



**Colorado
Legislative
Council
Staff**

SB17-275

FISCAL NOTE

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

Drafting Number: LLS 17-1025

Date: April 20, 2017

Prime Sponsor(s): Sen. Baumgardner; Jahn

Bill Status: Senate Agriculture

Fiscal Analyst: Clare Pramuk (303-866-2677)

BILL TOPIC: MARIJUANA PESTICIDES TEST MEDICAL EFFECTIVENESS

Fiscal Impact Summary	FY 2017-2018	FY 2018-2019
State Revenue	<u>\$82,210</u>	<u>\$29,505</u>
Cash Funds	82,210	29,505
State Expenditures	<u>\$82,210</u>	<u>\$29,505</u>
Cash Funds	82,210	29,505
TABOR Impact	\$82,210	\$29,505
FTE Position Change	0.1 FTE	
Appropriation Required: \$82,210 - Department of Revenue (FY 2017-18).		
Future Year Impacts: Ongoing revenue and expenditure increase.		

Summary of Legislation

This bill allows Marijuana Tax Cash Fund (MTCF) moneys to be used for research into the health effects of marijuana and addresses issues related to the use of pesticides in the cultivation of medical and retail marijuana. Specifically, the bill:

- allows up to one percent of available moneys in the MTCF to be used for grants to conduct medical research on Colorado grown marijuana;
- allows a medical or retail marijuana licensee to transfer marijuana to a medical research facility for research studies funded under the Medical Marijuana Health Grant Program;
- allows the tracking of medical or retail marijuana by the Marijuana Enforcement Division in the Department of Revenue to end when the marijuana is transferred to a medical research facility or a pesticide manufacturer for research purposes;
- specifies which pesticides may be used in marijuana cultivation; and
- requires the Marijuana Enforcement Division to consider specific factors when determining whether marijuana is contaminated with pesticides.

The bill expands the types of pesticides that may be used in the cultivation and production of medical and retail marijuana under certain conditions. The pesticide must either be on the Department of Agriculture's approved list of pesticides or otherwise meet one of the following conditions:

- be exempt from registration under federal law;
- be allowed for use on the Environmental Protection Agency Crop Group 19 for herbs and spices, hops, or unspecified crops or plants; or
- be listed by the Organic Materials Review Institute or a successor organization.

For all pesticides, the label must show that the pesticide can be used at the intended site of application on crops and plants intended for human consumption.

Background

Grant program. The Medical Marijuana Health Grant Program in the Department of Public Health and Environment, created under Senate bill 14-155, expires June 30, 2019. A total of \$10 million was authorized for grants and administration from the Medical Marijuana Program Cash Fund. Nine studies have been funded and are currently active.

Pesticide enforcement. Marijuana cultivators are currently able to use pesticides on marijuana plants if the pesticide use is in compliance with the Colorado Pesticide Applicators' Act. The Department of Agriculture currently tests marijuana for the presence of unlawful pesticide residue and refers cases to the Marijuana Enforcement Division for enforcement action if violations are found. In FY 2014-15, 97 percent of samples tested positive for unlawful pesticide residue; in FY 2015-16, 44 percent; and so far in FY 2016-17, 14 percent. In 2016, the Department of Agriculture referred approximately 40 cases to the Marijuana Enforcement Division for enforcement action.

State Revenue

This bill will increase state cash fund revenue by \$82,210 in FY 2017-18 and \$29,505 in FY 2018-19 to the Marijuana Cash Fund in the Department of Revenue.

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. This bill will require a fee increase for medical marijuana licensees to cover the expenditures in the Department of Revenue identified in this fiscal note. If the expenditures are divided equally among all 1,439 medical and retail marijuana cultivator licensees, the increase will be \$57 per licensee in FY 2017-18 and \$20 in FY 2018-19. Actual fee calculations will be set administratively by the Department of Revenue based on cash fund balance, overall program costs, and the 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 expenditures for the Marijuana Enforcement Division in the Department of Revenue by \$82,210 and 0.1 FTE in FY 2017-18 and \$29,505 in FY 2018-19, paid from the Marijuana Cash Fund.

