

Department of Planning and Budget
2021 Fiscal Impact Statement
REVISED 2/3/2021¹

1. Bill Number: SB1406S1

House of Origin	<input type="checkbox"/> Introduced	<input checked="" type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
Second House	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input type="checkbox"/> Enrolled

2. Patron: Ebbin

3. Committee: Senate Committee on Judiciary

4. Title: Legalization of simple possession of marijuana

5. Summary: The bill provides the following:

It repeals the following sections of the Code of Virginia:

- § 18.2-248.1, which establishes penalties for sale, gift, distribution, or possession with intent to sell, give, or distribute marijuana;
- § 18.2-250.1, which establishes that the possession of marijuana is unlawful and assesses a \$25 civil penalty for violations;
- § 18.2-251.1, which permits possession or distribution of marijuana for medical purposes; and
- § 19.2-389.3, which places limits on dissemination of criminal history record information, prohibits practices by employers, educational institutions, and state and local governments regarding marijuana possession and set penalties for violations

It establishes a 20-member Cannabis Equity Reinvestment Board in the executive branch of state government, to be chaired by the Director of Diversity, Equity, and Inclusion or his/her designee. The Board must be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties. This provision becomes effective on July 1, 2021.

The bill establishes a Cannabis Equity Reinvestment Fund (Fund). Moneys in the Fund must be used solely for the purposes of:

- Making whole again families and communities historically and disproportionately targeted and affected by drug enforcement;
- Providing scholarships for the historically marginalized population of youth, particularly in underserved communities, who have been adversely impacted by substance abuse individually or within their families or communities, including the experience of incarceration of a family member convicted of a marijuana offense;
- Awarding grants to support workforce development, youth mentoring programs, job training and placement efforts, and reentry services that serve persons residing in areas disproportionately impacted by drug enforcement;
- Contributing to the Virginia Indigent Defense Commission; and
- Contributing to the Virginia Cannabis Equity Business Loan Fund.

¹ The fiscal impact statement was revised to remove language that was inadvertently included regarding criminal background checks and VDACS.

Expenditures and disbursements from the Fund are to be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director of Diversity, Equity, and Inclusion.

The bill amends § 2.2-2818 related to health and related insurance for state employees and adds employees of the Virginia Cannabis Control Authority to the provisions. It provides that the Office of the Attorney General may provide legal service in civil matters for members or employees of the Virginia Cannabis Control Authority.

The bill allows the Virginia Board of Agriculture and Consumer Services (VDACS) to establish a criteria for or a list of pesticides that may be used on cannabis cultivated, and amends the definitions of certain hemp-related terms. The bill requires the Board of Agriculture and Consumer Services to promulgate regulations to implement the provisions of this act by July 1, 2022.

The bill also allows the Commissioner of VDACS to charge a nonrefundable fee not to exceed \$50 for any license, and requires the Commissioner to notify the Superintendent of State Police of the locations of all and hemp testing laboratories, and provide a copy of the license issued to the chief law-enforcement officer of the county or city where a hemp testing laboratory will be located. The bill requires the Commissioner to establish a licensure program to allow a laboratory to test industrial hemp or hemp products and to inspect each location at which the laboratory tests hemp. The bill requires that if the results of a test indicate that the tested hemp product exceeds the maximum level of allowable contamination for any contaminant for which testing is required, a hemp testing laboratory must, within 30 days of completing the test, notify the Commissioner of the test results. For each day any violation of this section occurs, the Commissioner may assess a penalty not to exceed: (i) \$100 for a first violation, (ii) \$200 for a second violation, and (iii) \$500 for a third or subsequent violation. All penalties collected by the Commissioner pursuant to this subsection shall be deposited in the state treasury. The bill does not appear to specify a specific fund within the state treasury.

The bill establishes requirements for testing, labeling, and advertising of hemp products: i) intended for smoking or ii) that is or includes an industrial hemp extract intended for human consumption distributed, offered for sale, or sold in the Commonwealth. For any violation of these requirements by a processor or by a retail establishment, the Commissioner may assess a penalty not to exceed: (i) \$100 for a first violation, (ii) \$200 for a second violation, and (iii) \$500 for a third or subsequent violation.

The bill requires a processor to destroy the batch of hemp product intended for smoking or consumption whose testing sample exceeds the maximum level of allowable contamination for each contaminant established in regulations adopted unless remedial measures can bring the hemp product into compliance with such regulation. For any violation of this subsection by a processor, the Commissioner may assess a penalty not to exceed: (a) \$100 for a first violation, (b) \$200 for a second violation, and (c) \$500 for a third or subsequent violation. All penalties collected by the Commissioner pursuant to this subsection shall be deposited in the state treasury. The bill does not appear to specify a specific fund within the state treasury.

The bill creates the Virginia Cannabis Control Authority as an independent political subdivision of the Commonwealth, exclusive of the legislative, executive, or judicial branches of state government. The Authority's exercise of powers and duties conferred to it are deemed the performance of an essential governmental function and a matter of public necessity for which

public moneys may be spent. The bill outlines the responsibilities of the Board of Directors of the Authority. The Virginia Cannabis Control Authority consists of the Virginia Cannabis Board of Directors, the Chief Executive Officer, and the agents and employees of the Authority. This provision is effective on July 1, 2021.

The bill establishes the membership and term limits for the Cannabis Control Advisory Board and establishes that members of the Advisory Board will receive no compensation for the performance of their duties, but must be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties.

The bill also establishes a 21-member Cannabis Public Health Advisory Council as an advisory council to the Cannabis Control Advisory Board for the purpose of assessing and monitoring public health issues, and trends, related to marijuana and marijuana legalization, and making recommendations regarding health warnings, retail marijuana, and retail marijuana products safety and product composition, and public health awareness, programming, and related resource needs. This provision is effective on July 1, 2021.

