

Report of the
NORTH DAKOTA LEGISLATIVE COUNCIL

Submitted to the
North Dakota Secretary of State
Under North Dakota Century Code Section 16.1-01-17
Thursday, September 29, 2016

BACKGROUND

In 2004 the electorate of this state approved a constitutional amendment to Article III, Section 2, of the Constitution of North Dakota which authorized the Legislative Assembly to provide by law for a procedure through which the Legislative Council may establish an appropriate method for determining the fiscal impact of an initiated measure and for making the information regarding the fiscal impact of the measure available to the public.

In 2005 the Legislative Assembly enacted North Dakota Century Code Section 16.1-01-17, which requires the Legislative Management to hold hearings, receive public testimony, and gather information from agencies, institutions, or departments on the estimated fiscal impact of an initiated measure. At least 30 days before the public vote on the measure, the Legislative Council is to submit a statement of the estimated fiscal impact of the measure to the Secretary of State. Within 30 days of the close of the first complete fiscal year after the effective date of an initiated measure approved by the voters, the agencies, institutions, or departments that provided the estimates of the fiscal impact of the measure to the Legislative Council are to submit a report to the Legislative Council on the actual fiscal impact for the first complete fiscal year resulting from the provisions of the initiated measure and a comparison to the estimates provided to the Legislative Council, and the Legislative Council is to issue a report of the actual fiscal impact of the initiated measure.

Three initiated measures qualify for the ballot for the general election on Tuesday, November 8, 2016. Measures qualifying for the ballot include:

- A constitutional initiated measure relating to the rights of crime victims;
- A statutory initiated measure relating to an increase in taxes on cigarettes and tobacco products and the allocation of the taxes; and
- A statutory initiated measure relating to the medical use of marijuana.

The Legislative Council followed the procedure required by statute, which is similar to the procedure for obtaining fiscal impact information which the Legislative Assembly follows during legislative sessions. Those state agencies determined to have either the best information on the impact of a measure or the primary responsibility for compiling and maintaining the information that is needed were invited to prepare fiscal notes and present their findings at a meeting held by the Legislative Management on Thursday, September 29, 2016.

**INITIATED CONSTITUTIONAL MEASURE NO. 3 -
VICTIMS' RIGHTS AMENDMENT**

This initiated constitutional measure would create a new section to Article I of the Constitution of North Dakota to provide rights and protections for crime victims throughout the criminal and juvenile justice systems. Under the measure, crime victims would be afforded the right to be present at court proceedings relating to the release, plea, sentencing, and parole of the accused. In addition, crime victims would be entitled to be notified of any release or escape of the accused and have the right to refuse interviews and requests for information made by the accused or the accused's attorney.

The Office of Management and Budget presented information on the estimated fiscal impact of this measure. A copy of the fiscal note submitted by the Office of Management and Budget is attached as [Appendix A](#).

**Statement of Estimated
Fiscal Impact of the Measure**

The fiscal note prepared by the Office of Management and Budget states the constitutional measure will become effective 30 days after the election, or December 8, 2016. The combined state and local fiscal impact for this constitutional measure is estimated to be \$4.0 million in additional expenditures for the 2017-19 biennium, including \$1.7 million of estimated costs to county governments. The estimated fiscal impact for this constitutional measure is anticipated to be \$1.2 million for the remainder of the 2015-17 biennium for a total of \$5.2 million in additional expenditures through June 30, 2019.

INITIATED STATUTORY MEASURE NO. 4 - TOBACCO TAX INCREASE

This initiated statutory measure would amend numerous sections in Chapter 57-36 to increase the separate and additional tax on cigarette sales, create an inventory tax on cigarettes and tobacco products, and increase the excise tax for tobacco products and the levy and assessment of taxes on cigarettes. In general, the effect of the proposed measure would be to increase the excise tax on a package of 20 cigarettes sold in North Dakota from \$.44 to \$2.20.

The measure also would create a new section to Chapter 37-14 to create a veterans' tobacco tax trust fund and would repeal two provisions of statute related to an excise tax on cigarettes and the exemption for taxes on cigarettes and tobacco products given to occupants of the Veterans' Home and the State Hospital. Collections from cigarette and tobacco product taxes would be allocated among North Dakota cities, the general fund, the veterans' tobacco tax trust fund, and the community health trust fund.

Additionally, the measure creates new definitions of inhalation devices, liquid nicotine, and tobacco products, addresses prohibition of tobacco dealers being tobacco distributors, requires distributors to keep additional records, sets requirements for registration of liquid nicotine dealers, and regulates the alteration of liquid nicotine.