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

- implementation of the bill will begin July 1, 2017;
- findings of unlawful pesticide residue on marijuana plants will continue to decline; and
- future enforcement actions will be complex to process.

Table 1. Expenditures Under SB17-275		
Cost Components	FY 2017-18	FY 2018-19
Computer programming	\$43,200	
Expert testimony	20,000	\$20,000
Legal Services	19,010	9,505
TOTAL	\$82,210	\$29,505

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

Marijuana Enforcement Division, Department of Revenue. The division will develop rules to authorize pesticide manufacturers to conduct research and establish safe and effective protocols for the use of pesticides on medical and retail marijuana. Because this is outside the allotted legal support for rulemaking and general counsel for the division, it will require an additional 200 hours of legal services from the Department of Law in FY 2017-18 and 100 hours in FY 2018-19. At a rate of \$95.05 per hour, the costs for legal services will be \$19,010 in FY 2017-18 and \$9,505 in FY 2018-19. For FY 2017-18, the Department of Law requires an allocation of 0.1 FTE.

The bill requires that a number of factors be evaluated when determining whether marijuana or a marijuana-infused product is contaminated, which will require the division to establish a new evaluation process. This will require expert testimony during enforcement actions that could be at least \$10,000 per case and possibly more. The fiscal note includes \$20,000 for expert testimony for two cases per year. If additional cases require expert testimony, the Department of Revenue will request additional funding through the annual budget process.

Computer programming. To add the functionality to allow a transfer of marijuana to research facilities and pesticide manufacturers, and to track pesticide testing results, the DOR will update its marijuana tracking system, METRC, at a cost of up to \$43,200, paid to a vendor.

Grant funding. Based on Joint Budget Committee staff analysis, the MTCF has no funds available for appropriation in FY 2017-18 for grant funding under this bill. Depending on when the assessment of available funds is made for FY 2018-19, there may be funds available for appropriation in FY 2018-19. The Department of Public Health and Environment currently has grant program staff through June 30, 2019, who can administer new grants if funds become available. The department can request an extension of the program staff beyond FY 2018-19 through the annual budget process if necessary to support the new grants authorized by the bill.

Judicial Department. This bill may increase the number of petitions filed in district court asking for an order for the destruction of marijuana or marijuana-infused products. Trial courts may see a minimal increase in cases concerning licensees that fail to comply with an order to destroy contaminated marijuana or marijuana-infused products. These workload increases can be addressed within existing appropriations.

Institutions of higher education. State institutions of higher education are eligible to apply for grants to conduct medical research on marijuana when funding becomes available.

Effective Date

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

State Appropriations

For FY 2017-18, the Department of Revenue requires an appropriation of \$82,210 from the Marijuana Cash Fund. Of this amount, the Department of Law requires \$19,010 in reappropriated funds and an allocation of 0.1 FTE.

Departmental Difference

The Department of Revenue estimates the cost of the bill to be \$454,586 and 0.5 FTE in FY 2017-18, and \$345,728 and 0.5 FTE in FY 2018-19. The Marijuana Enforcement Division identified the need for additional staffing to track the transfer of marijuana to research facilities and pesticide manufacturers, to track pesticide test results, and support pesticide-related field inspections. The fiscal note assumes that the number of pesticide contamination cases will decrease under the bill and not require additional staffing. The division also recommended an additional \$205,308 in FY 2017-18 and \$193,902 in FY 2018-19 for legal services associated with enforcement actions and litigation and \$140,000 in FY 2017-18 and \$100,000 in FY 2018-19 for expert witnesses. The fiscal note assumes a lower number of cases requiring increased legal services hours and expert testimony.

The Department of Public Health and Environment estimates its costs of the bill as \$655,000 each year beginning in FY 2017-18 and 1.5 FTE. This includes additional staffing for its Retail Marijuana Health Monitoring Program to conduct scientific research on pesticide exposure, staff for the grant program, and grant funding. The fiscal note assumes that the department is not required to conduct pesticide research and that no funding is available for grants for FY 2017-18.

State and Local Government Contacts

Agriculture
Information Technology
Law
Revenue

Higher Education
Judicial
Public Health And Environment