INITIATIVE FINANCIAL INFORMATION STATEMENT FOR
USE OF MARIJUANA FOR CERTAIN MEDICAL CONDITIONS

SUMMARY OF INITIATIVE FINANCIAL INFORMATION STATEMENT

The amendment allows the use of medical marijuana for certain specified medical conditions, as well as other conditions, for which a physician licensed in Florida believes the medical use of marijuana would likely outweigh the potential health risks for the patient. In addition, a process is established for the sale of medical marijuana to qualifying patients and designated caregivers. Based on the information provided through public workshops and staff research, the Financial Impact Estimating Conference expects that the proposed amendment will have the following financial effects:

- According to the final analysis provided by the Department of Health, the department will incur an estimated $1.1 million in costs each year to comply with the regulatory responsibilities assigned to it by the constitutional amendment. These costs will likely be offset through fees charged to the medical marijuana industry and users, but this may require further action by the Legislature.
- The Department of Business and Professional Regulation, the Agency for Health Care Administration, and the Department of Agriculture and Consumer Services do not expect the amendment's passage to produce a significant impact on their regulatory functions. To the extent regulatory impacts occur, they will likely be offset through fees charged to the affected industries.
- The Department of Highway Safety and Motor Vehicles, the Police Chiefs Association, and the Sheriffs Association expect additional law enforcement costs based on the experience from other states that have similar amendments or laws, but the magnitude could not be determined at this time.
- Other state and local agencies were unable to quantify the amendment's impact, if any, on the services they provide.
- The Conference has determined that the purchase of medical marijuana is subject to Florida sales and use tax since medical marijuana is tangible personal property for the purposes of Chapter 212, Florida Statutes, unless a specific exemption exists.
- After testimony from the Department of Revenue, the Conference determined that agricultural-related exemptions apply to sales of medical marijuana when the grower or cultivator sells or dispenses the product directly to the end-user or designated caregiver. However, if the grower or cultivator sells the product to a third-party retailer (a non-taxable transaction) which then sells or dispenses the product to the end-user or a caregiver, the agricultural exemption on the final sale is lost and that transaction becomes taxable. Since the sponsors indicated that the proposed amendment was drafted to allow various levels of industry integration, the potential for both taxable and exempt activities exists. In the case of a segmented market structure, the determination of whether medical marijuana is a common household remedy (and therefore exempt) becomes significant. Until this determination is made by the Department of Revenue and/or the Department of Business and Professional Regulation or by a future action of the Legislature, the tax treatment of a sale through a third-party to the end-user is uncertain.
- The magnitude of the impact on property taxes, either positive or negative, cannot be determined.

FINANCIAL IMPACT STATEMENT

Increased costs from this amendment to state and local governments cannot be determined. There will be additional regulatory and enforcement activities associated with the production and sale of medical marijuana. Fees will offset at least a portion of the regulatory costs. While sales tax may apply to purchases, changes in revenue cannot reasonably be determined since the extent to which medical marijuana will be exempt from taxation is unclear without legislative or state administrative action.

I. SUBSTANTIVE ANALYSIS

A. Proposed Amendment

Ballot Title:

Use of Marijuana for Certain Medical Conditions.

Ballot Summary:

Allows the medical use of marijuana for individuals with debilitating diseases as determined by a licensed Florida physician. Allows caregivers to assist patients' medical use of marijuana. The Department of Health shall register and regulate centers that produce and distribute marijuana for medical purposes and shall issue identification cards to patients and caregivers. Applies only to Florida law. Does not authorize violations of federal law or any non-medical use, possession or production of marijuana.

Proposed Amendment to the Florida Constitution:

ARTICLE X, SECTION 29. Medical marijuana production, possession and use.—

(a) PUBLIC POLICY.

(1) The medical use of marijuana by a qualifying patient or personal caregiver is not subject to criminal or civil liability or sanctions under Florida law except as provided in this section.

(2) A physician licensed in Florida shall not be subject to criminal or civil liability or sanctions under Florida law for issuing a physician certification to a person diagnosed with a debilitating medical condition in a manner consistent with this section.

(3) Actions and conduct by a medical marijuana treatment center registered with the Department, or its employees, as permitted by this section and in compliance with Department regulations, shall not be subject to criminal or civil liability or sanctions under Florida law except as provided in this section.

(b) DEFINITIONS. For purposes of this section, the following words and terms shall have the following meanings:

(1) "Debilitating Medical Condition" means cancer, glaucoma, positive status for human immunodeficiency virus (HIV), acquired immune deficiency syndrome (AIDS), hepatitis C, amyotrophic lateral sclerosis (ALS), Crohn's disease, Parkinson's disease, multiple sclerosis or other conditions for which a physician believes that the medical use of marijuana would likely outweigh the potential health risks for a patient.

(2) "Department" means the Department of Health or its successor agency.

