

Department of Planning and Budget 2024 Session Fiscal Impact Statement

1. Bill Number: SB448S3

House of Origin ☐ Introduced ☒ Substitute ☐ Engrossed
Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron: Rouse

3. Committee: Finance and Appropriations

4. Title: Cannabis control; retail market; penalties.

5. Summary: The substitute bill establishes a framework for the creation of a retail marijuana market in the Commonwealth, which would be administered by the Virginia Cannabis Control Authority. The bill allows the Authority to begin issuing marijuana licenses on July 1, 2024, but provides that no marijuana sales may occur prior to January 1, 2025.

6. Budget Amendment Necessary: See Item 8 below

7. Fiscal Impact Estimates: Preliminary (see Item 8 below)

8. Fiscal Implications: The proposed bill has varying levels of impact on several state agencies:

Cannabis Control Authority (CCA)

In order to meet the provisions of this substitute bill, the CCA estimates that it will need up to 76 additional (nongeneral fund supported) staff in 2025. The necessary staff categories include Education, Legal and Policy, Investigation, Licensing, Compliance, Information Technology, Human Resources, and Finance. The substitute reduces the number of retail marijuana store licenses that can be issued from 400 to 300. As a result, the agency estimates that it would need one less licensing associate than it would for previous versions of the bill. The CCA also reports that it will need to use resources for IT services and equipment, computer software development and maintenance, motor vehicle and law enforcement equipment, and travel within the Commonwealth of Virginia. Under the substitute bill, the agency estimates approximately 860 adult use permits in Virginia. The source of the nongeneral funds to support these positions is the revenue collected from a marijuana establishment pursuant to § 4.1-614 (disposition of moneys collected by the Board).

The CCA's estimated costs are summarized below.

Description	FY 2025 Cost	FY 2026 Cost
Computer Software Development and Maintenance Services (licensing and product registration software) (One-Time and Recurring)	\$850,000	\$250,000

Motor Vehicle and Law Enforcement Equipment and Supplies (One-Time and Recurring)	\$913,710	\$57,360
IT Services, Software, Travel, Training, and Incidentals for FTE (Recurring)	\$1,031,665	\$1,031,665
IT Equipment and Furniture for FTE (One-Time)	\$451,220	
Estimated Personnel Costs (76 FTE)	\$5,892,410*	\$7,920,078
Estimated Total Fiscal Impact	\$9,139,005	\$9,259,025
*FY 2025 estimated personnel costs are prorated for nine months.		

Item 397 in Chapter 1 (present Appropriation Act) provides the CCA with a general fund base budget of \$5.3 million and 49 positions. Chapter 1 also provides one-time funding of \$2.5 million general fund originally appropriated under Item 479 U., Chapter 552, 2021 Acts of Assembly, Special Session I, to cover one-time expenses. The Introduced Budget (HB30/SB30) adjusts CCAs authority by \$1 million each year. According to the agency, once the retail market is fully implemented, the currently general funded positions would be supported with nongeneral fund appropriation.

Department of Taxation (TAX)

Under the third substitute bill, TAX estimates that the bill will begin to have an impact beginning January 1, 2025, for the second half of FY 2025. TAX estimates that the impact will be roughly \$9.4 million for FY 2025 between the sales and use tax, and the marijuana tax. This estimate excludes any potential gains from the local option which would see up to an additional \$2.4 million to localities if all localities elected the option in FY 2025. However, at this time it is not known which localities would elect the option and how sales would be distributed around the Commonwealth; therefore, a maximum has been provided. The impact, excluding the local option, would increase annually to roughly \$118.8 million in FY 2030. The local option could generate up to \$30.5 million if all localities elect to implement it by FY 2030.

The majority of revenues will be distributed to the social program funds prescribed under § 4.1-614. These funds will collectively receive the full 12.5% marijuana tax revenues. For FY 2025, TAX estimates that the marijuana tax could generate \$8.6 million, increasing to \$109 million in FY 2030. This substitute bill introduces a sales and use tax at 1.125%, which would be directed into two education funds that are restricted under the current sales and use tax distribution. This newly introduced sales tax rate would generate \$0.8 million in FY 2025 and \$9.8 million in FY 2030 for these two funds.

The full breakdown of funds can be found in the table below.

Revenue Impact Estimates for Retail Marijuana Market
(Millions \$)

	Fiscal Year 2025*	Fiscal Year 2026	Fiscal Year 2027	Fiscal Year 2028	Fiscal Year 2029	Fiscal Year 2030 ^e
Tax Collection (Excluding Local Option)	\$9.36	\$34.12	\$58.10	\$81.21	\$101.37	\$118.76
Sales and Use Tax (1.125%)	\$0.77	\$2.82	\$4.80	\$6.71	\$8.37	\$9.81
Marijuana Tax (12.5%)	\$8.58	\$31.30	\$53.30	\$74.50	\$93.00	\$108.95
<i>Local Option (3.5%)</i>	<i>Unknown up to \$2.4</i>	<i>Unknown up to \$8.76</i>	<i>Unknown up to \$14.92</i>	<i>Unknown up to \$20.86</i>	<i>Unknown up to \$26.04</i>	<i>Unknown up to \$30.51</i>
Sales and Use Tax (1.125%)	\$0.77	\$2.82	\$4.80	\$6.71	\$8.37	\$9.81
GF - Restricted ¹ (1%)	\$0.69	\$2.50	\$4.26	\$5.96	\$7.44	\$8.72
GF - Transfer ² (0.125%)	\$0.09	\$0.31	\$0.53	\$0.75	\$0.93	\$1.09
Marijuana Tax (12.5%)	\$8.58	\$31.30	\$53.30	\$74.50	\$93.00	\$108.95
Pre-K Programs (40%)	\$3.43	\$12.52	\$21.32	\$29.80	\$37.20	\$43.58
Cannabis Equity Reinvestment Fund (30%)	\$2.58	\$9.39	\$15.99	\$22.35	\$27.90	\$32.69
Substance Use Disorder (25%)	\$2.15	\$7.83	\$13.33	\$18.63	\$23.25	\$27.24
Health Program (5%)	\$0.43	\$1.57	\$2.67	\$3.73	\$4.65	\$5.45