The Tax Department presented information on the estimated fiscal impact of this measure. A copy of the fiscal note submitted by the department is attached as [Appendix B](#).

Statement of Estimated Fiscal Impact of the Measure

The fiscal note prepared by the Tax Department states the statutory measure will become effective 30 days after the election, or December 8, 2016. The fiscal impact for this statutory measure is estimated to total \$170.4 million through June 30, 2019, including an additional \$28.7 million in revenue for the remainder of the 2015-17 biennium and additional revenue of \$141.7 million for the 2017-19 biennium. The measure would result in a reduction in revenues deposited in the general fund of \$4.1 million through June 30, 2019, but an increase in revenues that would be distributed as follows through June 30, 2019--\$86.9 million to the veterans' tobacco tax trust fund, \$86.9 million to the community health trust fund, and \$700,000 to the state aid distribution fund and to cities.

INITIATED STATUTORY MEASURE NO. 5 - MEDICAL MARIJUANA LEGALIZATION

This initiated statutory measure would create a new chapter to Title 19 to provide for the medical use of marijuana for defined medical conditions such as cancer, Hepatitis C, and epilepsy. The measure would require the State Department of Health to issue identification cards to qualified patients, caregivers, compassion centers, and other facilities. The measure would create procedures for the monitoring, inventorying, dispensing, and cultivation of marijuana, all of which would be enforced by the department. The measure would allow a qualified patient to receive up to 3 ounces of marijuana with penalties of suspension, revocation, or criminal prosecution for violations.

The State Department of Health presented information on the estimated fiscal impact of this measure. A copy of the fiscal note submitted by the department is attached as [Appendix C](#).

Statement of Estimated Fiscal Impact of the Measure

The fiscal note prepared by the State Department of Health states the fiscal impact of the statutory measure would total \$12.6 million in additional expenditures and \$6 million in revenue through June 30, 2019. The fiscal impact to the department would be an estimated \$7.4 million in expenditures and \$4.8 million in revenue for the 2017-19 biennium. The department estimates, if implemented in December 2016, expenditures of up to \$2.4 million, including \$1.4 million of one-time costs, and revenues of \$1.2 million during the 2015-17 biennium for an impact of \$9.8 million in expenditures and \$6 million in revenue to the department through June 30, 2019. The fiscal note also stated the fiscal impact to the Attorney General would total \$2.8 million in additional expenditures during the 2017-19 biennium.

ATTACH:3

State of North Dakota
OFFICE OF MANAGEMENT AND BUDGET

600 East Boulevard Avenue, Dept. 110 • Bismarck, North Dakota 58505-0400
FAX – 701.328.3230

September 23, 2016

Sheila Sandness
Legislative Council
State Capitol
Bismarck, ND 58505

Dear Sheila,

This is in response to your letter dated June 27, 2016, requesting OMB to determine the estimated fiscal impact of an initiated measure related to the rights of crime victims.

If approved by the voters in the November 2016 general election, the measure will become effective 30 days after the election. The fiscal impact for this initiated measure involves several state and local entities. The fiscal impact for the remainder of the 2015-17 biennium is \$1,156,846 and the fiscal impact for the 2017-19 biennium is \$3,966,330.

An explanation of each entity's fiscal impact for a complete biennium is attached.

If you have any questions, please contact me.