The bill establishes powers and duties of the Cannabis Control Advisory Board, which include, among other items, allowing the Board to fix, alter, charge, and collect rates, rentals, fees, and other charges for the use of property of, the sale of products of, or services rendered by the Authority at rates to be determined by the Authority for the purpose of providing for the payment of the expenses of the Authority and employ, at its discretion, consultants, researchers, architects, engineers, accountants, financial experts, investment bankers, superintendents, managers, and such other employees and special agents as may be necessary and fix their compensation to be payable from funds made available to the Authority. The Board is also authorized to assess and collect civil penalties and civil charges for violations of this subtitle and Board regulations and establish and collect fees for all permits. The bill requires the Attorney General to provide legal services for the Authority. This provision is effective on July 1, 2021.

Additionally, the bill provides that the Board may use mediation or a dispute resolution proceeding in appropriate cases to resolve underlying issues or reach a consensus or compromise on contested issues.

The bill also creates § 4.1-606, concerning regulations of the Board, and the types of regulations it may promulgate, including the establishment of criteria by which to evaluate social equity license applicants. It provides that the Authority be governed by Board of Directors who shall receive annual salary, compensation, and reimbursement of expenses (§ 4.1-607), the appointment, salary, and powers of the Board's Chief Executive Officer, who shall be appointed by the Governor and confirmed by the General Assembly (§ 4.1-608), a background check process for members (§ 4.1-609), and governs board members' financial interests (§ 4.1-610).

The bill provides guidance on the Board's audit requirements (§ 4.1-613), and provides a process by which the Board must handle any money collected by it (§ 4.1-614), which constitutes an Enterprise Fund for the payment of the salaries and remuneration of the members, agents, and employees of the Board and all costs and expenses incurred by the administration of the Board.

All moneys collected by the Board shall be paid directly and promptly into the state treasury, or shall be deposited to the credit of the State Treasurer in a state depository, without any deductions on account of salaries, fees, costs, charges, expenses, refunds or claims of any description. All moneys so paid into the state treasury, less the net profits determined, shall be set aside as and constitute an Enterprise Fund, subject to appropriation, for the payment of: (i) the salaries and

remuneration of the members, agents, and employees of the Board and (ii) all costs and expenses incurred in the administration. The net profits shall be transferred by the Comptroller to the general fund of the state treasury quarterly, within 50 days after the close of each quarter or as otherwise provided in the appropriation act.

As allowed by the Governor, the Board may deduct from the net profits quarterly a sum for the creation of a reserve fund not exceeding the sum of \$2.5 million in connection with the administration of this subtitle and to provide for the depreciation on the buildings, plants, and equipment owned, held, or operated by the Board.

After accounting for the Authority's expenses net profits shall be appropriated in the general appropriation act as follows:

- Forty percent to pre-kindergarten programs for at-risk three-year-olds and four-year-olds;
- Thirty percent to the Cannabis Equity Reinvestment Fund established pursuant to § 2.2-2499.4;
- Twenty-five percent to substance use disorder prevention and treatment programs; and
- Five percent to public health programs.

"Net profits" means the total of all moneys collected by the Board, less local marijuana tax revenues collected under § 4.1-1003 and distributed pursuant to § 4.1-614 and all costs, expenses, and charges authorized by this section.

All local tax revenues collected shall be paid into the state treasury and credited to a special fund, titled "Collections of Local Marijuana Taxes." The revenues shall be credited to the account of the locality in which they were collected. If revenues were collected from a marijuana establishment located in more than one locality by reason of the boundary line or lines passing through the marijuana establishment, tax revenues shall be distributed pro rata among the localities.

The Authority shall provide to the Comptroller any records and assistance necessary for the Comptroller to determine the locality to which tax revenues are attributable. On a quarterly basis, the Comptroller shall draw his warrant on the Treasurer of Virginia in the proper amount in favor of each locality entitled to the return of its tax revenues, and such payments shall be charged to the account of each such locality under the special fund created for this purpose. If errors are made in any such payment, or adjustments are otherwise necessary, whether attributable to refunds to taxpayers, or to some other fact, the errors shall be corrected and adjustments made in the payments for the next quarter.

To ensure that no retail marijuana or retail marijuana products grown or processed by a marijuana establishment are sold or otherwise transferred except as authorized by law, the Board shall develop and maintain a seed-to-sale tracking system that tracks retail marijuana from either the seed or immature plant stage until the retail marijuana or retail marijuana product is sold to a customer at a retail marijuana store (§ 4.1-611). The bill includes a provision (§ 4.1-629) allowing voters to file a petition with the circuit court asking that a referendum be held on the question of whether the operation of retail marijuana stores can be prohibited within that jurisdiction. This provision is effective on July 1, 2021.

The Board may issue, including marijuana cultivation facility licenses (§ 4.1-800), marijuana manufacturing facility licenses (§ 4.1-801), marijuana testing facility licenses (§ 4.1-802), marijuana wholesaler licenses (§ 4.1-803), and retail marijuana store licenses (§ 4.1-804). The remainder of the section concerns the provision of such licenses, including instances in which the Board may or must refuse such licenses (§ 4.1-809 and § 4.1-810). Section 4.1-900 and subsequent sections concern the suspension or revocation of such licenses by the Board, including duties to provide notice and to hold a hearing (§ 4.1-901), and to impose civil penalties (§ 4.1-903). The proposed § 4.1-702 establishes civil penalties for licensees who fail to pay the required license fee in a timely manner.

The proposed § 4.1-1000 concerns how businesses may apply for such licenses, and outlines the pertinent fees. Section 4.1-1003 establishes the marijuana tax, which would be levied on the sale of any retail marijuana, retail marijuana products, paraphernalia, non-retail marijuana, and non-retail marijuana products at the rate of 21 percent, and provides for exceptions to this tax. The bill also provides for an optional local marijuana tax (§ 4.1-1004).

