



SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE
STATEMENT OF ESTIMATED FISCAL IMPACT
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Bill Number:	H. 3361	Introduced on January 12, 2021
Author:	Herbkersman	
Subject:	SC Compassionate Care Act	
Requestor:	House Medical, Military, Public, and Municipal Affairs	
RFA Analyst(s):	Griffith, Gallagher, and Gardner	
Impact Date:	November 29, 2021 Updated for Revised Analysis and Fiscal Impact	

Fiscal Impact Summary

This bill establishes the South Carolina Medical Cannabis Program, which creates a seed-to-sale system to provide for the sale of medical cannabis to treat a qualifying patient's debilitating medical condition or to alleviate symptoms.

This bill will increase expenditures by \$5,034,000 in FY 2022-23 for the Department of Health and Environmental Control (DHEC) to administer the South Carolina Medical Cannabis Program. These expenditures include \$2,295,000 in recurring salaries and employer contributions for 34.0 FTEs. Non-recurring other operating expenditures will increase by \$1,989,000 in FY 2022-23. Recurring expenditures, beginning in FY 2023-24, will total \$3,045,000 and include \$2,295,000 in salaries and employer contributions for 34.0 FTEs. Recurring other operating expenditures will total \$750,000 beginning in FY 2023-24.

While this bill authorizes fees and monetary penalties that must be used for the direct and indirect costs associated with the implementation, administration, and enforcement of this bill, DHEC indicates that revenue collected during the first year may be minimal. Given the potential lag in revenue collections, DHEC expects to rely on General Fund appropriations of \$5,034,000 to establish the program in FY 2022-23. For FY 2023-24, DHEC indicates that Other Funds from fees and monetary penalties will fund the expected \$3,045,000 in recurring expenditures.

The Judicial Department will use existing General Funds to manage any additional costs resulting from an increase in caseloads. Therefore, there is no expenditure impact on the General Fund, Other Funds, and Federal Funds of Judicial Department from the potential increased caseload due to the new misdemeanor and perjury offenses established by the bill.

The State Law Enforcement Division (SLED) indicates the need to establish two new units with 78.0 FTEs to manage the requirements of the bill. Recurring General Fund expenditures of the agency would increase by \$7,147,000 beginning in FY 2022-23 for salary and fringe for the new FTEs, equipment, training, and various other miscellaneous expenses. Non-recurring General Fund expenses of \$3,821,000 would occur in FY 2022-23 as well for vehicles and other equipment. This results in a total General Fund expenditure increase of \$10,968,000 in FY 2022-23.

The expenditure impact on the Administrative Law Court (ALC) from additional hearings requested by revoked or suspended registry identification cardholders and medical cannabis establishments is undetermined as there is no data available that may be used to estimate the increase in the number of hearings. However, any increase will be at least partially offset by the collection of filing fees.

This bill establishes the South Carolina Medical Cannabis Program Fund within DHEC, which is funded by monies collected pursuant to Title 44, Chapter 53. DHEC is tasked with setting fees to cover costs related to the establishment and maintenance of the program. Since DHEC will set these fees by regulation, we are unable to estimate the total amount of Other Funds fee revenue that will be generated. However, the department does anticipate an initial lag in revenue collections, as first year collections may be minimal while the program is established. As such, DHEC expects to rely on General Fund appropriations of \$5,034,000 to establish the program in FY 2022-23. Beginning FY 2023-24, DHEC indicates that Other Funds from fees and monetary penalties will fund the anticipated \$3,045,000 in recurring expenditures.

Further, this bill adds a sales tax of 6 percent to all sales of medical cannabis products, but it also adds a sales and use tax exemption. The exemption applies to cannabis sold by a dispensary to a cardholder pursuant to Article 20, Chapter 53, Title 44. Also, medicine sold by prescription is exempt from state sales and use tax currently pursuant to Section 12-36-2120(28). As such, the sale of cannabis by a physician-authorized prescription through DHEC regulated dispensaries would pre-emptively exempt the collection of sales and use tax on prescribed cannabis products. We expect that all sales will be covered under these exemptions. Therefore, we anticipate there will be no revenue impact from the sale of cannabis products pursuant to this bill.

This bill may result in an increase in the number of hearings filed in ALC. Section 1-23-670 allows for filing fees for hearings filed in ALC to be used to defray the cost of the proceedings. Therefore, this bill will result in an undetermined increase of Other Funds revenue due to the increase in filing fees.

