



**Colorado
Legislative
Council
Staff**

HB17-1221

**REVISED
FISCAL NOTE**

(replaces fiscal note dated March 3, 2017)

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

Drafting Number: LLS 17-0130
Prime Sponsor(s): Rep. Willett; Pabon
Sen. Aguilar

Date: March 7, 2017
Bill Status: House Appropriations
Fiscal Analyst: Clare Pramuk (303-866-2677)

BILL TOPIC: GRAY AND BLACK MARKET MARIJUANA ENFORCEMENT GRANTS

Fiscal Impact Summary	FY 2017-2018	FY 2018-2019
State Revenue Cash Funds	Minimal increase.	
State Expenditures	at least \$6,000,000	at least \$6,000,000
Cash Funds	5,945,392	5,947,757
Centrally Appropriated Costs	54,608	52,243
TABOR Impact	Minimal increase.	
FTE Position Change	1.3 FTE	1.5 FTE
Appropriation Required: \$5,945,392 - Department of Local Affairs (FY 2017-18).		
Future Year Impacts: Ongoing revenue and expenditure increase.		

Summary of Legislation

This bill, *as amended by the House Finance Committee*, creates the Gray and Black Market Marijuana Enforcement Grant Program in the Division of Local Government (division) in the Department of Local Affairs (DOLA). The bill also creates an offense for a person who is not a primary caregiver for possessing a marijuana plant that the person is growing on behalf of another person.

Grant program. The division will award grants to local law enforcement agencies and district attorneys to cover, in part or in full, investigation and prosecution costs associated with unlicensed marijuana cultivation or distribution operations conducted in violation of state law. The division is required to prioritize funding to:

- local governments in rural areas that have limited law enforcement resources to address illegal, unlicensed marijuana cultivation or distribution operations;
- support local law enforcement agencies and district attorneys in investigating and prosecuting large-scale unlicensed marijuana cultivation or distribution operations;
- provide necessary financial assistance to local law enforcement agencies and district attorneys in the investigation and prosecution of organized crime involved in unlicensed marijuana cultivation or distribution operations; and

- provide necessary financial assistance to local law enforcement agencies and district attorneys in the investigation and prosecution of unlicensed marijuana cultivation or distribution operations that divert marijuana outside of Colorado.

A rural area is defined in the bill as a county of less than 200,000 people or a municipality of less than 30,000 people that is 10 miles or more from a municipality of 50,000 people according to the most recent Census.

The division is required to adopt policies and procedures for administration of the grant program including the application process and grant award criteria.

The bill authorizes moneys from the Marijuana Tax Cash Fund to be used to fund the grant program and its administration. Any moneys not expended in a given fiscal year are retained in the fund for use in the next fiscal year.

On or before November 1, 2019, and each November 1 thereafter, DOLA is required to provide an update about the program in its annual SMART Act hearing for the General Assembly.

Offense relating to marijuana. A person who possesses any marijuana plant he or she is growing on behalf of another individual, unless he or she is the primary caregiver for the individual and is in compliance with the medical marijuana program, is subject to a level 3 drug felony if the offense involves more than 30 plants, a level 4 drug felony if the offense involves more than 6 but less than 30 plants, and a level 1 drug misdemeanor if less than 6 plants.

Background

Existing training resources. The Peace Officer Standards and Training Board provides grant training dollars to local governments for various peace officer trainings, which may include marijuana training. The Department of Law also maintains 2.0 FTE to conduct trainings for district attorneys and police officers with respect to the legal aspects of marijuana and allocates \$450,000 General Fund, per year to the Colorado District Attorneys Council for a variety of training expenses.

Existing grant program funding. The DOLA has an appropriation for grant funding (\$1.1 million) and staff for its Local Government Marijuana Impact Grant program. These funds are for documented expenses, costs, and other impacts incurred as a result of legal activity related to the sale, transfer, cultivation, or processing of retail marijuana or any illegal activity related to marijuana, but are not available for the purposes outlined in this bill. Existing DOLA rules define local governments to include 334 counties and municipalities (sheriff offices, district attorney offices, municipal judges, and police departments) and 304 fire and emergency medical services districts.

