

Department of Legislative Services  
 Maryland General Assembly  
 2022 Session

FISCAL AND POLICY NOTE  
 Enrolled - Revised

House Bill 837  
 Judiciary

(Delegate Clippinger)

Finance and Budget and Taxation

Cannabis Reform

This bill (1) renames marijuana as “cannabis”; (2) requires specified agencies and entities to complete studies, collect/report data, and develop specified standards regarding the use of cannabis, the medical cannabis industry, and the adult-use cannabis industry; (3) establishes an income tax subtraction modification for specified cannabis businesses; (4) alters civil/criminal penalties related to cannabis; (5) authorizes specified resentencing and release of individuals convicted of use or possession of cannabis; (6) alters expungement provisions; and (7) establishes three new special funds and an advisory council. **The provisions related to studies, data collection, and reports take effect June 1, 2022. The income tax subtraction modification applies to tax year 2022 and beyond. The other provisions are subject to the ratification of the constitutional amendment in House Bill 1 of 2022 and take effect January 1, 2023, or July 1, 2023.**

Fiscal Summary

**State Effect:** General fund expenditures increase by \$52.5 million in FY 2023, which includes (1) \$46.5 million restricted in the FY 2023 budget to capitalize two new special funds and to implement expungement provisions and (2) \$5.75 million included in the FY 2023 budget to implement specified provisions of the bill, as discussed below. Future years reflect ongoing costs. Known general fund revenues decrease by \$5.6 million in FY 2023 from the income tax subtraction modification; future years reflect annualization and projected increases in taxable deductions. Special fund finances are significantly affected beginning in FY 2023; the effects shown below do not reflect potential significant increases in available special funds in future years.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
GF Revenue	\$0	(\$5,564,000)	(\$4,146,000)	(\$4,560,000)	(\$5,016,000)
SF Revenue	\$0	\$44,182,000	(\$610,000)	(\$670,000)	(\$738,000)
GF Expenditure	\$0	\$52,527,100	\$3,082,100	\$3,170,500	\$3,254,400
SF Expenditure	\$35,000	\$45,297,900	\$101,600	\$118,900	\$118,600
Net Effect	(\$35,000)	(\$59,207,000)	(\$7,939,700)	(\$8,519,400)	(\$9,127,000)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

**Local Effect:** Local income tax revenues and local highway user revenues decrease by approximately \$1.6 million in FY 2023 and by \$1.5 million in FY 2027. Potential significant increase in local revenues and expenditures if local governments receive grants and distributions from the special funds established by the bill. Minimal decrease in (1) local incarceration and prosecution-related expenditures and (2) fine revenues from cases heard in circuit courts. Potential increase in local expenditures to comply with the bill's expungement provisions.

**Small Business Effect:** Meaningful.

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## Analysis

**Bill Summary:** House Bill 1 of 2022 proposes a constitutional amendment that, if approved by the voters at the November 2022 general election, authorizes an individual at least age 21 to use or possess cannabis in the State beginning July 1, 2023. This constitutional amendment is contingent on the requirement that the General Assembly pass legislation regarding the use, distribution, possession, regulation, and taxation of cannabis. Specified provisions in this bill are subject to the enactment of House Bill 1 and ratification of the proposed constitutional amendment.

### I. Required Studies, Data Collection, and Reports (Effective June 1, 2022)

#### *Natalie M. LaPrade Medical Cannabis Commission Studies and Reports*

The Maryland Medical Cannabis Commission (MMCC) must complete a comprehensive baseline study, collect and report data from MMCC licensees, and complete a study on home grow programs, as specified below.

*Baseline Study:* MMCC must consult with specified agencies (or contract with an institution of higher education or a private research entity) to conduct a comprehensive baseline study of cannabis use in the State that includes a survey of:

- patterns of use, including frequency of use and dosing, methods of consumption, and general perceptions of cannabis among individuals in specified age groups, pregnant women, and breastfeeding women;
- incidents of impaired driving, including arrests, accidents, and fatalities, related to cannabis use;
- hospitalizations related to cannabis use;

- calls to poison control centers related to cannabis use, including data on calls related to individuals younger than age 21; and
- diagnoses of cannabis use disorder and problem cannabis use.

By March 1, 2023, MMCC must issue a report on the baseline study findings. By March 1, 2025, and every other year thereafter, MMCC must issue a report of its findings from follow-up surveys of the factors listed above that utilize the same methodology or model that was used in the initial survey.

*Data Collection from MMCC Licensees:* MMCC must require its licensed growers, processors, and dispensaries and preapproved applicants for licensure to provide any information determined to be necessary to continue to assess the need for remedial measures in the cannabis industry and market that may include specified business-related data broken down by State fiscal year for the period beginning July 1, 2016, and ending June 30, 2022. These entities must provide the requested data to MMCC by July 1, 2022, and MMCC must provide the data it collects to the Maryland Department of Transportation (MDOT) (referred to as “the certification agency” in the bill) by July 15, 2022. The data provided constitutes confidential information and may only be used for the purposes authorized under the bill.