Sincerely,



Pam Sharp
Director

OMB Risk Management	Unknown
Statutory limitations on liability that exist for public entities that enforce or monitor conditions of release, sentencing, parole, probation or juvenile supervision may face constitutional challenge under this measure if it is adopted.	
Department of Human Services	\$65,381
<p>The Department of Human Services determined that the initiated measure, if passed, would have an anticipated fiscal impact of \$65,381.00 for the biennium. There would be a need to add a .25 FTE at a cost of \$27,860 due to a workload increase to ensure that the Department does not collect funds from individuals that owe restitution when victims have priority. The Department also anticipates a .5% or \$37,521 reduction in estate collections. Fifty percent of the estate collections reduction would be the federal share and the other fifty percent would increase the need for general fund dollars.</p> <p>The Child Support Division of the Department of Human Services has reviewed Marsy's law and determined that the initiated measure, if passed, would have no fiscal impact on the division. The provision giving payment priority to victim restitution requires that priority be given over debts owed to the government. Of the amount collected in child support for SFY 2015, 86.71% was owed and distributed directly to families, with another 8.48% disbursed to other states for distribution. The remaining 4.81%, although either retained by the state or used to reimburse the federal government, arises out of an assignment of the right to support that belongs to the family. Accordingly, the priority in Marsy's law for victim restitution payments would not apply to debts collected by the Child Support division.</p>	
North Dakota County Governments	\$1,740,000
<p>North Dakota's county state's attorneys and their partners in the various non-profit agencies that provide crime-victim support statewide are currently serving the approximately 7000 victims of crimes against persons each year, as well as some victims of serious property crime. The expansion of this role, as proposed in the ballot measure, to all 20,000+ victims of property crimes, misdemeanors, municipal crimes, and juvenile crimes will require either a significant increase to the property tax supported staff, or cause a significant erosion of services to those victims of serious crimes (murder, assault, rape, etc.).</p> <p>To achieve an even minimal staffing level for these other categories of crimes, it is estimated that 10-15 additional full-time equivalent staff will be required statewide. Assuming twelve new staff at the average cost of salaries, benefits, space and supplies for existing staff, the impact to various local government budgets would total \$1.44 million per biennium.</p> <p>Additionally, the obligation to identify and contact victims of property, misdemeanor, municipal and juvenile crimes to determine their desired level of involvement prior to the initiation of court proceedings will likely delay some initial and bond hearings. Any delay in these less serious crimes will increase jail costs, and for those jurisdictions without jails, the costs of prisoner transport as well. Looking at the 4,200 individuals annually arrested for property crimes, and assuming one additional day of jail time for the 50% that would likely bond out, these jail and transport costs are estimated at \$300,000 per biennium.</p>	

	<p>The amendment language confers numerous rights which, effectively, would likely establish concomitant duties on the part of governmental entities involved in the criminal justice process. It is likely that if this constitutional amendment were enacted, there would eventually be a fact situation where the language "This section does not create any cause of action for damages against....any political subdivision of the State..." would be challenged in a lawsuit. We would estimate that defense costs incurred by the liability carrier of such a challenge, through appeal, could be in the \$100,000 range. If the defense were unsuccessful, of course, there would likely be ongoing additional financial implications, depending upon the terms of the decision, which cannot be estimated at this time.</p>	
Supreme Court		\$49,250
	<p>Additional costs could be incurred for jury fees, mileage, bailiffs, amenities, and interpreters.</p>	
Commission on Legal Counsel for Indigents		\$916,500
	<p>Approximately 43 percent of the Commission's criminal case assignments involve victims. Additional costs could be incurred for additional preliminary hearings, jury trials, interpreter expenses, and orders to show cause. In addition, the Commission could see lower collections of fees due to victim restitution being a higher priority. The failure to pay victim restitution could result in more probation revocation hearings.</p>	
Department of Corrections and Rehabilitation		\$768,633
	<p>The Department of Corrections and Rehabilitation's ability to collect from incarcerated individuals or those on supervision would be impacted if that person owes money on a victim restitution order. In addition, the department would need to modify the offender management system to allow for the determination of billing eligibility.</p>	
Protection and Advocacy		\$426,566
	<p>The agency would need additional staff and funding for contracted services to educate and represent victims with disabilities and to provide benefits planning in the event restitution payments are awarded.</p>	
Total estimated impact for a biennium		\$3,966,330



OFFICE OF STATE TAX COMMISSIONER
STATE OF NORTH DAKOTA

Ryan Rauschenberger
TAX COMMISSIONER

August 30, 2016

Sheila M. Sandness
Senior Fiscal Analyst
North Dakota Legislative Council
600 East Boulevard Avenue
Bismarck, ND 58505-0360

Dear Ms. Sandness:

This letter is in response to your July 20, 2016 request that the Office of Tax Commissioner determine the estimated fiscal impact of the initiated measure related to cigarette and tobacco taxes. The Secretary of State has determined the sufficiency of the circulated signatures requiring that the measure be placed on the November 8, 2016 statewide election ballot.

As you requested, in accordance with N.D.C.C. §16.1-01-17, we have completed our fiscal estimate of the initiated measure. Enclosed is a summary that shows the measure, if enacted by the voters, is expected to increase total revenues by \$141.7 million in the 2017-19 biennium. If enacted, the measure would have an impact on Fiscal Year 2017 revenues as well (assuming it would become effective December 8, 2016). We estimate the FY 2017 impact to total \$28.7 million.

The enclosed fiscal estimate summary includes information about the expected distribution of the estimated revenue. Nearly all of the estimated revenue will be distributed in the veterans' tobacco tax trust fund and the community health trust fund. The expected impact to the State general fund is minimal.

I will be happy to report on the estimated fiscal impact of this measure to the Legislative Management at their next meeting.