Also, this bill creates new offenses and up to a \$5,000 fine upon conviction. Any revenue collected pursuant to these fines will be distributed according to the current statutes depending upon the jurisdiction of the trial court. Therefore, this bill will result in an undetermined increase in General Fund, Other Funds, and local revenue due to the increase in fines collected.

Due to the permissive nature of the bill that allows local governments to choose to enact local ordinances governing the time, place, manner, and number of medical cannabis establishments in the locality, the expenditure impact on local governments is undetermined.

The prohibition on a local government from imposing any tax or fee on the sale of medical cannabis or medical cannabis products sold in a licensed dispensary will not reduce or impact local government tax or fee revenue because sales of medical cannabis are not being taxed currently by local governments.

Explanation of Fiscal Impact

Updated for Revised Analysis and Fiscal Impact on November 29, 2021

Introduced on January 12, 2021

State Expenditure

This bill establishes the South Carolina Medical Cannabis Program, which creates a seed-to-sale system to provide for the sale of medical cannabis to treat a qualifying patient's debilitating medical condition or to alleviate symptoms.

The Department of Health and Environmental Control. This bill requires DHEC to promulgate regulations to develop a registry identification card application form and to establish the process for issuing the cards no later than one year after the effective date of this legislation. Cards may be issued to qualifying patients and designated caregivers. DHEC must begin accepting applications for registry identification cards no later than ninety days after the effective date of the promulgated regulations. Further, the agency must contract with a company to develop or create the necessary software for an electronic registry of the qualifying patients and designated caregivers. These identification cards must be printed with tamper-resistant technology. Once the system is implemented, DHEC must issue a registry identification card within twenty-five days of receiving the application from the qualifying patient or designated caregiver.

DHEC must also establish a secure web-based verification system to allow law enforcement personnel and medical cannabis establishments to verify registry identification cards. The verification system must provide specified information on the cardholder. Confidentiality of this data is the responsibility of DHEC. The bill also adds other specific duties for DHEC.

DHEC indicates that this bill will increase expenditures by \$5,034,000 in FY 2022-23. These expenditures include \$2,295,000 in recurring salaries and employer contributions for 34.0 FTEs. Non-recurring other operating expenditures of \$1,989,000 for start-up operations will include the following:

- Consultants to assist with the initial establishment and implementation of the program - \$650,000
- Implementation of the seed-to-sale tracking system - \$400,000
- Implementation of the electronic registry of qualifying patients and designated caregivers - \$450,000
- Registry identification card equipment and card stock - \$26,000
- Computer equipment, vehicles, and office furniture - \$463,000.

Recurring expenditures in year two will total \$3,045,000 and include \$2,295,000 in salaries and employer contributions for 34.0 FTEs. Recurring other operating expenditures of \$750,000 will include the following:

- Maintenance of the seed-to-sale tracking system - \$80,000
- Maintenance of the electronic registry of qualifying patients and designated caregivers - \$130,000
- Registry identification card equipment and card stock - \$120,000

- Computer software subscriptions, equipment, office supplies, and consulting services - \$420,000.

While this bill authorizes fees and monetary penalties that must be used for the direct and indirect costs associated with the implementation, administration, and enforcement of this bill, DHEC indicates that revenue collected during the first year may be minimal. Given the potential lag in revenue collections, DHEC expects to rely on General Fund appropriations of \$5,034,000 to establish the program in FY 2022-23. For FY 2023-24, DHEC indicates that Other Funds from fees and monetary penalties will fund the expected \$3,045,000 in recurring expenditures.

Judicial Department. This bill creates new offenses for violating the provisions of the bill. Knowingly making a misrepresentation to a law enforcement official of any fact or circumstance related to the medical use of cannabis to avoid arrest or prosecution and knowingly making a misrepresentation of a medical condition to a physician in order to obtain a registry identification card is considered a misdemeanor. Upon conviction, these actions are punishable by a fine of up to \$1,000 per offense. Any revenue collected pursuant to these fines will be distributed according to the current statutes depending upon the jurisdiction of the trial court.

