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FISCAL NOTE

Drafting Number:	LLS 19-0419	Date:	February 26, 2019
Prime Sponsors:	Rep. Gray; Van Winkle Sen. Gonzales; Hill	Bill Status:	House Finance
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Bill Topic: PUBLICLY LICENSED MARIJUANA COMPANIES

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 modifies ownership and investment definitions and allows publicly traded corporations to own or invest in a marijuana business. The bill will increase state revenue and expenditures on an ongoing basis.

Appropriation Summary: For FY 2018-19, this bill requires an appropriation of \$70,311 to the Department of Revenue.
For FY 2019-20, this bill requires an appropriation of \$2,046,076 to the Department of Revenue.

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

**Table 1
State Fiscal Impacts Under HB 19-1090**

		FY 2018-19 <i>(Current Year)</i>	FY 2019-20	FY 2020-21
Revenue	Cash Funds	-	\$2,633,760	\$2,769,097
	Total	-	\$2,633,760	\$2,769,097
Expenditures	Cash Funds	\$70,311	\$2,046,076	\$1,995,289
	Centrally Appropriated	\$4,374	\$328,466	\$328,466
	Total	\$74,685	\$2,374,542	\$2,323,755
	Total FTE	0.5 FTE	15.8 FTE	15.6 FTE
Transfers			-	-
TABOR Refund	General Fund	-	\$2,633,760	-

Summary of Legislation

This bill modifies the statutory ownership and investment definitions for medical and retail marijuana licensees, removes the limit of 15 out-of-state owners, and allows a publicly traded corporation to invest in a marijuana business or become a marijuana business. The bill repeals the definition of direct beneficial interest owners and creates two new ownership types.

Controlling beneficial owner means a person (individual, partnership, association, joint-stock company, corporation, limited liability company, or any other unincorporated organization that is not a governmental association) that is the beneficial owner of 10 percent or more of the securities of a marijuana business; is an affiliate; or is otherwise in a position to exercise control of the marijuana business. A person intending to apply to become a controlling beneficial owner must receive a finding of suitability or an exemption from the Marijuana Enforcement Division (MED) in the Department of Revenue (DOR) prior to submitting a marijuana business application. The MED is required to complete a finding of suitability within 60 days.

Passive beneficial owner means a person that is not an affiliate of a marijuana business, does not exercise control, and owns less than 10 percent of the securities of a marijuana business. This ownership type does not require a finding of suitability or a license.

Publicly traded corporation. The bill has specific requirements for publicly traded corporations that are marijuana businesses or controlling beneficial owners. Publicly traded corporations must have a class of securities that constitute "covered securities" under the federal Securities Act of 1933, or are qualified and quoted on the OTCQX tier (established companies) or OTCQB tier (venture capital) of the OTC markets and are filing reports with the federal Securities and Exchange Commission as if the listed securities constituted "covered securities". Alternately, a publicly traded corporation can be a foreign private issuer, traded on a designated offshore securities market, or can be identified by rule by the MED as a publicly traded corporation.

Publicly traded corporations are required to report to the MED on any change in directors or officers; provide notice when a filing is made with a securities exchange; disclose a complete list of all beneficial owners upon request of the MED; notify the MED and provide a copy of a comment letter or exchange notice from a securities exchange; and notify the MED of an offering of securities. A publicly traded corporation is required to provide a deposit to cover the direct and indirect costs of any investigation necessary to evaluate the finding of suitability.

Rulemaking. The MED is required to promulgate rules to implement the bill within 60 days of the bill's effective date.

Background

As of January 1, 2019, there are 1,413 licensed medical marijuana businesses, 1,599 licensed retail marijuana establishments, 41,796 active occupational licenses, and 1,690 direct beneficial interest owners 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

In FY 2017-18, applications for a finding of suitability equated to 6 percent of marijuana licensees. The fiscal note assumes this number will double to 12 percent of licensees or 361 applications per year for the next two fiscal years. Of these, 1 percent (4) will apply to become marijuana businesses while the remainder will invest in existing licensees.