(3) "Identification card" means a document issued by the Department that identifies a person who has a physician certification or a personal caregiver who is at least twenty-one (21) years old and has agreed to assist with a qualifying patient's medical use of marijuana.
(4) "Marijuana" has the meaning given cannabis in Section 893.02(3), Florida Statutes (2013).
(5) "Medical Marijuana Treatment Center" means an entity that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their personal caregivers and is registered by the Department.
(6) "Medical use" means the acquisition, possession, use, delivery, transfer, or administration of marijuana or related supplies by a qualifying patient or personal caregiver for use by a qualifying patient for the treatment of a debilitating medical condition.
(7) "Personal caregiver" means a person who is at least twenty-one (21) years old who has agreed to assist with a qualifying patient's medical use of marijuana and has a caregiver identification card issued by the Department. A personal caregiver may assist no more than five (5) qualifying patients at one time. An employee of a hospice provider, nursing, or medical facility may serve as a personal caregiver to more than five (5) qualifying patients as permitted by the Department. Personal caregivers are prohibited from consuming marijuana obtained for the personal, medical use by the qualifying patient.
(8) "Physician" means a physician who is licensed in Florida.
(9) "Physician certification" means a written document signed by a physician, stating that in the physician's professional opinion, the patient suffers from a debilitating medical condition, that the potential benefits of the medical use of marijuana would likely outweigh the health risks for the patient, and for how long the physician recommends the medical use of marijuana for the patient. A physician certification may only be provided after the physician has conducted a physical examination of the patient and a full assessment of the patient's medical history.
(10) "Qualifying patient" means a person who has been diagnosed to have a debilitating medical condition, who has a physician certification and a valid qualifying patient identification card. If the Department does not begin issuing identification cards within nine (9) months after the effective date of this section, then a valid physician certification will serve as a patient identification card in order to allow a person to become a "qualifying patient" until the Department begins issuing identification cards.

(c) LIMITATIONS.

(1) Nothing in this section shall affect laws relating to non-medical use, possession, production or sale of marijuana.
(2) Nothing in this section authorizes the use of medical marijuana by anyone other than a qualifying patient.
(3) Nothing in this section allows the operation of a motor vehicle, boat, or aircraft while under the influence of marijuana.
(4) Nothing in this law section requires the violation of federal law or purports to give immunity under federal law.

(5) Nothing in this section shall require any accommodation of any on-site medical use of marijuana in any place of education or employment, or of smoking medical marijuana in any public place.

(6) Nothing in this section shall require any health insurance provider or any government agency or authority to reimburse any person for expenses related to the medical use of marijuana.

(d) DUTIES OF THE DEPARTMENT. The Department shall issue reasonable regulations necessary for the implementation and enforcement of this section. The purpose of the regulations is to ensure the availability and safe use of medical marijuana by qualifying patients. It is the duty of the Department to promulgate regulations in a timely fashion.

(1) Implementing Regulations. In order to allow the Department sufficient time after passage of this section, the following regulations shall be promulgated no later than six (6) months after the effective date of this section:

a. Procedures for the issuance of qualifying patient identification cards to people with physician certifications, and standards for the renewal of such identification cards.

b. Procedures for the issuance of personal caregiver identification cards to persons qualified to assist with a qualifying patient's medical use of marijuana, and standards for the renewal of such identification cards.

c. Procedures for the registration of Medical Marijuana Treatment Centers that include procedures for the issuance, renewal, suspension, and revocation of registration, and standards to ensure security, record keeping, testing, labeling, inspection, and safety.

d. A regulation that defines the amount of marijuana that could reasonably be presumed to be an adequate supply for qualifying patients' medical use, based on the best available evidence. This presumption as to quantity may be overcome with evidence of a particular qualifying patient's appropriate medical use.

(2) Issuance of identification cards and registrations. The Department shall begin issuing qualifying patient and personal caregiver identification cards, as well as begin registering Medical Marijuana Treatment Centers no later than nine months (9) after the effective date of this section.

(3) If the Department does not issue regulations, or if the Department does not begin issuing identification cards and registering Medical Marijuana Treatment Centers within the time limits set in this section, any Florida citizen shall have standing to seek judicial relief to compel compliance with the Department's constitutional duties.

(4) The Department shall protect the confidentiality of all qualifying patients. All records containing the identity of qualifying patients shall be confidential and kept from public disclosure other than for valid medical or law enforcement purposes.

(e) LEGISLATION. Nothing in this section shall limit the Legislature from enacting laws consistent with this provision.

(f) SEVERABILITY. The provisions of this section are severable and if any clause, sentence, paragraph or section of this measure, or an application thereof, is adjudged invalid by any court of competent jurisdiction other provisions shall continue to be in effect to the fullest extent possible.

Effective Date:

Article XI, Section 5(e), of the Florida Constitution states that, unless otherwise specified in the Florida Constitution or the proposed constitutional amendment, the proposed amendment will become effective on the first Tuesday after the first Monday in January following the election. This amendment does not specify an effective date and will be effective as stated in Article XI, Section 5(e), of the Florida Constitution. However, the amendment delays implementation of certain provisions by allowing the Department of Health six months after the effective date to promulgate regulations and nine months after the effective date to begin issuing identification cards.