Comparable Crime

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. This bill creates a new factual basis for the offense of illegal growing of marijuana when the marijuana is grown on behalf of another person by someone other than a medical marijuana caregiver. The penalty for a level 1

drug misdemeanor is a fine of \$500 to \$5,000, six to eighteen months incarceration, or both. The penalty for a level 3 drug felony is a fine of \$2,000 to \$500,000, two to four years incarceration, or both. The penalty for a level 4 drug felony is a fine of \$1,000 to \$100,000, six months to one year incarceration, or both. In the past three years, there have been 2,508 convictions of at least one charge for offenses relating to marijuana and marijuana concentrate. Of those, the race/ethnic status of the offenders was 1,982 Caucasian, 234 African-American, 57 Asian, 14 Indian, 37 other, 9 unidentified, and 175 Hispanic; 2,123 were male, 376 were female and 9 had no gender identified. Given that the focus of the bill is on the investigation and prosecution of large-scale cultivation and distribution operations, the fiscal note assumes a minimal increase in misdemeanor and felony cases and convictions as a result of the bill.

State Revenue

Beginning in FY 2017-18, this bill is anticipated to increase state revenue by a minimal amount as described below.

Criminal fines. The bill may increase state cash fund revenue, credited to the Fines Collection Cash Fund in the Judicial Department. The fine penalty for a level 1 drug misdemeanor is \$500 to \$5,000, the fine penalty for a level 3 drug felony is \$2,000 to \$500,000, and the fine penalty for a level 4 drug felony is \$1,000 to \$100,000. Because the courts have the discretion of incarceration, imposing a fine, or both, the precise impact to state revenue cannot be determined. However, based on the low number of criminal fines imposed in 2016 and the focus of the bill, the fiscal note assumes that any revenue generated is likely to be minimal.

Court and administrative fees. To the extent that any additional convictions occur, this bill may also increase state fee revenue for a variety of court-related costs. In addition, if an offender is sentenced to probation, fee revenue will increase by \$50 per month supervised, per offender. Any such revenue is assumed to be minimal.

TABOR Impact

This bill increases state cash fund revenue from fines and fees, which will increase the amount of money required to be refunded under TABOR for FY 2017-18 and FY 2018-19. TABOR refunds are paid out of the General Fund. Since the bill increases the TABOR refund obligation without a corresponding change in General Fund revenue, the amount of money available in the General Fund for the budget will decrease by an identical amount.

State Expenditures

This bill increases state cash fund expenditures by at least \$6.0 million and 1.3 FTE in FY 2017-18 and \$6.0 million and 1.5 FTE in FY 2018-19 and future years. Beginning in FY 2017-18, this bill may increase workload and state expenditures in the Judicial Department. It may also increase state General Fund expenditures in the Department of Corrections. Table 1 and the discussion that follows present the costs of the bill.

Table 1. Expenditures Under HB17-1221		
Cost Components	FY 2017-18	FY 2018-19
Personal Services	\$66,953	\$77,285
FTE	1.3 FTE	1.5 FTE
Operating Expenses and Capital Outlay Costs	15,141	5,925
Computer Programming	21,603	6,180
Legal Services	4,753	1,426
Travel Expenses	720	720
Grant Funding	5,836,222	5,856,221
Centrally Appropriated Costs*	54,608	52,243
TOTAL	\$6,000,000	\$6,000,000

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

Assumptions and grant funding. The Governor's Office of State Planning and Budgeting has set aside \$6.0 million to fund enforcement grants for local governments in investigating and prosecuting gray and black market operations. This analysis assumes that while some efficiencies in program oversight may be achieved by the use of the existing program manager for the Local Government Marijuana Impact Grant Program, a program coordinator and an accountant will be required to provide outreach and technical assistance, process grant applications, perform accounting functions for grant distributions, and prepare information required to be included in the department's annual SMART Act hearing. The fiscal note assumes that the bill will take effect by July 1, 2017, and expenses will be incurred beginning on August 1, 2017.

