

# OFFICE OF FISCAL ANALYSIS

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## EMERGENCY CERTIFICATION

SB-1118

AN ACT CONCERNING RESPONSIBLE AND EQUITABLE  
REGULATION OF ADULT-USE CANNABIS.

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### ***OFA Fiscal Note***

***State Impact:*** See Below

***Municipal Impact:*** See Below

### ***Explanation***

The bill makes numerous changes to employment, licensing, consumer, economic development, tax, criminal justice, and traffic enforcement laws to establish a legal recreational cannabis consumer and business sector, which results in the following fiscal impacts:

### **State and Local Taxes**

The bill establishes the following taxes on the sale of cannabis: (1) a state cannabis tax on the sale of cannabis based upon the amount of THC per milligram of certain products and (2) a 3% municipal cannabis tax for municipalities. The 6.35% general sales tax rate also applies.

The taxes result in a total revenue gain to the state and municipalities of \$4.1 million in FY 22, \$26.3 million in FY 23, and \$44.6 million in FY24; the annual revenue gain is expected to grow to \$73.4 million by FY 26.

The tables below provide (1) the fiscal impact of each tax component per fiscal year and (2) the fiscal impact by fund and account.

**Fiscal Impact by Tax Component**

Tax Type	FY 22	FY 23	FY 24	FY 25	FY 26
6.35% Sales Tax	2.1	12.5	23.8	36.8	37.7
State Cannabis Tax	1.0	7.9	9.6	17.0	17.5
Municipal Cannabis Tax	1.0	5.9	11.2	17.4	18.2
<b>Total</b>	<b>4.1</b>	<b>26.3</b>	<b>44.6</b>	<b>71.2</b>	<b>73.4</b>

**Fiscal Impact by Fund/Account**

Fund/Account	FY 22	FY 23	FY 24	FY 25	FY 26
General Fund	2.8	18.4	21.5	33.5	33.5
Special Transportation Fund	0.2	1.0	1.9	2.9	3.0
Municipal Revenue Sharing Account	0.2	1.0	1.9	2.9	3.0
Social Equity and Innovation Fund	-	-	5.8	10.2	11.4
Prevention and Recovery Services Fund	-	-	2.4	4.2	4.4
<b>Total State Impact</b>	<b>3.1</b>	<b>20.4</b>	<b>33.4</b>	<b>53.8</b>	<b>55.2</b>
Municipal Cannabis Tax	1.0	5.9	11.2	17.4	18.2
<b>Total - State and Municipal Impact</b>	<b>4.1</b>	<b>26.3</b>	<b>44.6</b>	<b>71.2</b>	<b>73.4</b>

The bill specifies that all state cannabis tax revenue be deposited in various funds based on the schedule below in the table below:

**State Cannabis Tax Revenue Distribution**

Fund/Account	FY 22	FY 23	FY 24-25	FY 26-28	FY 29+
General Fund	100%	100%	15%	10%	-
Social Equity and Innovation Fund	-	-	60%	65%	75%
Prevention and Recovery Services Fund	-	-	25%	25%	25%

**Angel Investor Tax Credit**

The bill also extends and expands the existing Angel Investor Tax Credit, which results in a revenue loss of \$15 million annually through FY 24 and \$20 million annually from FY 25 to FY 28.

**Licensing Fees**

The bill imposes a number of fees on the various license types

outlined under the bill. Those fees, which are required to be deposited into the General Fund under the bill, are anticipated to generate approximately \$2 million annually.

The bill also imposes a \$1 million license conversion fee for a dispensary facility to become a hybrid retailer and \$3 million expansion fee for a producer to engage in the adult use cannabis market. Both fees are to be deposited into the Social Equity and Innovation Fund. It is anticipated that these fees may generate approximately \$15 million across the FY 22 - 23 biennium.

The actual revenue generated from the licensing fees in the bill will depend on the number of applications submitted and licenses granted and may differ from the estimates above.

#### **Social Equity and Innovation Fund**

The bill establishes the fund as a separate, non-lapsing fund and deposits certain licensing fees and a portion of the state cannabis tax into the fund. The bill appropriates those funds for various purposes including: Access to capital for businesses; technical assistance for the start-up and operation of a business; funding for workforce education; and funding for community investments. Under the bill, the Social Equity Council will submit expenditure requirements and recommended adjustments to the Office of Policy and Management.