The bill establishes a legal age of 21 for individuals to lawfully possess not more than one ounce of marijuana or an equivalent amount of marijuana product (§ 4.1-1100). Possessing marijuana or marijuana products in excess of one ounce is punishable by a civil penalty of no more than \$25, which must be deposited into the Drug Offender Assessment and Treatment Fund. Persons who possess more than five pounds of marijuana or an equivalent amount of marijuana product, with the exception of licensees performing their duties, law enforcement officers, jail officers, or correctional officers who are certified drug detection dog handlers, are guilty of a felony punishable by a term of imprisonment of between one and ten years, and a fine of not more than \$250,000, or both.

The bill provides that persons who are 21 years of age or older may cultivate up to two mature marijuana plants and two immature marijuana plants for personal use at their place of residence (§ 4.1-1101). It outlines guidelines for keeping such plants in the household, and provides for criminal penalties for persons who violate this section.

The bill creates § 4.1-1105, concerning instances in which the purchase of marijuana and related products is unlawful. It provides for a civil penalty of up to \$250 for the consumption, purchase, possession, or attempt to do so of marijuana by persons under 18 years of age. A second offense by a person over age 18 but under age 21 is punishable as a Class 3 misdemeanor; a third or subsequent offense is punishable as a Class 2 misdemeanor.

The bill provides that juvenile offenders must be required to enter substance abuse treatment or education programs licensed by the Department of Behavioral Health and Developmental Services (DBHDS), if available. Second and subsequent violations of this section by juveniles are punishable as a Class 3 misdemeanor, and require substance abuse treatment or education programming. Civil penalties collected pursuant to this section must be deposited into the Drug Offender Assessment and Treatment Fund.

Additionally, the bill provides civil and criminal penalties, among other things, for purchasing retail marijuana or retail marijuana products for an intoxicated person, or to purchase such products for someone known to be under age 21 and makes it unlawful to use marijuana or related products while in a motor vehicle driven on a public highway.

The bill prohibits certain practices by licensees and provides for criminal and civil penalties.

The bill provides that law enforcement officers may not stop, search, or seize a person, place, or thing solely on the basis of the odor of marijuana (§ 4.1-1302); exceptions are provided for airports and commercial motor vehicles. It provides for an avenue by which officers may obtain search warrants in relation to marijuana or related products (§ 4.1-1303), and establishes guidelines for such warrants.

The bill establishes the Virginia Cannabis Equity Business Loan Program and Fund. The Program will provide loans to qualified social equity cannabis licensees to promote business ownership and economic growth by communities that have been disproportionately impacted by the prohibition of cannabis.

The bill provides that any person who has been sentenced to jail or to the Department of Corrections for a marijuana offense, with some exceptions, may, at any time before the sentence has been completely served, file a motion with the court that heard the case for a resentencing hearing. If it appears compatible with the public interest and there are circumstances in mitigation of the offense, including the legalization of marijuana, such court may reduce, suspend or otherwise modify such person's sentence at any time before such person's sentence has been completely served. The petitioner is entitled to counsel if he claims to be indigent.

Additionally, the bill amends § 19.2-392.2, concerning the expungement of police and court records. It provides that a person who is convicted or adjudicated delinquent of a felony violation of § 18.2-248.1 (transporting controlled substances)), or charged under that section and the charge is deferred and dismissed, all court costs and fines and all orders of restitution have been satisfied, and five years have passed since the date of completion of all terms of sentencing and probation, he may file a petition requesting the expungement of the police and court records relating to the arrest, charge, conviction, adjudication, or civil offense. This provision is effective on July 1, 2021.

The bill provides for the automatic expungement of former marijuana offenses under § 19.2-392.2:1. It requires that records relating to the arrest, criminal charge, conviction, or civil offense of a person for a misdemeanor violation of former § 18.2-248.1 or of § 18.2-265.3(A) (sell or possess with intent to sell drug paraphernalia) as it relates to marijuana, or a violation of former § 18.2-250.1 (misdemeanor possession of marijuana), including any violation charged under either section and the charge was deferred and dismissed, must be expunged no later than (i) July 1, 2022, or (ii) if, on July 1, 2022, the person who is the subject of the arrest, criminal charge, conviction, or civil offense has not completed all terms of sentencing and probation, including satisfaction of all court costs and fines and all orders of restitution, three months after the date of completion of all terms of sentencing and probation. The bill provides a process by which the Department of State Police (VSP) and the Office of the Executive Secretary of the Supreme Court (OES) must see to it that the relevant documents are expunged. The section also provides for exceptions to allow for the release of records that would otherwise be required to be expunged.

The bill provides for a process by which the Department of Motor Vehicles (DMV) must expunge any convictions in its possession, and any exceptions. This provision is effective on July 1, 2021.

Additionally, the proposed legislation provides that it is unlawful under § 46.2-341.20:7 for any person to knowingly or intentionally possess marijuana or marijuana oil in a commercial motor vehicle, unless it was obtained directly from or pursuant to a valid prescription or order of a practitioner, or as otherwise authorized in the Federal Drug Control Act. Violations are punishable by a civil penalty of no more than \$25.

