2015-16 and FY 2018-19. Proposition BB reschedules the reductions of these transfers so that they occur between FY 2016-17 and FY 2019-20. Proposition BB does not affect the amount by which transfers are reduced between FY 2016-17 and FY 2018-19.

State spending. The measure is expected to reduce overall state spending by approximately \$51.1 million in FY 2015-16 and increase spending by approximately \$3.6 million in FY 2016-17. Changes to state expenditures under Proposition BB are summarized in Table 1 and detailed beginning on page 4.

Table 1. Changes to State Expenditures Under Proposition BB.		
	FY 2015-16	FY 2016-17
Refund for exceeding Prop AA Blue Book estimate	(\$66,100,000)	
<i>Retail marijuana special sales tax rate reduction</i>	<i>(17,100,000)</i>	
<i>Refund to marijuana cultivators</i>	<i>(24,000,000)</i>	
<i>Sales tax refund</i>	<i>(25,000,000)</i>	
HB15-1367 programs (listed below)	12,000,000	
FTE	1.0 FTE	
Special sales tax disbursements to local governments	3,000,000	3,600,000
Department of Revenue	(17,215)	(23,936)
<i>Personal services</i>	<i>(8,735)</i>	<i>(23,936)</i>
FTE	<i>(0.1 FTE)</i>	<i>(0.2 FTE)</i>
<i>Computer programming</i>	<i>(8,480)</i>	
TOTAL	(\$51,117,215)	\$3,576,064

Refund reductions. Proposition BB confers authority to the state to forego refunds of \$66.1 million that would otherwise be required under current law. Of this, \$17.1 million would be refunded via a temporary reduction in the retail marijuana special sales tax rate from 10.0 percent to 0.1 percent effective between January and June 2016, reducing collections to the MTCF. \$24.0 million would be paid from the General Fund directly to marijuana cultivators who remitted

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retail marijuana excise taxes in FY 2014-15, and \$25.0 million would be made available to full-year resident Colorado taxpayers on income tax returns for tax year 2015, reducing collections to the General Fund.

HB15-1367 program funding. Pursuant to HB15-1367, Proposition BB appropriates \$12.0 million from the General Fund Proposition AA refund account in FY 2015-16 as follows:

- \$2.5 million to the Department of Public Health and Environment (CDPHE) for the marijuana education campaign;
- \$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 Local Affairs (DOLA) for grants through the Local Government Retail Marijuana Impact Grant Program; this amount is assumed to include costs associated with the program's administration;
- \$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 Grampas youth mentoring program;
- \$0.5 million to the DHS for treatment and detoxification contracts;
- \$0.5 million to the Department of Health Care Policy and Financing for grants to 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; and
- \$0.2 million to the Department of Law for the Peace Officers Standards and Training (POST) Board.

Disbursements to local governments. Proposition BB eliminates a current law provision reducing the local share of retail marijuana special sales tax revenue from 15.0 percent to 7.5 percent beginning January 1, 2016, and continuing until local governments forego \$6.3 million, the amount they received from the retail marijuana special sales tax in FY 2014-15. Further, Proposition BB eliminates the current law reduction in the retail marijuana special sales tax rate between January and June 2016. As a result of these two changes, increased disbursements to local governments are estimated at \$3.0 million in FY 2015-16 and \$3.6 million in FY 2016-17, based on the June 2015 Legislative Council Staff forecast.

Department of Local Affairs. Expenditures for the DOLA will increase by \$121,385 and 1.0 FTE for FY 2015-16; these costs are assumed to be paid from the \$1 million General Fund Proposition AA refund account appropriation in HB15-1367. Costs are for the Local Government Retail Marijuana Impact Grant Program, which is assumed to issue additional grants and require additional workload in FY 2015-16 under Proposition BB. The majority of costs, \$92,997, are for the addition of 1.0 FTE at the Program Assistant I level for additional administration of the grant program. Additionally, the DOLA requires reappropriations of \$21,803 and \$2,835 to the Office of Information Technology and the Department of Law, respectively, for information technology and legal services related to the grant program, and \$3,750 for travel, printing, and postage expenses.

Department of Revenue. MTCF expenditures for the DOR will decrease by \$17,215 and 0.1 FTE in FY 2015-16, and by \$23,936 and 0.2 FTE in FY 2016-17. These expenditures are expected for administration of the refunds required under current law and are no longer necessary

under Proposition BB. For FY 2015-16, DOR programming expenditures will decrease by \$8,480, representing 40 hours of programming in the state's GenTax computer system at a cost of \$212 per hour. Additionally, DOR will no longer assume costs for the addition of personnel at the Accountant III level to track the reduced share of retail marijuana special sales tax revenue remitted to local governments.

Local Government Impact

Retail marijuana special sales tax distributions. Proposition BB will increase the amount of retail marijuana special sales tax revenue distributed to local governments. The amount of the increase is estimated at \$3.0 million in FY 2015-16 and \$3.6 million in FY 2016-17. These estimates represent the combined impact of the retail marijuana special sales tax rate not being reduced from 10.0 percent to 0.1 percent between January and June 2016, and the elimination of the current law requirement that the local share of retail marijuana special sales tax revenue be reduced from 15 percent to 7.5 percent beginning January 1, 2016. Distributions are made in proportion to the share of retail marijuana sales occurring in each county and municipality.

Local Government Retail Marijuana Impact Grant Program. Proposition BB 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, Proposition BB will increase grants to local governments.