



Legislative Council Staff

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FISCAL NOTE

Drafting Number: LLS 20-1023 Date: March 11, 2020
Prime Sponsors: Rep. Valdez A.; Esgar Bill Status: House Rural Affairs
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Bill Topic: OUTDOOR EMERGENCY MARIJUANA CONTINGENCY PLANS

- Summary of Fiscal Impact:
- State Revenue
- State Expenditure
- State Transfer
- TABOR Refund
- Local Government
- Statutory Public Entity

This bill requires the Marijuana Enforcement Division in the Department of Revenue to promulgate rules on the process and procedure for filing and approving contingency plans for outdoor marijuana cultivation operations. This increases state revenue and expenditures and local government workload on an ongoing basis.

Appropriation Summary: For FY 2020-21, the bill requires an appropriation of \$194,653 to the Department of Revenue.

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

Table 1
State Fiscal Impacts Under HB 20-1328

Table with 4 columns: Category, Sub-category, FY 2020-21, FY 2021-22. Rows include Revenue (Cash Funds, Total), Expenditures (Cash Funds, Centrally Appropriated, Total), Total FTE, Transfers, and TABOR Refund (General Fund).

## **Summary of Legislation**

This bill requires the Marijuana Enforcement Division (MED) in the Department of Revenue (DOR) to promulgate rules on the process and procedure for filing and approving contingency plans for outdoor marijuana cultivation operations by January 1, 2021. Until that time, outdoor cultivators may take reasonable and necessary actions to prevent or ameliorate crop loss due to an adverse weather event without the action being a violation of any state or local law, rules, or regulations. After January 1, 2021, outdoor operations may file contingency plans with the MED for approval. Once approved, outdoor operations may follow their contingency plans in the case of an adverse weather event or other catastrophe. The bill applies to both medical and retail marijuana outdoor cultivation operations.

## **Background and Assumptions**

As of February 1, 2020, Colorado has 1,142 licensed medical and retail marijuana cultivation facilities. The MED does not track the number of cultivation facilities that are outdoors. The fiscal note is based on the assumption that 10 percent (114) of licensed cultivation facilities are outdoors and that 30 percent (34) will submit contingency plans to the MED in FY 2020-21 and FY 2021-22. Adverse weather events in Colorado can include high winds, tornadoes, hail, flash flooding, earthquakes, drought, blizzards, and thunderstorms. Examples of violations of law, rule, and regulation that may occur as a result of an action taken to prevent or ameliorate crop loss from an adverse weather event or other catastrophe include, but are not limited to, the following:

- relocating marijuana plants to an unlicensed facility or to a jurisdiction that does not permit commercial marijuana operations;
- inventory tracking violations;
- possession and transportation of marijuana by persons not licensed to engage in such activities; and
- storage of plants at a facility without required security and surveillance.

## **State Revenue**

This bill will increase revenue from fees by \$241,880 in FY 2020-21 and \$217,190 in FY 2021-22 to the Marijuana Cash Fund to cover the direct and indirect costs of the bill. The next fee setting rulemaking occurs during the summer of 2020, at which time it will be determined how the costs will be recovered from fees. The revenue increase will be subject to TABOR.

## **State Expenditures**

This bill will increase expenditures in the DOR by \$241,880 and 2.0 FTE in FY 2020-21 and \$217,190 and 2.0 FTE in FY 2021-22 from the Marijuana Cash Fund. These costs are shown in Table 2 and explained below.

**Table 2  
 Expenditures Under HB 20-1328**

	<b>FY 2020-21</b>	<b>FY 2021-22</b>
<b>Department of Revenue</b>		
Personal Services	\$165,289	\$165,289
Operating Expenses	\$2,700	\$2,700
Capital Outlay Costs	\$12,400	-
Law Enforcement Equipment	\$14,264	\$1,974
Centrally Appropriated Costs*	\$47,227	\$47,227
<b>Total Cost</b>	<b>\$241,880</b>	<b>\$217,190</b>
<b>Total FTE</b>	<b>2.0 FTE</b>	<b>2.0 FTE</b>

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

**Marijuana Enforcement Division.** The MED will add 2.0 FTE at the Criminal Investigator II classification to investigate whether actions taken in response to adverse weather events prior to the contingency plan rule taking effect were reasonable and necessary to prevent crop loss. The investigators will review contingency plans and work with cultivation facilities to provide compliance assistance. The investigators will coordinate with other state or local law enforcement in contingency plan development and when an adverse weather event or other catastrophe subject to the contingency plan occurs. If an investigator finds that actions were not reasonable and necessary or not in compliance with an approved contingency plan, the investigator will prepare materials for administrative actions against the licensee. The fiscal note includes law enforcement equipment costs including personal protective equipment, badge, radio, phone, firearm and ammunition.

**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 leased space, employee insurance, and supplemental employee retirement payments, are estimated to be \$47,227 in FY 2020-21 and FY 2021-22.

**TABOR refund.** The bill is expected to increase state General Fund obligations for TABOR refunds by \$241,880 in FY 2020-21 and \$217,190 in FY 2021-22. Under current law and the December 2019 Legislative Council Staff forecast, the bill will correspondingly increase the amount refunded to taxpayers via sales tax refunds made available on income tax returns for tax years 2021 and 2022, respectively. A forecast of state revenue subject to TABOR is not available beyond FY 2021-22.

**Local Government**

Prior to January 1, 2021, if an outdoor marijuana cultivation facility takes action in response to an adverse weather event, the appropriate local jurisdictions may evaluate whether the action was reasonable and necessary to prevent or ameliorate crop loss. Local jurisdictions may also participate in the development and implementation of contingency plans.

## Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

## State Appropriations

For FY 2020-21, the bill requires an appropriation of \$194,643 from the Marijuana Cash Fund to the Department of Revenue and 2.0 FTE.

## State and Local Government Contacts

Counties	Information Technology	Law
Municipalities	Revenue	