



GOVERNOR'S OFFICE OF  
BUDGET AND PROGRAM PLANNING

## Fiscal Note 2013 Biennium

**Bill #** SB0423

**Title:** Generally revise laws relating to use of marijuana

**Primary Sponsor:** Essmann, Jeff

**Status:** As Introduced

- |   |   |   |
|---|---|---|
| <input type="checkbox"/> Significant Local Gov Impact     | <input checked="" type="checkbox"/> Needs to be included in HB 2  | <input checked="" type="checkbox"/> Technical Concerns              |
| <input type="checkbox"/> Included in the Executive Budget | <input checked="" type="checkbox"/> Significant Long-Term Impacts | <input checked="" type="checkbox"/> Dedicated Revenue Form Attached |

### FISCAL SUMMARY

	<u>FY 2011</u> <u>Difference</u>	<u>FY 2012</u> <u>Difference</u>	<u>FY 2013</u> <u>Difference</u>	<u>FY 2014</u> <u>Difference</u>	<u>FY 2015</u> <u>Difference</u>
<b>Expenditures:</b>					
General Fund	\$270,500	\$0	\$0	\$0	\$0
State Special Revenue - PSC	\$0	\$744,589	\$521,259	\$560,244	\$542,319
State Special Revenue - DLI	\$0	\$50,000	\$50,000	\$51,000	\$52,020
State Special Revenue - PHHS	\$0	(\$150,950)	(\$152,450)	(\$152,114)	(\$151,772)
<b>Revenue:</b>					
General Fund	\$0	\$0	\$0	\$0	\$0
State Special Revenue - PSC	\$0	\$744,589	\$521,259	\$560,244	\$542,319
State Special Revenue - DLI	\$0	\$0	\$0	\$0	\$0
State Special Revenue - PHHS	\$0	(\$174,920)	(\$174,920)	(\$174,920)	(\$174,920)
<b>Net Impact-General Fund Balance:</b>	(\$270,500)	\$0	\$0	\$0	\$0

**Description of fiscal impact:**

**Department of Public Health and Human Services (DPHHS)** - HB 423 creates a framework for therapeutic use of marijuana including the creations of an advisory board to review and make recommendations on the eligibility criteria for those applying for the therapeutic use of marijuana.

**Department of Labor and Industry (DLI)** - There would be costs to the Board of Medical Examiners associated with carrying out the provisions of the Montana Therapeutic Marijuana Act.

**Public Service Commission (PSC)** - SB 423 would revise the Medical Marijuana Act and establish the Therapeutic Marijuana Act by creating licensing and regulatory authority over couriers, personal production assistants, therapeutic marijuana growers, and therapeutic marijuana-infused products manufacturers; overseen

by the Departments of Public Service Regulation (PSC) and Public Health and Human Services. This bill creates a special revenue account and provides for a fee.