*Study on a Home Grow Program, On-site Cannabis Consumption, and Cannabis Use by Minors:* MMCC must complete a study on (1) a home grow program to authorize qualifying patients to grow cannabis plants for personal use; (2) the establishment of on-site cannabis consumption facilities; and (3) methods to reduce the use of cannabis by minors, including best practices regarding requirements related to advertising, potency, packaging, labeling, and other methods to reduce the appeal of cannabis to minors. The study must identify methods adopted by MMCC through regulations as well as best practices implemented in other states. MMCC must report its findings and recommendations for the program by November 1, 2022.

#### *Disparity Study*

MDOT (the “certification agency” designated by the Board of Public Works pursuant to § 14-303(b) of the State Finance and Procurement Article) must, in consultation with the Governor’s Office of Small, Minority, and Women Business Affairs (GOSBA), the General Assembly, and the Office of the Attorney General (OAG), review (1) the “Business Disparities in the Maryland Market Area” study completed on February 8, 2017; (2) the *Analysis of the Maryland Medical Cannabis Industry* report completed on December 8, 2017; and (3) the analysis of the industry report completed on January 17, 2018. The specified entities must evaluate whether the data and analyses in these studies/reports are sufficient to determine whether the enactment of remedial measures to assist minorities and women in the adult-use cannabis industry and market

comply with U.S. Supreme Court precedent in *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, and any subsequent federal or constitutional requirements.

If the data and analyses are determined to be *sufficient*, MDOT must submit the findings of the review by July 1, 2022. If the data and analyses are determined to be *insufficient*, MDOT and the Department of Legislative Services (DLS) must, in consultation with GOSBA, and OAG, initiate a study of the cannabis industry to evaluate whether the enactment of remedial measures to assist minorities and women in the adult-use cannabis industry and market would comply with the requirements of the *Croson* decision and any subsequent federal or constitutional requirements. MDOT must submit its study findings to the Legislative Policy Committee (LPC) by November 1, 2022.

The State may not issue an application for new licenses to any adult-use cannabis establishment (including a cultivator, processor, or retailer) until the required report (specified above) is received and reviewed by LPC.

#### *Development of Race- and Gender-neutral Alternatives and Report*

GOSBA must consult with MDOT and OAG to develop race- and gender-neutral approaches to address the needs of minority and women applicants and minority- and women-owned businesses seeking to participate in the adult-use cannabis industry and submit a report of its findings to the Legislative Policy Committee by October 15, 2022, to inform the General Assembly in its consideration of the adoption of any race- and gender-neutral alternatives in legislation concerning the adult-use cannabis industry.

#### *Attorney General – Formal Opinion*

By December 1, 2022, the Attorney General must provide a formal opinion to the General Assembly regarding the impact of cannabis legalization on the authority of police officers to conduct searches of individuals and vehicles based on detection of the odor of burnt or unburnt cannabis, including in cases involving suspicion of possession with intent to distribute cannabis, growing or manufacturing cannabis or cannabis products, or driving under the influence of cannabis.

## **II. Income Tax Subtraction Modification Provision (Effective June 1, 2022 – Applies to Tax Year 2022 and Beyond)**

The bill creates a subtraction modification against the State individual and corporate income tax for the amount of ordinary and necessary expenses, including a reasonable allowance for salaries or compensation, paid or incurred during the taxable year in carrying on a trade or business as a State licensed medical cannabis grower, processor, or dispensary or any other cannabis establishment licensed by the State. The subtraction

modification may be claimed if the deduction for ordinary and necessary expenses is disallowed under Section 280E of the Internal Revenue Code (IRC).

### **III. Transfer of the Natalie M. LaPrade Medical Cannabis Commission to the Alcohol and Tobacco Commission (Contingent on House Bill 1 Referendum)**

The bill expresses the intent of the General Assembly that the Office of the Executive Director of the Alcohol and Tobacco Commission (ATC) is the successor of MMCC concerning the regulation of medical cannabis. MMCC and ATC must jointly study the transfer of personnel from MMCC to ATC. By January 1, 2023, both entities must make a recommendation to the General Assembly on how to transfer personnel such that (1) the costs of the transfer are minimized and result in a more cost-efficient operation for the regulation of cannabis for the protection of the public health, safety, and welfare of the State; (2) does not result in any diminution of pay, working conditions, benefits, rights, or status; and (3) allows personnel to retain any merit system and retirement status existing on the date of transfer.