Sincerely,

A handwritten signature in blue ink that reads "Ryan Rauschenberger".

Ryan Rauschenberger
Tax Commissioner

Enc.



FISCAL IMPACT OF THE TOBACCO INITIATED MEASURE

Assumptions and Calculations

Prepared by Office of Tax Commissioner, August 2016

The starting point for this fiscal analysis is the official Preliminary Forecast for cigarette and tobacco tax revenue prepared by the Office of Management and Budget and the Office of Tax Commissioner in August 2016. The fiscal impact of the Initiated Measure is presented in terms of the changes to the Preliminary Forecast that will result if the measure is enacted by voters.

Cigarettes

- The Initiated Measure seeks to increase the excise tax on cigarettes from \$.44 to \$2.20 per standard package of 20 cigarettes
- The price elasticity of cigarettes is well established at an average of -.6. An additional 5% drop in consumption is assumed as cross-border sales will be reduced or eliminated
- Based on a price elasticity of -.6, the increase in excise tax is expected to increase the average price of cigarettes by 33% and **reduce direct cigarette consumption by 19.8%**. An additional drop of 5% is assumed, bringing the total estimated change to -24.8%

Tobacco Products

- The Initiated Measure changes the current method of computing some tobacco excise taxes based on the weight in ounces of the product, imposing instead an excise tax that is 56% of the wholesale price of all tobacco products
- The tax rate on some tobacco products – currently taxed at the rate of 28% of the wholesale price – is also increased to 56% by the measure
- Due to the price increase related to the new taxing method, **consumption of tobacco products is expected to decrease an average of 11%** (this assumes the same price elasticity as cigarettes of -.6)

Liquid Nicotine Products (E-cigs)

- North Dakota does not currently impose an excise tax on e-cigs or liquid nicotine products
- National statistics were used to establish a North Dakota base using estimates of total national sales and North Dakota's population
- The Initiated Measure imposes a tax of 56% of the wholesale cost of liquid nicotine products
- This new tax is expected to **reduce consumption of these products by an estimated 22%**

-more on reverse-

Sales and Use Taxes

- The Initiated Measure substantially raises the excise taxes thereby raising the price of cigarettes and tobacco products for the end user. These price increases are also subject to state sales tax, at the rate of 5%
- Additional sales taxes are expected to increase state general fund and state aid distribution fund revenues by an estimated \$3.7 million in FY 2018

Licenses and Fees for Distributors and Dealers

- Fiscal information regarding the change in dealers and distributors' licenses and associated fees was requested of the Attorney General's Office
- The AG estimates revenues for the 2017-19 biennium of \$21,500 and expenditures of \$20,400

Distribution of Revenue

- The State General Fund will receive 50% of the tobacco tax revenue, approximately 18.2% of the cigarette tax revenue, and 91.3% of the sales tax revenue. Overall, the Initiated Measure is expected to reduce State General Fund revenues by an estimated \$1.8 million in FY 2018, which is negligible given the uncertainties inherent in the estimate
- The measure creates a Veterans' tobacco trust fund, which is expected to receive an estimated \$36.6 million in FY 2018
- The measure also distributes revenue to the Community health trust fund, which is expected to receive an estimated \$36.6 million in FY 2018

Total Fiscal Impact and Phase-In

- The fiscal impact of this initiated measure is estimated to total **\$141.7 million in additional revenues during the 2017-19 biennium**
- Like all fiscal estimates, this fiscal impact was computed for the 2017-19 biennium. However, if enacted by the voters, this Initiated Measure will become effective December 8, 2016.

The immediacy of – and compliance with - the imposition of these tax increases is uncertain. There will likely be some consumer stockpiling which will offset some revenue from the imposition of the inventory tax. Overall, it is assumed that there will be a 40% impact in the first year after enactment – Fiscal Year 2017 – reflecting the estimated revenues and distributions that are likely to occur in the first, partial year after passage. **The FY 2017 impact is estimated to total \$28.7 million.**

DISTRIBUTION OF INITIATED MEASURE (IM) ESTIMATED FISCAL IMPACT

Amounts calculated for FY 2018 & 2019; FY 2017 assumed to be 40% of FY 2018
(in millions)