## **FISCAL ANALYSIS**

### **Assumptions:**

#### **Department of Public Health and Human Services**

1. This bill changes the requirements for applications by individuals for the registry, including the list of debilitating conditions to qualify as a registered cardholder, physician certification, residency requirements, and a requirement to designate the method of obtaining product through the licensing categories defined in the bill. The department will develop new application forms, design and implement system changes to the registry, and implement new administrative rules for the administration of the registry.
2. Section 3 creates a new advisory board assigned to the Department. The advisory board consists of eight members that are board certified medical practitioners representing the fields of neurology, pain management, medical oncology, psychiatry, infectious disease, family medicine, and gynecology.
3. The members of the board are entitled to a stipend as set by the Department not to exceed \$50 per day. The department will utilize the stipend of \$50 per day for board related activity and meetings.
4. Section 3, Subsection (3) requires the board to meet twice per year. It is estimated that each board member will travel a total of two days for each meeting. Total estimated stipend for board members is \$1,600 per year (\$50 x 8 board members x 2 meetings x 2 days).
5. It is estimated that travel cost per board member will be \$287 per trip including meals, hotel and mileage reimbursement. Total travel per meeting of the board is estimated to be \$2,296 (\$287 x 8), or \$4,592 per year for two meetings with 2% inflationary increases each year FY 2014-15.
6. It is assumed that minutes will need to be taken, typed and disseminated for these meetings. The estimated rate for a temporary staff to perform this task is \$14.00 per hour. It is estimated that it will take 16 hours to perform these tasks for a cost of \$224 per meeting for a total of \$448 annually with 2% inflationary increases FY2014-15.
7. New Section 6 of this bill states that “the department shall revoke and may not reissue the registry identification card of a person who is convicted of a drug offense”. The only means of determining if a person has been convicted of a drug offense is to perform a background check.
8. Currently background checks are not conducted on a registered cardholder, but are completed on named caregivers. The bill moves the responsibility to conduct background checks on caregivers, now termed as growers or manufacturers, to the State Licensing Authority (PSC). The department estimates that the existing staff currently conducting background checks on caregivers will be able to perform this function of background checks on registered cardholders.
9. The Quality Assurance Division (QAD) will conduct the required background checks using the Criminal Justice Information Network (CJIN) terminal. The department’s background check is limited to Montana and states that participate in the Western Identification Network (WIN) and are not a nationwide check.
10. The bill requires the development of administrative rules necessary for the implementation and administration. It is anticipated that the department will require 30 pages to be printed in the administrative rules.
11. The Secretary of State’s Office charges agencies \$50 per page to print and publish Administrative Rules.
12. Total estimated cost to publish and print new rules for the medical marijuana registry is estimated to be \$1,500.

13. The department is required to approve and issue an identification card within 20 days of receipt; therefore any applications the department received on or after June 10, 2011 will be reviewed and returned to the applicant if the new rules and new application materials are not provided.
14. The department will process applications currently in inventory that were received prior to June 10, 2011 to approve or deny all before June 30, 2011.
15. Applications that are processed in June that result in issuing a identification card for “Severe or Chronic Pain” will be issued for one year and will be subject to revocation on September 1, 2011. The department will not issue refunds to any registered cardholders who are subject to the revocation effective on September 1, 2011.
16. As of March 2011, there are approximately 21,700 registered cardholders with a diagnosis of only severe or chronic pain, 6,500 with a diagnosis of severe or chronic pain with another debilitating medical condition, and 1,800 with a diagnosis of a debilitating medical condition that does not also list severe or chronic pain. It is assumed that these 8,300 registry patients with other identified conditions will renew their registry cards.
17. For purposes of this fiscal note the Department will utilize the statistics from “severe and chronic pain only” category as the best measure to use for determining monthly applications with the debilitating condition of chronic or severe pain.
18. Changes will be required to the application form and the medical marijuana registry database to comply with the application information and required documentation for application.
19. The Department has no factual basis to determine the percentage of qualifying patients or applicants that will not renew or apply to be on the registry. For purposes of this fiscal note it is assumed that 75 percent of applicants will not submit to the new requirements to be on the registry. Using this assumption it is assumed that 5,425 applicants will reapply to be on the registry. (21,700 X .25 =5,425 applicants)
20. It is assumed that applicants whom will reapply to be on the registry will apply in equal amounts over a twelve month period. This equates to 452 applications each month. These will be treated as new applications.
21. From July through December 2010, approximately 2,215 applications were processed each month. New applications made up approximately 79 percent of the total applications.
22. Based on this information and assuming that 75 percent of applications will not apply under the new rules, it is assumed that there will be 438 new applications per month that includes the identification of a debilitating condition as identified in the bill. (2,215 applications x .79 x .25).
23. Section 57 regarding transition will require the revocation of all registry identification cards for registered cardholder with a debilitating condition of severe and chronic pain. As of March 24, 2011 this is identified to impact approximately 21,700 individuals. The registry identification cards will be systematically revoked effective September 1, 2011, thus providing an effective expiration as of August 31, 2011.
24. The remaining registered cardholders will remain on the registry until their designated expiration date.
25. Currently the department issues registration cards for registered patients and caregivers that have been named by the patient. The fees associated with the registration cards are \$25 for a new application or renewal of an expired application and \$10 for a renewal application that has not expired.
26. All cards including a condition of only severe or chronic pain will be expired on August 31, 2011.
27. The bill removes the requirement for the department to issue registry identification cards to named caregivers and reduces the number of cards to be issued to qualifying patients.
28. It is estimated that there will be savings due to the elimination of costs associated with printing and mailing Medical Marijuana cards to caregivers. The department printed and mailed over 52,000 cards to registered patients and caregivers during the period July-December 2010, for an average of approximately 8,700 cards per month.
29. Under the current program, two cards are issued to patients that have named a caregiver or a change request: one to the participant and one to the participant’s caregiver.

