



GOVERNOR'S OFFICE OF  
BUDGET AND PROGRAM PLANNING

## Fiscal Note 2025 Biennium

**Bill information:**

HB0907 - Generally revise marijuana laws (Hinkle, Jedediah )

**Status:** As Introduced

- 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 2024</u> <u>Difference</u>	<u>FY 2025</u> <u>Difference</u>	<u>FY 2026</u> <u>Difference</u>	<u>FY 2027</u> <u>Difference</u>
<b>Expenditures:</b>				
General Fund	\$1,051,026	\$324,397	\$327,334	\$330,305
State Special Revenue	\$21,000	\$21,000	\$21,000	\$21,000
<b>Revenue:</b>				
General Fund	(\$28,000)	\$0	(\$28,000)	\$0
State Special Revenue	(\$14,000)	\$0	(\$14,000)	\$0
<b>Net Impact-General Fund Balance:</b>	<u>(\$1,079,026)</u>	<u>(\$324,397)</u>	<u>(\$355,334)</u>	<u>(\$330,305)</u>

**Description of fiscal impact:** HB 907 proposes the state laboratory test marijuana and marijuana products for the presence of fentanyl and methamphetamine and prepare an annual report on testing results under subsection (5)(b) and send the report to the economic affairs interim committee by June 30, of each year beginning in 2024. There is biennial appropriation of \$42,000 from the state special revenue account to be used to pay for 0.50 FTE for additional testing and rulemaking duties. The Department of Public Health and Human Services would need to hire additional staffing beyond the 0.50 FTE to meet the new statutory lab testing requirements.

### FISCAL ANALYSIS

**Assumptions:****Department of Public Health and Human Services (DPHHS/department)**

- The lab would have to register as an analytical lab which is \$296 annually to be able to perform the required testing, as current law does not allow the lab to legally test marijuana. The registration requirements would add costs related to storage, inventory, and receiving as product would have to be stored, locked, and inventoried. The lab currently does not have the space to do this and would need funding to set up this space as well as the cost of locking cabinets and other supplies needed. This cost is estimated at \$25,000 in the first year. The lab is currently under renovation, so this space would not be complete until FY 2025.

2. Currently, the department does not have the expertise in marijuana or toxicology testing to meet the requirements of the HB907. An additional 2.00 FTE (toxicology section supervisor and a toxicology lab technologist) would need to be hired to perform the specific testing. Salary and benefits of the 2.00 new FTE positions are estimated to be \$169,447 in FY 2024 and \$170,001 in FY 2025. One-time office set up costs in FY 2024 are \$5,600, and ongoing operating costs associated with the FTE are estimated at 3% of personal services.
3. The department assumes a 1.5% inflation factor for personal services in FY 2026 and FY2027.
4. This staff would be required to attend a minimum of two trainings per year to maintain competency at \$5,000 per training for a total of \$20,000.
5. New instrumentation would be required to be able to perform these specific tests, as the lab does not currently have the equipment required to do the testing. The lab would need to purchase a marijuana Mass Spectrometer for \$400,000 plus an annual \$40,000 service agreement.
6. The lab would need to purchase a marijuana module for the current Information System. The module is \$30,000 plus \$10,000 annually to service.
7. The lab must do validation sample testing with the instrument to ensure accurate results. This would take a minimum of six months and cost \$216,000 for approximately 240 samples per month at \$150 per sample. A minimum of six months of test kits during the validation study would be required at a cost of \$50,000. Total validation expenses would be \$266,000.
8. Annual expenses for testing kits, proficiency testing, consumable, PPE, etc. are \$100,000.
9. Additional rules would have to be written to include new testing requirements. The lab estimates and additional 10 pages of associated rule changes in the passage of the bill at \$60 per page for a cost of \$600 in FY 2024.
10. HB 907 appropriates \$42,000 for the 2025 Biennium for 0.50 FTE. The calculations in this fiscal note assume the funding will become base funding for the 2027 Biennium.

**Department of Revenue (DOR)**

11. The \$42,000 transfer would reduce the final distributions from the marijuana state special revenue account by an equal amount. The reduction to general fund revenue would be about \$28,000 and the remaining \$14,000 would be a reduction to state special revenue.
12. The Department of Revenue would not incur significant additional costs because of this bill.
13. There is a termination date on the bill of September 30, 2026.

