



**Colorado
Legislative
Council
Staff**

SB17-063

FISCAL NOTE

Note: This fiscal note is provided pursuant to Joint Rule 22 (b) (2) and reflects strike-below Amendment L.002.

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

Drafting Number: LLS 17-0448
Prime Sponsor(s): Sen. Marble
Rep. Melton

Date: February 17, 2017
Bill Status: Senate Business
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BILL TOPIC: MARIJUANA CLUB LICENSE

Fiscal Impact Summary	FY 2017-2018	FY 2018-2019
State Revenue	<u>\$284,562</u>	<u>\$455,562</u>
Cash Funds	284,562	455,562
State Expenditures	<u>\$221,552</u>	<u>\$324,948</u>
Cash Funds	190,034	261,448
Centrally Appropriated Costs	31,518	63,500
TABOR Impact	\$283,122	\$454,122
FTE Position Change	1.9 FTE	3.7 FTE
Appropriation Required: \$190,034 - Department of Revenue (FY 2017-18).		
Future Year Impacts: Ongoing revenue and expenditures increases.		

Summary of Legislation

This bill creates a marijuana consumption club (marijuana club) license in the Colorado Retail Marijuana Code. Marijuana clubs will only be able to operate in local jurisdictions after voters or a majority of the governing board for the municipality, county, city, or city and county approve such businesses. A marijuana club in operation when the bill becomes effective may continue to operate if it has filed an application for licensure or approval with the state and local government and has not been denied licensure or approval.

A licensed marijuana club allows its patrons to purchase and consume retail marijuana and retail marijuana products on-site. The bill requires that all retail marijuana and retail marijuana products be consumed, stored, or disposed of on-site. A marijuana club must ensure that purchasers are at least 21 years of age and must confiscate fraudulent proof of age documents and remit to a state or local law enforcement agency. A marijuana club can purchase retail marijuana and retail marijuana products from a licensed retail marijuana business or become licensed to grow or manufacture its own. A licensed marijuana club is prohibited from selling or serving alcohol or food prepared on-site but can serve light snacks or retail marijuana products prepared elsewhere. A patron can bring food for consumption into the marijuana club but is prohibited from bringing in retail marijuana or retail marijuana products.

Other provisions of the bill include that a marijuana consumption club:

- is not civilly liable for injury or damage because of a person's intoxication due to the sale or service of retail marijuana, or retail marijuana products with some exceptions;
- may be inspected by local law enforcement;
- is prohibited from using a butane torch or similar device on the premises;
- must have its staff successfully complete a responsible vendor program annually;
- can sell no more than the equivalent of one ounce of retail marijuana;
- will track its retail marijuana and retail marijuana products when transferred from its source to the point of sale;
- must follow packaging and labeling rules for retail marijuana and retail marijuana products;
- must include the potency of retail marijuana in a display case next to the product;
- is prohibited from selling or giving away any consumable product;
- must be fully ventilated; and
- is prohibited from selling over the internet or delivering a product to a person not physically present at the club.

Background

Retail marijuana regulation. In response to the passage of Amendment 64, the General Assembly created the Retail Marijuana Code in 2013 which expanded the authority of the Department of Revenue (DOR) to include regulation of retail marijuana. Under the retail code, businesses that grow, transport, process, test, and sell retail marijuana are licensed by the Marijuana Enforcement Division (MED) in DOR.

Marijuana consumption clubs. There are a number of private clubs operating in Colorado that allow for on-site consumption of marijuana. Because these clubs are not licensed, there is no way to account for all of these businesses, but there appear to be less than 30 statewide. While some clubs allow patrons to bring in marijuana for consumption, others provide marijuana to their patrons using a reimbursement model where they either trade marijuana for memberships or sign affidavits saying the club grows the patron's legally allowed six marijuana plants for them.

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 makes the public display, consumption, or use of up to one ounce of marijuana in a marijuana club no longer a petty drug offense. Between January 17, 2014, and January 17, 2017, there were 287 convictions for the crime of public consumption of marijuana. Of these convictions, 231 were male and 56 were female, 243 Caucasian, 19 African American, 14 Hispanic, 1 Asian, 9 other, and 1 not specified. The penalty for a drug petty offense is a maximum fine of \$100 and up to 24 hours of community service.

