



**Colorado
Legislative
Council
Staff**

HB16-1079

**REVISED
FISCAL NOTE**

(replaces fiscal note dated February 8, 2016)

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

Drafting Number: LLS 16-0512
Prime Sponsor(s): Rep. Becker K.; Singer

Date: April 13, 2016
Bill Status: House Finance
Fiscal Analyst: Clare Pramuk (303-866-2677)

BILL TOPIC: PESTICIDE-FREE CANNABIS CERTIFICATION PROGRAM

Fiscal Impact Summary	FY 2016-2017	FY 2017-2018
State Revenue	Potential gifts, grants and donations.	<u>at least \$47,250</u>
Cash Funds		47,250
State Expenditures	<u>\$72,232</u>	<u>\$52,277</u>
General Fund	65,640	45,313
Centrally Appropriated Costs	6,592	6,964
TABOR Impact		\$47,250
FTE Position Change	0.7 FTE	0.5 FTE
Appropriation Required: \$65,640 - Department of Agriculture (2016-17).		
Future Year Impacts: Ongoing revenue and expenditure increases.		

Summary of Legislation

As amended by the House Public Health Care and Human Services Committee and House Finance Committee, 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 organic retail and medical marijuana. The Colorado Department of Agriculture (CDA) will certify third parties that can determine whether the marijuana that is cultivated or processed at a particular licensed premises is organic. In addition, this bill allows marijuana product labels to include a standardized notification that the marijuana has been certified as organic.

The bill exempts licensed premises that are certified as organic from testing for pesticides. A licensed premise that is certified organic under this bill cannot use the organic seal established by the United States Department of Agriculture (USDA) or imply any association with the USDA organic certification program. The CDA must inspect at least 15 percent of certified organic premises annually.

The program cannot begin accepting applications until the CDA identifies pesticides that may be used on medical and retail marijuana and the DOR has established the contaminant testing and certification program for retail marijuana. 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 for authorizing organic certifiers. The program may also be funded with marijuana tax revenue.

Background

The CDA is a 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 USDA-certified Organic.

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;
- bill implementation and rulemaking will begin July 1, 2016, and be completed in 12 months;
- private marijuana testing labs will be able to test for pesticides by January 1, 2017;
- the program will begin by July 1, 2017;
- there are currently three companies providing organic certification for marijuana that will seek state certification;
- demand for certification is not expected to expand the need for certifiers in the near term; and
- CDA will inspect 6 certified organic licensed premises 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 certifying agents. 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.

Type of Fee (Beginning FY 2017-18)	Proposed Fee	Number Affected	Total Fee Impact
Pesticide Free Certifying Agent Certification Fee	\$15,750	3	\$47,250
TOTAL			\$47,250

TABOR Impact

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

State Expenditures

This bill will increase General Fund expenditures by \$72,232 and 0.7 FTE in FY 2016-17 and by \$52,277 and 0.5 FTE in FY 2017-18 and thereafter. Although the bill allows for the program to be funded by the Marijuana Tax Cash Fund, the balance of the fund is not sufficient to cover the expenditures of this bill. Instead, program startup costs will be paid from the General Fund, continuing expenditures will be paid from the Plant Health, Pest Control, and Environmental Protection Cash Fund in the CDA. Expenditures are shown in Table 2 and explained below.

Table 2. Expenditures Under HB16-1079		
Cost Components	FY 2016-17	FY 2017-18
Personal Services	\$30,119	\$32,857
FTE	0.7 FTE	0.5 FTE
Operating Expenses and Capital Outlay Costs	5,178	475
Travel Costs	1,840	2,480
Legal Services	28,503	9,501
Centrally Appropriated Costs*	6,592	\$6,964
TOTAL	\$72,232	\$52,277

* 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 for this program is expected to be complex and will require 300 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 0.2 FTE to the Department of Law in FY 2016-17 only. Beginning in FY 2017-18, the CDA will require 100 hours of legal services to support program implementation.

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 inspections of 15 percent of licensed premises that have been certified organic. Inspection costs will be paid from the Plant Health, Pest Control, and Environmental Protection Cash Fund.

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 accomplished 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 accomplished 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.

Cost Components	FY 2016-17	FY 2017-18
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$4,015	\$4,020
Supplemental Employee Retirement Payments	2,577	2,944
TOTAL	\$6,592	\$6,964

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 \$65,640 and an allocation of 0.5 FTE. Of this amount, the Department of Law requires \$28,503 in reappropriated funds and an allocation of 0.2 FTE.

Departmental Difference

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. The CDA suggests 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 organic certification.

State and Local Government Contacts

Agriculture	Information Technology	Law
Public Health and Environment	Revenue	

Research Note Available

An LCS Research Note for House Bill 16-1079 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.