IM eff. 12/8/16

FY 2017 = 40% of FY 18

	<u>FY 2017</u>	<u>FY 2018</u>	<u>FY 2019</u>
State General Fund (SGF) share of IM cigarette tax revenue (18.18% of total)	\$ 5.988	\$ 14.970	\$ 14.596
SGF share of IM tobacco products revenue (50% of total)	\$ 2.910	\$ 7.275	\$ 7.158
SGF share of IM additional sales tax revenue (91.3% of total addl sales tax)	\$ 1.341	\$ 3.354	\$ 3.274
SGF share of IM additional license fee revenue (100% of additional)	\$ 0.004	\$ 0.011	\$ 0.011
Total IM SGF share	\$ 10.244	\$ 25.610	\$ 25.039
Less: Original Preliminary Forecast of Total SGF share	\$ (10.947)	\$ (27.368)	\$ (26.718)
Net Change to State General Fund due to Initiated Measure	\$ (0.703)	\$ (1.758)	\$ (1.679)
Cities share of IM cigarette tax revenue (\$.04 per pkg)	\$ 0.599	\$ 1.497	\$ 1.460
Less: Original Preliminary Forecast of cities share of cigarette tax revenue (\$.03 per pkg)	\$ (0.597)	\$ (1.493)	\$ (1.456)
Net Change to Cities due to IM	\$ 0.002	\$ 0.004	\$ 0.004
Net Change to SADF due to IM (8.7% of total new sales tax revenue)	\$ 0.128	\$ 0.320	\$ 0.312
Tobacco trust fund - \$.88 cigs plus 25% tobacco	\$ 14.630	\$ 36.575	\$ 35.693
Community health trust fund - \$.88 cigs plus 25% tobacco	\$ 14.630	\$ 36.575	\$ 35.693
Total Estimated Impact of Initiated Measure	\$ 28.686	\$ 71.715	\$ 70.022

Prepared August 2016 by Office of State Tax Commissioner

North Dakota Department of Health Fiscal Note

Measure No. 5 Medical Use of Marijuana

September 22, 2016

Summary of Measure

The measure creates an Act providing for the medical use of marijuana by *registered qualified patients* for defined debilitating medical conditions through *registered designated caregivers* and *compassion centers*, or by growing their own marijuana. A qualified patient who does not grow their own could be dispensed up to three ounces of usable marijuana. Qualified patients and designated caregivers are allowed to have up to eight marijuana plants and compassion centers are allowed 1,000 plants. Depending on growing conditions, the amount of usable marijuana obtained from each plant varies greatly.

The Act would create procedures for monitoring, inventorying, dispensing, cultivating and growing marijuana, all of which would be regulated and enforced by the Department of Health (DoH). The Act provides for the registration of qualified patients, designated caregivers and compassion centers by DoH and requires revenue to be deposited into the compassionate care fund administered by the DoH.

Qualified patients and designated caregivers are required to give local law enforcement officials notice of intent to grow marijuana. Compassion Centers are required to conduct comprehensive inventories of all medical marijuana and monthly inventories of stored, usable marijuana and must notify the DoH and appropriate local law enforcement authorities within twenty-four hours of discovery of any inventory discrepancy.

Fiscal Impact Sections of the Measure

Below is a brief description of the sections of the measure which have fiscal impact, and assumptions and comments related to the fiscal impact. Three characteristics significantly impact the cost to implement the measure.

- The measure does not limit the total number of qualified patients, designated caregivers or compassion centers that would be allowed to use, grow, cultivate, dispense, and sell medical marijuana in the state. This affects the number of permits that will have to be issued and tracked, the number of inspections that will need to be done, and the amount of testing that will be needed, all of which have to be done by the NDDoH. Some medical marijuana laws in other states significantly limit the number of allowed dispensaries/sellers, or allow none at all and require users to purchase the product out of state, thus reducing their costs.
- The measure allows for numerous methods to introduce medical marijuana into the human body (19-24-02(12)); legal methods of medical marijuana will include inhalation, including both smoking and vaporizing, edibles, oils, tinctures and so forth. Each of these methods and any future methods will need to be regulated by the NDDoH. Some medical marijuana laws in other states significantly limit the methods

of consumption that are allowed. For example, some states allow only cannabidiol oil, which significantly decreases the implementation costs.

- The measure allows medical marijuana to be used to treat a broad range of symptoms and diseases, such as chronic back pain and intractable, or hard to treat, nausea. Some states limit use to only one or a few diseases, thereby limiting the number of patients that qualify for medical marijuana. This means that, relative to other states, the NDDoH will be processing more applications, issuing and managing more permits, conducting more compliance checks of growers, and so forth.

19-24-03. Qualifying patient identification card application requirements.

