



GOVERNOR'S OFFICE OF  
BUDGET AND PROGRAM PLANNING

## Fiscal Note 2023 Biennium

**Bill #** HB0707

**Title:** Generally revise recreational marijuana laws

**Primary Sponsor:** Tschida, Brad

**Status:** As Amended

- Significant Local Gov Impact     
  Needs to be included in HB 2     
  Technical Concerns  
 Included in the Executive Budget     
  Significant Long-Term Impacts     
  Dedicated Revenue Form Attached

### FISCAL SUMMARY

	<u>FY 2022</u> <u>Difference</u>	<u>FY 2023</u> <u>Difference</u>	<u>FY 2024</u> <u>Difference</u>	<u>FY 2025</u> <u>Difference</u>
<b>Expenditures:</b>				
General Fund	\$3,577,143	\$441,761	\$431,128	\$437,595
State Special Revenue	\$4,900,000	\$6,400,000	\$6,834,926	\$7,134,161
<b>Revenue:</b>				
General Fund - Change in Tax Revenue (01)	\$1,890,000	\$13,380,000	\$18,120,000	\$20,760,000
State Special Revenue - Change in Tax revenue (02)	(\$11,660,000)	(\$30,330,000)	(\$41,060,000)	(\$47,030,000)
State Special Revenue - License Fees (02)	\$4,900,000	\$6,400,000	\$7,000,000	\$7,400,000
<b>Net Impact-General Fund Balance:</b>	<u>(\$1,687,143)</u>	<u>\$12,938,239</u>	<u>\$17,688,872</u>	<u>\$20,322,405</u>

**Description of fiscal impact:** This bill requires separation between the various stages of producing and selling adult-use marijuana, creates a wholesaler license, and applies the tax to wholesale sales instead of retail sales. The costs contained in this fiscal note include those necessary to implement the full adult-use marijuana program in accordance with statute as passed in I-190, and as amended by HB 707. A crosswalk from I-190 to HB 707 can be found in Technical Note #3 of this fiscal note.

### FISCAL ANALYSIS

#### Assumptions:

#### **Department of Revenue (DOR)**

1. This bill revises the regulation and taxation of adult-use marijuana.
2. The primary changes this bill makes from current law (I-190) are requiring separation between the stages of the manufacture, wholesale, and retail sales of marijuana, creating wholesaler licenses, and applying the 20% tax on wholesale sales instead of retail sales. This bill also requires people to apply for and get a purple card for personal cultivation and use of marijuana, which is not expected to have a significant fiscal impact.
3. The amendments to this bill change the effective date for the department to begin accepting applications for licenses from October 1, 2021 to March 1, 2022. This delays the assumed start date of sales until April 1, 2022.

**DOR: Sales Tax Revenue – Adult-use Marijuana**

4. The current law tax on adult-use marijuana is 20% and the current law revenue estimates are in the table below. These estimates were generated using the estimated potential sales in Montana published in a September 2020 report by the University of Montana Bureau of Business and Economic Research as a starting point for the potential demand in calendar year (CY) 2022. A downward adjustment was made for CY 2022 based on initial supply limitations as a result of only current medical marijuana licensees being allowed to sell adult-use marijuana for the first year. Moderate growth rates based on the growth of legal marijuana sales in Washington, Oregon, California, Colorado, Nevada and Alaska of 60%, 20%, and 10% were used to project the annual sales for CY 2023, CY 2024, and CY 2025, respectively. The calendar year sales were then converted to fiscal year sales, and both are presented in the table below, along with the estimated tax revenue and the general fund and state special revenue portions. These estimates assume that sales would begin January 1, 2022.

Year	Current Law I-190 (millions)				
	CY Sales	FY Sales	Tax Revenue (20%)	General Fund Revenue (10.5%)	State Special Revenue
2022	\$130.3	\$65.2	\$13.03	\$1.37	\$11.66
2023	\$208.5	\$169.4	\$33.88	\$3.56	\$30.33
2024	\$250.2	\$229.4	\$45.87	\$4.82	\$41.06
2025	\$275.2	\$262.7	\$52.55	\$5.52	\$47.03

5. Under current law, the state special revenue would be allocated for the following purposes: wildlife habitat and state parks, local government commerce, veteran services, Medicaid rate increases, and drug addiction treatment.
6. This bill changes the tax from 20% of retail sales to 20% of wholesale sales but does not make any other changes that are expected to change the estimated sales under current law. Based on the average markup on marijuana products in other states, it is assumed that the average markup for wholesale to retail sales would be 100% before tax, so the taxable wholesale sales under this bill would be 50% of the taxable retail sales under current law. The following table takes the FY sales from the current law table above and adjusts them to fiscal year wholesale sales and then applies the 20% tax rate. The amended effective date changes the assumed start date of sales from January 1, 2022 to April 1, 2022.

