HB 24-1061

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Fiscal Note

Drafting Number:	LLS 24-0021	**Date:**	March 6, 2024
Prime Sponsors:	Rep. Ricks; English	**Bill Status:**	House Business & Labor
		Fiscal Analyst:	John Armstrong | 303-866-6289 Emily Dohrman | 303-866-3687

Bill Topic: **MARIJUANA INDUSTRY & SOCIAL EQUITY**

Summary of Fiscal Impact:

☒ State Revenue ☐ State Transfer ☒ Local Government
☒ State Expenditure ☒ TABOR Refund ☐ Statutory Public Entity

The bill changes several provisions for social equity licensees in the marijuana industry. The bill will increase state and local revenue and expenditures beginning in FY 2024-25.

Appropriation Summary: For FY 2024-25, the bill requires an appropriation of $486,457 to multiple state agencies.

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

Table 1
State Fiscal Impacts Under HB 24-1061

		Budget Year FY 2024-25	Out Year FY 2025-26	Out Year FY 2026-27
Revenue	General Fund	-	($250,000)	($500,000)
	Marijuana Cash Fund	$310,584	$411,771	$435,504
	Total Revenue	**$310,584**	**$161,771**	**($64,496)**
Expenditures	General Fund	$79,611	$7,328	$7,328
	Marijuana Cash Fund	$310,584	$411,771	$435,504
	Marijuana Tax Cash Fund	$96,263	$89,593	$89,593
	Centrally Appropriated	$47,073	$90,423	$98,499
	Total Expenditures	**$533,530**	**$599,115**	**$630,923**
	Total FTE	**3.0 FTE**	**5.2 FTE**	**5.6 FTE**
Transfers		-	-	-
Other Budget	TABOR Refund	$310,584	$161,771	($64,496)
	General Fund Reserve	$11,942	$1,099	$1,099

Summary of Legislation

The bill makes a number of changes to the licensing and regulation of marijuana social equity licensees.

New license types. The bill creates the following new marijuana licenses beginning April 1, 2025:

- ***Medical Marijuana Independent Deliverer and Retail Marijuana Independent Deliverer Licenses*** must be issued to social equity licensees. These licenses authorize the delivery of marijuana products to private residences, marijuana hospitality businesses, and hotels, provided the local jurisdiction has authorized marijuana delivery. The bill specifies that certain places are prohibited from receiving marijuana deliveries or may opt out of deliveries. Licensees must abide by Marijuana Enforcement Division (MED) requirements for all marijuana products, including tracking, labeling, sales limits, identity verification, and taxation.
- ***Accelerator Hospitality Business, Accelerator Independent Deliverer, and Accelerator Transporter Licenses*** must be issued to social equity licensees who participate in the accelerator program and are eligible to receive technical support and reduced application fees from the Department of Revenue (DOR) and the Office of Economic Development and International Trade (OEDIT).

Changes to social equity licenses. Effective April 1, 2025, the bill removes the requirement that a social equity license applicant be a Colorado resident. In addition, the bill allows veterans who were discharged due to marijuana possession and individuals who receive low-income government assistance through certain federal programs to obtain a social equity license. Current social equity licensees and those who receive a social equity license between the bill's effective date and March 31, 2025, are not subject to these eligibility changes, unless their qualification is based on income.

Removal of delivery surcharge. Under current law, medical and retail marijuana stores may obtain a permit to deliver products if they include a $1 surcharge on any delivery. This surcharge is remitted to the county or municipality where the store is located. The bill eliminates this surcharge.

Expansion of grant program. OEDIT currently manages a grant program to provide funds to social equity licensees. The bill allows OEDIT to award up to $500,000 in funds to local jurisdictions that have social equity licensees, subject to available funding.

Accelerator program tax credit. The bill creates an income tax credit for tax years 2026 through 2036 of $50,000 for income taxes incurred by persons and businesses that possess an accelerator-endorsed license. If the credit exceeds the income tax liability, the excess may be carried over to a future tax year for up to five years. DOR must conduct similar reporting for this tax credit as their other income tax credits.

Rulemaking. The bill requires DOR to adopt new rules, including determining eligibility requirements for the new licenses; allowing current marijuana businesses to sell products to new delivery licensees; and creating incentives for social equity and accelerator licenses, including fee reductions. The DOR must also adopt rules to allow marijuana hospitality licensees with mobile facilities to temporarily suspend license privileges to conduct non-marijuana commercial activities.

Reporting. The DOR must submit a report on social equity licensees to the legislature by January 31, 2026, and each year thereafter, that includes recommendations for new license types and funding sources for the social equity license program. The DOR must convene a working group to develop these recommendations.

Sunset review. The Department of Regulatory Agencies (DORA) must include recommendations concerning social equity licenses in the sunset review of the Colorado Marijuana Code, scheduled for September 1, 2028.

