



Legislative
Council Staff

Nonpartisan Services for Colorado's Legislature

HB 19-1090

**REVISED
FISCAL NOTE**

(replaces fiscal note dated February 26, 2019)

Drafting Number: LLS 19-0419
Prime Sponsors: Rep. Gray; Van Winkle
Sen. Gonzales; Hill

Date: March 25, 2019
Bill Status: House Appropriations
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Bill Topic: PUBLICLY LICENSED MARIJUANA COMPANIES

Summary of Fiscal Impact:

<input checked="" type="checkbox"/> State Revenue	<input 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 \$54,766 to the Department of Revenue.
For FY 2019-20, this bill requires an appropriation of \$2,728,795 to the Department of Revenue.

Fiscal Note Status: The fiscal note reflects the introduced bill as amended by the House Finance Committee.

**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	-	\$3,078,022	\$3,078,022
	Total	-	\$3,078,022	\$3,078,022
Expenditures	Cash Funds	\$54,766	\$2,728,795	\$2,135,117
	Centrally Appropriated	\$4,374	\$360,579	\$360,579
	Total	\$59,140	\$3,089,374	\$2,495,696
	Total FTE	0.4 FTE	16.8 FTE	17.1 FTE
Transfers		-	-	-
TABOR Refund		-	-	-

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, changes the ownership residency requirement, 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 owner, indirect beneficial interest owner, and permitted economic interest; creates new ownership types; and changes disclosure and background requirements, including exemptions for passive beneficial owners and indirect financial interest holders.

Controlling beneficial owner means a natural person, a domestic or foreign entity that is organized under the laws of and for which its principal place of business is located in one of the states or territories of the United States or District of Columbia, a publicly traded corporation, or a qualified private fund that is not otherwise licensed as a qualified institutional investor:

- that owns or acquires beneficial ownership of 10 percent or more of a marijuana business;
- that is an affiliate that controls a marijuana business;
- that is otherwise in a position to control the marijuana business; or
- a qualified institutional investor that owns or acquires beneficial ownership of 30 percent or more of the securities of a 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 120 days.

Indirect financial interest holder means a person that is not an affiliate, a controlling beneficial owner, or a passive beneficial owner of a marijuana business and that:

- holds a commercially reasonable royalty interest in exchange for a marijuana business' use of the person's intellectual property;
- holds a permitted economic interest issued prior to January 1, 2020, that has not been converted into an ownership interest;
- is a contract counterparty; or
- is identified by the MED as an indirect financial interest holder.

Passive beneficial owner means any person acquiring any interest in a marijuana business that is not otherwise a controlling beneficial owner or in control.

Publicly traded corporation means any person other than an individual that is organized under the laws of and for which its principal place of business is located in one of the states or territories of the United States or District of Columbia or another country that authorizes the sale of marijuana and that:

- has a class of securities that constitutes "covered securities" pursuant to the federal Securities Act of 1933;
- is qualified and quoted on the OTCQX or OTCQB tier of the OTC markets; or
- is a corporation that has a class of securities listed on the Canadian securities exchange, Toronto stock exchange, or other exchange recognized by the MED.

A publicly traded corporation does not include an ineligible issuer, as defined in federal rule unless such publicly traded corporation satisfies the definition of ineligible issuer solely because it is one or more of the following and the publicly traded corporation is currently filing reports with the SEC:

- a blank check company;
- an issuer in an offering of penny stocks; or
- a shell company.

Qualified institutional investor means:

- a bank;
- a bank holding company;
- an insurance company;
- an investment company;
- an employee benefit plan or pension fund;
- a state or federal government pension plan;
- a group comprised entirely of the preceding entities; or
- any other entity identified by rule by the state licensing authority.

Rulemaking. The MED is required to promulgate rules to implement the bill that address:

- ownership and financial disclosure procedure requirements;
- record keeping requirements;
- findings of suitability;
- divestiture of ownership of a person found unsuitable by the MED;
- transfers of ownership involving a publicly traded corporation;
- designation of controlling beneficial owners;
- modification of the percentage of securities that may be held by a controlling beneficial owner and passive beneficial owner;
- designation of persons who qualify for an exemption from a finding of suitability; and
- designation of indirect financial interest holders and qualified institutional investors.

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 \$3.1 million in FY 2019-20 and FY 2020-21 to the Marijuana Cash Fund in DOR from fees as shown in Table 2 below. This revenue is subject to TABOR, however under the March 2019 Legislative Council Staff forecast, a TABOR surplus is not expected in FY 2019-20 or FY 2020-21. 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 are estimates only; actual fees will be set administratively by MED based on cash fund balance, estimated program costs, and the estimated number of licenses subject to the fee.