	<u>FY 2024</u> <u>Difference</u>	<u>FY 2025</u> <u>Difference</u>	<u>FY 2026</u> <u>Difference</u>	<u>FY 2027</u> <u>Difference</u>
<b><u>Fiscal Impact:</u></b>				
FTE	2.00	2.00	2.00	2.00
<b><u>Expenditures:</u></b>				
Personal Services	\$169,447	\$170,001	\$172,561	\$175,150
Operating Expenses	\$502,579	\$175,396	\$175,773	\$176,155
Equipment	\$400,000	\$0	\$0	\$0
<b>TOTAL Expenditures</b>	<u>\$1,072,026</u>	<u>\$345,397</u>	<u>\$348,334</u>	<u>\$351,305</u>
<b><u>Funding of Expenditures:</u></b>				
General Fund (01)	\$1,051,026	\$324,397	\$327,334	\$330,305
State Special Revenue (02)	\$21,000	\$21,000	\$21,000	\$21,000
<b>TOTAL Funding of Exp.</b>	<u>\$1,072,026</u>	<u>\$345,397</u>	<u>\$348,334</u>	<u>\$351,305</u>
<b><u>Revenues:</u></b>				
General Fund (01)	(\$28,000)	\$0	(\$28,000)	\$0
State Special Revenue (02)	(\$14,000)	\$0	(\$14,000)	\$0
<b>TOTAL Revenues</b>	<u>(\$42,000)</u>	<u>\$0</u>	<u>(\$42,000)</u>	<u>\$0</u>

**Net Impact to Fund Balance (Revenue minus Funding of Expenditures):**

General Fund (01)	(\$1,079,026)	(\$324,397)	(\$355,334)	(\$330,305)
State Special Revenue (02)	(\$35,000)	(\$21,000)	(\$35,000)	(\$21,000)

**Technical Notes:**

**Department of Public Health and Human Services (DPHHS/department)**

1. Marijuana is designated as a Schedule 1 drug under the federal Controlled Substances Act. Under federal law, the state laboratory cannot test marijuana or marijuana products unless it registers with the federal Drug Enforcement Agency (DEA) as an analytical lab. This registration imposes a number of responsibilities for the registrant related to subjects such as storage, inventory, receiving, and usage of a controlled substance. The state laboratory receives a significant amount of federal funding. All federal grantees or recipients of federal contracts of \$100,000 or more are subject to the Drug-Free Workplace Act. The act requires grantees and contractors to prepare and distribute a formal drug-free workplace statement and establish awareness programs, and also requires notification and direct action in response to drug violations by covered employees. Failure to comply with the Act can be grounds for suspension, termination or debarment for the purposes of federal grants or contracts. If the state laboratory were to test marijuana or marijuana products without being registered with the DEA as an analytical lab, its federal funding would be jeopardized under the Drug-Free Workplace Act.
2. HB 907 currently reads in section (5)(a) and (c) that the state laboratory shall measure the tetrahydrocannabinol, tetrahydrocannabinolic acid, cannabidiol, and cannabidiolic acid content of marijuana and marijuana products, and test marijuana and marijuana products for pesticides, solvents, moisture levels, mold, mildew, and other contaminants. This cannot be done currently as stated above the lab is not registered as an analytical lab and does not have the staff or equipment to perform this testing. This testing is being completed in the testing laboratories. The testing laboratories would have to register as analytical labs in order to test for fentanyl and methamphetamine as it is a schedule II drug.

3. The bill states the department may retain the services of the analytical laboratory provided by the department of agriculture pursuant to 80-1-104 for the testing contemplated. The agricultural lab in Bozeman does not provide toxicology testing.
4. The provisions of HB 907 could be implemented at a lower cost by shifting the testing to the Montana state crime lab through Department of Justice. The crime lab has the expertise and equipment for testing but is backlogged up to one year.

**Department or Revenue (DOR)**

5. If this bill and HB 128 pass, then the appropriation would have to go the DOR instead of DPHHS because HB 128 moves the state laboratory from DPHHS to DOR.

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*Sponsor's Initials*

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*Date*

  
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*Budget Director's Initials*

*3-31-23*  
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*Date*