This section requires issuance of a registry identification card to applicants for the purpose of participating in the medical marijuana program and collection of an unspecified non-refundable application fee paid by personal check or cashier's check to DoH. Patient eligibility is based on submission of various documents, including physician certification of patient's debilitating medical condition and length of time the applicant has been under the care of the physician, release of medical information, physician's licensure, and information regarding the applicant's designated caregiver.

Assumptions: 1) Since the application fee amount is not stated and no other funding source is identified, fees are set to cover all costs of registration, regulation and enforcement. 2) An annual renewal process is described but a fee is not stated; revenue estimates assume the renewal fee is equal to the application fee. 3) 19-24-03 (2.g) requires information on applicant's "primary caregiver(s)" which is not defined in the measure and has other legal definitions; considering the measure in total it appears that, and we made the assumption that, "primary caregiver" means the designated caregiver which is defined in the measure. 4) Administrative overhead costs are allocated equally to qualified patient/designated caregiver processes and the compassion center processes.

Based on statistics from Colorado when their laws allowed medical marijuana only, we estimated North Dakota would have 16,500 qualified patients. The annual registration fee would be set at \$117 for both qualified patients and designated caregivers to cover costs at the estimated number of participants (qualified patients and designated caregivers). If the actual number of participants is less than estimated, an additional funding source will be needed to cover fixed costs.

19-24-04. Designated caregiver registry identification card application requirements.

This section provides for issuance of a registry identification card to applicants for the purpose of managing the well-being of one to five qualified patients, including themselves, and collection of an unspecified non-refundable application fee paid by personal check or cashier's check to DoH. Eligibility is based on the submission of a certified copy of birth record, copy of driver's license or comparable state or federal issued photo identification card, approval of the qualified patient authorizing responsibility for managing their well-being with respect to use of marijuana, criminal history screening background check and other information.

Assumptions: 1) Since the application fee amount is not stated and no other funding source is identified, fees are set to cover all costs of registration, regulation and enforcement. 2) An annual renewal process is described but a fee is not stated; revenue estimates assume the renewal fee is equal to the application fee. 3) While the title of section 19-24-04 relates to designated caregiver registry application, throughout the section the term “primary caregiver” is used, which is not defined in the measure and has other legal definitions; considering the measure in total and this section, it appears that, and we made the assumption that, “primary caregiver” means the designated caregiver which is defined in the measure. 4) Administrative overhead costs are allocated equally to qualified patient/designated caregiver processes and the compassion center processes.

Based on statistics from Colorado when their laws allowed medical marijuana only, we estimated North Dakota would have 8,300 designated caregivers. The annual registration fee would be set at \$117 for both qualified patients and designated caregivers to cover costs at the estimated number of participants (qualified patients and designated caregivers). If the actual number of participants is less than estimated, an additional funding source will be needed to cover fixed costs.

19-24-06. Addition of debilitating medical conditions.

A citizen may petition the DoH to add conditions or treatments to the list of debilitating medical conditions listed in subsection 7 of section 19-24-02, where debilitating medical condition is defined. The process to consider additional conditions will require considerable staff and legal resources.

19-24-07. Registration and operation of compassion centers.

This section consists of sixteen pages of criteria for operation of a compassion center, which must be reviewed by the DoH before a compassion center may operate. Requirements include criminal history screening background checks for principal officers, board members, agents, volunteers, and employees, collection of \$125 non-refundable application or renewal fee, collection of a compassion center application fee of \$5,000 and a certification fee of \$25,000 after DoH has reviewed and approved them as having met the requirements.

Additional significant cost drivers are the DoH’s responsibility in subsection 2.g.(2) to ensure center’s compliance with requirements contained in subsections 2 and 3. These include compliance checks for conducting inventory, requirements for an operations manual, security, operating as a not-for-profit entity, training, packaging that indicates the marijuana is free of contaminants and the levels of active ingredients in the product within plus or minus error of five percentage points, along with additional requirements.

Assumptions: 1) The revenue provided in this section is not sufficient to cover the costs related to the licensure and regulation of compassion centers and no alternative source is provided, so a general fund appropriation would be needed to comply with this section. 2) Administrative overhead costs are allocated equally to qualified patient/designated caregiver processes and the compassion center processes.

Based on the numerous requirements to become a certified compassion center, DoH estimates only two centers would operate in the first full biennium.

19-24-09. On-site visits/interviews.

DoH may perform on-site visits and interviews to determine qualified patient or designated caregiver eligibility for the program. Additional responsibilities include reporting, referral and corrective action related to violations and involvement in suspension, revocation and appeal and hearing processes.

Financial Impact Summary

See Attached.