30. Card stock for registry cards is estimated to cost \$202 per 1,000 cards.
31. Postage to mail cards and letters is approximately \$.332 per piece for presorted mail.
32. Total card production for the July-December 2010 time frame was \$27,768. Total estimated card production for one year is \$55,536 ( $\$27,768 \times 2$ ).
33. It is estimated that that under the new guidelines in the bill, the total annual registry cards will be issued to 18,980 patients per year (10,980 severe and chronic pain + 8,300 debilitating medical condition) calculated as follows: (10,680 Severe and chronic pain applications = 452 renewals/month + 438 new applications/month X 12) plus 8,300 annual debilitating medical condition cardholders new and renewal.
34. Using the estimated card production costs listed in the previous assumption, card costs under the new guidelines will be \$10,135 annually FY 2012-13 with 2% inflationary increases each year FY 2014-15 (\$3,834 card stock + \$6,301 postage) calculated as follows: (18,980 registered patients ÷ 1,000 card stock x \$202 = \$3,834 total cost for card stock) plus (18,980 registered patients x \$.332 = \$6,301 total cost for postage).
35. Currently the Department utilizes the services of 3.00 FTE and 3.50 temporary workers to process applications and perform criminal background checks of care givers. If this bill passes, it is assumed that the Medical Marijuana Registry will need to utilize the services of only 3.00 FTE and no temporary workers, resulting in a savings to the program of \$113,689.
36. Current program expenditures for the Medical Marijuana Registry are approximately \$460,000 annually.
37. Anticipated annual program costs after implementation of the new rules are anticipated to be \$370,000.
38. Current revenue generated by the medical marijuana registry is approximately \$48,400 per month or \$580,800 per year calculated as follows: (2,215 applications per month x 79 percent = 1,750 new applications), (1,750 x \$25 = \$43,750 new applications) plus (465 x \$10 = \$4,650 renewal applications.)
39. If application fees were to remain as currently charged, anticipated revenue collection under the rules identified in this bill will not be sufficient to cover anticipated program costs. This decrease in revenues will result in the program having to readjust fees charged for the application or annual renewal of cards. New fees are estimated to be \$25 per new application, \$20 for renewal applications. Total new revenue collections are estimated to be \$405,880 per year including the following: (438 new applications per month x 12 months x \$25 = \$131,400) plus (452 severe and chronic pain renewals x 12 months x \$20 = \$108,480) plus (692 other debilitating conditions renewals x 12 months x \$20 = \$166,000).
40. Enhancements and updates to the Medical Marijuana Registry database will be required as a result of this bill. Enhancements include, a record proof documentation receipt for pain condition, verify and track Montana residency, capture statements on patient's intent on cultivation, maintain information on parents/legal guardians of minors, track background checks, change timeframe storage requirements, manage transition period, create and manage interfaces with PSC for data exchange.
41. It is estimated that this work will take approximately 2,230 programmer hours to identify requirements, design, code, and test and implement these changes.
42. It is estimated that 75 percent of the work will utilize contracted staff at a cost of \$85.00 per hour. Total estimated cost to hire the external contractor required to implement these changes is \$142,163 (2,230 hours x .75 x \$85.00).
43. The remaining 25 percent of the programming work will utilize internal staff programmers that will be paid from existing budget.
44. Total fiscal impact of SB 423 for PHHS is shown in the following chart:

<b>Fiscal Impact SB 423</b>				
	2012	2013	2014	2015
<b>Personal Services</b>				
Board Meeting Temporary Employee	\$448	\$448	\$457	\$466
FTE/Temporary Services Reduction	(\$113,689)	(\$113,689)	(\$113,689)	(\$113,689)
<i>Total Personal Services</i>	<i>(\$113,241)</i>	<i>(\$113,241)</i>	<i>(\$113,232)</i>	<i>(\$113,223)</i>
<b>Operations</b>				
Administrative Rules Publishing	\$1,500			
Board Meeting Stipend	\$1,600	\$1,600	\$1,632	\$1,665
Board Meeting Travel	\$4,592	\$4,592	\$4,684	\$4,778
Card Savings Old System	(\$55,536)	(\$55,536)	(\$55,536)	(\$55,536)
Card Issuance SB 423	\$10,135	\$10,135	\$10,338	\$10,544
<i>Total Operations</i>	<i>(\$37,709)</i>	<i>(\$39,209)</i>	<i>(\$38,882)</i>	<i>(\$38,549)</i>
<b>Total Expenses SB 423</b>	<b>(\$150,950)</b>	<b>(\$152,450)</b>	<b>(\$152,115)</b>	<b>(\$151,772)</b>
Revenue Generated Old System	(\$580,800)	(\$580,800)	(\$580,800)	(\$580,800)
Revenue Generated SB 423	\$405,880	\$405,880	\$405,880	\$405,880
<b>Revenue Difference SB 423</b>	<b>(\$174,920)</b>	<b>(\$174,920)</b>	<b>(\$174,920)</b>	<b>(\$174,920)</b>

**Department of Labor and Industry**

- 45. This legislation, under New Section 5 (4) requires the Board of Medical Examiners to review the practices of any physician who provides written certification for therapeutic marijuana to 25 or more patients within a twelve month period. The Board of Medical Examiners is charged with determining whether the physicians have met the standard of care in prescribing marijuana to a patient.
- 46. It is estimated that the board will review the practices of at least fifty physicians per year and will conduct a peer review of the cases involved. It is assumed these reviews will take place before the full board and the board will utilize the division’s contracted peer review services to conduct the case file reviews.
- 47. Based on the past costs of utilizing a peer review service, it is estimated that the review for each physician will cost an average of \$1,000 to review up to fifteen case files.
- 48. Total estimated cost to the Board of Medical Examiners is \$50,000 (fifty physicians x \$1,000 peer review annually).
- 49. An inflationary factor of 2% has been added to FY 2014 and FY 2015.

**Public Service Commission**

- 50. Therapeutic marijuana may be cultivated or manufactured by: (1) a registered cardholder for his/her personal use; (2) a grower; or (3) a marijuana products manufacturer that also has a grower license.
- 51. A registered cardholder may not get therapeutic marijuana directly from a licensed grower or manufacturer; rather, the marijuana will be delivered by PSC-licensed couriers. The PSC must establish by rule a process for providing information to cardholders who intend to receive therapeutic marijuana from a licensed grower or product manufacturer.
- 52. The bill assumes a decrease in cardholders from approximately 30,000 to approximately 2,000. This fiscal note mirrors that assumption, although the PSC feels the assumption of such a large reduction in cardholders may not materialize. Should it not, the PSC would expect costs to rise concomitantly with the number of cardholders.
- 53. The PSC’s operational costs (including but not limited to costs for licensing, inspections, investigations, hotline operation) for this program must be funded by fees paid by licensees and registrations.
- 54. The PSC must adopt emergency rules by June 1, 2011, regarding licensing, and may begin processing license applications on June 1. Licensees may begin operations October 1, 2011.