### **IV. Special Funds Established Under the Bill and the Cannabis Public Health Advisory Council (Contingent on House Bill 1 Referendum)**

#### *Cannabis Business Assistance Fund – (Effective January 1, 2023)*

The bill establishes the Cannabis Business Assistance Fund, contingent on the ratification of the constitutional amendment in House Bill 1 of 2022. The purpose of the fund is to assist small, minority-owned, and women-owned businesses entering the adult-use cannabis industry. The fund consists of money appropriated in the State budget to the fund and any other money from any other source accepted for the benefit of the fund.

The fund may be used only for (1) grants or loans to small, minority-owned, or women-owned businesses, as specified, and (2) grants to the State's Historically Black Colleges and Universities (HBCUs) for cannabis-related programs and business development organizations to train and assist small, minority, and women business owners and entrepreneurs seeking to become licensed to participate in the adult-use cannabis industry.

The Department of Commerce must administer the fund and must prioritize awarding grants and loans to (1) populations that have been historically disproportionately impacted by the enforcement of cannabis laws and (2) individuals who have been convicted of cannabis offenses. Commerce may not award grants or loans to small, minority, and women business owners and entrepreneurs with a personal net worth exceeding \$1.7 million. In awarding grants and loans, Commerce must develop partnerships with specified entities.

*Cannabis Public Health Advisory Council – (Effective January 1, 2023)*

The bill establishes the Cannabis Public Health Advisory Council, contingent on the passage of the specified referendum. The Maryland Department of Health (MDH) must provide staff support and technical assistance for the advisory council.

The bill establishes the membership of the advisory council, which (1) must include residents of rural and urban areas of the State and (2) to the extent practicable and consistent with federal and State law, must reflect the gender, ethnic, and racial diversity of the State. Members of the advisory council serve staggered four-year terms, as specified; may not serve more than two consecutive full terms; and must file financial disclosure statements with the State Ethics Commission. A member may not receive compensation, but is entitled to reimbursement for expenses, as provided in the State budget.

The advisory council must study and issue a report of its findings and recommendations by December 1 each year regarding:

- the promotion of public health and mitigation of youth use, misuse, and addiction to cannabis;
- data collection and reporting of data that measures the impact of cannabis consumption and legalization;
- the impact of cannabis legalization on the education, behavioral health, and somatic health of individuals younger than age 21;
- initiatives to prevent cannabis use by individuals younger than age 21, including educational programs for use in schools;
- public health campaigns on cannabis;
- advertising, labeling, product testing, and quality control requirements;
- training for health care providers related to cannabis use;
- best practices regarding requirements to reduce the appeal of cannabis to minors, including advertising, potency, packaging, and labeling standards; and
- any other issues that advance public health related to cannabis use and legalization.

To the extent practicable, the advisory council must consider any data collected by the State related to cannabis use when making its recommendations, including data collected in the baseline study required under the bill.

*Cannabis Public Health Fund – (Effective January 1, 2023)*

The bill establishes the Cannabis Public Health Fund, contingent on the referendum, to provide funding to address the health effects associated with the legalization of adult-use cannabis. The fund consists of revenues distributed to the fund based on revenues from

adult-use cannabis, money appropriated in the State budget to the fund, and any other money from any other source accepted for the benefit of the fund.

MDH must administer the fund, which may only be used to (1) support the advisory council; (2) support data collection and research on the effects of cannabis legalization in the State; (3) provide funding for education and public awareness campaigns related to cannabis use, including funding for educational programs to be used in schools; (4) support substance use disorder counseling and treatment for individuals; (5) provide training and equipment for law enforcement to recognize impairments due to cannabis; and (6) purchase technology proven to be effective at measuring cannabis levels in drivers.

*Community Reinvestment and Repair Fund – (Effective July 1, 2023)*

The bill establishes the Community Reinvestment and Repair Fund, a special fund administered by the Comptroller, with the stated purpose of providing funds to community-based organizations that serve communities determined by OAG to have been the most impacted by disproportionate enforcement of the cannabis prohibition before July 1, 2022. The fund consists of (1) at least 30% of the revenues generated from adult-use cannabis; (2) licensing fees paid by dual-licensed cannabis establishments; and (3) money from any other source accepted for the benefit of the fund by the Comptroller, as specified.

The fund may be used only for (1) funding community-based initiatives intended to benefit low-income communities; (2) funding community-based initiatives that serve communities disproportionately harmed by the cannabis prohibition and enforcement; and (3) any related administrative expenses. Money may not be expended from the fund for law enforcement agencies or activities. Money expended from the fund is supplemental to and may not supplant funding that would otherwise be appropriated for preexisting local government programs. The fund is subject to audit by the Office of Legislative Audits (OLA).