Additionally, the sale of cannabis to any individual who is not allowed to possess cannabis is a felony, and subjects the individual to a fine of not more than \$5,000, imprisonment of not more than five years, or both. Giving cannabis to any individual who is not allowed to possess it is a misdemeanor and subjects the individual to a fine of not more than \$1,000, imprisonment of not more than 180 days, or both.

As the bill creates new misdemeanors and felonies, there is no data available to estimate any increase in the number of hearings or trials that will be held. The department will use existing General Funds to manage any additional costs resulting from an increase in caseloads. Therefore, there is no expenditure impact on the Judicial Department. Any revenue collected pursuant to the fines will be distributed according to current statutes depending upon the jurisdiction of the trial court. Therefore, the bill will result in an undetermined increase in General Fund, Other Funds, and local revenue due to the increase in fines collected.

State Law Enforcement Division. This bill directs SLED to consult with DHEC on security regulations for medical cannabis establishments, as well as the establishments' security plans. SLED must also check criminal records for every person seeking to become a medical cannabis establishment agent. Pursuant to Section 23-3-15(A)(3), SLED has the exclusive statewide jurisdiction and authority for covert investigations of illegal activities pertaining to the interdiction of narcotics and other illicit substances.

SLED indicates that the agency intends to establish a new Marijuana Enforcement Unit to manage the provisions of the bill. SLED anticipates that this new unit would be comprised of 56 narcotic agents to provide enforcement, 3 lieutenants and 1 captain to provide oversight, and 4 administrative support staff. The unit would incur recurring costs associated with salaries and fringe for new FTEs and operating expenses for gasoline, cellular telephone service with hotspot capability, mobile and portable 800 radio services, uniform replacement,

training, travel, technology licenses, and vehicle maintenance. The unit would also incur non-recurring operating costs for the purchase of vehicles, firearms, duty accessories, computer equipment, and training expenses.

SLED also indicates that the agency intends to establish a new Laboratory Marijuana Analysis Unit to determine the difference between hemp and marijuana. SLED anticipates that this unit would be comprised of 6 drug chemists, 4 forensics technicians, and 1 team leader. The unit would incur recurring costs associated with salaries and fringe for the new FTEs, expenses for cellular telephone service, training, and travel. Non-recurring operating costs for this unit include expenses for the purchase of cellular telephones, computer equipment, and four new gas chromatography mass spectrometers.

Additionally, SLED indicates the need to hire additional support staff to manage the provisions of the bill. The new staff would include 1 attorney to provide specialized guidance and legal support. Further, SLED indicates the need for 1 information technology specialist and 1 fiscal analyst to support the additional agents and lab staff.

If SLED establishes both new units, the agency intends to hire 78.0 FTEs to manage the provisions of the bill. Recurring General Fund expenditures of the agency would increase by \$7,147,000 beginning in FY 2022-23 for salary and fringe for the new FTEs, equipment, training, and various other miscellaneous expenses. Non-recurring General Fund expenses of \$3,821,000 would occur in FY 2022-23 as well for vehicles and other equipment. This results in a total General Fund expenditure increase of \$10,968,000 in FY 2022-23.

Administrative Law Court. This bill allows a person whose registry identification card is revoked or suspended to request a hearing with the ALC. A similar provision allows a medical cannabis establishment to request an ALC hearing when the establishment's license is denied, suspended, or revoked. In addition, if DHEC fails to promulgate regulations to implement this bill within two years of the effective date, a qualifying patient may commence an action in the ALC to compel action by DHEC. While ALC currently conducts contested cases from multiple permitting processes through DHEC, there is no data available that may be used to estimate the increase in the number of hearings that will be held. Therefore, the expenditure impact of this bill on the ALC is undetermined. However, some of this expenditure will be offset by the collection of filing fees.

State Revenue

This bill establishes the South Carolina Medical Cannabis Program Fund within DHEC, which is funded by monies collected pursuant to Title 44, Chapter 53. This revenue must be used for direct and indirect costs associated with the implementation, administration, and enforcement of this bill. Any revenues in excess of the amount needed to cover these costs are to be distributed as follows:

- 90 percent to the state General Fund,
- 5 percent for research conducted by the University of South Carolina (USC) School of Medicine, the Medical University of South Carolina (MUSC), or both, for medical cannabis research and development,

- 3 percent for research conducted by USC School of Medicine, MUSC, or both, for the detection of drivers impaired by drugs, and
- 2 percent to the Department of Education for drug safety education.

