

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

SB 1849 - HB 2389

May 8, 2020

SUMMARY OF BILL: Authorizes the growing, processing, manufacture, delivery, and sale of marijuana in the state.

A person or entity would be authorized to operate a marijuana-related business. The sale of marijuana is to be taxed at the state rate of 12 percent. Receipts of such tax are to be allocated as follows:

- 20 percent to the General Fund;
- 50 percent to educational purposes; and
- 30 percent of such moneys shall be earmarked and allocated to the General Fund and credited to a special infrastructure account to be used exclusively to fund projects identified in the annual public infrastructure needs inventory compiled by the Tennessee Advisory Commission on Intergovernmental Relations.

ESTIMATED FISCAL IMPACT:

Increase State Revenue - \$858,900/FY21-22/General Fund
\$3,382,400/FY22-23/General Fund
\$6,756,900/FY23-24 and Subsequent Years/General Fund

\$900,000/FY21-22/GF – Special Infrastructure
\$3,600,000/FY22-23/GF – Special Infrastructure
\$7,200,000/FY23-24 and Subsequent Years/GF – Special Infrastructure

\$1,500,000/FY21-22/Educational Purposes
\$6,000,000/FY22-23/Educational Purposes
\$12,000,000/FY23-24 and Subsequent Years/Educational Purposes

\$500/FY21-22/Department of State
\$200/FY22-23/Department of State
\$100/FY23-24 and Subsequent Years/Department of State

Decrease State Expenditures – \$893,700 Incarceration*

Decrease Local Revenue - \$467,300/FY20-21 and Subsequent Years

**Decrease Local Expenditures –
\$1,794,200/FY20-21 and Subsequent Years/Incarceration**

Assumptions:

State and Local - Incarceration

- The proposed legislation will reduce convictions for simple possession involving an amount of marijuana less than one-half ounce.
- Based on information provided by the Administrative Office of the Courts (AOC), there has been an average of 1,869 Class A misdemeanor convictions under Tenn. Code Ann. § 39-17-418 each year over the past five years. This analysis assumes that only 10 percent of misdemeanor convictions are at the state court level. As a result, it is estimated that there are a total of 18,690 convictions ($1,869 / 10\% = 18,690$) per year for misdemeanor violations of Tenn. Code Ann. § 39-17-418.
- The potential punishment for a Class A misdemeanor is up to 11 months, 29 days in jail, a fine up to \$2,500, or both.
- This analysis estimates that 10 percent, or 1,869 ($18,690 \times 10\%$) offenders, currently pay an average \$250 fine for simple possession.
- The proposed legislation will result in a recurring mandatory decrease of local revenue estimated to be \$467,250 ($1,869 \times \250), beginning in FY20-21.
- This analysis assumes 10 percent of offenders are spending an average of 15 days in local jail for Class A misdemeanor convictions of Tenn. Code Ann. § 39-17-418.
- The average cost to local governments to house an inmate in a local jail facility is \$64 per day.
- The proposed legislation will lead to a recurring mandatory decrease in local incarceration expenditures estimated to be \$1,794,240 ($\$64 \times 1,869$ offenders $\times 15$ days), beginning in FY20-21.
- Pursuant to Tenn. Code Ann. § 39-17-417(g)(1), one commits a Class E felony for manufacturing, delivering, selling, or possessing marijuana with intent to manufacture, deliver, or sell in an amount between one-half ounce and 10 pounds. The proposed legislation will result in fewer Class E felony admissions.
- Based on information provided by the Department of Correction (DOC), there has been an average of 239.5 admissions statewide per year for manufacturing, delivering, selling, or possessing with intent to sell marijuana between one-half ounce and 10 pounds.
- This analysis assumes offenders imprisoned for possession of marijuana possessed a substantial amount of marijuana, which likely exceeded one ounce. It is assumed that the proposed legislation will reduce these admissions by 10 percent, or 24 admissions (239.5 admissions $\times 10\%$).
- The average time served for a Class E felony is 1.35 years (493.09 days).
- According to the DOC, the average operating cost per offender per day for calendar year 2018 is \$75.52.
- In FY20-21 and subsequent years, the proposed legislation will decrease recurring state incarceration costs by \$893,716 (24 admissions $\times 493.09$ days $\times \$75.52$).

