



Legislative Council Staff

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Fiscal Note

Drafting Number:	LLS 21-0204	Date:	March 24, 2021
Prime Sponsors:	Rep. Valdez A.; Van Winkle Sen. Gonzales	Bill Status:	House Business
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Bill Topic: **MARIJUANA LICENSEES ABILITY TO CHANGE DESIGNATION**

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

The bill allows medical marijuana cultivation facilities and product manufacturers to receive marijuana from a co-located retail facility and change the marijuana's designation from retail to medical. The bill decreases state and local revenue and increases state workload on an ongoing basis.

Appropriation Summary: No appropriation is required.

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

Summary of Legislation

The bill allows a medical marijuana cultivation facility to receive retail marijuana from a co-located retail marijuana cultivation facility, and change the marijuana's designation from retail to medical. The bill also applies to a medical marijuana products manufacturer, which may receive retail marijuana that has been extracted and is in concentrated form from a co-located retail marijuana products manufacturer and change the marijuana's designation from retail to medical.

Retail marijuana must obtain passing test results prior to a transfer. The co-located facilities must share at least one controlling beneficial owner, and the designation change must be entered into the seed-to-sale tracking system. Once the change is entered, the marijuana is the product of the medical marijuana cultivation facility or products manufacturer and cannot be treated as retail marijuana or retail marijuana product.

The bill specifies that a transfer and change of designation from retail to medical does not result in a right to a refund of any retail marijuana excise tax paid prior to the transfer.

State Revenue

Beginning in FY 2021-22, changing the marijuana designation from retail to medical reduces the taxes that will be paid on it, thus reducing net state marijuana tax revenue. Specifically, the bill results in:

- a reduction in revenue from the 15 percent special sales tax on retail marijuana, which is distributed to the General Fund, Marijuana Tax Cash Fund (MTCF), State Public School Fund, and local governments, and is exempt from TABOR;
- a reduction in revenue from the 15 percent excise tax on retail marijuana transferred between cultivators, which is deposited in the Public School Capital Construction Assistance Fund and is exempt from TABOR; and
- an increase in revenue from the 2.9 percent sales tax on medical marijuana, which is deposited in the MTCF and is subject to TABOR. This additional revenue will offset a portion of the revenue reduction.

The exact amount of the reduction has not been estimated and will depend on how much marijuana is changed from retail to medical, as well as whether licensees have paid the excise tax on retail marijuana prior to changing the designation.

State Expenditures

The bill increase workload for the Department of Revenue by a minimal amount to conduct rulemaking, ensure compliance, and respond to questions. The increased workload can be accomplished within existing appropriations.

TABOR refunds. The bill increases state revenue subject to TABOR, as revenue from the 2.9 percent sales tax on medical marijuana is subject to TABOR. For FY 2022-23, the March 2021 LCS forecast projects revenue to fall short of the TABOR limit by \$28.6 million, or 0.2 percent of the limit. If actual revenue exceeds the limit, the bill will increase the amount required to be refunded to taxpayers from the General Fund in FY 2023-24.

Local Government

To the extent the bill reduces revenue from the special sales tax on retail marijuana, it will reduce the amount that is distributed to local governments. Of the special sales tax revenue, 10 percent is allocated proportionally to local governments based on where sales occur.

Effective Date

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

State and Local Government Contacts

Counties

Public Health and Environment

Law

Revenue

Municipalities