



**Colorado
Legislative
Council
Staff**

SB17-192

**REVISED
FISCAL NOTE**

(replaces fiscal note dated February 28, 2017)

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

Drafting Number: LLS 17-0941 **Date:** April 4, 2017
Prime Sponsor(s): Sen. Neville T. **Bill Status:** Senate Appropriations
 Rep. Melton; Singer **Fiscal Analyst:** Clare Pramuk (303-866-2677)

BILL TOPIC: MARIJUANA BUSINESS EFFICIENCY MEASURES

Fiscal Impact Summary	FY 2017-2018	FY 2018-2019
State Revenue	<u>\$64,023</u>	<u>\$35,137</u>
Cash Funds	64,023	35,137
State Expenditures	<u>\$73,623</u>	<u>\$35,137</u>
General Fund	9,600	
Cash Funds	59,458	29,349
Centrally Appropriated Costs	4,565	5,788
TABOR Impact	\$64,023	\$35,137
FTE Position Change	0.3 FTE	0.4 FTE
Appropriation Required: \$69,058 - Department of Revenue (FY 2017-18).		
Future Year Impacts: Ongoing revenue and expenditure increase.		

Summary of Legislation

As amended by the Senate Business, Labor, and Technology Committee and the Senate Finance Committee, this bill allows for a single-instance transfer of retail marijuana and retail marijuana products from a retail marijuana licensee to a medical marijuana licensee, changes the provisions for calculating the average market rate, and creates a contract price to use when calculating excise taxes between unaffiliated retail marijuana businesses. The bill also clarifies that the Marijuana Enforcement Division in the Department of Revenue (DOR) can take action against a licensee upon a violation of law whether the license active, expired, or surrendered.

Single-instance transfers. A retail marijuana licensee may engage in a one-time complete inventory conversion and license surrender under specific conditions identified in the bill. The retail marijuana licensee has 180 days after providing written notice to the division to complete the inventory conversion. Any retail marijuana or retail marijuana product not transferred within the 180 day time frame must be destroyed. If the transfer causes a medical marijuana licensee to exceed its inventory limits, the licensee has six months to comply with the inventory limits. A retail marijuana licensee subject to suspension is not eligible for an inventory conversion and license surrender.

Excise tax calculations. Under current law, the average market rate used to calculate excise taxes on the sale or transfer of unprocessed retail marijuana is determined twice a year by DOR. The bill requires DOR to determine the average market rate on a quarterly basis. Under the bill, the average market rate must include one or more rates that cover unprocessed marijuana used for extractions. These rates must be lower than the rate applied to unprocessed marijuana sold directly to consumers. The bill also defines a contract price, which is the invoice price charged by a retail marijuana cultivation facility for each sale or transfer of unprocessed retail marijuana, excluding any tax included in the written invoice price and any discount. The contract price will be used for unaffiliated transactions, while the average market rate will continue to be used for affiliated transactions. Affiliated transactions occur between businesses that are owned or controlled by the same or related interests.

Background

Average market rate. Retail marijuana is subject to a 15 percent excise tax collected when marijuana is transferred from a grow facility to a retail store or a processing facility. The DOR calculates the average market rate every six months for five different types of marijuana: marijuana flower, trim, immature plants, wet whole plant, and marijuana seeds. The average market rate calculated by the DOR is currently used to calculate the excise tax for both transactions between affiliated and unaffiliated marijuana businesses.

State Revenue

This bill will increase state cash fund revenue by \$64,023 in FY 2017-18 and \$35,137 in FY 2018-19 to the Marijuana Cash Fund in the DOR. The bill may also affect excise tax revenue but the amount of excise tax revenue collected is based on a variety of factors and cannot be determined.

Fee impact on retail marijuana licensees. Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. This bill will require a fee increase for retail marijuana licensees to cover the expenditures of the bill. If the expenditures are divided equally among all 1,397 retail marijuana licensees, the increase per licensee will be approximately \$46 in FY 2017-18 and \$25 in FY 2018-19. Actual fee calculations will be set administratively by the Department of Revenue based on cash fund balance, estimated program costs, and the estimated number of licenses subject to the fee.

TABOR Impact

This bill increases state cash fund revenue from 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 will increase cash fund expenditures in the DOR by \$73,623 and 0.3 FTE in FY 2017-18 and \$35,137 and 0.4 FTE in FY 2018-19. Of this, \$9,600 in FY 2017-18 is from the General Fund, while \$64,023 and \$35,137 is from the Marijuana Cash Fund in FY 2017-18 and FY 2018-19 respectively. These costs are shown in Table 1 and explained below.

Table 1. Expenditures Under SB17-192.		
Cost Components	FY 2017-18	FY 2018-19
Personal Services	\$24,458	\$29,349
FTE	0.3 FTE	0.4 FTE
Computer Programming	44,600	0
Centrally Appropriated Costs*	4,565	5,788
TOTAL	\$73,623	\$35,137

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

Assumptions. No resources are included for the one-time transfer because the transfer is conditional on a future policy change.

Calculation of average market rate. The bill requires the average market rate to be calculated twice as often so the DOR will increase its statistical staff by 0.3 FTE in FY 2017-18, and 0.4 FTE in FY 2018-19 and thereafter to perform the analysis more frequently. This assumes a September 1, 2017, start date in FY 2017-18.

Computer programming. The DOR will have costs to modify its computer systems in FY 2017-18 only. To put the new average market rates into operation, the DOR will contract with its computer system vendors to update its taxation system, GenTax, at a cost of \$9,600 for 48 hours of programming, at a rate of \$200 per hour from the General Fund. To identify whether a transfer of marijuana is between affiliated or unaffiliated retail marijuana businesses for purposes of applying the average market rate, the DOR will update its marijuana tracking system, METRC, at a cost of \$35,000 from the Marijuana Cash Fund.

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 SB17-192		
Cost Components	FY 2017-18	FY 2018-19
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$2,373	\$3,158
Supplemental Employee Retirement Payments	2,192	2,630
TOTAL	\$4,565	\$5,788

Local Government Impact

For local governments that levy an excise tax on retail marijuana, the changes to the frequency and method of calculating the average market rate will have an impact on revenue collected. Because of the variety of factors involved in the retail marijuana market, the effect on revenue collected for excise taxes cannot be determined.

Effective Date

The bill takes effect August 9, 2017, if the General Assembly adjourns on May 10, 2017, as scheduled, and no referendum petition is filed.

State Appropriations

For FY 2017-18 the bill requires the following appropriations for the Department of Revenue:

- \$9,600 from the General Fund; and
- \$59,458 from the Marijuana Cash Fund and an allocation of 0.3 FTE.

State and Local Government Contacts

Counties	Information Technology
Law	Legislative Council Economists
Municipalities	Public Health And Environment
Public Safety	Revenue