**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	\$5,950	361	\$2,147,950
	Marijuana Business License	\$4,700	4	\$18,800
	Change of Ownership	\$2,500	357	\$892,500
	Criminal Background Checks	\$52	361	\$18,772
			FY 2019-20 Total	\$3,078,022
FY 2020-21	Beneficial Owner Pre-suitability	\$5,950	361	\$2,147,950
	Marijuana Business License	\$4,700	4	\$18,800
	Change of Ownership	\$2,500	357	\$892,500
	Criminal Background Checks	\$52	361	\$18,772
			FY 2020-21 Total	\$3,078,022

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 checks. The revenue is passed through to a third-party vendor overseen by the Colorado Bureau of Investigation.

State Expenditures

This bill increases expenditures by \$59,140 and 0.4 FTE in FY 2018-19, \$3,089,374 and 16.8 FTE in FY 2019-20, and \$2,495,696 and 17.1 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	\$1,342,556	\$1,342,556
Operating Expenses and Capital Outlay Costs	\$9,406	\$75,959	\$14,820
Legal Services	\$31,089	\$242,494	\$306,745
Information Technology	-	\$999,600	\$400,000
CBI/FBI Pass Through Background Checks	-	\$18,772	\$18,772
Law Enforcement Equipment	-	\$14,264	\$1,974
Vehicles and Mileage	-	\$35,150	\$50,250
Centrally Appropriated Costs*	\$4,374	\$360,579	\$360,579
FTE – Personal Services	0.2 FTE	15.5 FTE	15.5 FTE
FTE – Legal Services	0.2 FTE	1.3 FTE	1.6 FTE
Total Cost	\$59,140	\$3,089,374	\$2,495,696
Total FTE	0.4 FTE	16.8 FTE	17.1 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 15.5 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 Technician II;
- 2.0 FTE Criminal Investigator II;
- 1.0 FTE Legal Assistant II;
- 1.25 FTE Hearings Officer II; and
- 0.25 FTE Administrative Assistant III.

The MED staff will process a significant increase in the number and complexity of applications for a wider array of applicant types. They will also 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 15.5 FTE for office furniture, telephones, computers, and supplies beginning in FY 2020-21.

Legal Services. Beginning in the current fiscal year, FY 2018-19, the MED will conduct emergency rulemaking in order to promulgate rules in time to accept applications by November 1, 2019. Rulemaking will require 300 hours of legal services at a rate of \$103.63 per hour and an allocation of 0.2 FTE for a total of \$31,089. In addition, the MED is expected to require 2,340 hours of legal services in FY 2019-20 and 2,960 hours in FY 2020-21 and thereafter to provide general counsel during rulemaking, regulatory representation for disputed denials of licensure as well as compliance actions against licensees.

Information Technology. The MED will have costs to purchase a new licensing system, contract for a database and update existing computer systems.

Licensing system. The MED requires a new licensing system that facilitates timely processing of applications, and navigation of licensing and financial records for businesses of varying types of complexity. Costs for the system are estimated at \$875,000 for the platform in FY 2019-20 and \$375,000 for annual licenses thereafter. Actual costs will be determined through the procurement process including review by the Joint Technology Committee.

Existing systems modifications. The DOR tax software GenTax, and licensing software MyLo, will have programming costs to add the new ownership types and track the finding of suitability deposits at a one-time cost of \$99,600 in FY 2019-20.

Background database. The investigation requirements in the bill necessitates having access to a national and international background database designed to provide access to national and international data related to finances, financial regulatory reporting, criminal history, criminal and regulatory laws, and other information necessary to determine suitability for licensure and compliance with current legal requirements. The database is estimated at an annual cost of \$25,000 beginning in FY 2020-21.

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 five vehicles for staff working in the field in FY 2019-20, and seven vehicles in FY 2020-21 and following years. The Department of Personnel and Administration, which administers vehicle leases, will be reappropriated \$4,950 per vehicle per year. The remainder of the vehicle cost is for mileage at a rate of \$.52 per mile.

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, \$360,579 in both FY 2019-20 and 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 November 1, 2019.

State Appropriations

For FY 2018-19, the bill requires an appropriation of \$54,766 to the Department of Revenue from the Marijuana Cash Fund and an allocation of 0.2 FTE. Of this amount, \$31,089 and an allocation of 0.2 FTE are reappropriated to the Department of Law.

For FY 2019-20, the bill requires an appropriation of \$2,728,795 to the Department of Revenue from the Marijuana Cash Fund and an allocation of 15.5 FTE. From this amount the following reappropriations are required:

- \$242,494 to the Department of Law and an allocation of 1.3 FTE;
- \$24,750 to the Department of Personnel and Administration; and
- \$18,772 to the Department of Public Safety.

State and Local Government Contacts

Counties	Information Technology	Law
Municipalities	Personnel	Public Safety
Regulatory Agencies	Revenue	
Sheriffs		