State Revenue

This bill is expected to increase state cash fund revenue by \$284,562 in FY 2017-18 and \$455,562 in FY 2018-19 to the Marijuana Cash Fund in the Department of Revenue. Of this, \$5,562 will be reappropriated to the Department of Public Safety each year.

Assumptions. The fiscal note is based on the following assumptions:

- few local governments will approve the operation of marijuana clubs in FY 2017-18;
- individuals seeking licensure will generally not hold existing retail marijuana licenses;
- the MED will receive 30 applications for marijuana club licenses in FY 2017-18, and 30 new applications and 30 renewals in FY 2018-19;
- applicants will be fingerprinted upon initial application;
- each application will have three direct beneficial owners associated with it; and
- licensing will begin January 1, 2018.

Fee impact on marijuana club 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 fee calculations will be set administratively by the DOR based on cash fund balance, estimated program costs, and the estimated number of applications and licenses subject to the fee. Table 1 below identifies the fee impact of this bill.

Table 1. Fee Impact on Marijuana Club Licensees				
Type of Fee	Current Fee	Proposed Fee	Number Affected	Total Fee Impact
Marijuana Club Application		\$2,500	30	\$75,000
Marijuana Club License		2,000	30	60,000
Direct Beneficial Interest Owner	1,400		90	126,000
Due Diligence Investigations		150	120	18,000
CBI Fingerprint-based Background Check	46.35		120	5,562
FY 2017-18				\$284,562
Marijuana Club Application		\$2,500	30	\$75,000
Marijuana Club License		2,000	30	60,000
Marijuana Club License Renewal		1,500	30	45,000
Direct Beneficial Interest Owner	1,400		180	252,000
Due Diligence Investigations		150	120	18,000
CBI Fingerprint-based Background Check	46.35		120	5,562
FY 2018-19				\$455,562

Due diligence investigations. The MED will charge applicants for the direct costs of conducting due diligence investigations into the suitability of businesses and individuals. The revenue from applicants will offset the cost of the investigations. This includes an hourly rate for investigator time; the number of hours required will depend on the complexity of an application. For purposes of the fiscal note, investigations are estimated at \$150 each.

Fingerprint-based criminal background checks. This bill will increase state cash fund revenue by \$5,562 in FY 2017-18 and FY 2018-19 collected by the MED and reappropriated to the Colorado Bureau of Investigation (CBI) in the Department of Public Safety (DPS) for fingerprint-based criminal background checks. Revenue increases assume a fee of \$46.35 per applicant for fingerprinting and name check. Of this amount, \$27.50 is retained by the CBI, \$12 is passed through to the Federal Bureau of Investigation (FBI), and \$6.85 for the name check also goes to the CBI.

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. Fees for the FBI background check are not subject to TABOR.

State Expenditures

This bill increases state cash fund expenditures by \$221,552 and 1.9 FTE in FY 2017-18, and \$324,948 and 3.7 FTE in FY 2018-19 and each year thereafter from the Marijuana Cash Fund in DOR. These costs are shown in Table 2 and explained below.

Table 2. Expenditures Under SB16-063		
Cost Components	FY 2017-18	FY 2018-19
Personal Services	\$99,956	\$190,582
FTE - Department of Revenue	1.7 FTE	3.5 FTE
Operating Expenses and Capital Outlay Costs	15,724	8,028
Computer Programming	14,100	
Law Enforcement Equipment and Supplies	5,777	987
Legal Services	28,515	26,139
Vehicle Lease and Mileage	2,400	12,150
FTE - Department of Law	0.2 FTE	0.2 FTE
Due Diligence Investigations	18,000	18,000
Pass Through Background Checks	5,562	5,562
Centrally Appropriated Costs*	31,518	63,500
TOTAL	\$221,552	\$324,948

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

Personal services. Staff will be hired beginning in September 2017 in the MED and will develop the new licensure program and train for the January 1, 2018, program start date. The background investigation unit will add a criminal investigator and administrative assistant, the field enforcement unit will add a criminal investigator, and the analysis section will add a compliance investigator. Staff duties will include:

- accepting and processing applications;
- updating the MED licensing software and database;
- conducting computer-based inquiries and requests;
- investigating applicants' financial backgrounds;
- interviewing applicants; and
- reporting on investigative findings.