It is anticipated that approximately \$15 million in fee revenue will be deposited into the fund across the FY 22 - 23 biennium.

#### **Prevention and Recovery Services Fund**

The bill establishes the fund as a separate, non-lapsing fund and deposits a portion of the state cannabis tax into the fund. The bill appropriates those funds for various purposes including: substance abuse prevention, treatment and recovery services and data collection.

The transfer of state cannabis tax into the fund is to begin in FY 24 per the bill.

#### **Department of Consumer Protection (DCP):**

The bill requires DCP to license, regulate, enforce, and make certain recommendations regarding recreational cannabis, resulting in additional staffing needs. DCP will need to hire 25 staff in FY 22 and 24 additional staff in FY 23, for a cost of \$5.4 million in FY 22 and \$7.8 million in FY 23 for salaries, fringe benefits, and other expenses. DCP also has the ability to issue fines for violations resulting in a potential revenue gain to the General Fund to the extent violations occur.

### **Social Equity Council**

The bill results in a cost to the Department of Economic and Community Development (DECD) of at least \$733,921 in FY 22 and at least \$233,921 in FY 23 and thereafter by establishing a Social Equity Council within DECD.

The bill creates one executive director position for the council which is anticipated to result in a cost of \$141,770 (\$100,000 salary plus \$41,770 fringe). At least one additional staff at an estimated cost of \$92,151 (\$65,000 salary plus \$27,151 fringe) is anticipated to be needed to assist in the council's duties as outlined in the bill, including processing social equity applications.

Additionally, the bill requires the council to field an RFP to conduct a cannabis study, resulting in a one-time cost of up to \$500,000 in FY 22 to DECD. The exact cost will be dependent on the responses to the RFP, requirements of the study, and negotiations with the third-party vendor.

### **Bonding**

The bill includes an authorization of \$50 million of General Obligation (GO) bonds to DECD and the Social Equity Council for use for specified financial assistance and workforce training programs. To the extent that the bonding authorized in the bill is fully allocated and expended, debt repayment of up to \$2.5 million could begin as early as FY 23. Total debt service costs for \$50 million of GO bonds issued at market rates in FY 22 is estimated to be approximately \$70.25 million between FY 22 and FY 42.

### **Courts and Penalties**

The bill requires the erasure of certain police and court records resulting in a one-time cost in FY 22 of approximately \$825,000. To meet the requirements of the bill the Department of Emergency Services and Public Protection, Division of Criminal Justice, and the Judicial Department will require an information technology consultant to make necessary technology changes.

These sections also result in a potential cost to municipalities to the extent additional resources are needed due to the requirement that certain electronic records be deleted. It is anticipated potential costs will be isolated to municipalities with greater volumes of criminal records.

The bill creates new violations for cannabis and result in a marginal cost to the Department of Correction and the Judicial Department for violations and a revenue gain from fines. On average, the marginal cost to the state for incarcerating an offender for the year is \$2,200<sup>1</sup> while the average marginal cost for supervision in the community is less than \$700<sup>2</sup> each year. These sections also modify allowable possession of cannabis and result in: 1) a marginal savings to the Department of Correction and Judicial Department due to decreased violations, and 2) a revenue loss from less fines collected.

The bill results in a potential cost to the Division of Criminal Justice in FY 23 for expert witnesses in cases of cannabis related DUI's. Typically, an expert witness in DUI alcohol cases range from \$725-\$1,500 per case. The extent of the impact will be dependent on the number of cases that are challenged.

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<sup>1</sup> Inmate marginal cost is based on increased consumables (e.g. food, clothing, water, sewage, living supplies, etc.). This does not include a change in staffing costs or utility expenses because these would only be realized if a unit or facility opened.

<sup>2</sup> Probation marginal cost is based on services provided by private providers and only includes costs that increase with each additional participant. This does not include a cost for additional supervision by a probation officer unless a new offense is anticipated to result in enough additional offenders to require additional probation officers.

**Municipalities:**

The bill allows municipalities to implement restrictions on the smoking of cannabis on public property and restaurants, and to fine anyone who violates these restrictions. This results in a revenue gain, anticipated to be minimal, in a municipality that implements these restrictions. The bill also allows each municipality to vote to prohibit or otherwise regulate the sale of cannabis in that town. This has no fiscal impact as it is not anticipated to change the cost of administering or enforcing any local ordinances.