Other Fiscal Impacts

- **Tax Revenue:** The Office of the State Tax Commissioner has indicated that the revenue from sales of medical marijuana under this measure would be taxable because the revenue is not from prescribed drugs. The role of the physician is only to certify that the individual has one of the qualifying medical conditions and how long the individual has been under the physician's care.

The official statement from the Office of the State Tax Commissioner is "The initiated measure does not impose any state taxes. However, under existing law, the state sales tax of 5% would apply to the retail purchase price of all medical marijuana products sold in the state, including seeds and plants for "grow your own" usage, as well as products sold in final form. An estimate of the potential sales tax revenue from medical marijuana sales in North Dakota cannot be determined, as consumption estimates vary widely, making an assumption of the taxable value of the products likely to be sold in North Dakota unknown."

- **Implementation Start-up:** By law, measures passed by voters must be implemented within 30 days from approval by the voters, which in this instance would be December 8, 2016. Significant funding and FTE are needed to implement the measure. **The NDDoH does not have the funding, appropriation authority or authorized FTE to implement the measure in the current biennium.** Funding from the measure will come in as qualifying patients and designated caregivers apply for registration. However, before this occurs, staff need to be hired and an information technology system needs to be developed to process and track the registrations. In one state it took 18 months to implement a similar law. **One-time start-up costs, such as equipment, facility remodel and an IT system, are estimated at \$1,372,931. In addition, salary and operating costs during start-up are estimated at \$100,000 to \$200,000 per month.**

Other State Agency Impacts

- *North Dakota Department of Human Services*

The North Dakota Department of Human Services estimates no fiscal impact as a result of the initiated measure for legalized medical marijuana. Although there could be a fiscal impact to the broad field resulting from an increase for assessments of potential addictions, one could also argue it may decrease the request for assessment of potential addictions. This is because we would expect a decrease in referrals in situations where someone would be using marijuana for medical reasons as they would no longer be referred (through courts or CPS) for an assessment.

- ***North Dakota Attorney General***

The Attorney General’s Office is not able to accurately estimate the fiscal impact because the measure is so broad. According to the Attorney General’s office, the measure likely will result in a significant increase in workload for the Crime Laboratory division, Criminal & Regulatory division and also its Licensing section, the Fire Marshal division, the Bureau of Criminal Investigation (BCI) and its Criminal History Record section and State & Local Intelligence Center (SLIC).

The agency provided the following example of a potential fiscal impact to its BCI division, based on Colorado’s model and using DoH estimates:

One criminal history FTE can process approximately 2,000 record checks per year. Based on the Health Department’s estimates, the BCI will need **5 additional FTE positions** to process the required criminal history record checks. **The cost of a criminal history FTE is \$149,311. The measure provides that the applicant must pay for the background check, so this amount will be billable to the applicants.**

If the BCI will be tasked with conducting compliance checks, additional BCI agent FTEs will be required, including a Chief Agent and a Supervisory Agent. The number of agent FTEs needed would depend on the number of growers, distribution points, compassion care centers and medical cards issued or allowed by legislation and/or admin rules. Adding agent FTEs will require an increase in information processing staff. For every six additional agents, the BCI estimates 1 FTE position for Information Processing (IP). **One BCI agent FTE salary/benefits is \$278,040.** An increase in FTE positions at BCI will necessitate increased office space, which is worked into the cost of the new FTEs.

Based on the estimates:

6 new BCI agent FTEs	\$1,668,240	
1 Chief Agent	\$29,000	(Difference between Special Agent and Chief Agent salary/benefits)
1 Supervisory Agent	\$12,000	(Difference between Special Agent and Supervisory Agent)
1 IP FTE	\$144,512	
5 Criminal History FTEs	\$746,555	
1 SLIC analyst	\$186,278	

**Estimated cost/biennium
for the BCI division \$2,786,585**

This estimated cost does not take into account current BCI staffing shortages as a result of the required 2.5% budget reduction, or the cost of additional FTEs for the other divisions within the agency that may be required as a result of the measure.

- ***North Dakota Highway Patrol***

The North Dakota Highway Patrol estimates no fiscal impact at this time. If a law passed and marijuana-related criminal activity or crashes noticeably increased as a result, it could potentially lead to our agency requesting additional sworn officers, but the offense of driving under the influence of alcohol/drugs is something the NDHP works hard to enforce every day. The NDHP may also have some training-related costs for canines and drug recognition officers as a result of legalizing marijuana, but those costs would be fairly minimal.

- ***North Dakota Workforce Safety Insurance***

Should this initiated measure pass, there will most certainly be effects felt within WSI.