B. Substantive Effect of Proposed Amendment

Input Received from Proponents and Opponents

The Conference sought input from those groups who were on record as supporting or opposing the petition initiative. The proponents chose not to provide a response to a request for overall input on the initiative. However, a representative responded to a specific request from staff regarding the market structure envisioned by the sponsors.

An opponent group, Save Our Society from Drugs (S.O.S.), a non-profit drug policy organization based in St. Petersburg, submitted written testimony specific to the petition initiative. The testimony focused on the status of marijuana as not approved by the federal Food and Drug Administration (FDA) and the resulting unregulated nature of the use of marijuana, emphasizing that "crude (smoked) marijuana does not meet the standards of modern medicine." The testimony also noted that "the approval of medicines and the protection of consumers are the responsibility of the FDA, not state legislators, not voters and not governors petitioning for marijuana to be rescheduled." The testimony also expressed concerns relating to: potential impacts on public safety, with an emphasis on drugged driving; environmental impacts of marijuana production, including water quality and water use, wildlife, and wildfires; and the fiscal impact of regulating and policing "pot shops."

Background

Current Legal Status of Marijuana in Florida

Florida law defines Cannabis as "all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin"[1] and places it, along with other sources of tetrahydrocannabinol (THC), on the list of Schedule I drugs.[2] Schedule I drugs are substances that have a high potential for abuse and no currently accepted medical use in treatment in the United States. As a Schedule I drug, possession and trafficking in cannabis carry criminal penalties that vary from a misdemeanor of the first degree[3] up to a felony of the first degree with a possible minimum sentence of 15 years in prison and a

[1] S. 893.02(c), F.S.
[2] S. 893.03(c)7. and 37., F.S.
[3] For possessing or delivering less than 20 grams. See s. 893.13(3) and (6)(b), F.S.

$200,000 fine.[4] Paraphernalia[5] that is sold, manufactured, used, or possessed with the intent to be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance is also prohibited and carries criminal penalties ranging from a misdemeanor of the first degree to felony of the third degree.[6]

The Necessity Defense in Florida

Despite the fact that the use, possession, and sale of marijuana is prohibited by state law, Florida courts have found that circumstances can necessitate medical use of marijuana and circumvent the application of any criminal penalties. The necessity defense was successfully applied in a marijuana possession case in Jenks v. State[7] where the First District Court of Appeal found that "section 893.03 does not preclude the defense of medical necessity" for the use of marijuana if the defendant:

- Did not intentionally bring about the circumstance which precipitated the unlawful act;
- Could not accomplish the same objective using a less offensive alternative available; and
- The evil sought to be avoided was more heinous than the unlawful act.

In the cited case the defendants, a married couple, were suffering from uncontrollable nausea due to AIDS treatment and had testimony from their physician that he could find no effective alternative treatment. Under these facts, the First District found that the Jenks met the criteria for the necessity defense and ordered an acquittal of the charges of cultivating cannabis and possession of drug paraphernalia.

Medical Marijuana Laws in Other States

Currently, 20 states and the District of Columbia[8] have some form of law that permits the use of marijuana for medicinal purposes. These laws vary widely in detail but most are similar in that they touch on several recurring themes. Most state laws include the following in some form:

- A list of medical conditions for which a practitioner can recommend the use of medical marijuana to a patient.
  - Nearly every state has a list of medical conditions though the particular conditions vary from state to state. Most states also include a way to expand

[4] Trafficking in more than 25 pounds, or 300 plants, of cannabis is a felony of the first degree with a minimum sentence that varies from 3 to 15 years in prison depending on the amount of cannabis. See s. 893.135(1)(a), F.S.
[5] As defined in s. 893.145, F.S.
[6] S. 893.147, F.S.
[7] 582 So. 2d 676
[8] These states include Alaska, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Illinois (effective 2014), Maine, Maryland, Massachusetts, Michigan, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, and Washington. California was the first to establish a medical marijuana program in 1996 and Illinois was the most recent state to pass medical marijuana legislation in August of 2013. Illinois legislation does not become effective until 2014. See http://www.ncsl.org/issues-research/health/state-medical-marijuana-laws.aspx. Last visited on Oct. 17, 2013.

the list either by allowing a state agency or board to add medical conditions to the list or by including a "catch-all" phrase.[9] Most states require that the patient receive certification from at least one, but often two, physicians designating that they have a qualifying condition before they can be issued an ID card.

- Provisions for the patient to designate one or more caregivers who can possess the medical marijuana and assist the patient in preparing and using the medical marijuana.
  - The number of caregivers allowed and the qualifications to become a caregiver vary from state to state. Most states allow 1 or 2 caregivers and require that they be at least 21 years of age and, typically, cannot be the patient's physician. Caregivers are generally allowed to purchase or grow marijuana for the patient, be in possession of the allowed quantity of marijuana, and aid the patient in using the marijuana, but are strictly prohibited from using the marijuana themselves.
- A required identification card for the patient, caregiver, or both that is typically issued by a state agency.
- A registry of people who have been issued an ID card.
  - A method for registered patients and caregivers to obtain medical marijuana.
- General restrictions on where medical marijuana may be used.
- Provisions allowing a patient to either self-cultivate marijuana, creating regulated marijuana "dispensaries" where a patient may purchase marijuana, or both. The regulations governing such dispensaries, in states that allow them, vary widely.