The Comptroller must distribute funds to each county in an amount that is proportionate to the total number of marijuana arrests in the county compared to the total number of arrests in the State between July 1, 2002, and June 30, 2022. Subject to the authorized uses of the fund specified above, each county must adopt a law establishing the purpose for which money received from the fund may be used. Beginning in 2024, each local jurisdiction must submit a report to specified legislative committees by December 1 every two years on how the funds received were spent during the immediately preceding two fiscal years.

**V. Civil Penalties, Criminal Penalties, and Criminal Provisions Related to Cannabis (Effective January 1, 2023 (unless otherwise specified) – Contingent on House Bill 1 Referendum)**

*Cannabis – Defined:* The bill repeals the definition of marijuana and replaces it with a definition for cannabis. “Cannabis” means the plant *Cannabis sativa* L. and any part of the plant, including all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9-tetrahydrocannabinol (delta-9-THC) concentration greater than 0.3% on a dry weight basis. “Cannabis” does not include hemp as defined in § 14-101 of the Agriculture Article.

*Personal Use and Civil Use Amounts of Cannabis (Effective January 1, 2023 – Contingent on House Bill 1 Referendum)*

Beginning January 1, 2023, “personal use amount” means (1) up to 1.5 ounces of usable cannabis; (2) up to 12 grams of concentrated cannabis; (3) cannabis products containing up to 750 milligrams of delta-9-THC; or (4) as of July 1, 2023, up to two cannabis plants.

Beginning January 1, 2023, “civil use amount” means (1) more than 1.5 ounces but not more than 2.5 ounces of usable cannabis; (2) more than 12 grams but not more than 20 grams of concentrated cannabis; or (3) cannabis products containing more than 750 milligrams of delta-9-THC but not more than 1,250 milligrams of delta-9-THC.

*Civil and Criminal Penalties for Possession of Cannabis Under the Bill (Effective January 1, 2023, through June 30, 2023, and Effective July 1, 2023 – Contingent on House Bill 1 Referendum)*

The bill alters civil and criminal penalties for violations of specified cannabis-related offenses, contingent on the specified referendum. Effective July 1, 2023, and contingent on the referendum, it is an exception to the prohibition against possessing or administering to another a controlled dangerous substance (CDS) for an individual at least age 21 to possess the personal use amount of the CDS cannabis. **Exhibit 1** shows the penalties that take effect January 1, 2023, and terminate June 30, 2023, and the penalties that take effect July 1, 2023.



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**Exhibit 1**  
**Civil and Criminal Penalties for Possession of Cannabis under the Bill**  
**Effective January 1, 2023, through June 30, 2023, and Effective July 1, 2023**

<u>Offense</u>	<u>Offense Type</u>	<u>Maximum Penalty Effective January 1 through June 30, 2023</u>	<u>Maximum Penalty Effective July 1, 2023</u>
Possession of the personal use amount	Civil	\$100 fine*	\$100 fine for individual younger than age 21*
Possession of the civil use amount	Civil	\$250 fine*	\$250 fine*
Possession of more than the civil use amount	Criminal misdemeanor	Six months imprisonment and/or \$1,000 fine	Six months imprisonment and/or \$1,000 fine

\* With respect to a person younger than age 21, the court *may* (1) order the person to attend a drug education program approved by MDH; (2) refer the person to an assessment for substance abuse disorder; and (3) refer the person to substance abuse treatment, if necessary.

Source: Department of Legislative Services

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*Additional Criminal Provisions and Citations for Civil Offenses (Effective January 1, 2023, unless otherwise noted – Contingent on House Bill 1 Referendum)*

*Charge on Citation and Summons for Trial:* A police officer must issue a citation for the use or possession of the personal use amount of cannabis or the civil use amount of cannabis, both civil offenses, the adjudication of which does not constitute a criminal conviction for any purpose and does not impose any of the civil disabilities that may result from a criminal conviction. If a citation is issued to a person younger than age 21 for these civil offenses, the court must summon the person for trial. However, the bill repeals the requirement that a person at least age 21 be summoned for trial after having been found guilty at least twice previously for the use or possession of minimal amounts of marijuana (currently less than 10 grams) under § 5-601 of the Criminal Law Article.

*Possession with the Intent to Distribute and Adult Sharing of Cannabis:* A person may not possess cannabis in sufficient quantity to reasonably indicate under all circumstances an intent to distribute or dispense cannabis. However, possession of the personal use amount of cannabis or the civil use amount of cannabis without other evidence of an intent to distribute or dispense does not constitute a violation of this prohibition. A police officer must charge a violation of this provision by citation, as specified. A person who violates this provision is guilty of a misdemeanor and subject to a maximum penalty of three years imprisonment and/or a \$5,000 fine. (The existing prohibition applies to all CDS and is a felony, punishable by imprisonment for up to five years and/or a fine of up to \$15,000.)