Unless otherwise noted in enactment clauses below, the provisions of this act become effective on January 1, 2023:

- Enactment clause #4 establishes that the provisions of Article 29 (2.2-2499.1 et seq.) of Chapter 24 of Title 2.2 and §§ 4.1-601 through 4.1-628, 19.2-392.2, and 19.2-392.2:1 of the Code of Virginia, as created by this act, become effective on July 1, 2021.
- Enactment clause #5 requires the Board of Directors of the Virginia Cannabis Control Authority to promulgate regulations to implement the provisions of this act by July 1, 2023, and sets certain requirements for this process.
- Enactment clause #6 establishes dates for the Virginia Cannabis Control Authority to accept license applications and issue licenses and establishes that no retail marijuana store licensee may sell retail marijuana or retail marijuana products to a consumer prior to January 1, 2024. The Authority is required to develop and implement its diversity, equity, and inclusion plan pursuant to § 4.1-604 of the Code of Virginia, as created by this act, and publish resources to assist social equity applicants by January 1, 2023. The Authority must, in consultation with the Secretaries of Public Safety and Homeland Security, Transportation, and Health and Human Resources, develop and implement a health, safety, and safe driving campaign by January 1, 2023.
- Enactment clause #10 requires the Board of Agriculture and Consumer Services to promulgate regulations to implement the provisions of this act by July 1, 2022.
- Enactment clause #11 requires the Secretaries of Agriculture and Forestry, Health and Human Resources, and Public Safety and Homeland Security to convene a work group with all appropriate state agencies and authorities to develop a plan for identifying and collecting data that can determine the use and misuse of marijuana in order to determine appropriate policies and programs to promote public health and safety. The clause sets out data collection requirements of the study. The plan must include the cost of the initial and ongoing collection of such data, and a recommended timetable and the cost for analyzing and reporting the data. The work group's findings are to be reported to the Governor and the General Assembly by November 1, 2021.
- Enactment clause #12 requires the Virginia Department of Education (DOE), with assistance from appropriate agencies, local school divisions, and appropriate experts, to implement a plan to ensure that teachers have access to sufficient information, resources, and lesson ideas to assist them in teaching about the harms of marijuana use among the youth and about substance abuse, as provided in the 2020 Health Standards of Learning. The DOE must: (i) review resources currently provided to teachers to determine if additional or updated material or lesson ideas are needed and (ii) provide or develop any additional materials and resources deemed necessary and make the same available to teachers by January 1, 2024.
- Enactment clause #13 requires the Secretary of Education, in conjunction with the Virginia Department of Education, to develop a plan for introducing teachers, particularly those teaching health, to the information and resources available to them to assist them in teaching the 2020 Health Standards of Learning as it relates to marijuana use. The plan must include providing professional development webinars as soon as practicable, as well as ongoing periodic professional development relating to marijuana, as well as alcohol, tobacco, and other drugs as appropriate. The plan shall include the estimated cost of

implementation and any potential source of funds to cover such cost and shall be submitted to the Governor and the General Assembly by November 1, 2021.

- Enactment clause #14 requires the Secretary of Education, the State Council of Higher Education for Virginia, the Virginia Higher Education Substance Use Advisory Committee, and the Department of Behavioral Health and Developmental Services shall work with existing collegiate recovery programs to determine what, if any, additional evidence-based efforts should be undertaken for college-aged individuals to promote education and prevention strategies relating to marijuana. The plan shall include the estimated cost of implementation and any potential source of funds to cover such cost and shall be submitted to the Governor and the General Assembly by November 1, 2021.
- Enactment clause #15 allows that a referendum may be held in any county, city, or town between January 1, 2022, and December 31, 2023, on the following question: "Shall the operation of retail marijuana stores be prohibited in _____ (name of county, city, or town)?" The result of any referendum held pursuant to this enactment shall become effective on January 1, 2024.
- Enactment clause #16 requires, that effective July 1, 2021, the Regulations Governing Pharmaceutical Processors (18VAC110- 60) promulgated by the Board of Pharmacy will remain in full force and effect and continue to be administered by the Board of Pharmacy until the Board of Directors of the Virginia Cannabis Control Authority promulgates regulations pursuant to this act and no later than July 1, 2023. The Board of Pharmacy shall provide assistance to the Board of Directors of the Virginia Cannabis Control Authority in promulgating regulations by July 1, 2023.

6. Budget Amendment Necessary: Yes. Items 39 (Courts), 143 (DOE), 425 (VSP). See Line 8. Item 479 U of the Governor's introduced budget includes \$5 million in the first year and \$20 million in the second year from the general fund to support legislation related to expungements of criminal records, including but not limited to automatic expungement of misdemeanor marijuana records. The funds in central accounts are available to be transferred to these impacted items by budget amendment or they may remain in central accounts and be transferred administratively as needed with enactment of this legislation. Item 479.P provides new funding of \$5 million in the second year from the general fund to support legislation to be introduced in the 2021 General Assembly and is available for the Virginia Cannabis Equity Business Loan Program created by this legislation.

7. Fiscal Impact Estimates: Preliminary. See Line #8.

8. Fiscal Implications: The proposed bill is expected to impact several state agencies and potentially all counties and cities.

Revenue Impact

According to the Virginia Department of Taxation, and based upon projected marijuana sales in Virginia as determined by JLARC in conjunction with MPG Consulting, it is estimated that this bill could generate total revenues ranging between \$13.8 million and \$23.0 million in FY 2024; \$67.4 million and \$112.6 million in FY 2025; \$103.8 million and \$173.0 million in FY 2026; and \$135.6 million and \$225.9 million in FY 2027.

The higher end of this range reflects optimistic estimates of illegal market conversion, relative equilibrium between supply and demand, and that no other states or the federal government also legalize these products. The lower end reflects less optimistic estimates of illegal market conversion, possible periods of disequilibrium between supply and demand, and the possibility that surrounding states or the federal government also would legalize marijuana. The FY 2024 estimates are based on five months of collections.