State Revenue

This bill will increase state cash fund revenue by \$2.6 million in FY 2019-20 and \$2.8 million in FY 2020-21 to the Marijuana Cash Fund in DOR. The three sources of revenue under the bill are described below. The deposit required by publicly traded companies to cover the direct and indirect costs of an investigation to determine suitability will depend on factors determined through the rulemaking process, so it has not been estimated in the fiscal note.

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. Table 2 below identifies the fee impact of this bill. These fee amounts reflect current fees charged by the MED. These fee amounts may change during annual fee setting based on actual workload and projected applicants; this estimate is for illustration purposes only.

**Table 2
Fee Impact on Marijuana Business Investors**

Fiscal Year	Type of Fee	Fee	Number Affected	Total Fee Impact
FY 2019-20	Beneficial Owner Pre-suitability	\$5,000	361	\$1,805,000
	Marijuana Store License	\$4,500	4	\$18,000
	Change of Ownership	\$1,600	357	\$571,200
	Due Diligence Investigations			\$220,788
	Criminal Background Checks	\$52	361	\$18,772
FY 2019-20 Total				\$2,633,760
FY 2020-21	Beneficial Owner Pre-suitability	\$5,000	361	\$1,805,000
	Marijuana Store License	\$4,500	4	\$18,000
	Change of Ownership	\$1,600	357	\$571,200
	Due Diligence Investigations			\$356,125
	Criminal Background Checks	\$52	361	\$18,772
FY 2020-21 Total				\$2,769,097

Due diligence investigations. The MED will charge applicants for the direct costs of conducting due diligence investigations into the suitability of businesses and individuals prior to licensure. The revenue from applicants will offset the cost of the investigations; including 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 \$220,788, in FY 2019-20 and \$356,125 in FY 2020-21, based on the experience of the Division of Gaming in the DOR.

Fingerprint-based criminal background checks. This bill will increase state cash fund revenue by \$18,772 in FY 2019-20 and FY 2020-21. Revenue increases are based on a fee of \$52.00 per applicant for fingerprinting and name check. The revenue is passed through to a third-party vendor overseen by the Colorado Bureau of Investigation.

State Expenditures

This bill increases expenditures by \$74,685 and 0.5 FTE in FY 2018-19, \$2,374,542 and 15.8 FTE in FY 2019-20, and \$2,323,755 and 15.6 FTE in FY 2020-21 from the Marijuana Cash Fund. These expenditures are shown in Table 3 and explained below.

**Table 3
Expenditures Under HB 19-1090**

	FY 2018-19	FY 2019-20	FY 2020-21
Department of Revenue			
Personal Services	\$14,271	\$1,243,173	\$1,243,173
Operating Expenses and Capital Outlay Costs	\$9,406	\$69,736	\$13,300
Legal Services	\$46,634	\$340,943	\$306,745
Information Technology	-	\$108,200	\$25,000
Due Diligence Investigations	-	\$220,788	\$356,125
CBI/FBI Pass Through Background Checks	-	\$18,772	\$18,772
Law Enforcement Equipment	-	\$14,264	\$1,974
Vehicles and Mileage	-	\$30,200	\$30,200
Centrally Appropriated Costs*	\$4,374	\$328,466	\$328,466
FTE – Personal Services	0.2 FTE	14.0 FTE	14.0 FTE
FTE – Legal Services	0.3 FTE	1.8 FTE	1.6 FTE
Total Cost	\$74,685	\$2,374,542	\$2,323,755
Total FTE	0.5 FTE	15.8 FTE	15.6 FTE

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

Personal services. Beginning in FY 2019-20, the MED will add the following staff to its Background Investigation Unit (BIU) to implement this bill for a total of 14 FTE:

- 1.0 FTE Policy Advisor IV;
- 5.0 FTE Financial Credit Examiner II;
- 2.0 FTE Financial Credit Examiner III;
- 1.0 FTE Financial Credit Examiner IV;
- 2.0 FTE Compliance Investigator II;
- 2.0 FTE Criminal Investigator II; and
- 1.0 FTE Legal Assistant II.