With specified exclusions, “adult sharing” is defined as the transfer of cannabis between persons who are at least age 21 without remuneration. Effective July 1, 2023, the prohibition against distributing, dispensing, or possessing with the intent to distribute a CDS does not prohibit adult sharing of the personal use amount of cannabis. A civil or criminal penalty may not be imposed for adult sharing of the personal use amount of cannabis.

*Growing or Manufacturing Cannabis and Cannabis Products:* The bill establishes a separate prohibition for cannabis that is similar to the existing prohibition under § 5-603 of the Criminal Law Article (prohibition against manufacturing CDS, manufacturing, equipment, *etc.*). The bill also establishes that a person may not cultivate or grow cannabis or manufacture a cannabis product in violation of Title 5 of the Criminal Law Article, as specified. A police officer must charge a violation of this provision by citation. A person who violates this provision is guilty of a misdemeanor and subject to a penalty of imprisonment for up to three years and/or a fine of up to \$5,000. (The existing prohibition applies to all CDS and is a felony, punishable by imprisonment for up to five years and/or a fine up to \$15,000.)

*Smoking Cannabis in Public:* The bill alters the penalty for the civil offense of smoking cannabis in a public place from a fine of up to \$500 to a fine of up to \$250 for a first finding of guilt and a fine of up to \$500 for a second or subsequent finding of guilt. The bill also incorporates cannabis and hemp into specified existing prohibitions under the Clean Indoor Air Act (CIAA). Thus, the bill specifically prohibits the smoking of cannabis or hemp in specified locations, including an indoor area open to the public. The bill does not alter existing penalty provisions under CIAA.

*Smoking Cannabis in the Passenger Area of a Vehicle – (Effective July 1, 2023):* An occupant of a motor vehicle may not smoke cannabis in the passenger area of a motor vehicle on a highway. A violation of this prohibition is a civil offense subject to a maximum fine of \$25 (the current statute applies to consuming an alcoholic beverage in a passenger area of a motor vehicle on a highway). A driver of a motor vehicle may not smoke or consume cannabis in the passenger area of a motor vehicle on a highway. A violation of

this prohibition is a misdemeanor subject to a maximum fine of \$500 (the current statute applies to a driver of a motor vehicle consuming an alcoholic beverage in a passenger area of a motor vehicle on a highway). The prepayment penalty established by the District Court for the existing offense is \$530, and the Motor Vehicle Administration (MVA) must assess one point against a violator's license. If, however, the violation contributes to an accident, the prepayment penalty is \$570, and MVA must assess three points against the violator's license.

*Paraphernalia Repeal:* The definition of "drug paraphernalia" is altered to specifically exclude cannabis from the specified items that, when used with other CDS, would constitute drug paraphernalia. The bill also repeals the list of drug paraphernalia examples that can be used to ingest or inhale a CDS into the human body. Finally, the bill repeals the penalty provisions for controlled paraphernalia related to the use or possession of marijuana (a maximum of imprisonment of one year and/or a \$1,000 fine under current law).

*Criminal Provisions for Personal Cannabis Cultivation (Effective July 1, 2023 – Contingent on House Bill 1 Referendum)*

Beginning July 1, 2023, a person age 21 or older may cultivate up to two cannabis plants. A person who cultivates cannabis must (1) cultivate cannabis in a location outside of public view; (2) take reasonable precautions, as specified, to ensure the plants are secure from unauthorized access and access by an underage person; and (3) only cultivate cannabis on property the cultivator lawfully possesses or with the consent of the property's lawful possessor. An underage person may not cultivate cannabis. A person may not cultivate more than two cannabis plants. Also, if two or more individuals at least age 21 reside at the same residence, no more than two cannabis plants may be cultivated at the residence. A person who violates these provisions is guilty of a misdemeanor and subject to a maximum penalty of three years imprisonment and/or a \$5,000 fine.

**VI. Expungements, Maryland Judiciary Case Search, Resentencing, and Release Provisions (Effective January 1, 2023 – Contingent on the House Bill 1 Referendum)**

*Resentencing and Release*

A person who is incarcerated for a conviction related to cannabis under § 5-601 of the Criminal Law Article may apply to the court for resentencing, and the court must grant the application and resentence the person to time served. If the person is not serving another sentence, the person must be released from incarceration.

### *Expungements – Eligibility*

A person who is convicted of possession of cannabis under § 5-601 of the Criminal Law Article may file a petition for expungement of the conviction after the satisfactory completion of the sentence including probation (rather than the current waiting period of the later of four years after the conviction or the satisfactory completion of the sentence).

A person who is convicted of possession with the intent to distribute cannabis under § 5-602(b)(1) may file a petition for expungement of the conviction three years after satisfaction of the sentence(s) imposed for all convictions for which expungement is requested, including parole, probation, or mandatory supervision.