This bill requires DHEC to establish application and renewal fees to cover costs related to the establishment and maintenance of the program for:

- Registry identification cards for qualifying patients and designated caregivers provided that the fees must be no greater than the cost of processing and issuing the cards,
- Nonresident cardholders to access medical cannabis from a licensed dispensary,
- Discounts for patient fees based on household income and a waiver of fees for veterans,
- Replacement registry cards,
- Medical cannabis establishments,
- Cultivation centers,
- Processing facilities,
- Dispensaries, and
- Independent testing laboratories.

DHEC anticipates an initial lag in revenue collections, as first year collections may be minimal while the program is established. As such, DHEC expects to rely on General Fund appropriations of \$5,033,742 to establish the program in FY 2022-23. Beginning FY 2023-24, DHEC indicates that Other Funds from fees and monetary penalties will fund the anticipated \$3,044,567 in recurring expenditures. Since DHEC will set these fees by regulation, we are unable to estimate the total amount of Other Funds fee revenue that will be generated. However, we anticipate DHEC will set fees pursuant to the requirements of this bill, such that Other Funds revenue will cover expenses related to establishing and maintaining the program.

Further, the bill adds a 6 percent sales tax to all sales of medical cannabis products and specifies the manner for collections of the tax and revenue. However, Section 4 of this bill amends Section 12-36-2120 to add a sales and use tax exemption for cannabis sold by a dispensary to a cardholder pursuant to Article 20, Chapter 53, Title 44. Currently, medicine sold by prescription is exempt from state sales and use tax pursuant to Section 12-36-2120(28). As such, we expect that the sale of cannabis by a physician-authorized prescription through DHEC regulated dispensaries would already be exempt from sales and use tax on prescribed cannabis products. Further, the new exemption applies specifically to any sales to a cardholder. We expect that all sales will be exempted from tax under these two exemptions. Therefore, we anticipate there will be no sales tax revenue impact from the sale of cannabis products pursuant to this bill.

In summary, the total revenue impact of this bill is undetermined. The amount of revenue will be determined by fees set by DHEC pursuant to the requirements of this bill. As such, we are unable to estimate the total amount of Other Funds revenue that will be generated from these fees. Further, this bill, along with Section 12-36-2120(28), exempts cannabis products sold by a dispensary to a cardholder pursuant to Article 20, Chapter 53, Title 44 from sales and use tax. Therefore, we anticipate there will be no revenue impact from the sale of cannabis products.

Local Expenditure

This bill allows local governments to enact ordinances or regulations not in conflict with this bill governing the time, place, manner, and number of medical cannabis establishments in the locality. Further, a local government may establish penalties for violation of an ordinance or regulation in regards to medical cannabis. Due to the permissive nature of the bill that allows local governments to choose to enact local ordinances governing the time, place, manner, and number of medical cannabis establishments in the locality, the expenditure impact on local governments is undetermined.

Local Revenue

The bill prohibits a local government from imposing any tax or fee on the sale of medical cannabis or medical cannabis products sold in a licensed dispensary. Because sales of medical cannabis are not being taxed currently, this prohibition will not reduce local government tax or fee revenue.

Also, this bill creates new offenses and up to a \$5,000 fine upon conviction. Any revenue collected pursuant to these fines will be distributed according to the current statutes depending upon the jurisdiction of the trial court. Therefore, this bill may result in an undetermined increase in local revenue due to the increase in fines collected.

Introduced on January 12, 2021

State Expenditure

This bill establishes the South Carolina Medical Cannabis Program, which creates a seed-to-sale system to provide for the sale of medical cannabis to treat a qualifying patient's debilitating medical condition or to alleviate symptoms.

The Department of Health and Environmental Control. This bill requires DHEC to promulgate regulations no later than one year after the effective date of this legislation to develop a registry identification card application form for qualifying patients and designated caregivers and to establish the process for their issuance. No later than 90 days (per Section 3 of the bill) or no later than 30 days (per Section 8 of the bill) after the effective date of the promulgated regulations, DHEC shall begin accepting applications for registry identification cards. DHEC shall either create or engage a company to develop the necessary software for an electronic registry of the qualifying patients and designated caregivers. These identification cards must be printed with tamper-resistant technology. Once the system is implemented, DHEC must issue a registry identification card within 25 days of receiving the application from the qualifying patient or designated caregiver.