55. The PSC must adopt rules regarding: use of a courier to transport and deliver therapeutic marijuana; the manner in which licensees will ensure that therapeutic marijuana is provided only to cardholders; and procedures for licensees to follow if the licensee believes someone is using a fake ID card.
56. Licensing and registration procedures must include fingerprint and criminal history background check by DOJ and FBI.
57. The PSC must require complete disclosure of anyone having direct or indirect financial interest in each license issued. The law provides for PSC inspections. The PSC may require audits to be conducted by an outside auditor selected by PSC and paid for by the licensee.
58. The PSC must set up a hotline to receive reports of suspected abuse of this law. PSC may investigate such reports or refer them to the appropriate law enforcement agency.
59. The additional workload will require the addition of 5.00 FTE Regulatory Staff (\$336,384 salary and benefits each year), 1.00 FTE Attorney (\$98,290.69 salary and benefits each year), and 1 FTE Hotline Compliance Specialist (\$49,868.80 salary and benefits each year), \$21,400 for office packages and computers in FY 2012, and \$5,070 in each year of the biennium for phones, hotline phones and supplies.
60. Specialized training in FY 2012 will cost approximately \$2,000 for each FTE and travel to training facility \$1,500 for each FTE for a total of \$24,500.
61. Annual travel for inspections will cost \$15,000 and attorney travel will cost \$2,000 in each year of the biennium.
62. Annual travel for 5 Commissioners and 2 staff to attend hearings will cost \$11,146.32 in each year of the biennium (8 hearings at \$1,393.29 each).
63. ID cards are estimated to cost \$28,000 in FY 2012 and \$28,560 in 2014 (700 cards at \$40 each, adjusted by 2% inflation in FY 2014).
64. Fingerprint and background checks will cost \$3,000 in each year of the biennium, including FY 2011.
65. Changes to the licensing database (PSC ITS) to include therapeutic marijuana licensees is estimated at \$150,000 each year in FY 2011 and FY 2012.
66. Contracted attorney fees to meet the June 1, 2011 deadline are estimated at \$60,000 (400 hours at \$150 per hour) in FY 2011.
67. A consultant to assist with emergency rules related to security, sanitary, and labeling requirements is estimated at \$52,500 (350 hours at \$150 per hour) in FY 2011.
68. The costs of the PSC emergency rulemaking are estimated to be \$5,000 (100 total pages published in the Administrative Register at \$50 per page) in FY 2011. Rulemaking costs are estimated at \$5,000 (100 total pages at \$50 per page) in FY 2012 and \$500 in later years (10 pages at \$50 per page).
69. There are estimated to be \$270,500 in unfunded costs that would be incurred in FY 2011. These expenditures are assumed to be funded with general fund.
70. There is a 2% per year inflation factor applied to personal services and operating expenses in FY 2014 and FY 2015.

	<u>FY 2012 Difference</u>	<u>FY 2013 Difference</u>	<u>FY 2014 Difference</u>	<u>FY 2015 Difference</u>
<b><u>Fiscal Impact: Department of Health and Human Services</u></b>				
FTE	(0.50)	(0.50)	(0.50)	(0.50)
<b><u>Expenditures:</u></b>				
Personal Services	(\$113,241)	(\$113,241)	(\$113,232)	(\$113,223)
Operating Expenses	(\$37,709)	(\$39,209)	(\$38,882)	(\$38,549)
<b>TOTAL Expenditures</b>	<b>(\$150,950)</b>	<b>(\$152,450)</b>	<b>(\$152,114)</b>	<b>(\$151,772)</b>
<b><u>Funding of Expenditures:</u></b>				
State Special Revenue (02)	(\$150,950)	(\$152,450)	(\$152,114)	(\$151,772)
<b>TOTAL Funding of Exp.</b>	<b>(\$150,950)</b>	<b>(\$152,450)</b>	<b>(\$152,114)</b>	<b>(\$151,772)</b>
<b><u>Revenues:</u></b>				
State Special Revenue (02)	(\$174,920)	(\$174,920)	(\$174,920)	(\$174,920)
<b>TOTAL Revenues</b>	<b>(\$174,920)</b>	<b>(\$174,920)</b>	<b>(\$174,920)</b>	<b>(\$174,920)</b>
<b><u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u></b>				
State Special Revenue (02)	(\$23,970)	(\$22,470)	(\$22,806)	(\$23,148)

