



Legislative Council Staff
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Fiscal Note

Drafting Number:	LLS 22-0971	Date:	April 11, 2022
Prime Sponsors:	Sen. Gonzales Rep. Valdez A.; Van Winkle	Bill Status:	Senate Finance
		Fiscal Analyst:	Clare Pramuk 303-866-2677 clare.pramuk@state.co.us

Bill Topic: **LICENSEES ABILITY TO CHANGE MARIJUANA DESIGNATION**

Summary of Fiscal Impact:	<input checked="" type="checkbox"/> State Revenue	<input checked="" type="checkbox"/> TABOR Refund
	<input checked="" type="checkbox"/> State Expenditure	<input checked="" type="checkbox"/> Local Government
	<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

This bill allows a medical marijuana cultivation facility licensee to transfer medical marijuana to a retail marijuana cultivation licensee and change the product designation from medical to retail marijuana, as long as the facilities share at least one controlling beneficial owner. The bill will increase state revenue and expenditures on an ongoing basis.

Appropriation Summary: For FY 2022-23, the bill requires an appropriation of \$357,839 to the Department of Revenue.

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

Table 1
State Fiscal Impacts Under SB 22-178

		Budget Year FY 2022-23	Out Year FY 2023-24
Revenue	Cash Funds	\$434,684	\$384,007
	Total Revenue	\$434,684	\$384,007
Expenditures	Cash Funds	\$357,839	\$311,506
	Centrally Appropriated	\$76,845	\$72,501
	Total Expenditures	\$434,684	\$384,007
	Total FTE	4.8 FTE	4.5 FTE
Transfers		-	-
Other Budget Impacts	TABOR Refund	\$434,684	\$384,007

Summary of Legislation

This bill allows a medical marijuana cultivation facility licensee to transfer medical marijuana to a retail marijuana cultivation licensee, and allows the retail marijuana cultivation facility to receive the medical marijuana and change the marijuana's designation from medical to retail. The cultivation facilities must be co-located and have at least one identical controlling beneficial owner. If a medical marijuana and retail marijuana cultivation facility share at least one controlling beneficial owner but cannot be co-located because of a local jurisdiction prohibition, the medical marijuana cultivation facility must receive approval from the Marijuana Enforcement Division (MED) in the Department of Revenue prior to making the first transfer. Subsequent transfers do not require a separate approval.

Medical marijuana must obtain passing test results before the transfer and both the medical and retail marijuana cultivation facilities must remain at or under their respective regulated inventory limits before and after the transfer is conducted. The retail marijuana cultivation facility is required to pay the retail marijuana excise tax of 15 percent of the average market rate of the unprocessed marijuana.

Background

Transfers of marijuana under current law. Beginning July 1, 2022, House Bill 21-1216 allows a medical marijuana cultivation facility to receive retail marijuana from a co-located retail marijuana cultivation facility, and change the marijuana's designation from retail to medical. HB 21-1216 also allows a medical marijuana products manufacturer to receive retail marijuana that has been extracted and is in concentrated form from a co-located retail marijuana products manufacturer and change the marijuana's designation from retail to medical.

Special sales tax. Medical marijuana is subject to the state's 2.9 percent sales tax when sold to a consumer. Retail marijuana is not subject to the state sales tax but is subject to a special 15 percent sales tax on the final consumer purchase price, which is deposited into the Marijuana Tax Cash Fund; 10 percent of which is apportioned to local jurisdictions where retail marijuana is sold. Local jurisdictions may also apply a special tax on retail marijuana sales.

Excise tax. Retail marijuana is subject to a 15 percent excise tax applied to the average market rate or contract price of retail marijuana. The lesser of the first \$40 million collected from the excise tax is transferred to the Public School Capital Construction Assistance Fund and the remainder collected goes to the State Public School Fund.

Cultivations eligible for transfers. There are an estimated 217 medical marijuana cultivation facilities that are co-located with a retail cultivation and will be eligible to change the designation of marijuana transferred within the facility. There are an estimated 152 medical marijuana cultivation facilities that are not co-located with a retail marijuana cultivation facility due to local prohibitions on retail marijuana. Transfers from these facilities will require approval from the MED prior to the first transfer under the bill.