HB 707 Proposed Law - Sales Begin April 1, 2022 (millions)						
Fiscal Year	Current Law Retail Sales	Proposed Law Retail Sales	Proposed Law Wholesale Sales	Tax Revenue (20%)	Change in Tax Revenue from Current Law	Change in General Fund Revenue
2022	\$65.2	\$32.6	\$16.3	\$3.26	(\$9.77)	\$1.89
2023	\$169.4	\$169.4	\$84.7	\$16.94	(\$16.94)	\$13.38
2024	\$229.4	\$229.4	\$114.7	\$22.94	(\$22.94)	\$18.12
2025	\$262.7	\$262.7	\$131.4	\$26.27	(\$26.27)	\$20.76

7. The tax revenue from the above tables would all be deposited into the general fund to be appropriated by the legislature. This bill would increase general fund revenue as shown in the table above and decrease state special revenue by the amount estimated and shown in the earlier current law estimate table.

**DOR: Agency Costs**

8. For the purposes of this fiscal note, the following costs are the total costs to implement and administer the Montana Marijuana Regulation and Taxation Act, not the change in costs because of this bill relative to current law.

9. The department will create a new marijuana division with the following personnel (FTE) beginning in FY 2022: 1 administrator, 2 bureau chiefs, 2 unit managers, 2 management analysts, 4 licensing specialists, 3 cardholder technicians, 16 investigators, 1 chemist, 2 auditors, 1 compliance officer, 1 administrative specialist, and 1 education specialist. Additional costs for this division include travel, vehicles, firearms, and phones for investigators.
10. The director's office will add 1 administrative law judge (beginning January 1, 2022), 1 paralegal assistant and 1 public relation specialist in FY 2022.
11. The Information Management Collections Division within the department will add 1 collections specialist and 2 computer operators starting January 1, 2022.
12. The Business and Income Tax unit within the department will need to hire 1 new tax examiner in FY 2022, increasing to 5 in FY 2023, with travel and two leased vehicles.
13. The Technology Services Division within the department will hire 2 computer system analysts beginning in FY 2022 and will have a one-time contracted services cost in FY 2022 of \$3 million to get the new tax type added to the integrated revenue information system and annual costs of \$65,000 for system licensing.
14. The department will also be responsible for a \$40 per month tracking system reporting fee for each provider and providing the tracking tags for each plant and package or product in the seed-to-sale tracking system. Tags are \$0.45 per plant and \$0.25 for a package tag. Total estimated costs for these fees and tags are \$604,600 for FY 2022, \$1,338,800 for FY 2023, \$1,705,900 for FY 2024, and \$1,943,400 for FY 2025.
15. Total estimated costs to the department are \$8,200,704 in FY 2022, \$6,417,005 in FY 2023, \$6,834,926 in FY 2024, and \$7,134,161 in FY 2025.
16. It is assumed that these costs will be covered by the license fee revenue in marijuana state special revenue account, with any remaining costs coming out of the general fund. License fee revenue under this bill is estimated to be approximately \$4.9 million in FY 2022, \$6.4 million in FY 2023, \$7.0 million in FY 2024, and \$7.4 million in FY 2025. Note that this is the total estimated license fee revenue under this bill and not the change in license fee revenue relative to current law estimates.

**Department of Justice (DOJ)**

17. The DOJ will need 3.0 FTE in FY 2022 and 5.0 FTE beginning in FY 2023.
18. Based on new marijuana provider facilities, there will be an increase in fire inspections required. It is estimated that the increased workload of inspections and administrative process associated with the inspections throughout the year will result in a need of 5.0 FTE in the Division of Criminal Investigation. The FTE consist of the following expenses:
  - a. It is assumed that DOJ will hire 2.0 fire marshal and 1.0 FTE administrative assistant in FY 2022 and hire the remaining 2.0 FTE fire marshals in FY 2023.
  - b. An additional FTE will have an overall expense of \$276,439 in FY 2022, of which \$182,100 is personal services and \$94,339 is operating. Withing the operating costs, \$22,001 is OTO and \$72,338 are ongoing.
  - c. The personal services expenditures for the additional FTE are expected to be \$352,418 in FY 2023, \$357,704 in FY 2024, and \$363,070 in FY 2025.
  - d. Operating expenses are expected to be \$72,338 in FY 2023, \$73,424 in FY 2024, and \$74,525 in FY 2025.

**Office of the State Public Defender**

19. As written this legislation creates a new felony penalty under Title 45, chapter 9 of the MCA. OPD assumes each new case requires a minimum of 15 hours of attorney time for this case type. Our current full-time employee (FTE) all-inclusive hourly rate is \$68.48, established by the FY 2019 performance audit. OPD estimates each new case charged under this legislation would cost the agency \$1,027.20 (15 hours x \$68.48 per hour). However, the agency is currently unable to estimate the number of new cases that might be charged under this penalty and are unable to quantify the fiscal impact.