By July 1, 2024, the Department of Public Safety and Correctional Services (DPSCS) must “expunge” all cases in which the possession of cannabis is the only charge in the case and the charge was issued before July 1, 2023. For purposes of this provision, “expunge” is limited to mean removal of all references to a specified criminal case from the Central Repository.

### *Expungements – Unit Rule Provision*

The possession of cannabis under § 5-601 of the Criminal Law Article is excluded from the “unit rule” that requires two or more charges arising from the same incident, transaction, or set of facts to be a unit. A specified charge for possession of cannabis that arises from the same incident, transaction, or set of facts as a charge in the unit is not a part of the unit.

### *Maryland Judiciary Case Search*

The Maryland Judiciary Case Search may not refer to the existence of any criminal case (rather than only a District Court criminal case) in which possession of cannabis is the only charge in the case and the charge was disposed of before July 1, 2023 (rather than before October 1, 2014).

### **Current Law:**

#### *Criminal Law Provisions Related to Marijuana*

CDS are listed on one of five schedules (Schedules I through V) set forth in statute depending on their potential for abuse and acceptance for medical use. Marijuana is listed on Schedule I. Under the federal Controlled Substances Act, for a drug or substance to be classified as Schedule I, the following findings must be made: (1) the substance has a high potential for abuse; (2) the drug or other substance has no currently accepted medical use

in the United States; and (3) there is a lack of accepted safety for use of the drug or other substance under medical supervision.

No distinction is made in State law regarding the illegal possession of any CDS, regardless of which schedule it is on, with the exception of marijuana.

Possession of *10 grams or more* of marijuana is a misdemeanor, punishable by imprisonment for up to six months and/or a fine of up to \$1,000.

Possession of *less than 10 grams* of marijuana is a civil offense, punishable by a fine of up to \$100 for a first offense and \$250 for a second offense. The maximum fine for a third or subsequent offense is \$500. For a third or subsequent offense, or if the individual is younger than age 21, the court must (1) summon the individual for trial upon issuance of a citation; (2) order the individual to attend a drug education program approved by MDH; and (3) refer the individual to an assessment for a substance abuse disorder. After the assessment, the court must refer the individual to substance abuse treatment, if necessary.

Chapter 4 of 2016 repealed the criminal prohibition on the use or possession of marijuana-related drug paraphernalia and eliminated the associated penalties. The law also established that the use or possession of marijuana involving smoking marijuana in a public place is a civil offense, punishable by a fine of up to \$500.

In a prosecution for the use or possession of marijuana, it is an affirmative defense that the defendant used or possessed the marijuana because (1) the defendant has a debilitating medical condition that has been diagnosed by a physician with whom the defendant has a *bona fide* physician-patient relationship; (2) the debilitating medical condition is severe and resistant to conventional medicine; and (3) marijuana is likely to provide the defendant with therapeutic or palliative relief from the debilitating medical condition. Likewise, in a prosecution for the possession of marijuana, it is an affirmative defense that the defendant possessed marijuana because the marijuana was intended for medical use by an individual with a debilitating medical condition for whom the defendant is a caregiver; however, such a defendant must notify the State's Attorney of the intention to assert the affirmative defense and provide specified documentation. In either case, the affirmative defense may not be used if the defendant was using marijuana in a public place or was assisting the person for whom the defendant is a caregiver in using marijuana in a public place or was in possession of more than one ounce of marijuana.

Finally, medical necessity may be used as a mitigating factor in a prosecution for the possession or use of marijuana. A defendant may introduce, and the court must consider as a mitigating factor, any evidence of medical necessity. If a court finds that the use or possession of marijuana was due to medical necessity, the court *must dismiss* the charge.

### *Petition-based Expungement of a Court or Police Record*

Other than specified dispositions eligible for automatic expungement under Chapter 680 of 2021, to begin the process of expungement, a petitioner must file a petition for expungement with the court under § 10-105 or § 10-110 of the Criminal Procedure Article, which establishes eligibility for the expungement of records pertaining to a criminal charge or conviction.

Expungement of a court or police record means removal from public inspection:

- by obliteration;
- by removal to a separate secure area to which persons who do not have a legitimate reason for access are denied access; or
- if access to a court record or police record can be obtained only by reference to another such record, by the expungement of that record, or the part of it that provides access.

Pursuant to § 10-107 of the Criminal Procedure Article, if two or more charges, other than one for a minor traffic violation, arise from the same incident, transaction, or set of facts, they are considered to be a unit. If a person is not entitled to expungement of one charge or conviction in a unit, the person is not entitled to expungement of any other charge in the unit. This “unit rule” applies to expungements under §§ 10-105 and 10-110.