DHEC shall establish a secure web-based verification system to allow law enforcement personnel and medical cannabis establishments to verify registry identification cards. The verification system must provide specified information on the cardholder. Confidentiality of this data is the responsibility of DHEC.

Additional duties for DHEC include: developing a written certification form for physicians; developing a safety flyer, which shall be provided to each registry patient; promulgating

regulations for medical cannabis establishment licenses; issuing licenses for cultivation centers, processing facilities, dispensaries, and five independent testing laboratories; and performing inspections of medical cannabis establishments for violations of the bill and regulations developed by DHEC.

DHEC indicates that this bill will increase expenditures by \$5,033,742 in FY 2021-22. These expenditures include \$2,294,649 in recurring salaries and employer contributions for 34 FTEs. Non-recurring other operating expenditures of \$1,989,175 for start-up operations will include the following:

- Consultants to assist with the initial establishment and implementation of the program - \$650,000
- Implementation of the seed-to-sale tracking system - \$400,000
- Implementation of the electronic registry of qualifying patients and designated caregivers - \$450,000
- Registry identification card equipment and card stock - \$26,000
- Computer equipment, vehicles, and office furniture.

Recurring expenditures in year two will total \$3,044,567 and include \$2,294,649 in salaries and employer contributions for 34 FTEs. Recurring other operating expenditures of \$749,918 will include the following:

- Maintenance of the seed-to-sale tracking system - \$80,000
- Maintenance of the electronic registry of qualifying patients and designated caregivers - \$130,000
- Registry identification card equipment and card stock - \$120,000
- Computer software subscriptions, equipment, office supplies, and consulting services.

While this bill authorizes fees and monetary penalties that must be used for the direct and indirect costs associated with the implementation, administration, and enforcement of this bill, DHEC indicates that revenue collected during the first year may be minimal. Given the potential lag in revenue collections, DHEC expects to rely on General Fund appropriations of \$5,062,985 to establish the program in FY 2021-22. For FY 2022-23, DHEC indicates that Other Funds from fees and monetary penalties will fund the expected \$3,044,567 in recurring expenditures.

Judicial Department. This bill creates two new misdemeanors for knowingly making a misrepresentation to a law enforcement official of any fact or circumstance related to the medical use of cannabis to avoid arrest or prosecution and knowingly making a misrepresentation of a medical condition to a physician in order to obtain a registry identification card. Upon conviction, these actions are punishable by a fine of up to \$1,000 per offense.

Additionally, the bill creates a new misdemeanor for a cardholder who gives cannabis to an unauthorized person. This misdemeanor subjects the qualifying patient to a fine of not more than \$1,000, imprisonment of not more than 180 days, or both. Finally, the sale of cannabis from a legal possession or use to an illegal or unauthorized use by a qualifying patient or designated caregiver is a felony, and subjects the qualifying patient to a fine of not more than \$5,000, imprisonment of not more than five years, or both.

As the bill creates new mechanisms for committing misdemeanors and felonies, there is no data available that may be used to estimate any increase in the number of hearings or trials that will be held. The department will use existing General Funds to manage any additional costs resulting from an increase in caseloads. Therefore, there is no expenditure impact on the General Fund, Other Funds, or Federal Funds of the Judicial Department.

State Law Enforcement Division. SLED is directed to consult with DHEC on security regulations and applicants' security plans. Also, SLED shall check for criminal records for patients, caregivers, and every person seeking to become a medical cannabis establishment principal or agent.

SLED, pursuant to Section 23-3-15(A)(3), has the exclusive statewide jurisdiction and authority for covert investigations of illegal activities pertaining to the interdiction of narcotics and other illicit substances. In addition, SLED maintains a Department of Narcotics and Dangerous Drugs, which is primarily responsible for the enforcement of all laws pertaining to illicit traffic in controlled and counterfeit substances.

The expenditure impact on SLED is pending, contingent upon a response from the agency.

Administrative Law Court. This bill allows a person whose registry identification card is revoked or suspended to request a hearing with the Administrative Law Court. A similar provision allows a medical cannabis establishment to request an ALC hearing when the establishment's license is denied, suspended, or revoked. In addition, if DHEC fails to promulgate regulations to implement this bill within two years of the effective date, a qualifying patient may commence an action in the ALC to compel action by DHEC. While ALC currently conducts contested cases from multiple permitting processes through DHEC, there is no data available that may be used to estimate the increase in the number of hearings that will be held. Therefore, the expenditure impact on the General Fund, Other Funds, and Federal Funds of the ALC is undetermined.