	<u>FY 2012 Difference</u>	<u>FY 2013 Difference</u>	<u>FY 2014 Difference</u>	<u>FY 2015 Difference</u>
<b><u>Fiscal Impact: Department of Labor and Industry</u></b>				
<b><u>Expenditures:</u></b>				
Operating Expenses	\$50,000	\$50,000	\$51,000	\$52,020
<b>TOTAL Expenditures</b>	<b>\$50,000</b>	<b>\$50,000</b>	<b>\$51,000</b>	<b>\$52,020</b>
<b><u>Funding of Expenditures:</u></b>				
State Special Revenue (02)	\$50,000	\$50,000	\$51,000	\$52,020
<b>TOTAL Funding of Exp.</b>	<b>\$50,000</b>	<b>\$50,000</b>	<b>\$51,000</b>	<b>\$52,020</b>
<b><u>Revenues:</u></b>				
State Special Revenue (02)	\$0	\$0	\$0	\$0
<b>TOTAL Revenues</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b><u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u></b>				
State Special Revenue (02)	(\$50,000)	(\$50,000)	(\$51,000)	(\$52,020)

	<u>FY 2011 Difference</u>	<u>FY 2012 Difference</u>	<u>FY 2013 Difference</u>	<u>FY 2014 Difference</u>	<u>FY 2015 Difference</u>
<b><u>Fiscal Impact: PSC</u></b>					
FTE	0.00	7.00	7.00	7.00	7.00
<b><u>Expenditures:</u></b>					
Personal Services	\$0	\$484,543	\$484,543	\$494,234	\$504,120
Operating Expenses	\$270,500	\$238,646	\$36,716	\$66,010	\$38,199
Equipment	\$0	\$21,400	\$0	\$0	\$0
<b>TOTAL Expenditures</b>	<u>\$270,500</u>	<u>\$744,589</u>	<u>\$521,259</u>	<u>\$560,244</u>	<u>\$542,319</u>
<b><u>Funding of Expenditures:</u></b>					
General Fund (01)	\$270,500	\$0	\$0	\$0	\$0
State Special Revenue (02)	\$0	\$744,589	\$521,259	\$560,244	\$542,319
<b>TOTAL Funding of Exp</b>	<u>\$270,500</u>	<u>\$744,589</u>	<u>\$521,259</u>	<u>\$560,244</u>	<u>\$542,319</u>
<b><u>Revenues:</u></b>					
General Fund (01)	\$0	\$0	\$0	\$0	\$0
State Special Revenue (02)	\$0	\$744,589	\$521,259	\$560,244	\$542,319
<b>TOTAL Revenues</b>	<u>\$0</u>	<u>\$744,589</u>	<u>\$521,259</u>	<u>\$560,244</u>	<u>\$542,319</u>
<b><u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u></b>					
General Fund (01)	(\$270,500)	\$0	\$0	\$0	\$0
State Special Revenue (02)	\$0	\$0	\$0	\$0	\$0

**Long-Term Impacts:**

1. The addition of a newly regulated industry to the Department of Public Service Regulation is likely to have long-term economic impacts. The therapeutic marijuana industry has grown in Montana, as well as other states. It will be necessary to adjust fees accordingly, to accurately cover costs to the state.

**Technical Notes:**

**Department of Public Health and Human Services**

1. Section 4 (2)(b) will require the qualifying patient to submit “objective proof” of the chronic pain established by the results of diagnostic tests, including but not limited to x-rays, a computerized tomography scan, or magnetic resonance imaging. This information is considered protected health information as it contains specific medical information, which will be subject to the privacy and security standards of HIPAA (Health Insurance Portability and Accountability Act). The department will not perform a review of these documents to determine the validity of the information or to confirm medically the information supports the certification of the debilitating condition of severe and chronic pain. That determination will be confirmed by the physician certification as completed by the physician and the referring physician. The department will file the information with the other application materials and include the cost of storage with existing storage costs already incurred by the department.
2. Section 6 will require the department to conduct background checks on all registered cardholders applying for renewal on the registry. This section as currently worded will not require background checks on new applicants as a qualifying patient for the registry. The language clearly indicates the department shall revoke and may not reissue the registry identification card of a person who “is convicted of a drug

offense”. Clarification is needed regarding this requirement as to why new applicants are not subject to the same background check. In addition, clarification is needed regarding the application of the \$10,000 fine and if that would be assessed on department staff if an identification card was issued due to failure to confirm the drug offense. The title of section 6 would indicate the fine would be assessed on the cardholder but the language in subsection (2) merely indicates a violation.