Assumptions

The fiscal note assumes that co-located facilities will make approximately 2,000 transfers per month and that approximately 100 facilities that are not co-located will seek approval to make transfers.

State Revenue

The bill increases state revenue by \$434,684 in FY 2022-23 and \$384,007 in FY 2023-24 to the Marijuana Cash Fund. This revenue is subject to TABOR. The bill will also increase tax revenue as explained below.

Fee impact on marijuana licensees. Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. These fee amounts are estimates only, actual fees will be set administratively by the DOR based on cash fund balance, estimated program costs, and the estimated number of licensees subject to the fee. It is not known which fees will be increased to fund the bill; as a result, the table below identifies the total fee increase necessary to cover the bill's expenditures.

Table 2
Fee Impact on Marijuana Licensees

Fiscal Year	Type of Fee	Total Fee Increase
FY 2022-23	Marijuana Licensing Fees	\$434,684
FY 2023-24	Marijuana Licensing Fees	\$384,007

Tax revenue. The bill will increase revenue to the Marijuana Tax Cash Fund from the retail marijuana special sales tax, and to the Public School Capital Construction Assistance Fund from the retail marijuana excise tax. Once the Public School Capital Construction Assistance Fund receives \$40 million, the remainder collected from the excise tax is transferred to the State Public School Fund. The tax revenue will depend on the amount of marijuana that has its designation changed and has not been estimated.

State Expenditures

The bill increases state expenditures in the Department of Revenue by \$434,684 in FY 2022-23 and \$384,007 in FY 2023-24 from the Marijuana Cash Fund. Expenditures are shown in Table 3 and detailed below.

**Table 3
 Expenditures Under SB 22-178**

	FY 2022-23	FY 2023-24
Department of Revenue		
Personal Services	\$320,359	\$305,431
Operating Expenses	\$6,480	\$6,075
Capital Outlay Costs	\$31,000	-
Centrally Appropriated Costs ¹	\$76,845	\$72,501
Total Cost	\$434,684	\$384,007
Total FTE	4.8 FTE	4.5 FTE

¹ Centrally appropriated costs are not included in the bill's appropriation.

Department of Revenue. The MED requires 4.8 FTE in FY 2022-23 and 4.5 FTE in FY 2023-24 to implement the bill. This includes compliance, analytical, legal, scientific, and administrative staff. Initially, staff will be involved in rulemaking, and processing requests for transfers from facilities that are not co-located. Staff will also monitor compliance with transfer requirements including testing, and ensure that taxes are properly assessed on re-designated marijuana. The fiscal note assumes that not all transfers will be done in compliance with the bill and MED rules and will require additional staff to investigate and enforce compliance. Because the transfer of marijuana between physical facilities increases the risk of contamination and diversion, the MED requires a science researcher to determine whether a recall is indicated and to distribute a health and safety advisory to the public if necessary. Standard operating and capital outlay costs are included.

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 employee insurance and supplemental employee retirement payments, are shown in Table 2.

Other Budget Impacts

TABOR refunds. The bill is expected to increase the amount of state revenue required to be refunded to taxpayers by the amounts shown in the State Revenue section above. This estimate assumes the March 2022 LCS revenue forecast. A forecast of state revenue subject to TABOR is not available beyond FY 2023-24. Because TABOR refunds are paid from the General Fund, increased cash fund revenue will reduce the amount of General Fund available to spend or save.

Local Government

This bill may increase sales tax revenue to some local jurisdictions based on a number of factors but primarily whether transfers and changes in designations of medical marijuana to retail marijuana occur in a jurisdiction.

Technical Note

The Marijuana Cash Fund is not expected to end the fiscal year with a surplus, so there may be a delay in implementation so that the MED can increase existing fees or establish new fees to cover the costs of this bill.

Effective Date

The bill takes effect July 1, 2022.

State Appropriations

For FY 2022-23, the bill requires an appropriation of \$357,839 from the Marijuana Cash Fund to the Department of Revenue, and 4.8 FTE.

State and Local Government Contacts

Counties	Municipalities	Revenue
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