Medical Marijuana Laws and the Federal Government

Regardless of whether an individual state has allowed the use of marijuana for medicinal purposes, or otherwise, the Federal Controlled Substances Act lists it as a Schedule I drug with no accepted medical uses. Under federal law possession, manufacturing, and distribution of marijuana is a crime.[10] Although state medical marijuana laws protect patients from prosecution for the legitimate use of marijuana under the guidelines established in that state, such laws do not protect individuals from prosecution under federal law should the federal government choose to act on those laws.

In August of 2013, the United States Justice Department issued a publication entitled "Smart on Crime: Reforming the Criminal Justice System for the 21st Century." [11] This document details the federal government's changing stance on low-level drug crimes announcing a "change in Department of Justice charging policies so that certain people who have committed low-level, nonviolent drug offenses, who have no ties to large-scale organizations, gangs, or cartels will no longer be charged with offenses that impose draconian mandatory minimum sentences. Under the revised policy, these people would instead receive sentences better suited to their individual conduct rather than excessive prison terms more appropriate for violent criminals or drug

[9] Such as in California's law that includes "any other chronic or persistent medical symptom that either: Substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990, or If not alleviated, may cause serious harm to the patient's safety or physical or mental health."

[10] The punishments vary depending on the amount of marijuana and the intent with which the marijuana is possessed. See http://www.fda.gov/regulatoryinformation/legislation/ucm148726.htm#cntlsbd. Last visited Oct. 17, 2013.

[11] See http://www.justice.gov/ag/smart-on-crime.pdf. Last visited on Oct. 17, 2013

kingpins." This announcement indicates the justice department's relative unwillingness to prosecute low-level drug cases leaving such prosecutions largely up to state authorities.

Proposed Florida Laws

Distinct from the petition initiative, Florida legislation was proposed to enact concepts similar to the subject of the amendment. During the 2013 legislative session, identical bills were introduced in the Senate and House of Representatives relating to medical cannabis. The bill established regulatory responsibilities and rulemaking authority for the Department of Health (DOH) and the Department of Business and Professional Regulation (DBPR), and provided rulemaking authority for the Department of Revenue (DOR) specific to taxation and reporting responsibility for specified entities. The bill:

- Authorized a qualifying patient and the patient's qualified caregiver to possess and administer medical cannabis to a qualifying patient, and to possess and use paraphernalia for specified purposes;
- Provided procedures and requirements for DOH administration;
- Authorized a physician to recommend use of medical cannabis under specified procedures and requirements;
- Required DBPR to regulate licensure of cultivation centers and dispensaries, under related procedures and requirements;
- Established a medical cannabis section within DBPR, including procedures and requirements to authorize a medical cannabis farm to possess, cultivate, and manufacture medical cannabis, medical cannabis-based products, and marijuana plants for wholesale in this state, including permitting and licensing procedures and fees, administrative fines, license suspension, and injunctive relief.
- Required rule adoption by specified dates;
- Provided that use of medical cannabis is a defense to certain offenses, and does not create defense to certain other offenses;
- Made conforming revisions to a variety of criminal provisions, including changes to the Offense Severity Ranking Chart;
- Included a severability clause; and
- Provided an effective date of July 1, 2013.

The bill stipulated that fees established by DOH must offset all expenses of implementing and administering the provisions of the bill, specified fee caps for DBPR permitting purposes, and indicated that fees collected by DOH, DBPR, and DOR be applied first to administering the responsibilities assigned under the provisions. Senate Bill (SB) 1250, introduced by Senator Clemens and one co-sponsor, was referred to four committees of reference. House Bill 1139, introduced by Representative Edwards and five co-sponsors, was referred to four committees of reference. A related public records exemption bill, SB 1214, was also filed by Senator Clemens. When the 2013 session ended, each bill died in its initial committee of reference, having not been heard.

Potential Users of Medical Marijuana

The Florida Legislature's Office of Economic and Demographic Research (EDR) developed six approaches that estimate the potential number of medical marijuana users in Florida as of April 1, 2015. Approach I draws on the experience of other states. Approaches II – V attempt to capture eligible users with the specified medical conditions in the proposed ballot initiative, except "other conditions." It is not possible to precisely estimate the number of users that would qualify under "other conditions" as these conditions are currently unknown and to be determined by the physician when he or she believes that the medical use of marijuana would likely outweigh the potential health risks for a patient. Approach VI uses the number of illicit recreational marijuana users as a guide.