3. Section 11, Page 14, line 10 indicates that the department can disclose information to “authorized employees of state or local government agencies”, only as necessary to verify that an individual is a lawful possessor of a registry identification card. The bill does not define nor specifically define who are authorized employees of a state or local government. Currently the confidentiality requirements of the law provide exceptions for authorized employees of state to local law enforcement agencies, only as necessary verify that a person is a lawful possessor of a registry identification card. Law enforcement personnel are easily identified and verified prior to releasing information for verification. Employees of state and local government agencies are not easily verified. This generic definition subjects department staff and staff of the State Licensing Agency to increased risk of breaching the confidentiality of the registry. Clarification is needed to limit personnel of state and local government agencies or allow the department or the State Licensing Agency to define personnel by rule.
4. This bill removes the designation of Caregiver and replaces with the identification of obtaining product through a Personal Production Assistant, grower, or therapeutic infused product manufacturer. If an individual selects a grower or therapeutic infused product manufacturer, they are not required to pick only one licensed provider, but appear to be allowed to utilize any licensed provider to obtain product. This creates the potential for the registered cardholder to use services of two independent licensees and exceed the limits identified in Section 10.
5. Section 23 regarding Personal Production Assistants (PPA) require a limit of 4 registered cardholders. Registered cardholders can change licensee (PPA, grower or therapeutic infused product manufacturer) at any time. Those changes may result in more than 4 cardholders at any one time for a PPA if a registered cardholder names the PPA, and that PPA already has 4 cardholders, thus resulting in the count of registered cardholders to exceed 4.
6. Section 57 regarding transition will require the revocation of all registry identification cards for registered cardholder with a debilitating condition that included severe or chronic pain. The department notes that some registered cardholders have reported multiple debilitating conditions on an application. Some of those indicate “Cancer, Glaucoma or HIV (AIDS)” and “Severe or Chronic Pain”, or other combinations of a debilitating condition indicated in the act and also indicate a debilitating condition of “Severe or Chronic Pain”. For purposes of this fiscal note the department has interpreted that if a patient has another qualifying debilitating condition on the application, the registered cardholder’s enrollment will not be revoked on 9/1/2011. The department will revoke registry identification cards if only one debilitating condition is indicated that includes the indication of “Severe or Chronic Pain”. Those registry identification cards will be systematically revoked effective September 1, 2011, thus providing an effective expiration as of August 31, 2011.
7. Section 57 regarding transition will require the revocation of all registry identification cards for registered cardholder with a debilitating condition that included severe or chronic pain. The provision in subsection (1)(c) requires the department to reissue identification cards to qualifying patients who obtained a card before passage and approval of the bill whose debilitating condition at the time of registration did not include severe or chronic pain. The department notes that this requirement is not considered necessary as the registry database has the ability to maintain information regarding the status of enrollments of registered cardholders. This information is available to state and local law enforcement and as of March 24, 2011 this information is available to law enforcement electronically through the Department of Justice, Criminal Justice Information Network (CJIN).
8. Section 56 of the bill requires the Department to adopt emergency rules as provided in §2-4-303, MCA, to allow implementation of the new requirements by June 1, 2011. A 1988 Attorney General opinion, 42 A.G.

Op. 62, held that the use of emergency rules is not proper in a situation where the emergency requiring emergency rulemaking was foreseeable. It could be argued that an emergency as contemplated in §2-4-303 does not exist with this bill because the emergency was foreseeable. Conversely, it could be argued that the Legislature has authority to override the requirements of §2-4-303 by specifically mandating the adoption of emergency rules, based on the principle that a more specific statute prevails over a more general one.

