First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. R13-1020.01 Sharon Eubanks x4336 **SCR13-003**

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SENATE CONCURRENT RESOLUTION 13-003

SUBMITTING TO THE REGISTERED ELECTORS OF THE STATE OF COLORADO AMENDMENTS TO THE COLORADO CONSTITUTION CONCERNING MARIJUANA, AND, IN CONNECTION THEREWITH, ALLOWING THE REGISTERED ELECTORS TO VOTE ON TWO SEPARATE BUT RELATED QUESTIONS: 1) IMPOSING A STATE EXCISE TAX OF 15% ON THE FIRST SALE OR TRANSFER OF UNPROCESSED RETAIL MARIJUANA BY A RETAIL MARIJUANA CULTIVATION FACILITY, IMPOSING AN ADDITIONAL STATE SALES TAX OF 15% ON THE SALE OF RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCTS, ALLOWING THE GENERAL ASSEMBLY TO DECREASE OR INCREASE THE RATE OF EITHER OR BOTH TAXES WITHOUT FURTHER VOTER APPROVAL SO LONG AS THE RATE OF

EITHER TAX DOES NOT EXCEED 15%, AND ALLOWING THE RESULTING TAX REVENUES TO BE COLLECTED AND SPENT REGARDLESS OF ANY LIMITATIONS IMPOSED BY LAW; AND 2) IF A MAJORITY OF THE ELECTORS VOTING ON THE QUESTION FAIL TO APPROVE THE IMPOSITION OF A STATE EXCISE TAX AND A STATE SALES TAX ON RETAIL MARIJUANA AT THE ELECTION HELD IN NOVEMBER OF 2013, SUSPENDING THE PROVISIONS OF SECTION 16 OF ARTICLE XVIII OF THE COLORADO CONSTITUTION RELATING TO THE REGULATION OF MARIJUANA UNTIL A MAJORITY OF THE ELECTORS APPROVE THE IMPOSITION OF NEW STATE TAXES OR INCREASES IN STATE TAX RATES SUFFICIENT TO ANNUALLY FUND THE ESTIMATED COSTS OF STATE REGULATION OF MARIJUANA.

Resolution Summary

(Note: This summary applies to this resolution as introduced and does not reflect any amendments that may be subsequently adopted. If this resolution passes third reading in the house of introduction, a resolution summary that applies to the reengrossed version of this resolution will be available at http://www.leg.state.co.us/billsummaries.)

The concurrent resolution submits two questions concerning marijuana to the voters of the state at the statewide election to be held in November of 2013. If the voters approve the first question, the concurrent resolution will impose a state sales tax and a state excise tax on retail marijuana, legalized by section 16 of article XVIII of the state constitution, as follows:

Excise tax. Beginning January 1, 2014, the concurrent resolution will impose a tax on the first sale or transfer of unprocessed retail marijuana by a retail marijuana cultivation facility to a retail marijuana store, retail marijuana product manufacturing facility, or another retail marijuana cultivation facility. The amount of the tax is 15% of the average market rate of unprocessed retail marijuana statewide on the date that it is sold or transferred, as determined by the department of revenue, and the tax will be imposed when a retail marijuana cultivation facility sells or transfers unprocessed retail marijuana to a retail marijuana store, a retail marijuana product manufacturing facility, or another retail marijuana cultivation facility.

On or after January 1, 2014, the general assembly is authorized to

establish a tax rate that is lower than 15% of the average market rate by a bill enacted by the general assembly that becomes law. After establishing a tax rate that is lower than 15%, the general assembly may increase the rate by bill enacted by the general assembly and signed into law by the governor, so long as the rate does not exceed 15%. An increase in the rate does not require additional voter approval.

Sales tax. Beginning January 1, 2014, the concurrent resolution will impose a tax of 15% on the sale of retail marijuana or retail marijuana products to a consumer by a retail marijuana store. The tax to be imposed is in addition to the 2.9% state sales tax and any local government sales tax that is imposed on the sale of all property and services pursuant to current law.