State Revenue

This bill requires DHEC to establish a South Carolina Medical Cannabis Program Fund (fund). All fees and monetary penalties collected must be used for the direct and indirect costs associated with the implementation, administration, and enforcement of this bill. All sales of medical cannabis are subject to a 6 percent sales tax, and all revenue collected from this sales tax must be remitted to the Fund.

Based on medical marijuana sales data from the first two years of a similar program in Arizona, the Revenue and Fiscal Affairs Office estimates that approximately 67,600 ounces of medical cannabis will be sold in South Carolina during the first year of the program. A survey of states with similar programs suggests that an average price per ounce is approximately \$300. This amount of medical cannabis at the \$300 average price times the 6 percent tax rate would generate \$1,216,800 for the fund in FY 2021-22.

Additionally, DHEC must establish application and renewal fees for the following:

- Registry identification cards for qualifying patients and designated caregivers provided that the fees must be no greater than the cost of processing and issuing the cards
- Nonresident cardholders to access medical cannabis from a licensed dispensary
- Discounts for patient fees based on household income and a waiver of fees for veterans
- Replacement registry cards
- Medical cannabis establishments
- Cultivation centers
- Processing facilities
- Dispensaries
- Independent testing laboratories.

DHEC indicates that revenue collected during the first year may be minimal. Given the potential lag in revenue collections, DHEC expects to rely on General Fund appropriations of \$5,033,742 to establish the program in FY 2021-22. For FY 2022-23, DHEC indicates that Other Funds from fees and monetary penalties will fund the expected \$3,044,567 in recurring expenditures. Since DHEC will set these fees by regulation, we are unable to estimate the total amount of Other Funds fee revenue that will be deposited into the Fund.

In summary, the total revenue impact of this bill is undetermined. The amount of fee and registration revenue is unknown given that the bill requires DHEC to set the amount of fees by regulation. Any revenues generated in excess of the amounts needed to implement and enforce this program must be distributed to the University of South Carolina School Medicine, the Medical University of South Carolina, the South Carolina Department of Education, and the state's general fund.

In addition, the bill amends Section 12-36-2120 to add a sales and use tax exemption for cannabis sold by a dispensary to a cardholder pursuant to Article 20, Chapter 53, Title 44. Currently, any medicine or FDA-approved drug prescribed by a licensed physician and sold by prescription is exempt from state sales and use tax pursuant to Section 12-36-2120(28). The sale of cannabis by a physician authorized prescription through DHEC regulated dispensaries would exempt the collection of sales and use tax. Because sales taxes on cannabis are not currently being collected and are not included in the Board of Economic Advisors' General Fund sales tax revenue estimate, this section will not reduce General Fund sales and use tax revenue.

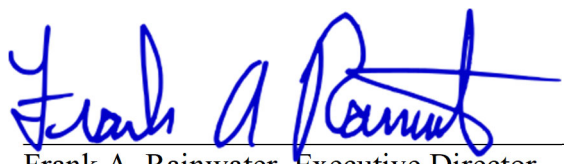
Local Expenditure

This bill allows local governments to enact ordinances or regulations not in conflict with this bill governing the time, place, manner, and number of medical cannabis establishments in the locality. Further, a local government may establish penalties for violation of an ordinance or regulation in regards to medical cannabis. Counties and municipalities, through the Municipal Association of South Carolina (MASC), were surveyed to determine what, if any, expenditure impact the passage of the bill will have on local operations. Charleston County and MASC provided responses. MASC does not expect any additional expenditures, and Charleston County indicates that it expects no expenditures because it will defer to DHEC to administer the program. Due to the permissive nature of the bill that allows local governments to choose to

enact local ordinances governing the time, place, manner, and number of medical cannabis establishments in the locality, the expenditure impact on local governments is undetermined.

Local Revenue

The bill prohibits a local government from imposing any tax or fee on the sale of medical cannabis or medical cannabis products sold in a licensed dispensary. Because sales of medical cannabis are not being taxed currently, this prohibition will not reduce local government tax or fee revenue.



Frank A. Rainwater, Executive Director