The bill's impact on local police departments can be found in the law enforcement section, and the bill's impact on local tax revenue can be found in Cannabis taxes section.

**Law Enforcement Units**

The bill requires the Police Officer Standards and Training Council (POST) to determine how many drug recognition experts (DRE) are needed for each law enforcement unit resulting in a potential cost to various agencies<sup>3</sup> and municipalities. If agencies with law enforcement units and municipalities do not meet the minimum standard developed by POST, they will need to train additional DREs resulting in a potential cost. The estimated cost per officer is \$15,000 (including the cost to send the officer to training and to cover the missing shifts with overtime).

These sections also require each police officer who has not been recertified for the first time after the initial certification to be trained in advanced roadside impaired driving enforcement (ARIDE) resulting in a cost to various agencies and municipalities for the training. For example, the cost for the Department of Transportation to hold additional classes is estimated at approximately \$50,000 annually and the cost per officer is estimated at \$2,000.

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<sup>3</sup> Agencies with law enforcement personnel include Department Emergency Services and Public Protection, Office of Legislative Management, Department of Energy and Environmental Protections, the Department of Transportation and the higher education constituent units.

**Department of Motor Vehicles and Department of Transportation**

The bill expands the administrative license suspension process to drug-impaired drivers and results in a cost to the Department of Motor Vehicles (DMV) of approximately \$720,400 in FY 22 and \$748,107 in FY 23 for salary and fringe benefit costs for seven new positions, and a one-time cost in FY 22 of \$115,802 for information technology and ancillary costs.

The bill also requires the Department of Transportation, in consultation with DMV and a Statewide Impaired Driving Task Force, to make recommendations regarding enhanced data collection, electronic warrants, and feasibility of oral fluid testing in impaired driving investigations, which does not result in a cost, because it is within the agencies' expertise.

**Department of Revenue Services**

The bill results in administrative costs to the Department of Revenue Services estimated at \$383,735 in FY 22 and \$693,143 in FY 23. This includes salary and fringe benefit costs for two Revenue Agents and five Revenue Examiners, as well as a one-time set-up and information technology programming cost estimated at \$50,000 in FY 22 only.

**Department of Emergency Services and Public Protection**

Certain cannabis applicants are required to submit to background checks resulting in a potential revenue gain to the Department of Emergency Services and Public Protection (DESPP) to the extent applicants go through DESPP for the background checks<sup>4</sup>.

**Department of Energy and Environmental Protection (DEEP)**

The bill establishes penalties for using cannabis on state lands or waters managed by DEEP. This is anticipated to result in a revenue gain to the resources of the General Fund to the extent violations occur in on state parks or forests, or other DEEP-managed properties.

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<sup>4</sup> Applicants can satisfy the background check requirements through DESPP or a third-party vendor.

### **Attorney General**

The bill allows the Office of the Attorney General (OAG) discretion to end the waiting period required under the bill governing material changes to cannabis establishments to allow the transaction to proceed. It also allows OAG to request additional information or documents relevant to the proposed transaction and stipulates that anyone who does not comply with these provisions is liable to the state for a civil penalty not to exceed \$25,000 per day recoverable through civil action brought by OAG. This may result in a revenue gain to the resources of the General Fund, to the extent violations occur.

### **Pretrial Intervention Programs**

Sections 166 - 173 replace the existing pretrial education programs with the new Pretrial Impaired Driving Intervention Program and Pretrial Drug Intervention and Community Service Program, effective April 1, 2022. The bill standardizes the number of sessions for each program and adjusts associated fees. The fiscal impact to the non-appropriated Pre-Trial account will depend on program participation levels and the number of participants for whom program fees are waived. For example, if participation rates remain constant but fee waivers increase or decrease, the account will experience a shortfall or surplus.

In addition, these sections may result in a revenue gain to the Criminal Injuries Compensation Fund for associated application fees.

### **The Out Years**

The annualized ongoing fiscal impact identified above would continue into the future subject to: 1) inflation, 2) the number of cannabis applications and licensees, 3) the length of time required to erase records, 4) the number of law enforcement officers required to receive additional training, 5) the debt service repayment schedule established when the bonds are issued, and 6) the number of violations.

*The preceding Fiscal Impact statement is prepared for the benefit of the members of the General Assembly, solely for the purposes of information, summarization and explanation and does not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety*



*of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.*