On or after January 1, 2014, the general assembly is authorized to establish a rate that is lower than 15% by a bill enacted by the general assembly that becomes law. After establishing a tax rate that is lower that 15%, the general assembly may increase the rate by bill enacted by the general assembly and signed into law by the governor, so long as the rate does not exceed 15%. An increase in the rate does not require additional voter approval.

If the voters approve the first question, the state will be allowed to collect and spend any revenues generated by the retail marijuana excise and sales taxes as voter-approved revenue changes.

If the voters do not approve the first question to impose a state sales tax and a state excise tax on retail marijuana and the voters approve the second question, the concurrent resolution will suspend all provisions of section 16 of article XVIII of the state constitution relating to the regulation of marijuana until such time as voters approve the imposition of new state taxes or increases in state tax rates sufficient to fund the estimated costs of state regulation of marijuana.

Be It Resolved by the Senate of the Sixty-ninth General Assembly of the State of Colorado, the House of Representatives concurring herein:

SECTION 1. At the statewide election to be held on the first Tuesday of November in 2013, there shall be submitted to the registered electors of the state of Colorado, for their approval or rejection, the following amendments to the constitution of the state of Colorado, to wit:

In the constitution of the state of Colorado, section 16 of article XVIII, **amend** (9); and **add** (5) (d.1), (5) (d.2), and (5) (d.3) as follows:

Section 16. Personal use and regulation of marijuana. (5) Regulation of marijuana. (d.1) (I) BEGINNING JANUARY 1, 2014, EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (d.1), THERE IS LEVIED AND SHALL BE COLLECTED, IN ADDITION TO THE SALES TAX IMPOSED PURSUANT TO PART 1 OF ARTICLE 26, COLORADO REVISED STATUTES, OR ANY SUCCESSOR LAW, AND PARAGRAPH (d.2) OF THIS SUBSECTION (5), A TAX ON THE FIRST SALE OR TRANSFER OF UNPROCESSED RETAIL MARIJUANA BY A RETAIL MARIJUANA CULTIVATION FACILITY, AT A RATE OF FIFTEEN PERCENT OF THE AVERAGE MARKET RATE OF THE UNPROCESSED RETAIL MARIJUANA. THE TAX SHALL BE IMPOSED AT THE TIME WHEN THE RETAIL MARIJUANA CULTIVATION FACILITY FIRST SELLS OR TRANSFERS UNPROCESSED RETAIL MARIJUANA FROM THE RETAIL MARIJUANA CULTIVATION FACILITY TO A RETAIL MARIJUANA PRODUCT MANUFACTURING FACILITY, A RETAIL MARIJUANA STORE, OR ANOTHER RETAIL MARIJUANA CULTIVATION FACILITY.

(II) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (d) OF THIS SUBSECTION (5) TO THE CONTRARY, THE FIFTEEN PERCENT TAX RATE SPECIFIED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (d.1) IS THE MAXIMUM TAX RATE THAT MAY BE IMPOSED PURSUANT TO THIS PARAGRAPH (d.1). AT ANY TIME ON OR AFTER JANUARY 1, 2014, THE GENERAL ASSEMBLY MAY, BY A BILL ENACTED BY THE GENERAL ASSEMBLY THAT BECOMES LAW:

(A) ESTABLISH A TAX RATE TO BE IMPOSED PURSUANT TO THIS PARAGRAPH (d.1) THAT IS LOWER THAN FIFTEEN PERCENT OF THE AVERAGE MARKET RATE OF UNPROCESSED RETAIL MARIJUANA AT THE TIME THAT IT IS SOLD OR TRANSFERRED; OR