Estimates of Potential Florida Medical Marijuana Users

Estimation Approach	April 1, 2015
I. States with medical marijuana laws	452 to 417,252
II. Disease prevalence	1,295,922
III. Disease incidence	116,456
IV. Use by cancer patients	173,671
V. Deaths	46,903
VI. Self-reported marijuana use	1,052,692 to 1,619,217
Range	**452 to 1,619,217**

The following is a summary of each of these approaches.

Approach I. States with Medical Marijuana Laws

Approach I applies rates of medical marijuana use from other states to Florida's 2015 projected population. Using the current experience of 16 other states, there may be an estimated 452 to 417,252 Floridians using medical marijuana in 2015. The lower range of the estimate is more likely if the medical marijuana program is rolled out slowly, such as in New Jersey, or faces implementation, administrative, and/ or legal challenges that will limit the number of registrants in the first year. The higher range of the estimate may be more likely at full implementation of a more mature program, such as in Colorado.

Approach II. Disease Prevalence

Approach II uses disease prevalence rates (proportion of people alive diagnosed with a certain disease) for cancer, hepatitis C, and HIV to determine the number of eligible patients with the conditions specified in the proposed ballot initiative. There will be an estimated 1,295,922 patients alive in 2015 that have been diagnosed with cancer, hepatitis C, or HIV during their lifetime. These patients represent the pool of eligible patients for medical use of marijuana. Prevalence data for the remaining conditions specified in the proposed ballot initiative were not available. In addition, there are unspecified "other conditions" in the proposed ballot initiative which cannot be estimated under this approach.

Approach III. Disease Incidence

Approach III uses disease incidence rates (proportion of people newly diagnosed with a certain disease) for cancer, hepatitis C, HIV, and amyotrophic lateral sclerosis (ALS) to determine the number of eligible patients with the conditions specified in the proposed ballot initiative. Disease incidence cases are a subset of disease prevalence cases, so Approach III has a smaller estimate than Approach II. There will be an estimated 116,456 patients newly diagnosed with cancer, hepatitis C, HIV, or ALS in 2015 in Florida. These patients represent the pool of eligible patients for medical use of marijuana. Incidence data for the remaining conditions specified in the proposed ballot initiative were not available. In addition, there are unspecified "other conditions" in the proposed ballot initiative which cannot be estimated under this approach.

Approach IV. Use by Cancer Patients

Approach IV uses medical marijuana penetration rates by disease, specifically cancer, to estimate medical marijuana users in Florida. The number of Florida cancer patients that are likely to use medical marijuana in 2011 is calculated by applying the average penetration rate among cancer patients from seven other states to the Florida number of cancer patients. Assuming Florida will have the same average proportion of cancer patients in the total medical marijuana users as these seven states, the number of medical marijuana users with cancer is grown to represent total medical marijuana users with all conditions in Florida in 2011. The latter is then adjusted to produce 173,671 medical marijuana users with all conditions in 2015.

Approach V. Deaths

Approach V assumes that mostly terminally ill patients will use medical marijuana. Thus, it uses 2012 death rates by disease for the specified diseases, excluding glaucoma and ALS for which no data were available, in the proposed ballot initiative to estimate the number of users. Adjusting these rates to 2015 population projections produces 46,903 potential medical marijuana patients with the specified conditions. In addition, there are unspecified "other conditions" in the proposed ballot initiative which cannot be estimated under this approach.

Approach VI. Self-Reported Marijuana Use (Illicit Recreational Use)

Approach VI presents self-reported illicit marijuana use from the 2011 National Survey on Drug Use and Health. Adjusting 2011 survey results to the 2015 Florida population projections shows that there may be an estimated 1,619,217 self-reported recreational users of marijuana in Florida. If we exclude the population 18 to 24 from this estimate since they would not be as likely to suffer from the debilitating conditions envisioned in the ballot initiative as their older counterparts, it is estimated that there may be 1,052,692 self-reported recreational users of marijuana in Florida. Approach VI was included because some of the current illicit use may be for medical purposes. This estimation approach has been used by other states to estimate recreational marijuana use.

The Conference requested EDR to estimate the extent to which a pill mill scenario and medical marijuana tourism may affect the potential number of users of medical marijuana.

- *Pill Mills:* The potential medical marijuana population was compared to the estimates of the population illicitly using pain relievers for nonmedical reasons to examine

whether "pill mills" can develop for medical marijuana. Applying use rates from the 2011 National Survey on Drug Use and Health, it is estimated that there will be 676,099 pain reliever users for nonmedical reasons in 2015, with higher rates among the 12 to 17 and 18 to 24 age groups compared to the 25 and over age group. The multi-step process consisting of (1) an examination and assessment by a physician in order for a patient to receive a physician certification and (2) the application process through the Department of Health for an identification card may dissuade a pill mill scenario. Further, the amendment allows the Department of Health to issue implementing regulations, and allows the Legislature to enact laws consistent with the amendment that may provide additional regulatory protection.