The MED staff will process a significant increase in the number and complexity of applications and a wider array of applicant types. They will be responsible for conducting pre-suitability analyses. Applicants found suitable will require staff to conduct the intake, background investigation, and processing of business applications; change of ownership; and renewal applications. Staff will prepare and report investigative findings for approved and denied applications. Salaries are estimated above the minimum level to enable the MED to hire more experienced staff.

Operating expenses and capital outlay costs. The fiscal note includes expenses for 14.0 FTE for office furniture, telephones, computers, and supplies.

Legal Services. Beginning in the current fiscal year, FY 2018-19, the MED will conduct emergency rulemaking in order to promulgate rules within 60 days of the bill's effective date. Rulemaking will require 900 hours of legal services at a rate of \$103.63 per hour and an allocation of 0.5 FTE for a total of \$93,267. Because the bill's effective date will be close to the end of FY 2018-19, this cost is divided between FY 2018-19 and FY 2019-20. In addition, the MED is expected to require 2,840 hours of legal services in FY 2019-20 and 2,960 hours in FY 2020-21 and thereafter to provide general counsel, regulatory representation for disputed denials of licensure as well as compliance actions against licensees.

Information Technology. The MED will have costs to update existing computer systems (GenTax and MLO) to add the new ownership type and to track the finding of suitability deposits at a one-time cost of \$83,200 in FY 2019-20. In addition, the MED will need access to a national and international background database to support its investigation of applicant suitability. The database is estimated at an annual cost of \$25,000.

Law enforcement equipment. The two criminal investigators employed by the MED are law enforcement officers who require protective equipment, badges, guns, radios, at a one-time cost of \$6,145 per person, and ammunition, fees, and contracts at an annual cost of \$987 per person.

Vehicles and mileage. The MED requires four vehicles for staff working in the field. The Department of Personnel and Administration, which will administer the vehicle leases, will be reappropriated \$4,790 per vehicle per year. The remainder of the vehicle cost is for mileage at a rate of \$.52 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 applicants will be charged an hourly investigation rate, to be set by the MED, and actual investigation expenses.

Fingerprint-based criminal background checks. These costs are for a third-party vendor to conduct background checks based on an estimated 361 checks in FY 2019-20 and FY 2020-21.

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 \$4,374 in FY 2018-19, \$328,466 in FY 2019-20, and \$328,466 in FY 2020-21.

TABOR refunds. The bill is expected to increase state General Fund obligations for TABOR refunds by \$2,633,760 in FY 2019-20. Under current law and the December 2018 forecast, the bill will correspondingly increase the amount refunded to taxpayers via sales tax refunds on income tax returns for tax year 2020. The state is not expected to collect a TABOR surplus in FY 2020-21.

Local Government Impact

Local governments that regulate marijuana businesses will have an increase in revenue and expenditures to process new applications. This amount will depend on a variety of factors and has not been estimated for this fiscal note.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature. It applies to applications made on or after July 1, 2019.

State Appropriations

For FY 2018-19, the bill requires an appropriation of \$70,311 to the Department of Revenue from the Marijuana Cash Fund and an allocation of 0.2 FTE. From this amount, the Department of Law requires \$93,267 in reappropriated funds and an allocation of 0.3 FTE.

For FY 2019-20, the bill requires an appropriation of \$2,046,076 to the Department of Revenue from the Marijuana Cash Fund and an allocation of 14.0 FTE. From this amount the following reappropriations are required:

- \$340,943 to the Department of Law and an allocation of 1.8 FTE; and
- \$30,200 to the Department of Personnel and Administration.

State and Local Government Contacts

Counties	Information Technology	Law
Municipalities	Personnel	Public Safety
Revenue	Sheriffs	