### *Section 10-105 of the Criminal Procedure Article*

Under § 10-105 of the Criminal Procedure Article, a person who has been charged with the commission of a crime for which a term of imprisonment may be imposed or who has been charged with a civil offense or infraction, except a juvenile offense, may file a petition for expungement of a police record, court record, or other record maintained by the State or a political subdivision of the State, under various circumstances listed in the statute. These grounds include acquittal, dismissal of charges, entry of probation before judgment, entry of *nolle prosequi*, stet of charge, and gubernatorial pardon. Individuals convicted of a crime that is no longer a crime, convicted of possession of marijuana under § 5-601 of the Criminal Law Article, convicted of or found not criminally responsible for specified public nuisance crimes or specified misdemeanors, or who had a conviction vacated due to being a victim of human trafficking (as defined in statute), are also eligible for expungement of the associated criminal records under certain circumstances.

Under § 10-105, a conviction for possession of marijuana under § 5-601 of the Criminal Law Article is eligible for expungement four years after the conviction or satisfactory completion of the sentence, including probation that was imposed for the conviction, whichever is later.

A person is not entitled to expungement if (1) subject to a specified exception, the petition is based on the entry of probation before judgment and the person, within three years of the entry of the probation before judgment, has been convicted of a crime other than a minor traffic violation or a crime where the act on which the conviction is based is no longer a crime or (2) the person is a defendant in a pending criminal proceeding.

#### *Section 10-110 of the Criminal Procedure Article*

Section 10-110 of the Criminal Procedure Article authorizes an individual convicted of any of a list of approximately 100 specified offenses or an attempt, a conspiracy, or a solicitation of any of these offenses, to file a petition for expungement of the conviction, subject to specified procedures and requirements.

#### *Timeline for Expungement*

Maryland's expungement process for removing an eligible record takes a minimum of 90 days. If a State's Attorney or victim, as applicable, objects, the court must hold a hearing on the petition. If an objection is not filed within 30 days, as specified, the court must pass an order requiring the expungement of all police and court records concerning the charges. After the court orders are sent to each required agency, each agency has 60 days from receipt to comply with the order.

#### *Natalie M. LaPrade Medical Cannabis Commission*

MMCC is responsible for implementation of the State's medical cannabis program, which is intended to make medical cannabis available to qualifying patients in a safe and effective manner. The program allows for the licensure of growers, processors, and dispensaries and the registration of their agents, as well as registration of independent testing laboratories and their agents. There is a framework to certify health care providers (including physicians, dentists, podiatrists, nurse practitioners, nurse midwives, and physician assistants), qualifying patients, and their caregivers to provide qualifying patients with medical cannabis legally under State law via written certification. Additionally, there are legal protections for third-party vendors authorized by the commission to test, transport, or dispose of medical cannabis, medical cannabis products, and medical cannabis waste.

#### *Status of Medical Cannabis Implementation*

Statute limits the number of grower and processor licenses the commission can issue, and regulations establish a limit on the number of dispensary licenses. Specifically, the commission can issue 22 grower, 28 processor, and 102 dispensary licenses. At the close of calendar 2021, the commission had issued 19 final grower licenses, 20 final processor licenses, and 95 final dispensary licenses. In addition, there are three licensed independent

testing laboratories. The commission maintains a list of licensees on its [website](#). Also, at the close of calendar 2021, there were 148,129 certified patients, 12,939 caregivers, and 1,511 certifying providers. The commission additionally reports a preliminary total of \$564.8 million in retail sales at cannabis dispensaries in the State for calendar 2021.

### *Clean Indoor Air Act*

Pursuant to CIAA, except as otherwise specified, a person may not smoke in (1) an indoor area open to the public; (2) an indoor place in which meetings are open to the public; (3) a government-owned or -operated means of mass transportation; (4) an indoor place of employment; (5) a private home used by a licensed child care provider; or (6) a private vehicle used for public transportation of children or as part of health care or day care transportation. The prohibition includes bars, clubs, restaurants, pubs, taverns, retail establishments, theaters, concert halls, athletic facilities, financial service institutions, government buildings, educational institutions, museums, and libraries.

However, the prohibition does not apply to (1) private homes or residences; (2) private vehicles; (3) a hotel or motel room as long as the total percent of rooms so used does not exceed 25%; (4) specified tobacco facilities and retail businesses; or (5) a laboratory for the purpose of conducting scientific research into the health effects of tobacco smoke. CIAA defines “smoking” as the burning of a lighted cigarette, cigar, pipe, or any other matter or substance that contains tobacco.

CIAA required MDH to adopt regulations that prohibit environmental tobacco smoke in indoor areas open to the public. A person who violates the MDH regulations is subject to a written reprimand for a first violation, a civil penalty of \$100 for a second violation, a civil penalty of \$500 for a third violation, and a civil penalty of \$1,000 for each subsequent violation, unless otherwise waived by MDH after the department considers the seriousness of the violation and good faith measures. (Statute requires that the civil penalty for third and subsequent violations be at least \$250.) However, an employer who takes certain retaliatory actions against an employee (who has complained or taken other actions related to violations) is subject to a civil penalty of at least \$2,000 but no more than \$10,000 for each violation. All civil penalty revenue is paid to the Cigarette Restitution Fund.