Background

Social equity licensees. Under current law, Colorado residents may qualify for a social equity license if they have not previously had a marijuana license revoked, and meet at least one of the following criteria:

- resided for at least 15 years between 1980 and 2010 in an area designated as an opportunity zone, or as a disproportionate impacted area as defined in rule by the MED;
- the applicant or their immediate family was arrested for or convicted of a marijuana offense or was subject to civil asset forfeiture related to a marijuana investigation; or
- the applicant's household income in the previous year did not exceed an amount determined by the DOR.

Social equity licensees have the option of applying for any other marijuana business license, or joining the accelerator program. Under the accelerator program, the social equity licensee may partner with an accelerator-endorsed licensee who provides technical and capital support to the social equity licensee.

Accelerator-endorsed licensees. Accelerator-endorsed licensees may be retail marijuana cultivation facilities, manufacturing facilities, or stores. Licensees may qualify for an accelerator endorsement if they have been involved in the marijuana industry for at least two years, have not had their license revoked in the past two years, and submit an equity assistance proposal. An accelerator-endorsed licensee may receive additional privileges such as being designated a social equity leader, receiving compliance assistance and education engagement from DOR, and being able to request certain fee exemptions.

Number of social equity and accelerator-endorsed licensees. As of February 2023, there are 93 approved social equity licensees, and 0 accelerator-endorsed licensees.

State Revenue

On net, the bill increases revenue to the Marijuana Cash Fund by an estimated $311,000 in FY 2024-25 and by $412,000 in FY 2025-26 from changes in licensing fees. The bill also reduces General Fund revenue by $250,000 in FY 2025-26 and $500,000 in FY 2026-27 and ongoing, as a result of the accelerator program tax credit.

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. The fee amounts shown in Table 2 are estimates only; actual fees will be set administratively by MED based on cash fund balance, program costs, and the number of licenses subject to the fee.

- **Reduced social equity licensing fees.** The bill requires DOR to adopt rules reducing costs for social equity license applicants. Under current law, the fees collected from social equity licenses total approximately $311,000 annually. The fiscal note assumes that in order to comply with the bill, DOR will decrease all application fees for social equity licensees by half. In FY 2025-26, the number of expected applicants is assumed to increase by 20 percent as knowledge of the economic benefit to business owners for obtaining a social equity license grows. DOR is expected to raise fees on other license types to account for this revenue reduction.

- **Increased marijuana licensing fees.** Current expenditures for licensing and enforcement of marijuana businesses, including for social equity licensees, are funded from fee revenue to the Marijuana Cash Fund. Because the bill increases MED expenditures, as discussed in the State Expenditures section below, the DOR will raise fees for other marijuana licenses to account for the increase in expenditures.

Table 2
Licensing Revenue Impacts of HB 24-1061

Year	Fee	Total Fee Revenue
FY 2024-25	Reduced Social Equity Fee Revenue	($155,780)
	Increased Fees Accounting for Social Equity Reductions	$155,780
	Increased Fees Accounting for Bill's Expenditures	$310,584
	Total Revenue	**$310,584**
FY 2025-26	Reduced Social Equity Fee Revenue	($187,000)
	Increased Fees Accounting for Social Equity Reductions	$187,000
	Increased Fees Accounting for Bill's Expenditures	$411,771
	Total Revenue	**$411,771**

Marijuana accelerator program participation tax credit. The marijuana accelerator program participation tax credit allows accelerator-endorsed licensees that have provided assistance to social equity licensees for the previous twelve months to claim a $50,000 income tax credit. The credit may be carried forward for up to five years. The fiscal note assumes that approximately ten accelerator-endorsed licensees will claim the tax credit in tax year 2026, the first year the credit is available. This results in a decrease in General Fund revenue of $250,000 in FY 2025-26 (a half-year impact) and $500,000 in FY 2026-27 and ongoing.

State Expenditures

The bill increases state expenditures in the DOR and OEDIT by $534,000 in FY 2024-25, $599,000 in FY 2025-26, and $631,000 in FY 2026-27. The DOR's marijuana-related expenditures are paid from the Marijuana Cash Fund and its tax credit-related expenditures are paid from the General Fund. OEDIT's expenditures are paid from the Marijuana Tax Cash Fund. Expenditures are shown in Table 3 and detailed below.

Table 3
Expenditures Under HB 24-1061

	FY 2024-25	FY 2025-26	FY 2026-27
Department of Revenue			
Personal Services	$107,722	$285,031	$321,591
Operating Expenses	$1,920	$4,864	$5,376
Capital Outlay Costs	$26,680	$13,340	-
Marijuana Licensing Programming	$36,000	$1,000	$1,000
Tax Credit Programming/Reporting (GF)	$79,611	$7,328	$7,328
Legal Services	$138,262	$107,537	$107,537
Centrally Appropriated Costs[1]	$27,530	$70,879	$78,955
FTE – Personal Services	1.5 FTE	3.8 FTE	4.2 FTE
FTE – Legal Services	0.6 FTE	0.5 FTE	0.5 FTE
DOR Subtotal	**$417,724**	**$489,979**	**$521,787**
Office of Economic Development			
Personal Services	$88,441	$88,441	$88,441
Operating Expenses	$1,152	$1,152	$1,152
Capital Outlay Costs	$6,670	-	-
Centrally Appropriated Costs[1]	$19,544	$19,544	$19,544
FTE – Personal Services	0.9 FTE	0.9 FTE	0.9 FTE
OEDIT Subtotal	**$115,806**	**$109,136**	**$109,136**
Total Cost	**$533,530**	**$599,115**	**$630,923**
Total FTE	**3.0 FTE**	**5.2 FTE**	**5.6 FTE**