While WSI pays medical expenses related to workplace injuries, we pay pharmaceuticals within our adopted formularies as priced within our fee schedules. For the foreseeable future it seems highly unlikely marijuana will meet the guidelines to make our formulary.

The foreseeable fiscal impact for us is anticipated as increased claim costs and administrative expenses generated by injured workers securing prescriptions for medical marijuana, using, and then testing positive, thereby preventing return to work after a work related injury. Many employers in North Dakota have mandatory drug testing. These positions would likely be eliminated as return to work options for our Vocational Rehabilitation team. Should the measure pass, additional legislation would likely be necessary to provide further clarification.

We are unable to complete a full actuarial analysis within the time constraints proposed, but even within the rather vague parameters, it is possible the impact may become material, depending on the pervasiveness of use.

We anticipate numerous injured workers to qualify for treatment under the conditions of

1. Fibromyalgia;
2. Spinal stenosis or chronic back pain including neuropathy or damage to the nervous tissue of the spinal cord with objective neurological indication of intractable spasticity;
3. Severe debilitating pain that has not responded to previously prescribed medication or surgical measures for more than three months or for which other treatment options produced serious side effects.

We know the analysis is not as complete as we would like, but, again, we anticipate economic effects, both administratively as well as in the amount of benefits paid.

- **North Dakota Department of Corrections**
None

Local Agency Impacts

Only one response was received from local agencies.

- **West Fargo Police**
The West Fargo Police Department is unable to provide a reliable estimate as the most comprehensive data regarding impacts related to medical marijuana (obtained from Colorado) does not distinguish marijuana-only operators of a motor vehicle from alcohol and other drug-operators, prior to legalization of recreational marijuana.

Additional costs will be associated with the following:

- DUI arrests and motor vehicle crashes, including investigation and reconstruction of more serious accidents, providing additional safety at the scene, and time spent in court
- Medical first response related to accidental ingestion, poisoning, or mental health related issues
- Response to alarms at Compassion Care Centers
- Administrative tracking of notification of intent to grow
- Investigation into reports of lost inventory
- Assisting or escorting Department of Health inspectors
- Investigation of violations of this chapter

Qualifying Statement:

Because of the many assumptions that had to be made and the limited reliable data on which to base estimates, the department's confidence in the numbers is not high and the state could have additional or less financial risk and impact.

For additional legal analysis of this measure see

<https://www.ndhealth.gov/publications/Memo%20Medical%20Marijuana%20Measure%207-13-2016.pdf?v=2>.

Fiscal Note

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**Department of Health
Ballot Measure - Medical Marijuana
Fiscal Impact Summary**

Description	One-time Costs			Biennial Costs		
	Qualified Providers / Designated Caregivers	Compassion Centers (assuming 2 Centers)	Combined Total	Qualified Providers / Designated Caregivers	Compassion Centers (assuming 2 Centers)	Combined Total
Expenditures:						
Salaries	\$ -	\$ -	\$ -	\$ 3,439,215	\$ 1,317,130	\$ 4,756,345
Operating	1,218,542	154,389	1,372,931	1,308,788	1,287,699	2,596,487
Total Expenditures	\$ 1,218,542	\$ 154,389	\$ 1,372,931	\$ 4,748,003	\$ 2,604,829	\$ 7,352,832
FTE				25	7	32
Revenue:						
Replacement cards	\$ -	\$ -	\$ -	\$ 150,000	\$ -	\$ 150,000
Charges for failure to notify DoH of changes	-	-	-	30,000	-	30,000
Annual Registration fees @ \$117 per QP and DC	1,218,542	-	1,218,542	4,568,003	-	4,568,003
Application / Registration / Renewal fees	-	-	-	-	70,000	70,000
Total Revenue	\$ 1,218,542	\$ -	\$ 1,218,542	\$ 4,748,003	\$ 70,000	\$ 4,818,003
Unidentified Revenue Source (Gap)	\$ -	\$ 154,389	\$ 154,389	\$ -	\$ 2,534,829	\$ 2,534,829

NOTE: The fiscal impact for the 2015-2017 biennium will be dependent on the receipt of funding and spending authority and could range anywhere from \$2,422,931 if started in December 2016, which includes \$1,372,931 of one-time costs and an estimated \$1,050,000 of salary costs to \$1,038,399, if started as late as April 2017, assuming an average monthly cost of approximately \$346,133.

The fiscal impact for the 2017 - 2019 biennium is estimated to be \$7,352,832, assuming all one-time costs are completed in the 2015 - 2017 biennium.