Operating expenses and capital outlay costs. The fiscal note includes expenses for 3.5 FTE for office furniture, telephones, computers, and supplies, which represents the number of FTE when all staff are hired.

Computer programming. The DOR will incur one-time programming costs of \$8,000 in FY 2017-18 to add a new liability to the Marijuana Revenue Summary Account in GenTax. This programming is performed by a vendor at a cost of \$200 per hour. Another vendor will add new license types to the division's MYLO program at a cost of \$6,100.

Law enforcement equipment. The criminal investigator in field enforcement will hold peace officer status. The MED will supply this investigator with appropriate police equipment for one-time capital equipment costs of \$4,790 and ongoing annual supply costs of \$987.

Legal services. The MED is expected to require 300 hours of legal services in FY 2017-18 and 275 in FY 2018-19 at a rate of \$95.05 per hour. This volume of work requires an allocation of 0.2 FTE to the Department of Law in FY 2017-18 and FY 2018-19. In FY 2017-18, the department will provide general counsel and rulemaking support. In FY 2018-19, the department will provide general counsel, regulatory representation for underage hearings, and counsel in licensing disputes.

Vehicles. Beginning FY 2018-19, the MED requires one vehicle for the criminal investigator working in field enforcement. The Department of Personnel and Administration, which will administer the vehicle lease, will be reappropriated \$4,950 in FY 2018-19. The remainder of the costs are for mileage, calculated at 5,000 miles in FY 2017-18, and 15,000 miles in FY 2018-19 at a rate of \$0.48 per mile.

Due diligence investigations. As noted in the State Revenue section, the MED will charge applicants for the direct costs of conducting due diligence investigations into the suitability of businesses and individuals. The MED needs sufficient appropriations to conduct investigations of applicants estimated at \$150 per investigation for 120 investigations per year. The applicants will be charged an hourly investigation rate, that will be set by the MED, and actual investigation expenses, which will include travel costs.

Pass-through background checks. These costs are for the CBI in the DPS to conduct background checks and for the FBI portion of the background checks. The revenue collected for background checks will be reappropriated to DPS.

Judicial Department. This bill may reduce the number of filings in trial courts for open consumption of marijuana violations but any reduction is expected to be minimal.

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. Leased space is included to show the incremental impact of the additional FTE, and calculated at DOR's rate of 200 square feet per FTE at a rate of \$27 per square foot.

Table 3. Centrally Appropriated Costs Under SB17-63		
Cost Components	FY 2017-18	FY 2018-19
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$13,381	\$27,523
Supplemental Employee Retirement Payments	8,957	17,077
Leased Space	9,180	18,900
TOTAL	\$31,518	\$63,500

Local Government Impact

The provisions of the bill do not take effect unless a local government approves the operation of marijuana consumption clubs. If citizens file an initiative that goes to the ballot in a general election, the affected county will have an increase in costs to administer the election. Election costs increase if a special election is required which could range from \$5,000 for a very small county to over \$500,000 for a large urban county.

If the local governing body or the voters allow these businesses, the local government will have an increase in workload to draft new policies and ordinances and to administer a licensure program. Local governments that approve and license marijuana clubs will have an increase in revenue from licensing fees and taxes.

Municipal courts may see a reduction in workload and associated fine revenue from the potential reduction of cases involving public consumption of marijuana, but this is expected to be minimal.

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 following appropriations are required:

- \$190,034 to the Department of Revenue from the Marijuana Cash Fund, and an allocation of 1.7 FTE;
- \$28,515 to the Department of Law in reappropriated funds, and an allocation of 0.2 FTE; and
- \$5,562 to the Department of Public Safety in reappropriated funds.

Departmental Difference

The DOR estimates that this bill will increase cash fund expenditures by \$425,671 and 3.3 FTE in FY 2017-18 and \$497,313 and 4.9 FTE in FY 2018-19 from the Marijuana Cash Fund. The DOR estimates that revenue will increase by \$543,968 in FY 2017-18, and \$629,468 in FY 2018-19. These revenue and expenditure figures include \$37,500 each year in pass-through

expenses for investigations. The DOR assumes that they will receive 57 license applications and 171 direct beneficial interest owner applications each year. This fiscal note estimates that fewer license applications will be filed.

State and Local Government Contacts

Counties
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Revenue

Information Technology
Municipalities
Sheriffs

Judicial
Public Safety