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

Department of Revenue. The MED and the Taxation Division requires staff and computer programming to implement the bill.

- **Staff.** DOR requires a total of 4.2 FTE ongoing to implement the bill. These additional staff will conduct additional, more complex application reviews for new and existing social equity licenses, investigate deliveries and file criminal motions in case of violations, adopt new rules, and write reports as required by the bill. Costs are prorated to assume a January 2025 start date for compliance investigators, a statistical analyst, and an administrative assistant. Costs for a policy advisor are prorated to assume a July 2025 start date and a criminal investigator is prorated to assume a January 2026 start date. Standard capital outlay and operating costs are included for all positions.

- **Marijuana licensing programming.** The MED requires $36,000 in FY 2024-25 and $1,000 in subsequent years for updates to the MyLicenseOffice system and map access.

- **GenTax programming and reporting.** In FY 2024-25, the Taxation Division requires $79,611 to program, test, and update database fields in its GenTax software system. Programming costs are estimated at $30,128, representing 130 hours of contract programming at a rate of $231.75 per hour. Costs for testing at the department include $28,875 for 825 hours of innovation, strategy, and delivery programming support at a rate of $35 per hour, and $13,216 for 413 hours of user acceptance testing at a rate of $32 per hour. Expenditures in the Office of Research and Analysis are required for changes in the related GenTax reports so that the department can access and document tax statistics related to the new tax policy. These costs are estimated at $7,392, representing 231 hours for data management and reporting at $32 per hour.

- **Legal services.** The MED requires 600 hours in legal services provided by the Department of Law in FY 2024-25, which equates to 0.6 FTE, and 480 hours beginning in FY 2025-26, which equates to 0.5 FTE. Legal services are required to assist with any denials of applications, enforcement of delivery provisions and violations, and the increased complexity of license types.

Office of Economic Development and International Trade. OEDIT requires 0.9 FTE program manager to manage local government grant applications. The $500,000 grant program for social equity licensees in the bill has existing funding. Standard capital outlay and operating expenses are included for staff.

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 3.

Other Budget Impacts

TABOR refunds. The bill is expected to decrease 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 December 2023 LCS revenue forecast. A forecast of state revenue subject to TABOR is not available beyond FY 2025-26. Because TABOR refunds are paid from the General Fund, decreased cash fund revenue will increase the amount of General Fund available to spend or save.

General Fund reserve. Under current law, an amount equal to 15 percent of General Fund appropriations must be set aside in the General Fund statutory reserve. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve by the amounts shown in Table 1, decreasing the amount of General Fund available for other purposes

Local Government

The bill will decrease revenue to counties and municipalities that currently collect a $1 surcharge on delivered marijuana products. The exact reduction will vary between local governments and cannot be estimated. The bill will also increase workload for local marijuana licensing authorities to update regulations to match the bill. Finally, any local government that applies for and receives a grant from OEDIT for its social equity licensees will have an increase in revenue and expenditures.

Technical Note

Under current law, retail marijuana is subject to a 15 percent special sales tax, and is exempt from the state's standard 2.9 percent sales tax. The bill states that retail marijuana is not exempt from any state or local sales tax. This provision would make retail marijuana subject to both the 15 percent special sales tax and the standard 2.9 percent tax, rather than just the former. The fiscal note assumes that the bill will be amended such that retail marijuana will remain exempt from the standard 2.9 percent sales tax. If the bill is not amended, revenue subject to TABOR will increase by more than what is reported in this fiscal note. The bill does not state where this revenue would be deposited.

Effective Date

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

State Appropriations

For FY 2024-25, the bill requires the following appropriations to the Department of Revenue:

- $79,611 from the General Fund; and

- $310,584 from the Marijuana Cash Fund and 1.5 FTE, of which $138,262 is reappropriated to the Department of Law, with an additional 0.6 FTE.

In addition, for FY 2024-25, the bill requires an appropriation of $96,262 from the Marijuana Tax Cash Fund to the Office of Economic Development and International Trade, and 0.9 FTE.

State and Local Government Contacts

Counties	Law	Municipalities
Office of Economic Development	Public Health and Environment	Revenue
State Auditor		

The revenue and expenditure impacts in this fiscal note represent changes from current law under the bill for each fiscal year. For additional information about fiscal notes, please visit the General Assembly website.