Below is the distribution of total revenues based upon the lower end estimates:

	FY 2024*	FY 2025	FY 2026
GF - Unrestricted	\$1,200,000	\$5,700,000	\$8,800,000
GF - Restricted	\$600,000	\$2,800,000	\$4,300,000
Transportation	\$500,000	\$2,300,000	\$3,500,000
Local Option	\$500,000	\$2,500,000	\$3,900,000
Other	\$300,000	\$1,200,000	\$1,900,000
Pre-K (40 percent)	\$4,300,000	\$21,200,000	\$32,600,000
Cannabis Equity (30 percent)	\$3,200,000	\$15,900,000	\$24,400,000
Substance Use Disorder (25 percent)	\$2,700,000	\$13,200,000	\$20,300,000
Public Health Programs (5 percent)	\$500,000	\$2,600,000	\$4,100,000
21 Percent Excise Rate + Retail Sales and Use Tax	\$13,800,000	\$67,400,000	\$103,800,000

Below is the distribution of total revenues based upon the higher end estimates:

	FY 2024*	FY 2025	FY 2026
GF - Unrestricted	\$1,900,000	\$9,500,000	\$14,600,00
GF - Restricted	\$1,000,000	\$4,700,000	\$7,200,000
Transportation	\$800,000	\$3,800,000	\$5,800,000
Local Option	\$900,000	\$4,200,000	\$6,500,000
Other	\$400,000	\$2,100,000	\$3,200,000
Pre-K (40 percent)	\$7,200,000	\$35,300,000	\$54,300,000
Cannabis Equity (30 percent)	\$5,400,000	\$26,500,000	\$40,700,000
Substance Use Disorder (25 percent)	\$4,500,000	\$22,100,000	\$33,900,000
Public Health Programs (5 percent)	\$500,000	\$2,600,000	\$4,100,000
21 Percent Excise Rate + Retail Sales and Use Tax	\$23,000,000	\$112,600,000	\$173,000,000

The Virginia Department of Agriculture and Consumer Services (VDACS) may generate additional revenue from the licensing of hemp testing laboratories. The license fee likely will be an amount not to exceed \$50. The potential number of hemp testing laboratories that may be licensed is unknown, therefore, the revenue that could be generated cannot be determined. The bill also provides that the VDACS Commissioner may assess civil penalties: (1) if a tested hemp product exceeds the maximum level of allowable contamination, (2) for violations of labeling, testing and advertising of hemp products, or (3) for failure to destroy the hemp product intended for smoking or consumption whose testing sample exceeded the maximum level of allowable contamination. The penalty ranges from \$100 for a first violation to \$500 for a third and subsequent violation with all penalties collected deposited into the state treasury. It is reasonable to conclude that some revenue will be generated from civil penalties, however, the amount collected cannot be determined.

Expenditure Impact

The following table summarizes the estimated expenditure impact of this legislation:

	FY 2021	FY 2022	FY 2023	FY 2024
Office of the Executive Secretary (OES)				
Computer System Enhancements	0	\$6,156,130	\$0	\$0
Additional District Court Clerks	0	\$2,823,915	\$2,823,915	\$2,823,915
Total Costs - OES	\$0	\$8,980,045	\$2,823,915	\$2,823,915

Virginia State Police (VSP)

20 Non-IT Contractors (Front Line Workers)	0	\$490,000	\$0	\$0
2 First Line Supervisors (Contractor)	0	\$58,800	\$0	\$0
1 Fingerprint Technician Trainee FTE	0	\$81,026	\$81,026	\$81,026
1 Program Support Technician FTE	0	\$72,537	\$72,537	\$72,537
5 Program Support Technician Senior FTEs	0	\$377,967	\$377,967	\$377,967
1 Office Services Supervisor Senior FTEs	0	\$75,903	\$75,903	\$75,903
Office Space for 30 positions	0	\$385,560	\$21,420	\$0
Office Furniture for 30 positions	0	\$524,988	\$0	\$0
IT Hardware for 30 positions	0	\$219,010	\$12,320	\$12,320
IT Modifications to CCH	0	\$15,010,560	\$0	\$0
Total Costs - VSP	\$0	\$17,296,351	\$641,173	\$619,753

	FY 2021	FY 2022	FY 2023	FY 2024
Department of Education (DOE)				
Contractor Costs	0	0	\$50,000	\$0
Resource Development	0	0	\$100,000	\$0

Development of Online Modules	0	0	\$150,000	\$0
Hosting and Maintenance Fees	0	0	\$10,000	\$10,000
Total Costs - DOE	\$0	\$0	\$310,000	\$10,000

**Department of Corrections
(DOC)**

Impact on Prison Bed Space Needs	0	\$50,000	\$0	\$0
Total Costs – DOC	\$0	\$50,000	\$0	\$0

Total Costs for OES, VSP, VDOE, and DOC -SB1406 **\$0** **\$26,326,396** **\$3,775,088** **\$3,453,668**

Virginia Cannabis Control Authority **\$0** **\$4,000,000** **\$9,000,000** **\$12,000,000**

Virginia Retirement System (VRS) **\$0** **\$195,000** **\$0** **\$0**

The following narrative details the expenditure estimates in the table above.

Courts

This bill eliminates criminal penalties for possession of marijuana for persons who are 21 years or older. The bill also modifies several other criminal penalties related to marijuana and provides for an expungement process for those convicted of certain marijuana-related crimes.

Petition Expungements

The bill provides that a person convicted or adjudicated delinquent of a felony violation of former § 18.2-248.1 (transporting controlled substance into the Commonwealth), or charged under that section and the charge was deferred and dismissed, may petition the court for expungement of the court and police records if five years have passed since the date of completion of all terms of sentencing and probation. This provision would increase the workload on general district court and juvenile and domestic relations district court clerks who would be tasked with locating the physical case file for each expunged case, sealing its contents, indexing the case and deleting the electronic record for each case in the case management system. The Office of the Executive Secretary of the Supreme Court (OES) estimates that the tasks required of a district court deputy clerk to expunge a case would consume an average of 10 minutes per case.