(B) AFTER ESTABLISHING A TAX RATE THAT IS LOWER THAN

FIFTEEN PERCENT PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (d.1), INCREASE THE TAX RATE TO BE IMPOSED PURSUANT TO THIS PARAGRAPH (d.1); EXCEPT THAT, IN NO EVENT SHALL THE GENERAL ASSEMBLY INCREASE THE TAX RATE ABOVE FIFTEEN PERCENT OF THE AVERAGE MARKET RATE OF UNPROCESSED RETAIL MARIJUANA AT THE TIME THAT IT IS SOLD OR TRANSFERRED. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN INCREASE IN THE TAX RATE PURSUANT TO THIS SUB-SUBPARAGRAPH (B) SHALL NOT REQUIRE VOTER APPROVAL SUBSEQUENT TO THE VOTER APPROVAL REQUIRED PURSUANT TO SECTION 20 (4) (a) OF ARTICLE X OF THIS CONSTITUTION.

(III) THE TAX IMPOSED PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (d.1) SHALL NOT BE LEVIED ON THE SALE OR TRANSFER OF UNPROCESSED MARIJUANA BY A MARIJUANA CULTIVATION FACILITY TO A MEDICAL MARIJUANA CENTER.

(d.2) (I) IN ADDITION TO THE TAX IMPOSED PURSUANT TO PART 1 OF ARTICLE 26, COLORADO REVISED STATUTES, OR ANY SUCCESSOR LAW, AND THE SALES TAX IMPOSED BY A LOCAL GOVERNMENT PURSUANT TO TITLE 29, 30, 31, OR 32, COLORADO REVISED STATUTES, OR ANY SUCCESSOR STATUTES, BEGINNING JANUARY 1, 2014, THERE IS IMPOSED UPON ALL SALES OF RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCTS BY A RETAILER A TAX AT THE RATE OF FIFTEEN PERCENT OF THE AMOUNT OF THE SALE, TO BE COMPUTED IN ACCORDANCE WITH SCHEDULES OR FORMS PRESCRIBED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT.

(II) THE FIFTEEN PERCENT TAX RATE SPECIFIED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (d.2) IS THE MAXIMUM TAX RATE THAT MAY BE IMPOSED PURSUANT TO THIS SECTION. AT ANY TIME ON OR AFTER

JANUARY 1, 2014, THE GENERAL ASSEMBLY MAY, BY A BILL ENACTED BY THE GENERAL ASSEMBLY THAT BECOMES LAW:

(A) ESTABLISH A TAX RATE TO BE IMPOSED PURSUANT TO THIS PARAGRAPH (d.2) THAT IS LOWER THAN FIFTEEN PERCENT OF THE SALE OF RETAIL MARIJUANA OR RETAIL MARIJUANA PRODUCTS; OR

(B) AFTER ESTABLISHING A TAX RATE THAT IS LOWER THAN FIFTEEN PERCENT PURSUANT TO SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (II), INCREASE THE TAX RATE TO BE IMPOSED PURSUANT TO THIS PARAGRAPH (d.2); EXCEPT THAT, IN NO EVENT SHALL THE GENERAL ASSEMBLY INCREASE THE TAX RATE ABOVE FIFTEEN PERCENT OF THE SALE OF RETAIL MARIJUANA OR RETAIL MARIJUANA PRODUCTS. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN INCREASE IN THE TAX RATE PURSUANT TO THIS SUBPARAGRAPH (II) SHALL NOT REQUIRE VOTER APPROVAL SUBSEQUENT TO THE VOTER APPROVAL REQUIRED PURSUANT TO SECTION 20 (4) (a) OF ARTICLE X OF THIS CONSTITUTION.

(III) NOTHING IN THIS PARAGRAPH (d.2) SHALL BE CONSTRUED TO IMPOSE A TAX ON THE SALE OF MARIJUANA OR MARIJUANA PRODUCTS TO ANY PERSON BY A MEDICAL MARIJUANA CENTER.