**Fiscal Note Request – As Amended**

*(continued)*

	<u>FY 2022</u> <u>Difference</u>	<u>FY 2023</u> <u>Difference</u>	<u>FY 2024</u> <u>Difference</u>	<u>FY 2025</u> <u>Difference</u>
<b><u>Fiscal Impact:</u></b>				
FTE	46.00	54.00	54.00	54.00
<b><u>Expenditures:</u></b>				
Personal Services	\$3,804,225	\$4,531,610	\$4,590,290	\$4,649,845
Operating Expenses	\$4,672,918	\$2,310,151	\$2,675,764	\$2,921,911
<b>TOTAL Expenditures</b>	<b>\$8,477,143</b>	<b>\$6,841,761</b>	<b>\$7,266,054</b>	<b>\$7,571,756</b>
<b><u>Funding of Expenditures:</u></b>				
General Fund (01)	\$3,577,143	\$441,761	\$431,128	\$437,595
State Special Revenue (02)	\$4,900,000	\$6,400,000	\$6,834,926	\$7,134,161
<b>TOTAL Funding of Exp.</b>	<b>\$8,477,143</b>	<b>\$6,841,761</b>	<b>\$7,266,054</b>	<b>\$7,571,756</b>
<b><u>Revenues:</u></b>				
General Fund - Tax Revenue (01)	\$1,890,000	\$13,380,000	\$18,120,000	\$20,760,000
State Special Revenue - Tax revenue (02)	(\$11,660,000)	(\$30,330,000)	(\$41,060,000)	(\$47,030,000)
State Special Revenue - License Fees (02)	\$4,900,000	\$6,400,000	\$7,000,000	\$7,400,000
<b>TOTAL Revenues</b>	<b>(\$4,870,000)</b>	<b>(\$10,550,000)</b>	<b>(\$15,940,000)</b>	<b>(\$18,870,000)</b>
<b><u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u></b>				
General Fund (01)	(\$1,687,143)	\$12,938,239	\$17,688,872	\$20,322,405
State Special Revenue (02)	(\$11,660,000)	(\$30,330,000)	(\$40,894,926)	(\$46,764,161)

**Technical Notes:**

1. This bill makes no changes to the medical marijuana tax so the retailers would still be responsible for collecting and paying the tax on sales to medical marijuana cardholders, while the wholesalers would be responsible for collecting and paying the tax on adult-use marijuana products. This would increase the number of taxpayers and require separation of medical and adult-use products at or prior to wholesale to avoid double taxing the medical marijuana products.

**Office of the State Public Defender (OPD)**

2. OPD assumes the felony penalty in New Section 2, part 4 (b) would be codified under Title 45 Section 9 of the MCA. The codification is not clarified in the legislation.

**Office of Budget and Program Planning (OBPP)**

3. The following table represents the change in revenue allocations between present law as it was passed by the electorate in I-190, and the proposed changes in HB 707 without regard to the changes to the medical marijuana program:

Present Law I-190 Revenue Collection and Allocation (millions)							
FY	Distributable Revenue	General Fund 10.5%	State Special Revenue Total	FWP SSRs	DPHHS SSRs	Military Affairs SSR	Commerce SSR
2022	\$13.03	\$1.37	\$11.66	\$6.45	\$2.61	\$1.30	\$1.30
2023	\$33.88	\$3.56	\$30.32	\$16.77	\$6.78	\$3.39	\$3.39
2024	\$45.87	\$4.82	\$41.05	\$22.71	\$9.17	\$4.59	\$4.59
2025	\$52.54	\$5.52	\$47.02	\$26.01	\$10.51	\$5.25	\$5.25
<b>Total</b>	<b>\$145.32</b>	<b>\$15.26</b>	<b>\$130.06</b>	<b>\$71.93</b>	<b>\$29.06</b>	<b>\$14.53</b>	<b>\$14.53</b>

HB 707 Revenue Collection and Allocation (millions)							
FY	Distributable Revenue	General Fund	State Special Revenue Total	FWP SSRs	DPHHS SSRs	Military Affairs SSR	Commerce SSR
2022	\$3.26	\$3.27	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2023	\$16.94	\$16.94	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2024	\$22.94	\$22.94	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2025	\$26.27	\$26.27	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>Total</b>	<b>\$69.41</b>	<b>\$69.42</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>

Revenue Impacts of HB 707 (millions)							
FY	Distributable Revenue	General Fund	SSR Total	FWP SSRs	DPHHS SSRs	Military Affairs SSR	Commerce SSR
2022	(\$9.77)	\$1.89	(\$11.66)	(\$6.45)	(\$2.61)	(\$1.30)	(\$1.30)
2023	(\$16.94)	\$13.38	(\$30.32)	(\$16.77)	(\$6.78)	(\$3.39)	(\$3.39)
2024	(\$22.94)	\$18.12	(\$41.05)	(\$22.71)	(\$9.17)	(\$4.59)	(\$4.59)
2025	(\$26.27)	\$20.76	(\$47.02)	(\$26.01)	(\$10.51)	(\$5.25)	(\$5.25)
<b>Total</b>	<b>(\$75.92)</b>	<b>\$54.15</b>	<b>(\$130.06)</b>	<b>(\$71.93)</b>	<b>(\$29.06)</b>	<b>(\$14.53)</b>	<b>(\$14.53)</b>

**NOT SIGNED BY SPONSOR**

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