Between 2010 and 2019 there were 147 adjudications of delinquency under Va. Code § 18.2-248.1 in juvenile and domestic relations district courts (JDR). Within the same time period in general district court (GDC), there were 12,220 felony cases for violations of Va. Code § 18.2-248.1 certified to circuit court. Records indicate that there were 10,734 guilty verdicts for violations of § 18.2-248.1 in circuit court. Assuming that 50 percent of the 10,881 convictions

were expunged in accordance with the bill's provisions, and that the vast majority of the circuit court convictions had a preliminary hearing within general district court, the statewide workload of district clerks would increase by 0.7 full time positions. The number of cases deferred and dismissed for felony violations of § 18.2-248.1 within the timeframe in JDR and circuit court is minimal and is not expected to have a substantial impact on the district court workload.

“Automatic” Expungements

The bill also provides that police and court records of a person charged with a misdemeanor violation of § 18.2-248.1 (transporting controlled substance into the Commonwealth) or subsection A of § 18.2-265.3 (penalties for sale of drug paraphernalia) as it relates to marijuana, or a violation of former § 18.2-250.1 (possession of marijuana unlawful) must be expunged if the person has satisfied all terms of sentencing and probation (including payment of all court costs and fines and all orders of restitution).

The Department of State Police (VSP) is responsible for identifying such cases and electronically submitting a list to the OES and any circuit court clerk who maintains a case management system that interfaces with VSP at least monthly. OES must then, on at least a monthly basis, provide an electronic list of all offenses that meet the criteria for automatic expungement to the circuit court clerks that utilize the case management system it maintains. The clerk receiving the list would then be required to prepare an order to be entered by the chief judge directing that the offenses that meet the criteria be automatically expunged. The circuit court clerk must provide, on a monthly basis, an electronic copy of any order entered by the chief judge regarding automatic expungement to VSP and any agency or individual known to maintain or to have obtained the records to be expunged. Upon receipt of such order, VSP and any such agency or individual must expunge such records under the process set forth by VSP pursuant to rules and regulations adopted pursuant to § 9.1-134 (sealing of criminal history record information). Any records maintained electronically must be considered expunged if they are transformed to an offline system or to a confidential and secure area inaccessible from normal use within the system in which the record is maintained, provided they are still accessible only to the manager of the records. The records cannot be open for public inspection or otherwise disclosed, except to specific entities that are granted an exception by statute.

The automatic expungement process contained in the bill appears to require both an electronic exchange of information with VSP and a manual process to expunge the case papers maintained by the courts. As part of the technology changes necessary to implement, the following is a partial list of some of the tasks OES has identified that must be accomplished in order to implement the bill:

- Modification of 17 public or external facing systems to prohibit access to automatically sealed cases and modifications of more than 20 internal systems and interfaces;
- Develop and implement incoming and outgoing interfaces with VSP to receive and process cases for automatic sealing and orders voiding sealing;
- Development of new Expungement Management System (EXMS), which includes project setup, infrastructure configuration, and development of capabilities to fully implement the bill's requirements;
- Modification of multiple systems to allow receipt of sealing and sealing void orders entered from EXMS;
- Performance and load testing of all affected systems;
- Address database security and roles to ensure that only authorized users see the automatically sealed data; and

- Assign additional processing units to systems to handle the increased load during seal list processing, which will also include additional data storage capabilities and software licensing costs.

OES has determined that the total one-time cost of system enhancements to be \$6,156,130. The technology changes must be coordinated with VSP's system enhancements as OES cannot complete its technology enhancements until VSP completes their work.

In addition, the bill contemplates a manual process upon receipt of the order from the circuit court. Between 2010 and 2019 there were 1,203 misdemeanor cases brought under § 18.2-248.1 (transporting controlled substances into the Commonwealth) in JDR and 12,241 in GDC. Within the same time period, records indicate there were 17,835 cases in JDR for violations of §18.2-250.1 (possession of marijuana unlawful) and 278,706 in GDC. The number of cases brought for violations of subsection A of § 18.2-265.3 (penalties for sale of drug paraphernalia) as it relates to marijuana cannot be determined from available information. If the cases for misdemeanor violations of § 18.2-248.1 and for violations of § 18.2-250.1 were to be expunged, this would increase the statewide workload of clerks in a manner equivalent to that performed by 42 full-time employees of a clerk's office. OES estimates the fiscal impact on district court clerk offices is \$2,823,915 annually.

Virginia State Police (VSP)

According to VSP, the bill requires fingerprint based criminal history record checks be completed on all individuals that apply to be licensed. The fingerprints of the licensee are to be forwarded to the Department of State Police, Central Criminal Records Exchange (CCRE) so that criminal history record checks may be processed.

In the recent Joint Legislative Audit and Review Commission (JLARC) report outlining the key considerations for the legalization of marijuana, it was estimated that approximately 1,550 licenses would be issued for marijuana establishments. Currently, the Non-Criminal Justice (NCJ) section of the CCRE is tasked with processing criminal history record background checks. Within the fingerprint-based criminal record check process, fingerprint technicians are used to establish the identification of the fingerprints in order to match the information to the appropriate criminal history record. Once this match, or no match takes place, a program support technician in the NCJ section processes the criminal history record results and forwards the information to the requesting agency. VSP estimates needing one fingerprint technician and one program support technician to process the additional background checks that are expected to be generated from this bill. These positions are estimated to cost \$81,026 annually for the fingerprint technician and \$72,537 annually for the program support technician.

In addition, this bill requires that convictions for felony §18.2-248.1 be eligible for expungement under the current record expungement process. Under the current CCRE expungement process, each expungement employee can complete 500 expungements a year. Currently, there are 21,518 records in the CCRE that would meet the criteria for expungement. VSP cannot determine at this time how many individuals would take advantage of this expungement. However, if you assume 10 percent of the total records to be expunged, VSP would need five additional Program Support Technician Senior positions (estimated at \$377,967 annually) and one additional Office Services Supervisor Senior (estimated at \$75,903 annually) to meet this bill requirement.