- A decrease in the number of misdemeanor cases for multiple cannabis offenses listed under Tenn. Code Ann. Title 39, Chapter 17, will result in a decrease in state and local court costs. It is assumed that any such decrease will have a nominal impact on employment within such courts. Any decrease in court costs is estimated to be offset by a reduction in fee revenue received from individuals convicted and required to pay court costs and other necessary fees.
- The proposed legislation will not reduce the courts', district attorneys', or public defenders' caseloads enough to require a reduction in workforce.

Tax Revenue

A) Sales Tax

- Sales of marijuana will be taxed at a rate of 12 percent. Proceeds of such tax will be distributed as follows:
 - 20 percent to the General Fund;
 - 50 percent to educational purposes; and
 - 30 percent of such moneys shall be earmarked and allocated to the General Fund and credited to a special infrastructure account to be used exclusively to fund projects identified in the annual public infrastructure needs inventory compiled by the TACIR.
- The following are the estimated statewide sales per fiscal year:
 - FY21-22: \$25,000,000;
 - FY22-23: \$100,000,000;
 - FY23-24 and subsequent years: \$200,000,000.
- The increase in state tax collections in FY21-22 is estimated to be \$3,000,000 (\$25,000,000 x 12%), and allocated as follows:
 - General Fund: \$600,000 (\$3,000,000 x 20%);
 - Educational Purposes: \$1,500,000 (\$3,000,000 x 50%);
 - Special Infrastructure Projects: \$900,000 (\$3,000,000 x 30%)
- The increase in state sales tax collections in FY22-23 is estimated to be \$12,000,000 (\$100,000,000 x 12%), and allocated as follows:
 - General Fund: \$2,400,000 (\$12,000,000 x 20%);
 - Educational Purposes: \$6,000,000 (\$12,000,000 x 50%);
 - Special Infrastructure Projects: \$3,600,000 (\$12,000,000 x 30%)
- The increase in state sales tax collections in FY23-24 and subsequent years is estimated to exceed \$24,000,000 (\$200,000,000 x 12%), and allocated as follows:
 - General Fund: \$4,800,000 (\$24,000,000 x 20%);
 - Educational Purposes: \$12,000,000 (\$24,000,000 x 50%);
 - Special Infrastructure Projects: \$7,200,000 (\$24,000,000 x 30%)

B) Excise and Franchise Tax

- Retail sales of medical cannabis per fiscal year:
 - FY21-22: \$25,000,000;
 - FY22-23: \$100,000,000;
 - FY23-24 and subsequent years: \$200,000,000.

- It is assumed that companies within the industry pay taxes on average net profit of 15 percent.
- In FY21-22, the net profit on which excise tax would be paid is \$3,750,000 (\$25,000,000 x 15%). The state excise tax rate is 6.5 percent; therefore, the increase in state revenue attributable to excise tax collections will be \$243,750 (\$3,750,000 x 6.5%).
- Net worth of these companies is estimated to be equivalent to annual sales.
- The franchise tax rate is 0.25 percent per \$100 of value.
- In FY21-22, the increase in state revenue attributable to franchise tax collections will be \$625 [(\$25,000,000 / \$100) x 0.25%].
- In FY22-23, the net profit on which excise tax would be paid is \$15,000,000 (\$100,000,000 x 15%). The increase in state revenue attributable to excise tax collections will be \$975,000 (\$15,000,000 x 6.5%)
- In FY22-23, the increase in state revenue attributable to franchise tax collections will be \$2,500 [(\$100,000,000 / \$100) x 0.25%].
- In FY23-24 and subsequent years, the net profit on which excise tax would be paid is \$30,000,000 (\$200,000,000 x 15%). The increase in state revenue attributable to excise tax collections will be \$1,950,000 (\$30,000,000 x 6.5%)
- In FY23-24 and subsequent years, the increase in state revenue attributable to franchise tax collections will be \$5,000 [(\$200,000,000 / \$100) x 0.25%].