- 9. New section 9 provides an exception for hospices to allow the use of therapeutic marijuana, but other facilities licensed as a healthcare facility under 50-5-101 are not allowed to permit the use of therapeutic marijuana. The department interprets this hospice language will apply to licensed freestanding inpatient hospice facilities. There are 3 licensed in-patient hospice facilities with 27 beds available in Montana (7 beds in Great fall, 12 beds in Billings and 6 beds in Hamilton). There are 36 licensed Hospice programs that can only serve the hospice patient in the patient’s home, an adult foster home, an assisted living facility, a nursing home, or a hospital. If an individual is provided a registry identification card as a qualified patient for a debilitation condition (Hospice) under the definition in Section 2, it should be noted that they will not be able to use therapeutic marijuana in a licensed facility that is not a freestanding inpatient hospice facility.
- 10. Revenue projections based on the current rate structure will not be sufficient to support the expected future costs of the program. If necessary, a change in rate structure may be implemented to support ongoing program expenditures.

**Public Service Commission**

- 11. The PSC will incur costs in FY 2011 (see PSC assumptions) of approximately \$270,500 in order to meet bill deadlines of June 1, 2011. Funding for these costs will need to occur prior to licensing revenue being billed or received.
- 12. Significant cash flow concerns in the state special revenue account arise where Section 40 states that the funds remaining in the account at the end of the fiscal year must be transferred to the general fund. With the renewal cycle every two years, and operation budget set for 2 years, this may be problematic.
- 13. The PSC is concerned that licensing couriers to transport marijuana is not lawful under federal statute 49 USC §14501(c), which pre-empts states’ ability to regulate carriers of property. A determination to this effect would render the retail aspect of this bill moot and prevent large numbers of cardholders from receiving marijuana through a courier service as contemplated in this bill. Nonetheless, this note assumes this provision of the bill would be lawful.

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*Sponsor’s Initials*

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*Date*

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*Budget Director’s Initials*

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*Date*



## Dedication of Revenue 2013 Biennium

GOVERNOR'S OFFICE OF  
BUDGET AND PROGRAM PLANNING

### 17-1-507-509, MCA.

- a) **Are there persons or entities that benefit from this dedicated revenue that do not pay? (please explain)**

The bill indicates the state special revenue account is to cover the expenses of the state licensing authority and these must be fully funded by fees paid. Money remaining in the account must be transferred to the general fund so it is possible others could benefit if revenue exceeds cost. Fees will be established by the department, and all who benefit should pay a fee.

- b) **What special information or other advantages exist as a result of using a state special revenue fund that could not be obtained if the revenue were allocated to the general fund?**

The bill is intended to be self-sustaining so a state special revenue fund was established. The cost of the program is to be paid by those benefiting from the program.

- c) **Is the source of revenue relevant to current use of the funds and adequate to fund the program activity that is intended? Yes / No (if no, explain)**

This bill creates a new state licensing authority for therapeutic marijuana. The costs of the state licensing authority are to be fully compensated from fees established by the Department of Public Service Regulation.

- d) **Does the need for this state special revenue provision still exist?  Yes  No (Explain)**

Section 40 of the bill creates the state special revenue account for the purpose of funding the state licensing authority.

- e) **Does the dedicated revenue affect the legislature's ability to scrutinize budgets, control expenditures, or establish priorities for state spending? (Please Explain)**

It should not. The legislature would still have that ability with the state special revenue account.

- f) **Does the dedicated revenue fulfill a continuing, legislatively recognized need? (Please Explain)**

This bill creates a new program to license, administer, and govern the supply and sale of therapeutic marijuana. Since medical marijuana was recently approved by the voters, there appears to be a continuing need if this legislation passes. If so it would indicate the legislature recognizes and approves the need.

- g) **How does the dedicated revenue provision result in accounting/auditing efficiencies or inefficiencies in your agency? (Please Explain. Also, if the program/activity were general funded, could you adequately account for the program/activity?)**

If the program/activity were general funded, the department could still adequately account for the program/activity, if it is deemed necessary to account for it separately.