



Colorado  
Legislative  
Council  
Staff

HB16-1266

REVISED  
FISCAL NOTE

(replaces fiscal note dated March 4, 2016)

**FISCAL IMPACT:**  State  Local  Statutory Public Entity  Conditional  No Fiscal Impact

**Drafting Number:** LLS 16-0970

**Date:** April 8, 2016

**Prime Sponsor(s):** Rep. Becker K.

**Bill Status:** Senate SVMA

Sen. Cooke

**Fiscal Analyst:** Clare Pramuk (303-866-2677)

**BILL TOPIC:** DOR SEIZE DESTROY MARIJUANA UNAUTHORIZED PESTICIDE

Fiscal Impact Summary	FY 2016-2017	FY 2017-2018
<b>State Revenue</b>	<b>\$787,405</b>	<b>\$787,405</b>
Cash Funds	787,405	787,405
<b>State Expenditures</b>	<b>\$664,680</b>	<b>\$773,430</b>
Cash Funds	625,392	726,082
Centrally Appropriated Costs	39,288	47,348
<b>TABOR</b>	<b>787,405</b>	<b>787,405</b>
<b>FTE Position Change</b>	<b>4.9 FTE</b>	<b>5.8 FTE</b>
<b>Appropriation Required:</b> \$625,392 - Department of Revenue (FY 2016-17).		
<b>Future Year Impacts:</b> Ongoing revenue and expenditure increase.		

### Summary of Legislation

Under current law, if test results indicate the presence of harmful contaminants in medical or retail marijuana, the licensee is required to quarantine the marijuana, notify the Marijuana Enforcement Division (MED) in the Department of Revenue (DOR), and document and properly destroy the adulterated product. The **reengrossed** bill allows the MED to quarantine, document, and destroy marijuana that tests positive for any substance determined by the Colorado Department of Public Health and Environment (CDPHE) to be harmful, including unauthorized pesticides. Before any products are destroyed, DOR must notify the licensee that it may contest the results of the test by filing written notice with the DOR within five days after receipt of the test results. The DOR will hold a hearing on the matter within two weeks, promptly determine the matter, and provide the licensee with a written notice of its determination.

### Background

Executive Order D2015-015 directs state agencies to address threats to public safety posed by marijuana contaminated by pesticides. The Colorado Department of Agriculture (CDA) regulates the use of pesticides, while the MED licenses medical and retail marijuana businesses. Currently, the CDA tests marijuana for the presence of pesticides and reports violations to the MED. The CDPHE is currently conducting stakeholder meetings on the subject of certifying facilities to test for pesticides in medical and retail marijuana.

### **State Revenue**

This bill increases annual state cash fund revenue by \$787,405 beginning in FY 2016-17 to the Marijuana Cash Fund.

**Fee impact on Retail and Medical Marijuana businesses.** Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. The actual fees will be set administratively by the DOR based on the cash fund balance, estimated program costs, and estimated number of licensees. Table 1 below identifies the fees necessary to cover the program costs.

<b>Table 1. Fee Impact on Retail and Medical Marijuana Businesses Under HB16-1266</b>					
<b>Type of License Fee</b>	<b>Current Fee</b>	<b>Proposed Fee</b>	<b>Fee Change</b>	<b>Number Affected</b>	<b>Total Fee Impact</b>
Center Type 1 (1-300 patients)	\$3,000	\$3,345	\$345	443	\$152,835
Center Type 2 (301-500 patients)	7,000	7,805	805	55	44,275
Center Type 3 (501 or more patients)	11,000	12,265	1,265	24	30,360
Retail Store	3,000	3,345	345	424	146,280
Cultivation	2,200	2,453	253	1,256	317,768
Manufacturer	2,200	2,453	253	379	95,887
<b>TOTAL</b>					<b>\$787,405</b>

### **TABOR Impact**

This bill increases state revenue from fees, which will increase the amount of money required to be refunded under TABOR. TABOR refunds are paid out of the General Fund.

### **State Expenditures**

This bill increases state cash fund expenditures by \$664,680 and 4.9 FTE in FY 2016-17 and \$773,430 and 5.8 FTE in FY 2017-18 from the Marijuana Cash Fund in the DOR.

**Assumptions.** The fiscal note assumes that annually 5 percent of 2,581 licensees will have some of their products fail tests and will appeal the test results. This equates to 10 appeals per month that will be heard by the DOR's hearings division. Each appeal will require 50 hours of legal services from the Department of Law.

<b>Table 2. Expenditures Under HB 16-1266</b>		
<b>Cost Components</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>
Personal Services	\$129,487	\$153,647
DOR FTE	2.1 FTE	2.5 FTE
Department of Law FTE	2.8 FTE	3.3 FTE
Operating Expenses and Capital Outlay Costs	16,104	2,375
Legal Services	479,801	570,060
Centrally Appropriated Costs*	39,288	47,348
<b>TOTAL</b>	<b>\$664,680</b>	<b>\$773,430</b>

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

**Department of Revenue.** Beginning in FY 2016-17, the DOR will have increased costs and workload related to hearings and enforcement as explained below.

*Hearings division.* Each hearing to appeal a failed test will require an average of 35 hours of a hearings officer's time to participate in prehearing conferences, prepare information to be used at hearings, hold the hearing, and write the decision after the hearing is complete. Intake of each hearing will require nine hours of an administrative assistant's time. For FY 2016-17, the DOR requires 1.7 FTE Hearing Officer II and 0.4 FTE of an Administrative Assistant III and 2.0 FTE Hearing Officer II and 0.5 FTE Administrative Assistant III in FY 2017-18. The personal services costs for FY 2016-17 are prorated to reflect the 10 months of hearings due to the August effective date.

*Legal services.* The DOR requires legal services for general counsel, rulemaking, legal support for agency actions to quarantine and destroy marijuana and to represent the DOR in hearings. Each case will require an average of 50 hours of legal services from the Department of Law. With 50 hours for rulemaking in FY 2016-17, the DOR requires a total of 5,050 hours of legal services for 10 months of hearings in FY 2016-17 and 6,000 hours in FY 2017-18 from the Department of Law at a rate of \$95.01 per hour. The Department of Law requires an allocation of 2.5 FTE for FY 2016-17 and 2.9 FTE for FY 2017-18 to support this number of hours.

*Marijuana Enforcement Division.* Workload in the MED will increase to take enforcement action against licensees whose marijuana is found to be contaminated and to destroy the product. This workload increase is expected to be minimal and can be addressed within existing appropriations.

**Department of Public Health and Environment.** Should the CDPHE be required to identify additional contaminants in medical or retail marijuana that pose a threat to human safety, that workload can be addressed within existing appropriations.

#### **Effective Date**

The bill takes effect August 10, 2016, if the General Assembly adjourns on May 11, 2016, as scheduled, and no referendum petition is filed.

**State Appropriations**

For FY 2016-17, the Department of Revenue requires an appropriation of \$620,641 from the Marijuana Cash Fund and an allocation of 1.7 FTE. The Department of Law requires \$475,050 in reappropriated funds and an allocation of 2.8 FTE.

**State and Local Government Contacts**

Agriculture

Governor's Marijuana Office

Law

Revenue