Tax revenue estimates use JLARC's 2020 retail cannabis sales estimates.
Assumed effective start date for retail sales begins January 1, 2025.
* Tax revenues in Fiscal Year 2025 are reduced by 5/12 given mid-fiscal year start.
^e Half of Fiscal Year 2030 sales are extrapolated using the rate of change from JLARC sales estimates
¹ Includes 1% Education based on school age population
² General Fund transfer to Education, 0.125%

Office of the Executive Secretary of the Supreme Court (OES)

According to the Office of the Executive Secretary of the Supreme Court, the proposed legislation is not expected to have a fiscal impact on agency operations.

Virginia Department of State Police (VSP)

According to the Virginia State Police, fingerprint-based criminal background checks may be required for each cannabis license applicant. Currently, the Civil and Applicant Records Exchange (CARE) of the CCRC is tasked with processing criminal history record background checks. It is anticipated that fingerprint submissions will be inked cards instead of electronic submissions. Within the fingerprint-based criminal record check process, Fingerprint Technicians are used to identify the fingerprints to match the information to the appropriate criminal history record. One Fingerprint Technician and one Program Support Technician can process up to 10,000 fingerprint cards per year. The agency estimates that it

would require one Fingerprint Technician Trainee and one Program Support Technician to process the additional background checks for a total estimated general fund cost of \$188,287 in the first year and \$177,373 in the second year (including benefits, IT hardware, and furniture).

Department of Agriculture and Consumer Services (VDACS)

VDACS estimates it will require current staffing and resources to maintain the Office of Hemp Enforcement as well as three additional Food Safety Specialists with annual salary, benefits, and operating expenses totaling \$91,081 general fund per position to keep up with increasing inspections of new edible marijuana manufacturers.

Department of Education

According to the Department of Education, the agency can absorb any work associated with reviewing and distributing materials on underage marijuana use provided by the CCA.

Under § 4.1-1003. Marijuana tax, per paragraph A and existing § 4.1-614, part of the 12.5% tax would go to pre-K programs for at-risk three- and four-year-olds.

Institutions of Higher Education

The proposed legislation is not expected to have a fiscal impact on public institutions of higher education.

Office of the Attorney General

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

Department of Health Professions

According to the Department of Health Professions, the proposed legislation is not expected to have a fiscal impact on agency operations.

Criminal Impact

According to the Virginia Criminal Sentencing Commission (VCSC), the number of individuals who may be convicted of the new misdemeanors and felonies defined in the proposal, and the sentences these individuals may receive, is not known. By creating a regulatory and licensing structure, the proposal may result in fewer convictions related to the unlawful distribution of marijuana. Whether or not, or the extent to which, this will occur is not known.

Licensees convicted for false statements on tax returns required by the bill may be sentenced similarly to those currently convicted of perjury under § 18.2-434.

VCSC reports that 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. The proposal also specifies that monthly tax returns filed by licensees must be made under oath,

which may have felony implications for making a materially false statement on the return. Furthermore, the proposal expands the felony for operating an aircraft while under the influence to include the influence of marijuana. The net effect on the number of convicted individuals and the impact on sentencing patterns cannot be estimated; therefore, the net impact on the future state-responsible (prison) bed space needs of the Commonwealth cannot be quantified. Similarly, the net impact on local-responsible (jail) bed space needs cannot be estimated.

There is not enough information available to reliably estimate the increase in jail population as a result of this proposal. However, any increase in jail population will increase costs to the state. The Commonwealth currently pays the localities \$5.00 a day for each misdemeanor or otherwise local-responsible prisoner held in a jail and \$15.00 a day for each state-responsible prisoner. It also funds a considerable portion of the jails' operating costs, e.g., correctional officers. The state's share of these costs on a per prisoner, per day basis varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2023), the estimated total state support for local jails averaged \$45.76 per inmate, per day in FY 2022.

Due to the lack of data, the Virginia Criminal Sentencing Commission has concluded, pursuant to §30-19.1:4 of the Code of Virginia, that the impact of the proposed legislation on state-responsible (prison) bed space cannot be determined. In such cases, Chapter 1, 2023 Acts of Assembly, Special Session I, requires that a minimum impact of \$50,000 be assigned to the bill.

- 9. Specific Agency or Political Subdivisions Affected:** Courts, Department of Education, Department of Agriculture and Consumer Services, Virginia State Police, Department of Corrections, Office of the Attorney General, Department of Health Professions, Board of Pharmacy, Department of Corrections, local and regional jails, state and local law enforcement agencies, Commonwealth's Attorneys, and Office of the Public Defender.

10. Technical Amendment Necessary: No.

11. Other Comments: None.