The bill also requires the automatic expungement of misdemeanor charges, convictions and adjudications of §18.2-248.1, 18.2-265.3 (A) and §18.2-250.1. In this process the CCRE would

determine which individuals are eligible for expungement and send the information electronically to the Office of the Executive Secretary of the Supreme Court and any other court that interfaces with the CCRE. The total number of records in the CCRE that would be eligible for automatic expungement is 349,226. Since all records will be expunged under this process as soon as fines and costs are paid and probation is complete, VSP uses the 349,226 figure to determine its personnel needs to meet the automatic expungement requirement.

According to VSP, system modifications are required to accomplish this legislation. The CCH system must be modified to achieve the required back and forth communication with the Supreme Court's Office of the Executive Secretary. The cost associated with developing this functionality by the July 1, 2022, deadline required under this bill is approximately \$10,318,720. Building this functionality rapidly requires eight teams of contractors. Each team would comprise eight personnel. In order to carry out the automatic expungement for Marijuana charges, and to transmit the expungements to the FBI, VSP's Computerized Criminal History system would require reprogramming and testing. It is estimated that this would cost an additional \$2,691,840 and would require two teams of contractors. Each team would contain eight contract personnel. An additional \$2.0 million will be needed to purchase both hardware and software to support this development. The total one-time system modification costs are \$15,010,560.

The programming changes described above will allow for the automatic removal of the applicable charges from the criminal history record, but do not address the removal of fingerprints and mugshots, which is also a required part of the expungement process. Because the charges being expunged will not be crimes following legalization, no new charges will be added to the CCRE going forward. Therefore, this work can be completed using contract labor. VSP estimates that one contractor can remove 20 sets of fingerprints and mugshots per hour using a contract labor workforce at \$25/hour. With 349,226 charges under 18.2-250.1, 18.2-248.1, and 18.2-265.3(a), removing these fingerprints and mugshots in six months would require 20 contract personnel, and two contract supervisors ($349,226/20 = 17,461.3$ Hrs./980 Work Hours in a six month period to meet the deadline = 17.81 Contractors + 10 percent = 20 Contractors). The total estimated one-time costs are \$490,000 for the 20 contractors and \$58,800 for the two supervisory positions.

All IT and expungement contractors, in addition to the Program Support Technician Seniors and the Office Services Supervisor Seniors will require office space, furniture, and IT hardware in the first year. In the second year, only the Program Support Technician Seniors and the Office Services Supervisor Seniors will require office space. In the second year the Fingerprint Technician, Program Support Technician, Program Support Technician Seniors, and the Office Services Supervisor Senior will still need IT hardware. The total costs for office space, furniture, and IT hardware are \$1,129,558 in FY 202x and \$33,740 in FY 2022. At this time, there is no information as to where the agency would rent a space or how soon staff would be able to occupy such office spaces given the existing emergency related to COVID-19.

The VSP fiscal impact statement is based on the statutory required completion date of July 1, 2022. At present, all IT enhancements are scheduled to be completed by January 1, 2022, and the expungement of fingerprints and mugshots will be complete by July 1, 2022.

Department of Education (DOE)

Enactment clauses of the bill require DOE to implement a plan to ensure that teachers have access to information, resources, and lesson ideas to teach about the harms of marijuana use. It

requires DOE to review currently available resources to determine if additional or updated materials are needed and to provide or develop additional materials as needed. According to DOE, the agency would need one-time funding of \$50,000 for additional contract assistance to develop the plan and review all resources. In addition, the agency would need one-time funding of \$100,000 to develop new resources.

The bill also requires the development of a plan for introducing teachers to the information and resources available to assist them in teaching the 2020 Health Standards of Learning as it relates to marijuana use. The plan must include providing professional development webinars as well as ongoing professional development relating to marijuana. In order for these professional development opportunities to be practical, DOE estimates it would need to develop web-based modules that can be accessed by teachers in real-time. One-time development costs for online modules are estimated to be \$150,000. DOE estimates an additional \$10,000 per year in ongoing costs related to hosting and maintenance fees. The estimated total state impact of SB 1406 to DOE would be \$310,000 in FY 2023 and \$10,000 per year beginning in FY 2024.

Criminal Sentencing Impact

According to the Virginia Sentencing Commission while the proposal would eliminate certain criminal penalties related to marijuana from the Code and reduce penalties for other offenses, it would establish a number of new misdemeanors and felonies for engaging in activities related to the cultivation, manufacture, testing and sale of marijuana without the required license or otherwise engaging in prohibited practices related to the production, sale, etc., of marijuana. If enacted, the proposal also specifies that monthly tax returns filed by licensees must be made under oath, which may have felony implications for making a material false statement on the return.

The net effect on the number of convicted individuals and the impact on judicial sentencing patterns cannot be estimated. Therefore, the net impact on the future state-responsible (prison) bed space needs of the Commonwealth cannot be determined. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 56, 2021 Acts of Assembly, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

The total anticipated fiscal impact as a result of the proposed legislation on OES, VSP, DOE, and DOC is \$0 in FY 2021, \$26,326,396 in FY 2022, \$3,775,088 in FY 2023, and \$3,453,668 in FY 2024.

Virginia Cannabis Control Authority

Establishing the Virginia Cannabis Control Authority as a standalone agency likely will require funding to hire personnel, acquire office space and other operational costs. The bill provides, as allowed by the Governor, the Board may deduct from the net profits quarterly a sum for the creation of a reserve fund not exceeding the sum of \$2.5 million in connection with the administration and to provide for the depreciation on the buildings, plants, and equipment owned, held, or operated by the Board. However, JLARC estimates that the first year cost could be \$3 to \$4 million with second year cost coming in at \$7 to \$9 million. Once fully operational, it is anticipated that ongoing operational costs will be \$9 to \$12 million. These are estimated costs based on other states. It is estimated that the new agency would need funding support for at least

the first 2 years of operations before sufficient revenues are generated to cover the cost of operations.

