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FISCAL NOTE

Drafting Number:	LLS 18-0325	Date:	February 23, 2018
Prime Sponsors:	Rep. Pabon Sen. Neville T.; Jahn	Bill Status:	House Finance
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Bill Topic: MARIJUANA BUSINESS ALLOW PUBLICLY TRADED OWNERS

Summary of Fiscal Impact:

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

This bill allows publicly traded companies to invest in medical and retail marijuana businesses and limits which types of investors are subject to disclosure and background investigations. The bill increases state revenue and expenditures on an ongoing basis.

Appropriation Summary: In FY 2018-19, the bill requires an appropriation of \$472,592 to the Department of Revenue.

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

**Table 1
State Fiscal Impacts Under HB 18-1011**

		FY 2018-19	FY 2019-20
Revenue	Cash Funds	\$540,286	\$1,074,380
	Total	\$540,286	\$1,074,380
Expenditures	Cash Funds	\$472,592	\$855,869
	Centrally Appropriated	\$64,516	\$115,276
	Total	\$537,108	\$971,145
	Total FTE	3.8 FTE	6.8 FTE
Transfers		-	-

Summary of Legislation

This bill modifies the definitions of "direct beneficial interest" and "permitted economic interest" so that only investors owning five percent or more of a licensed medical or retail marijuana business are subject to disclosure and background investigations. The bill allows publicly traded companies to invest in medical and retail marijuana businesses and removes the limit of 15 nonresident direct beneficial interest owners that a marijuana business can have. In developing rules related to ownership by and licensing of publicly traded companies, the Marijuana Enforcement Division (MED) in the Department of Revenue (DOR) must promulgate rules substantively identical to Colorado Gaming Commission rules regarding publicly traded corporations and public offerings of securities.

Background

As of January 1, 2018, there are 1,534 licensed medical marijuana businesses, 1,539 licensed retail marijuana establishments, 11,660 key occupational licenses, and 1,616 direct beneficial interest owners (DBIO) in Colorado. Each license must be renewed annually. The MED is required by the Colorado Constitution to take action on a retail license within 90 days of application.

Assumptions

This fiscal note is based on the following assumptions:

- the MED will begin rulemaking and stakeholder engagement July 1, 2018;
- the MED will begin accepting applications January 1, 2019;
- applicants will apply for existing license types; and
- there will be a 20 percent increase in pre-suitability (36), new business (99), and change of ownership (117) applications over 2017 application levels in the bill's first full implementation year.

State Revenue

This bill will increase state cash fund revenue by \$540,286 in FY 2018-19 and \$1,074,380 in FY 2019-20 to the Marijuana Cash Fund in DOR. The three sources of revenue under the bill are described below.

Fee impact on marijuana business investors. Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. These fee amounts reflect current fees charged by the MED. Table 2 below identifies the fee impact of this bill.

Table 2
Fee Impact on Marijuana Business Investors

Fiscal Year	Type of Fee	Fee	Number Affected	Total Fee Impact
FY 2018-19 <i>(half-year)</i>	DBIO Non-resident Pre-suitability	\$5,000	18	\$90,000
	Retail Marijuana Store License	\$4,500	50	225,000
	Change of Ownership	\$1,600	59	94,400
			FY 2018-19 Total	\$409,400
FY 2019-20	DBIO Non-resident Pre-suitability	\$5,000	36	\$180,000
	Retail Marijuana Store License	\$4,500	99	445,500
	Change of Ownership	\$1,600	117	187,200
			FY 2019-20 Total	\$812,700

Investor licensure. Application fees are expected to increase by \$409,400 in FY 2018-19 and \$812,700 in FY 2019-20 based on the licensing assumptions discussed in the Assumptions section above.

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. The fiscal note estimates these fees will total \$250,000, prorated in FY 2018-19 to \$125,000.

Fingerprint-based criminal background checks. This bill will increase state cash fund revenue by \$5,886 in FY 2018-19 and \$11,680 in FY 2019-20 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 are based on a fee of \$46.35 per applicant for fingerprinting and name check. Of this amount, \$36.35 is retained by the CBI and \$10.00 is passed through to the Federal Bureau of Investigation (FBI).