Division of Local Government, Department of Local Affairs. The division requires 1.0 FTE program coordinator and 0.5 FTE accountant. In the first year, it is assumed that the program coordinator will begin on August 1, 2017, and the accountant will start on October 1, 2017; salaries and standard operating expenses are adjusted accordingly. Annual operating costs assume printing and postage expenses of \$4,500 to mail program grants, contracts, and annual notices of funding availability. Computer programming costs will be incurred to create and maintain a grant management system to process requests, perform approvals, create and monitor grant contracts, and conduct reporting. Legal services costs are required for initial rule-making and ongoing updates. Travel expenses assume annual reimbursement of 1,500 vehicle miles traveled in order to provide training or technical assistance to local governments.

Judicial Department. To the extent that this bill results in any new case filings, workload will increase for trial courts. If defendants are deemed indigent, workload and costs for the Office of the State Public Defender or the Office of the Alternate Defense Counsel may also increase. If an offender is sentenced to probation, workload will increase for the Probation Division. These impacts are assumed to be minimal and can be accomplished within existing appropriations.

Department of Corrections. To the extent that this bill increases the number of persons sentenced to the DOC, costs will increase. Should any convictions occur, the fiscal note assumes the DOC will request additional appropriations through the annual budget process. Based on current year expenditures, each year of incarceration costs the state about \$21,900. Each year of parole costs the state about \$4,600. For informational purposes, the average length of stay in

prison for a level 3 drug felony offender is 23.8 months and the average length of stay in prison for a level 4 drug felony offender is 6.6 months. The average length of stay on parole for either a level 3 or level 4 drug felony offender is 9.5 months.

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 2.

Table 2. Centrally Appropriated Costs Under HB17-1221		
Cost Components	FY 2017-18	FY 2018-19
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$11,386	\$13,139
Supplemental Employee Retirement Payments	6,000	6,925
Indirect Costs	31,222	26,179
Leased Space	6,000	6,000
TOTAL	\$54,608	\$52,243

Local Government Impact

This bill increases grant funding and expenditures for local law enforcement and prosecution costs. Under the bill, a local government may apply to receive grant funding to reimburse its full or partial costs related to the gray and black marijuana markets. The amount of grant funding received by any individual local government will vary based on the size and number of grant applications submitted. This bill will affect local governments in several ways, as discussed below.

County court expenditures. First, the bill increases workload for district attorneys to prosecute any new felony and misdemeanor offenses under the bill. Second, to the extent that this bill increases misdemeanor convictions and offenders are sentenced to jail, costs will increase. Under current law, a court may sentence an offender to jail for a level 1 drug misdemeanor for a period of between six and eighteen months. Because the courts have the discretion of incarceration or imposing a fine, the precise impact at the local level cannot be determined. The cost to house an offender in county jails varies from about \$53 to \$114 per day. It is assumed that the impact of this bill will be minimal.

Denver County expenditures. The bill results in an increase in revenue and workload for the Denver County Court, managed and funded by the City and County of Denver. The court will try misdemeanor cases under the bill. Probation services in the Denver County Courts may also experience a minimal increase in revenue and workload to supervise persons convicted under the bill.

Effective Date

The bill takes effect July 1, 2017 and applies to offenses committed on or after this date.

State Appropriations

For FY 2017-18, the Department of Local Affairs requires an appropriation of \$5,945,392 from the Marijuana Tax Cash Fund and an allocation of 1.3 FTE. Of this amount, \$21,603 is reappropriated to the Office of Information Technology and \$4,753 is reappropriated to the Department of Law.

State and Local Government Contacts

Corrections
District Attorneys
Information Technology
Law
Municipalities
Public Safety
Sheriffs

Counties
Governor
Judicial
Local Affairs
Public Health And Environment
Revenue