Virginia Retirement System (VRS)

According to the Virginia Retirement System (VRS), the substitute bill impacts three of the agency's plans: 1) Virginia Retirement System (VRS), 2) Virginia Law Officers' Retirement System (VaLORS) and 3) Optional Retirement Plan for Political Appointees (ORPPA). In addition, there may be a need for administrative implementation of Line of Duty Act (LODA) benefits. The need for VRS to allocate resources to incorporate the new Virginia Cannabis Control Authority into its plans will depend on the overall implementation schedule for creating the new Authority and the appointing or hiring of employees. VRS estimates its implementation cost to be approximately \$145,000. This figure does not include the impact to future contribution rates for VRS or VaLORS, the premium rates for LODA, or the impact on the funded status of the plans. Additionally, if implementation for the new Authority impacts the work VRS is doing to implement the new Cardinal system, there may be an additional cost of \$50,000.

Office of the Attorney General (OAG)

According to the Office of the Attorney General, the proposed bill is not expected to have a material fiscal impact on its agency operations.

Virginia Indigent Defense Commission (VIDC)

Since marijuana has already been decriminalized, VIDC does not expect the proposed bill will have a material fiscal impact on its agency operations.

Department of Behavioral Health and Developmental Services (DBHDS)

Information from DBHDS related to the Trauma Fund is still pending, and the fiscal impact statement will be updated as necessary.

Department of Criminal Justice Services (DCJS)

According to Department of Criminal Justice Services (DCJS), the proposed bill is not expected to have material fiscal impact on agency operations. Although it is likely that local probation agencies will see some cost reductions from already-passed decriminalization legislation, no further cost reductions are expected from any future legalization efforts. Additionally, DCJS staff indicate that projected savings from decriminalization may not be realized because of other recent legislative changes that could increase local agencies' workloads.

Drug Offender Assessment Fund

The marijuana bill repeals two current laws related to marijuana possession: §18.2-248.1, which presumes that the possession of no more than one ounce is for personal use and §18.2-250.1 which assesses a \$25 civil penalty for unlawful possession of marijuana, with penalties deposited into the Drug Offender Assessment Fund. The Fund supports community-based probation and local pretrial services agencies and the Office of the Executive Secretary of the Supreme Court of Virginia for the operation of drug treatment court programs. The bill also proposes § 4.1-1100, which establishes that, except as otherwise provided in the new subtitle and notwithstanding any other provision of law, a person 21 years-of-age or older may lawfully possess on his person or in any public place not more than one ounce of marijuana or an equivalent amount of marijuana product as determined by regulation promulgated by the Board of Directors of the Virginia Cannabis Control Authority. Any person who possesses on his person or in any public place marijuana or marijuana products in excess of the amounts set forth by the Board is subject to a civil penalty of no more than \$25. A violation of this section is a civil offense, and any civil

penalties collected are to be deposited into the Drug Offender Assessment and Treatment Fund established pursuant to § 18.2-251.02. This legislation may impact the amount of revenue deposited into the Drug Offender Assessment and Treatment Fund; however, it is not possible to estimate either the number of convictions that may result or the amount of each fine that may be assessed under this legislation. Therefore, the impact of this provision cannot be determined.

Other Agencies

It is possible the bill could have an impact on the Department of Motor Vehicles, Department of Corrections, colleges and universities. Information has been requested from these agencies and entities and is still pending. The impact statement will be updated accordingly if additional information becomes available.

9. Specific Agency or Political Subdivisions Affected: Department of Taxation, Department of Criminal Justice Services, Virginia State Police, Virginia Criminal Sentencing Commission, Virginia Indigent Defense Commission, Office of the Attorney General, Courts, Department of Education, Department of Motor Vehicles, Virginia Department of Agriculture and Consumer Services, Virginia Retirement System, localities, and local law enforcement agencies

10. Technical Amendment Necessary: Line 6308, the bill refers to the “Virginia Alcoholic Beverage and Cannabis Control Authority” whereas the bill creates the Virginia Cannabis Control Authority

11. Other Comments: According to VSP, the agency needs a new criminal history, civil commitment, applicant, and master name index system to replace the Computerized Criminal History (CCH) system. A new system also is needed to introduce Rap Back, an FBI service that eliminates the need for repeated background checks by government employers and licensing agencies.

The current criminal history system began in 1972 as a COBOL-based system. Between 1972 and 2016, the system was modified, but never replaced. In 2016, VSP updated the existing system. The system was transformed from a COBOL-based system into a Java-based system; however, this was a modernization without an increase in functionality. The 2016 update took the outdated coding and logic of the COBOL system, and rewrote that logic and coding into Java. The age of the current system, and the underlying logic, makes all system modifications time and money intensive. Upgrades that could be accomplished in a cost effective manner with a modern system, either cannot be achieved within the current system or come at a cost-prohibitive price point. Additionally, the underlying code was developed well before today’s emphasis on data driven decisions.

As an alternative to modifying the current systems, VSP believes that the purchase of a new and modern criminal history system likely would be more cost effective over time; however, VSP cannot purchase and implement a new, modern criminal history system to include enhanced expungement capabilities by July 1, 2022. Replacement of the existing system would take approximately two years, therefore, the only option for VSP is to modify its existing systems. According to VSP, if the agency were provided funding for a new CCH system and the bill implementation date was extended, VSP could meet the requirements of this bill for a total IT investment cost of \$15,607,433 (\$15 million for new system and \$607,433 for 8 additional positions). These costs estimates are informational only and are not reflected in the table above nor are they intended to be part of this impact statement.