TABOR Refund

The bill increases state revenue subject to TABOR by \$539,016 in FY 2018-19 and \$1,071,860 in FY 2019-20. State revenue is not currently expected to exceed the TABOR limit in either year and no refund is required. However, refunds in future years when the state next collects a TABOR surplus will be increased.

State Expenditures

This bill increases expenditures by \$537,108 and 3.8 FTE in FY 2018-19 and \$971,145 and 6.8 FTE in FY 2019-20 from the Marijuana Cash Fund. These expenditures are shown in Table 3 and explained below.

**Table 3
Expenditures Under HB 18-1011**

	FY 2018-19	FY 2019-20
Department of Revenue		
Personal Services	\$216,138	\$397,005
Operating Expenses and Capital Outlay Costs	\$26,745	\$10,403
Legal Services	\$85,248	\$160,906
Due Diligence Investigations	\$125,000	\$250,000
CBI/FBI Pass Through Background Checks	\$5,886	\$11,680
Vehicles and Mileage	\$13,575	\$25,875
Centrally Appropriated Costs*	\$64,516	\$115,276
FTE – Personal Services	3.4 FTE	6.0 FTE
FTE – Legal Services	0.4 FTE	0.8 FTE
Total Cost	\$537,108	\$971,145
Total FTE	3.8 FTE	6.8 FTE

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

Personal services. The MED will add the following staff to its Background Investigation Unit (BIU) to implement this bill:

- 1.0 FTE compliance investigator;
- 4.0 FTE financial credit examiners; and
- 1.0 FTE legal assistant.

Staff will be hired in November 2018 and personal services costs are prorated to reflect that start date. With assistance from existing BIU staff, the new investigative staff will train for the January 1, 2019, implementation date. Staff duties will include:

- accepting and processing applications;
- conducting computer-based inquiries and requests;
- investigating applicants' financial backgrounds;
- interviewing applicants;
- traveling nationwide and possibly internationally for verification of assets and investigative oversight; and
- preparing and reporting investigative findings for approved and denied changes of ownership.

Operating expenses and capital outlay costs. The fiscal note includes expenses for 6.0 FTE for office furniture, telephones, computers, and supplies, which represents the number of new FTE when all staff are hired.

Legal services. The MED is expected to require 800 hours of legal services in FY 2018-19 and 1,510 hours in FY 2019-20 at a rate of \$106.56 per hour. In FY 2018-19, the Department of Law will provide general counsel and rulemaking support. In FY 2019-20, the department will provide regulatory representation for disputed denials of licensure as well as compliance actions against licensees.

Vehicles. The MED requires three vehicles for staff working in the field. These costs are prorated for FY 2018-19 and will be ongoing. The Department of Personnel and Administration, which will administer the vehicle leases, will be reappropriated \$4,950 per vehicle per year. The remainder of the costs are for mileage.

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 applicants will be charged an hourly investigation rate, to be set by the MED, and actual investigation expenses, which will include travel costs.

CBI/FBI pass-through background checks. These costs are for the CBI in the DPS to conduct background checks and to pass through funds to the federal government for the FBI portion of the background checks.

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, supplemental employee retirement payments, and leased space, are estimated to be \$64,516 in FY 2018-19 and \$115,276 in FY 2019-20.

Effective Date

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

State Appropriations

For FY 2018-19, the bill requires an appropriation of:

- \$472,592 to the Department of Revenue from the Marijuana Cash Fund and an allocation of 3.8 FTE. From this amount, the following reappropriations are required:
 - \$85,248 to the Department of Law and an allocation of 0.4 FTE;
 - \$9,900 to the Department of Personnel and Administration; and
 - \$5,886 to the Department of Public Safety, of which \$1,270 is passed through to the federal government for FBI background checks.

State and Local Government Contacts

Information Technology
Public Safety

Law
Revenue