(d.3) NOTWITHSTANDING ANY LIMITATIONS ON REVENUE, SPENDING, OR APPROPRIATIONS CONTAINED IN SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION OR ANY OTHER PROVISION OF LAW, ANY REVENUES GENERATED BY THE RETAIL MARIJUANA EXCISE AND SALES TAXES IMPOSED PURSUANT TO PARAGRAPHS (d.1) AND (d.2) OF THIS SUBSECTION (5), AS APPROVED BY THE VOTERS AT THE STATEWIDE ELECTION HELD IN NOVEMBER OF 2013, MAY BE COLLECTED AND SPENT AS VOTER-APPROVED REVENUE CHANGES WITHOUT ADDITIONAL VOTER APPROVAL.

(9) Effective date - conditional suspension of regulatory provisions. (a) Unless otherwise provided by this section, all provisions of this section shall become effective upon official declaration of the vote hereon by proclamation of the governor, pursuant to section 1(4) of article V.

(b) IN THE EVENT A MAJORITY OF THE ELECTORS VOTING ON THE QUESTION TO IMPOSE THE STATE EXCISE AND SALES TAXES ON RETAIL MARIJUANA AS PROPOSED BY SENATE CONCURRENT RESOLUTION 13-___ SHALL HAVE VOTED "NO" AT THE STATEWIDE ELECTION HELD ON THE FIRST TUESDAY IN NOVEMBER OF 2013, ALL PROVISIONS OF THIS SECTION RELATING TO THE REGULATION OF MARIJUANA ARE IMMEDIATELY SUSPENDED AND SHALL NOT BE IN EFFECT UNTIL A MAJORITY OF THE ELECTORS VOTING ON A QUESTION OR QUESTIONS APPROVE THE IMPOSITION OF ONE OR MORE NEW STATE TAXES OR INCREASES IN STATE TAX RATES THAT WILL PROVIDE SUFFICIENT REVENUES TO ANNUALLY FUND THE ESTIMATED COSTS OF STATE REGULATION OF MARIJUANA IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION.

SECTION 2. Each elector voting at said election and desirous of voting for or against said amendments shall cast a vote as provided by law either "Yes/For" or "No/Against" on each of the two separate but related questions set forth in the proposition:

"Concerning marijuana:

(1) Shall state taxes on retail marijuana be increased by $_____ annually in the first full fiscal year and by such amounts as are raised thereafter by amendments to the Colorado constitution, and, in connection therewith, imposing an excise tax of 15% on the first sale or transfer of unprocessed retail marijuana by a retail marijuana cultivation

facility; imposing an additional sales tax of 15% on the sale of retail marijuana and retail marijuana products, allowing the rate of either or both taxes to be decreased or increased without further voter approval so long as the rate of either tax does not exceed 15%; and allowing the resulting tax revenues to be collected and spent notwithstanding any limitations provided by law?

(2) Shall the provisions of section 16 of article XVIII of the Colorado constitution relating to the regulation of marijuana be suspended and not be in effect if a majority of the electors voting on the question fail to approve the imposition of a state excise tax and a state sales tax on retail marijuana at the November 2013 election and until a majority of the electors approve the imposition of one or more state taxes or increases in state tax rates that will provide sufficient revenues to annually fund the estimated costs of state regulation of marijuana?"

SECTION 3. (1) The votes cast for the adoption or rejection of said amendments shall be canvassed and the result determined in the manner provided by law for the canvassing of votes for representatives in Congress.

(2) (a) If a majority of the electors voting on the question set forth in subsection (1) of the proposition shall have voted "Yes/For", said amendment to add paragraphs (d.1), (d.2), and (d.3) to section 16 (5) of article XVIII shall become a part of the state constitution; and

(b) If a majority of the electors voting on the question set forth in subsection (2) of the proposition shall have voted "Yes/For" and if a majority of the electors voting on the question set forth in subsection (1)

of the proposition shall have voted "No/Against", said amendment to amend subsection (9) of section 16 of article XVIII shall become a part of the state constitution.