- *Medical Marijuana Tourism:* The multi-step process described above would discourage shorter-duration visitors from participating in Florida's medical marijuana program. Snowbirds (visitors staying one month or longer) were used as a potential universe for medical marijuana tourists. An estimated 17,178 to 41,271 snowbirds may apply for ID cards.

For a variety of reasons, the estimates of pill mill and medical tourism were included to "color" the final estimate of the potential number of medical marijuana users and are not meant to be additive to approaches I – VI.

After careful consideration and review of all methods, the Conference determined that the likely number of potential users of medical marijuana upon full implementation of the amendment would be less than 450,000 persons per year.

C. Fiscal Impact of Proposed Amendment

Summary of the Department of Health's Analysis

The Department's Planning Assumptions

The analysis from the Department of Health assumes the proposed Constitutional Amendment entitled "Use of Marijuana for Certain Medical Conditions" will be approved by the Florida voters and will have an effective date of January 1, 2015. The analysis further assumes the Florida Department of Health will: (1) promulgate rules by June 30, 2015, (2) issue qualified patient and personal caregiver identification cards prior to October 1, 2015, and (3) register Medical Marijuana Treatment Centers prior to October 1, 2015.

The department analysis provides general planning assumptions, as well as a series of assumptions specific to marijuana, physician authority under state and federal law and regulations, patient and caregiver identification cards, medical marijuana treatment centers, and the department's responsibilities.

The department estimates that when the program is fully implemented, the number of annual program participants to be: (1) 417,252 qualified patients, (2) 250,351 personal caregivers and (3) 1,789 registered Medical Marijuana Treatment Centers. These estimates were derived based on experience data for the states of Colorado and Oregon.

Program Components

The Florida Department of Health will establish a Florida Medical Marijuana Program which supports: (1) physician issuance of certification, (2) patient and caregiver identification cards, (3)

medical marijuana treatment center registration and regulation, and (4) regulation of the adequate supply of marijuana for a qualifying patient's medical use. For each of these components, the department's analysis cited relevant definitions as provided in the petition initiative language and indicates the department's responsibilities relative to each component.

Program Costs

According to the final analysis provided by the Department of Health, the department will incur an estimated $1.1 million in costs each year to comply with the regulatory responsibilities assigned to it by the constitutional amendment. Details regarding these costs are in the following table.

Cost Analysis

Cost of Implementation	Year 1 2015	Year 2 2016	Description
Program Staff State Health Office	$287,654	$238,181	**Year 1** Recurring FTE. Program Manager, $60,000 salary, fringe (35%) & expense package ($15,541). One-time contracted positions- Rule making support $20 hr/2080 hours plus fringe (35%) and contract overhead (4%). Educator $20.00 hr/1500 hours plus fringe (35%) and contract overhead (4%). Cost to disseminate materials to physicians ($7,000). **Year 2** Program Manager and 2.0 additional recurring FTEs to manage established program. Environmental Consultant ($82,587) and Senior Clerk ($37,993). Year 2 includes 750 hours of contracted time to refresh training materials.
Data system implementation and maintenance	$238,400	$32,000	**Year 1** Business Analysis for program and data system development $85 per hours for 1040 hours. One-time contractual. Cost to design, develop, test and data system based on business requirements. One-time contractual 1800 hours at $75.00 per hour ($135,000) and $15,000 for hardware. **Year 2** Annual cost of help desk and software maintenance 800 hours per year at $40 per hour. Recurring $32,000 after Year 1 implementation.
Treatment facility inspections, reinspections, and complaint investigations	$564,129	$790,755	**Year 1** 25% of Year 2 cost for services ($197,689). One-time cost for 10 state vehicles @ $35,000 each, 10 pentablets @ $1,500, and VPN connectivity service $48 per month for 3 months in year 1- $1,440. **Year 2** Cost for services for 12 months - 9,303 services @ $85.00 per service = $790,755. 1,789 treatment centers – 7,156 quarterly inspections, 1,789 reinspections (25% rate) and 358 complaint investigation (20% of centers). Funds 13.25 Environmental Specialist II's to conduct inspections & investigations. (Salary $37,357, Fringe $12,451 and Travel $9,606) for a total of $787,236. Interagency Agreement with DOACS for inspections of cultivators/processors = $2,500 per year. Miscellaneous cost of services=$1,019.
Total	**$1,090,183**	**$1,060,936**	

Requested Information from State Agencies

The following table reflects a summary of information gleaned from several agencies that were asked to appear before the Conference. Note the information specific to the Department of Revenue is addressed separately under tax discussions that appear subsequently in this document.

