

CONFIDENTIAL
Legislative Bill Review Form: 2016

Bill Number: S.241

Name of Bill: An act relating to possession, cultivation, and commercialization of cannabis

Agency/Dept: Tax

Author(s) of Bill Review: Kirby Keeton, Candace Morgan

Date of Bill Review: 03/07/16

Related Bills & Key Players: S.95, H.277

Status of Bill: As passed by 1st body

Recommended Position: Support with modifications identified in #8 below

Analysis of Bill

1. Summary of bill and issue it addresses. *Describe what the bill is intended to accomplish and why.*

The bill legalizes the possession of small amounts of marijuana and allows marijuana to be grown for and sold at a limited number of licensed retail establishments. Sec. 12a establishes a marijuana excise tax, imposed at 25 percent of the sales price. Marijuana (both recreational and medical) is exempt from sales tax (Sec. 12c). Most of the provisions of the sales tax chapter are incorporated by reference for tax assessment, collection, enforcement, and appeals. The bill currently allows three forms of bundled transactions (transactions involving products subject to the excise tax and not subject to the excise tax). Retailers are required to register for a free tax license with the Department before collecting and remitting the tax.

The bill also allows marijuana businesses and medical marijuana dispensaries to deduct business expenses for state income tax purposes that are currently precluded for marijuana businesses for federal income taxes (Sec. 12b).

2. Is there a need for this bill? *Please explain why or why not.*

This bill was proposed during the Governor's State of the State. This bill appears to effectively and cautiously implement a legal and regulated approach to marijuana.

3. What are likely to be the fiscal and programmatic implications of this bill for this department?

The new tax requires an addition to our integrated tax computer system and some new positions. We anticipate that some marijuana businesses will have trouble getting access to banking because of federal rules and laws. A lack of consistent banking could lead to significant difficulties in administering the tax because the Department does not currently accept cash payments and this bill could potentially lead to very large cash payments. This has the potential for serious security concerns.

FY2017 costs were limited to two positions and part of the cost of implementing a new module for the excise tax. Senate Appropriations granted the Department \$500,000 for the module plus \$160,000 for two new positions. This was less than our original ask for FY2017, but still workable. There was a lot of discussion before the floor and during the debate about the cost of this implementation. It was developed using an estimate from Colorado's implementation, but we assume it to be high. We are actively working with our vendor to develop a more focused estimate during the House debate of S.241.

It is also important to emphasize that this money does not deal with any of the cash issues we anticipate based on the experiences of other states. That is scheduled to be addressed in FY2018's appropriation from the Marijuana Regulation and Resource Fund.

4. What might be the fiscal and programmatic implications of this bill for other departments in state government, and what is likely to be their perspective on it?

The Department of Public Safety has the largest role to play as the regulatory agency. This bill also affects the Department of Financial Regulation, Department of Health, and Agency of Agriculture.

5. What might be the fiscal and programmatic implications of this bill for others and what is likely to be their perspective on it? (e.g., public, municipalities, organizations, business, regulated entities)

Municipalities may choose to disallow marijuana businesses. There is also an ask of the Marijuana Program Review Board to consider local revenue streams which may include a local option excise tax. Banks and credit unions may choose to offer financial services to these businesses.

6. Other Stakeholders

6.1 Who else is likely to support the proposal and why?

6.2 Who else is likely to oppose the proposal and why?

7. Rationale for recommendation: *Justify recommendation stated above.*

The Department foresees no problems in administering the excise tax portions of this bill. If it weren't for the cash component, it would be a fairly simple miscellaneous tax for us to implement. The potential for cash payments is the greatest problem. While some credit unions have said they will offer banking solutions for the retailers, it would be unwise to not anticipate some amount of cash. Even if only 30% of the revenue came in cash, it would be a significant amount more than we currently take in (roughly less than \$10,000/year).

8. Specific modifications that would be needed to recommend support of this bill: *Not meant to rewrite bill, but rather, an opportunity to identify simple modifications that would change recommended position.*

The bill currently allows a retailer to bundle transactions involving marijuana and non-marijuana items without itemizing a receipt but charge excise tax on the marijuana only. If a retailer's bookkeeping is not very well done, this lack of tracking on the receipt could lead to the underpayment of tax and/or large assessments on audit. We think it would be preferable for retailers and the Department to not allow this kind of transaction. Bundled transactions with itemized receipts or where excise tax is applied to the entire transaction is relatively easy to track and would avoid these possible problems. Tax plans on offering this solution when the bill is before Ways and Means.

9. Will this bill create a new board or commission AND/OR add or remove appointees to an existing one? If so, which one and how many? *This is simply expanded language to indicate whether the bill would also add or remove appointees to existing board or commission, under the administration's control.*

Yes. This bill creates a Marijuana Advisory Board and Marijuana Program Review Commission. The purpose of the Board is to encourage interagency communication and the purpose of the Commission is to investigate possible improvements to the regulation of marijuana.

The Marijuana Advisory Board created in Sec. 12 of the bill includes a member of local law enforcement to be appointed by the Governor. The Commission includes four members of the public, appointed by the Governor (one who shall have experience in public health). The Appropriations amendment changed the location of the Commission to the Administration (instead of legislative council, as was originally proposed).

Secretary/Commissioner has reviewed this document. Name: Mary Peterson

Date: 03/30/16