Revenue - Licenses

- This legislation does not provide any indication that a license will be required to grow, process, manufacture, or deliver marijuana or marijuana products.
- Due to absence of any guidance of this legislation, it is assumed that any such business which wholly or partly grows, processes, manufactures, or distributes marijuana will require no special licensure and will operate as a normal retail business.

Revenue - Business Charters

- All marijuana-related businesses will be required to file a business charter with the Secretary of State's Office.
- The number of marijuana-related businesses that will open in the state is unknown
- For the purpose of this fiscal analysis, the following charter filings for marijuana-related businesses by fiscal year:
 - FY21-22: 150 filings;
 - FY22-23: 50 filings;
 - FY23-24 and subsequent years: 20 filings.
- The business charter fee is one-time at \$100.
- For purposes of this analysis, the following charter fee revenue is estimated by fiscal year:
 - FY21-22: \$15,000 (150 x \$100);
 - FY22-23: \$5,000 (50 x \$100);
 - FY23-24 and subsequent years: \$2,000 (20 x \$100).

- Revenue from charter fees is allocated 97 percent to the General Fund, and 3 percent to the Secretary of State's Office.
- The increase in revenue to the General Fund is estimated to be \$14,550 in FY21-22 (\$15,000 x 97%); \$4,850 in FY22-23 (\$5,000 x 97%); and \$1,940 in FY23-24 and subsequent years (\$2,000 x 97%).
- The increase in revenue to the Secretary of State's Office is estimated to be \$450 in FY21-22 (\$15,000 x 3%); \$150 in FY22-23 (\$5,000 x 3%); and \$60 in FY23-24 and subsequent years (\$2,000 x 3%).

Total Impacts

General Fund

- An increase in state revenue in FY21-22 of \$858,925 (\$600,000 + \$14,550 + \$243,750 + \$625).
- An increase in state revenue in FY22-23 of \$3,382,350 (\$2,400,000 + \$4,850 + \$975,000 + \$2,500).
- An increase in state revenue in FY23-24 and subsequent years of \$6,756,940 (\$4,800,000 + \$1,940 + \$1,950,000 + \$5,000).

General Fund (GF) – Special Infrastructure

- An increase in state revenue to the GF – Special Infrastructure Fund in FY21-22 of \$900,000.
- An increase in state revenue to the GF – Special Infrastructure Fund in FY22-23 of \$3,600,000.
- An increase in state revenue to the GF – Special Infrastructure Fund in FY23-24 and subsequent years of \$7,200,000.

Educational Purposes

- An increase in state revenue for educational purposes in FY21-22 of \$1,500,000.
- An increase in state revenue for educational purposes in FY22-23 of \$6,000,000.
- An increase in state revenue for educational purposes in FY23-24 and subsequent years of \$12,000,000.

Secretary of State's Office

- An increase in state revenue in FY21-22 of \$450.
- An increase in state revenue in FY22-23 of \$150.
- An increase in state revenue in FY23-24 and subsequent years of \$60.

Incarceration

- A recurring decrease in state expenditures of \$893,716 in FY20-21 and subsequent years.

Local Government

- A mandatory decrease in local revenue in FY21-22 and subsequent years of \$467,250.
- A decrease in local expenditures in FY21-22 and subsequent years of \$1,794,240.

**Tennessee Code Annotated, Section 9-4-210, requires that: For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Krista Lee Carsner". The signature is written in a cursive, flowing style.

Krista Lee Carsner, Executive Director

/jdb