State / Local Agency	Date Info Provided	Result
Florida Department of Health	10/21/2013 11/1/2013	Written preliminary and final analyses and testimony showing $1.1 million in ongoing annual costs, likely to be offset by regulatory fees (see preceding section).
Florida Department of Children and Families Substance Abuse and Mental Health Program	10/28/2013	The department indicated that the budget impact cannot be determined. The budget for these services is set in the General Appropriations Act, which is controlled by the Legislature and these services are not an entitlement.
Florida Agency for Health Care Administration	10/28/2013	Discussed the possible impact regarding "personal care givers". The activity would fall into current regulatory oversight and would not significantly change regulatory duties. Health care clinics would only be impacted if the clinics accept 3rd party reimbursement.
Florida Board of Pharmacy	10/28/2013	The dispensaries would be a separate facility or entity and the certificate is not a prescription, so there would be no additional costs.
Florida Department of Business and Professional Regulation (DBPR) Division of Drugs, Devices and Cosmetics	10/28/2013 10/31/2013	Whether medical marijuana is a 'common household remedy' is currently unknown. There may be costs associated with making this determination. The form of the substance does not greatly matter, unless it is a food or has been processed. DBPR would have little authority over related supplies or devices.
Florida Department of Agriculture and Consumer Services	10/28/2013	Would not result in a significant regulatory impact to the agency: oversight of the plants; nursery stock dealers' license; commercial weights; agricultural inspection stations, etc. Fees would cover any additional costs.
Florida Department of Law Enforcement	10/22/2013	Deferred to the Attorney General's office, as per phone call with staff.
Florida Office of the Attorney General	10/24/2013	Referred the Conference to a letter that was submitted to the Chief Justice and Justices of the Florida Supreme Court detailing several concerns; among them the interaction of the amendment and current federal law.
Florida Department of Highway Safety and Motor Vehicles	10/31/2013	Indicated that there may be some additional costs, but cannot quantify them at this time. The costs may be due to law enforcement training needs and public education and outreach.
Florida Association of Counties	10/29/2013	The Florida Association of Counties is unable to make a determination about the financial impact of the proposed amendment on local governments as per email.
Florida League of Cities	10/30/2013	Responded via phone call to staff that they had no input at this time and referred the Conference to the Police Chiefs Association.
Florida Police Chiefs Association	10/25/2013	Email indicating additional enforcement costs based on the experience from other states that have similar amendments, but they were unable to quantify these costs at this time.
Florida Sheriffs Association	10/21/2013 10/27/2013	Presentation and email indicating additional enforcement costs based on the experience from other states that have similar amendments, but they were unable to quantify these costs at this time.

Florida Sales Tax Treatment of Medical Marijuana

Since medical marijuana is tangible personal property for the purposes of Chapter 212, Florida Statutes, its purchase is subject to Florida sales and use tax unless a specific exemption exists. In this regard, there were three possible areas of current law exemptions considered by the Conference: prescription-based exemptions, the common household remedy exemption, and agricultural-related exemptions.

The Conference has determined that the prescription-based exemptions do not apply to medical marijuana purchases due to technical constraints that include the interaction of state and federal law. The Florida Statutes define a prescription as "any order for drugs or medicinal supplies written or transmitted by any means of communication by a duly licensed practitioner authorized by the laws of the state to prescribe such drugs or medicinal supplies and intended to be dispensed by a pharmacist." Current federal law prohibits a physician from writing prescriptions for Schedule I controlled substances, which would include marijuana. In addition, the proposed amendment establishes a certification process that allows the end-user to control both the product type and dosage frequency without the need for an authorizing prescription, making the certification process fundamentally different from the typical prescription purchase. Moreover, the proposed amendment requires medical marijuana to be dispensed by a Medical Marijuana Treatment Center that is not required to be a pharmacy. Similarly, the exemption for medical products requires a prescription and would not be applicable to the sales of supplies related to medical marijuana.

The exemption for common household remedies does not require the presence of a prescription. Pursuant to Florida Statutes, the Department of Business and Professional Regulation must approve a list of these items, and that list is then certified to and adopted by the Department of Revenue through the rule-making process. There is also a process for inclusion of additional items. The existing list contains a mixture of specifically named remedies and broad classes of remedies. Based on testimony provided by both departments that they are unclear whether the broad classes of remedies presently on the list encompass medical marijuana, the Conference is left with uncertainty regarding the applicability of the exemption. During the discussion, both agencies identified reasons that the exemption may not apply, emphasizing the restrictive nature of the certification process on potential users and the limitation on sales locations to registered Medical Marijuana Treatment Centers. Because this aspect of the discussion applies equally to a decision regarding the specific inclusion of medical marijuana on a future list, doubt is cast on this action as well. However, it is possible that some supplies related to the use of medical marijuana are already on the list so each item would have to be evaluated on a case-by-case basis even if the sale of medical marijuana itself is determined to be taxable.

The agricultural-related exemptions apply to sales of medical marijuana when the grower or cultivator sells or dispenses the product directly to the end-user or a personal caregiver as defined in the proposed amendment. If the grower or cultivator instead sells the product to a third-party retailer (a non-taxable transaction) who then sells or dispenses the product to the end-user or the caregiver, the agricultural exemption on the final sale is lost and that transaction

becomes taxable.[12] However, the determination of whether medical marijuana is a common household remedy becomes significant at this point. Since it is unclear whether medical marijuana will ultimately be deemed to be a common household remedy, the tax treatment of a sale through a third-party to the end-user is uncertain.

