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Revised Fiscal Note

(replaces fiscal note dated April 11, 2022)

Drafting Number: LLS 22-0971 Date: April 25, 2022
Prime Sponsors: Sen. Gonzales Bill Status: Senate Appropriations
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Bill Topic: LICENSEES ABILITY TO CHANGE MARIJUANA DESIGNATION

- Summary of Fiscal Impact:
[X] State Revenue [X] TABOR Refund
[X] State Expenditure [X] Local Government
[] State Transfer [] Statutory Public Entity

This bill allows a medical marijuana cultivation facility licensee to transfer medical marijuana to a retail marijuana cultivation licensee and change the product designation from medical to retail marijuana, as long as the facilities share at least one controlling beneficial owner. The bill will increase state revenue and expenditures on an ongoing basis.

Appropriation Summary: For FY 2022-23, the bill requires an appropriation of \$228,510 to the Department of Revenue.

Fiscal Note Status: The revised fiscal note reflects the reengrossed bill.

Table 1
State Fiscal Impacts Under SB 22-178

Table with 4 columns: Category, Sub-category, Budget Year FY 2022-23, and Out Year FY 2023-24. Rows include Revenue (Cash Funds, Total Revenue), Expenditures (Cash Funds, Centrally Appropriated, Total Expenditures, Total FTE), Transfers, and Other Budget Impacts (TABOR Refund).

Summary of Legislation

Beginning January 1, 2023, this bill allows a medical marijuana cultivation facility licensee to transfer medical marijuana to a retail marijuana cultivation licensee, and allows the retail marijuana cultivation facility to receive the medical marijuana and change the marijuana's designation from medical to retail. For cultivation facilities that are co-located and have at least one identical controlling beneficial owner, a virtual transfer may be reflected in the seed-to-sale tracking system if the marijuana is not physically moved. Transfers between facilities are permitted if a medical marijuana and retail marijuana cultivation facility share at least one controlling beneficial owner but cannot be co-located because of a local jurisdiction prohibition.

Medical marijuana must obtain passing test results before the transfer and both the medical and retail marijuana cultivation facilities must remain at or under their respective regulated inventory limits before and after the transfer is conducted. The retail marijuana cultivation facility is required to pay the retail marijuana excise tax of 15 percent of the average market rate of the unprocessed marijuana and notify and pay any applicable county excise tax on the transferred retail marijuana.

Background

Transfers of marijuana under current law. Beginning July 1, 2022, House Bill 21-1216 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. HB 21-1216 also allows a medical marijuana products manufacturer to 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.

Special sales tax. Medical marijuana is subject to the state's 2.9 percent sales tax when sold to a consumer. Retail marijuana is not subject to the state sales tax but is subject to a special 15 percent sales tax on the final consumer purchase price, which is deposited into the Marijuana Tax Cash Fund; 10 percent of which is apportioned to local jurisdictions where retail marijuana is sold. Local jurisdictions may also apply a special tax on retail marijuana sales.

Excise tax. Retail marijuana is subject to a 15 percent excise tax applied to the average market rate or contract price of retail marijuana. The lesser of the first \$40 million collected from the excise tax is transferred to the Public School Capital Construction Assistance Fund and the remainder collected goes to the State Public School Fund. Several counties also assess an excise tax on retail marijuana.

Cultivations eligible for transfers. There are an estimated 217 medical marijuana cultivation facilities that are co-located with a retail cultivation and will be eligible to change the designation of marijuana transferred within the facility. There are an estimated 152 medical marijuana cultivation facilities that are not co-located with a retail marijuana cultivation facility due to local prohibitions on retail marijuana.

State Revenue

The bill increases state revenue by \$274,941 in FY 2022-23 and \$384,007 in FY 2023-24 to the Marijuana Cash Fund. The bill will also increase marijuana sales and excise tax revenue as explained below. These revenue sources are subject to TABOR.

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. These fee amounts are estimates only, actual fees will be set administratively by the DOR based on cash fund balance, estimated program costs, and the estimated number of licensees subject to the fee. It is not known which fees will be increased to fund the bill; as a result, the table below identifies the total fee increase necessary to cover the bill’s expenditures.

**Table 2
 Fee Impact on Marijuana Licensees**

| Fiscal Year | Type of Fee | Total Fee Increase |
|--------------------|--------------------------|---------------------------|
| FY 2022-23 | Marijuana Licensing Fees | \$274,941 |
| FY 2023-24 | Marijuana Licensing Fees | \$384,007 |

Tax revenue. The bill will increase revenue to the Marijuana Tax Cash Fund from the retail marijuana special sales tax, and to the State Public School Fund from the retail marijuana excise tax. After \$40.0 million is transferred to the Public School Capital Construction Assistance Fund, the remainder collected from the excise tax is transferred to the State Public School Fund. The tax revenue will depend on the amount of marijuana that has its designation changed and has not been estimated.

State Expenditures

The bill increases state expenditures in the Department of Revenue by \$274,941 in FY 2022-23 and \$384,007 in FY 2023-24 from the Marijuana Cash Fund. Expenditures are shown in Table 3 and detailed below.

**Table 3
 Expenditures Under SB 22-178**

| | FY 2022-23 | FY 2023-24 |
|---|-------------------|-------------------|
| Department of Revenue | | |
| Personal Services | \$193,595 | \$305,431 |
| Operating Expenses | \$3,915 | \$6,075 |
| Capital Outlay Costs | \$31,000 | - |
| Centrally Appropriated Costs ¹ | \$46,431 | \$72,501 |
| Total Cost | \$274,941 | \$384,007 |
| Total FTE | 2.9 FTE | 4.5 FTE |

¹ Centrally appropriated costs are not included in the bill's appropriation.

Department of Revenue. The MED requires 4.5 FTE, prorated to 2.9 FTE in FY 2022-23, to implement the bill. This includes compliance, analytical, legal, scientific, and administrative staff. Initially, staff will be involved in rulemaking, and processing requests for transfers from facilities that are not co-located. Staff will also monitor compliance with transfer requirements including testing, and ensure that taxes are properly assessed on re-designated marijuana. The fiscal note assumes that not all transfers will be done in compliance with the bill and MED rules and will require additional staff to investigate and enforce compliance. Because the transfer of marijuana between physical facilities increases the risk of contamination and diversion, the MED requires a science researcher to determine whether a recall is indicated and to distribute a health and safety advisory to the public if necessary. Standard operating and capital outlay costs are included.

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 and supplemental employee retirement payments, are shown in Table 2.

Other Budget Impacts

TABOR refunds. The bill is expected to increase the amount of state revenue required to be refunded to taxpayers by the amounts shown in the State Revenue section above. This estimate assumes the March 2022 LCS revenue forecast. A forecast of state revenue subject to TABOR is not available beyond FY 2023-24. Because TABOR refunds are paid from the General Fund, increased cash fund revenue will reduce the amount of General Fund available to spend or save.

Local Government

This bill may increase sales and excise tax revenue to some local jurisdictions based on a number of factors but primarily whether transfers and changes in designations of medical marijuana to retail marijuana occur in a jurisdiction.

Effective Date

The bill takes effect July 1, 2022.

State Appropriations

For FY 2022-23, the bill requires an appropriation of \$228,510 from the Marijuana Cash Fund to the Department of Revenue, and 2.9 FTE.

State and Local Government Contacts

Counties

Municipalities

Revenue