The only form of medical marijuana that appears especially problematic to the direct application of the above findings regarding taxability is its inclusion as a part of a food product. In this regard, if medical marijuana is determined to be transformed from its original form into a distinct food product, then the law and the Department of Revenue's rules regarding food will govern its taxability. The sale of each type of food product would have to be evaluated on a case-by-case basis.

Finally, the sales of items such as grow lights and hydroponic systems that might be used for the indoor cultivation of medical marijuana are generally taxable. However, there is an exemption from sales tax for "power farm equipment." According to the Florida Statutes, "power farm equipment" means "moving or stationary equipment that contains within itself the means for its own propulsion or power and moving or stationary equipment that is dependent upon an external power source to perform its functions." Therefore, grow lights and hydroponic systems that are sold as a component part of power farm equipment would likely be exempt.

In summary, the revenue impact to state and local government from the application of the sales and use tax to the sale of medical marijuana and related supplies would range from zero to positive indeterminate because critical details regarding the specific transactions are currently unknown and key decisions regarding the potential tax exemptions have yet to be made by the affected agencies under their current administration of the law. It is also possible that the Legislature would enact new legislation specific to these questions.

Potential Estimates Related to Sales Tax Impact

In an attempt to quantify the potential magnitude of the sales tax impact, the Conference looked to other states to analyze their results. Of the states that have approved the use of medical marijuana, at least eight states and the District of Columbia have a sales tax structure that could encompass medical marijuana transactions.[13] Of these, at least three states and the District of Columbia have approved medical marijuana and also have a sales tax provision providing an exemption or partial exemption for over-the-counter health remedies. It appears that the exemption for common household remedies will apply to the sales of medical marijuana in at least Vermont. In New Jersey and Illinois, legislation explicitly made the sale of medical marijuana subject to tax. In the District of Columbia, marijuana's status as a Schedule I drug appears to disqualify it from the exemption. This leaves the experience of five states and the District of Columbia for comparison purposes. Within this grouping, California's collections

[12] According to Jon Mills who spoke via phone conversation on behalf of the initiative's sponsors, the proposed amendment was drafted to allow various levels of industry integration: both vertical integration of the complete supply chain through one owner and a segmented market structure with independent intermediaries at each stage. He also indicated that the Legislature or the Department of Health through its rule-making process would have the ability to further limit or define the permissible market structure arrangements.

[13] Arizona, California, Colorado, Illinois, Maine, New Jersey, Rhode Island, Vermont and the District of Columbia have sales taxes. Nevada reportedly has a 2% excise tax at the wholesale and retail levels.

were by far the highest with projected revenues from the 7.5% state sales tax rate ranging between $58 million and $105 million in 2012.

Temporarily suspending the confusion regarding Florida's final tax treatment of medical marijuana sales, the Legislative Office of Economic and Demographic Research used the information from other states to analyze the potential range of state sales tax revenues *in the extreme case where no sales tax exemptions apply*. The number of users, the consumption per user and the cost of the product are all critical assumptions and cause the projections to change dramatically as they are varied. Using price data from Vermont, allowable usage from Connecticut, survey data on the illegal use of marijuana for recreational purposes, and two of the estimates of projected Florida users discussed earlier, the estimated sales tax collections range from a low of $8.3 million to a maximum of $338.0 million. Since the brackets at both ends assume *no exemptions apply*—and the Conference believes that at a minimum the exemption for agricultural products will apply in at least some instances—these numbers do not encompass a probable range and cannot be used for a purpose other than testing significance.

Potential Range of State Sales Tax Revenues from Medical Marijuana End-Users Assuming No Sales Tax Exemptions Apply

The Following Examples Demonstrate a Range that is Generated by Varying Assumptions

Quantity Consumed/ Estimation Approach	April 1, 2015 Users	Sales ($)		State Sales Tax Revenues ($)	
		$225/ oz	$450/ oz	$225/ oz	$450/ oz
Annual use of 3.53 oz (100 g)					
I. States with medical marijuana laws	417,252	331,402,401	662,804,802	19,884,144	39,768,288
IV. Use by cancer patients	173,671	137,938,192	275,876,384	8,276,292	16,552,583
Annual use of 30 oz (850 g)					
I. States with medical marijuana laws	417,252	2,816,451,000	5,632,902,000	168,987,060	337,974,120
IV. Use by cancer patients	173,671	1,172,279,250	2,344,558,500	70,336,755	140,673,510

NOTE: Additional detail can be found at EDR's website:
http://edr.state.fl.us/Content/constitutional-amendments/2014Ballot/UseofMarijuanaforCertainMedicalConditions/UseofMarijuanaAdditionalInformation.cfm,

Florida Property Tax Treatment of Medical Marijuana

Lands used for growing medical marijuana will likely qualify as agricultural property for property tax purposes. This means that the property would receive a classified use agricultural assessment. Because this treatment may increase or decrease the taxable value relative to its prior value, the impact on property taxes is indeterminate—both in terms of magnitude and direction.