### *Income Tax Subtraction Modifications and Tax Credits*

Currently, there are no State subtraction modifications or tax credits similar to the bill’s income tax subtraction modification provisions.

Generally, income from any source is presumptively taxable by the federal government, even if such income is generated from illegal activity. Thus, though a marijuana business is illegal under federal law, it must still pay federal income tax on its taxable income.



Businesses may generally deduct ordinary and necessary business expenses on their federal income tax return, which typically results in a lower federal and State income tax liability. However, a marijuana business is prohibited from deducting ordinary and necessary business expenses, because IRC § 280E states that no expenses incurred in connection with the trafficking of controlled substances, or illegal drugs, may be deducted for federal income tax purposes. Section 280E also disallows other deductions and certain tax credits.

A medical marijuana business is not allowed to deduct ordinary and necessary business expenses, which may include expenses associated with distribution, sales, administration, management, promotion, advertisement, overhead, and support. However, a business may deduct the costs of goods sold, which are the direct costs attributable to the production of a good.

Federal legislation has been introduced in the U.S. Congress in recent years to amend the IRC to exempt a trade or business that conducts marijuana sales in compliance with state law from the prohibition against allowing business-related tax credits or deductions for expenditures in connection with trafficking in controlled substances. In addition, several states have “decoupled” from federal income tax law and allow a marijuana business to deduct for state income tax purposes ordinary and necessary business expenses.

### *Certification Agency*

Pursuant to Title 21 of the Code of Maryland Regulations, MDOT is the agency designated to certify, recertify, and decertify Minority Business Enterprises (MBEs), as referenced in § 14-303(b) of the State Finance and Procurement Article.

**State Fiscal Effect:** General fund expenditures increase by \$52.5 million in fiscal 2023 (which includes a total of \$52.25 million in funding that is either appropriated or restricted in the fiscal 2023 budget, as discussed below); future years reflect ongoing administrative and implementation costs. Special fund finances are also significantly affected, as discussed in more detail below. While the overall effect of the bill’s criminal justice and traffic-related provisions on general fund revenues is indeterminate, known general fund revenues decrease by \$5.6 million in fiscal 2023 from the income tax subtraction modification; future years reflect annualization and projected increases in taxable deductions.

### *Fiscal 2023 Budget*

The fiscal 2023 budget restricts \$46.5 million of the general fund appropriation for the Revenue Stabilization Account for the following purposes, contingent on the enactment of this bill and the ratification of a constitutional amendment authorizing adult use and possession of cannabis:

- \$40.0 million for Commerce for the Cannabis Business Assistance Fund;
- \$5.0 million for MDH for the Cannabis Public Health Fund; and
- \$1.5 million for DPSCS to fund enhancements to the Criminal Justice Information System (CJIS) necessary for compliance with changes to statutory expungement provisions.

Funds not used for the restricted purposes may not be transferred by budget amendment or otherwise to any other purpose and must revert to the general fund.

Further, the fiscal 2023 budget includes \$5.5 million in general funds for the Judiciary, as follows, contingent on the enactment of this bill and the ratification of a constitutional amendment authorizing adult use and possession of cannabis:

- \$3.0 million in general funds and 41.0 regular positions for the District Court to provide resources for the expedient implementation of statutory changes to expungement laws resulting from the enactment of this bill and the ratification of the constitutional amendment; and
- \$2.5 million in general funds for the Maryland Legal Services Corporation (MLSC) to provide resources to help MLSC educate individuals on changes to cannabis and expungement laws and support other expungement efforts.

The fiscal 2023 budget also includes, contingent on the enactment of this bill, \$250,000 in general funds for DLS to conduct a disparity study in order to better understand the barriers to entering the cannabis market.

Specified provisions in the bill, as noted, are subject to the contingency regarding the enactment of House Bill 1, approval of the constitutional amendment by the voters at the November 2022 general election, and ratification of the constitutional amendment. This analysis assumes that the contingency is met.

#### *Cannabis Business Assistance Fund*

Assuming the specified contingency is met and the Governor authorizes the use of restricted funds (see “Fiscal 2023 Budget” section above), general fund expenditures increase by \$40.0 million in fiscal 2023 to capitalize the Cannabis Business Assistance Fund, which reflects the funding restricted for Commerce for this purpose in the fiscal 2023 budget; special fund revenues and expenditures increase by corresponding amounts. Special fund revenues (and corresponding expenditures) continue in the out-years to the extent that additional revenue sources are available for the Cannabis Business Assistance Fund.

As the bill does not explicitly authorize the fund to be used to cover administrative costs, it is assumed that any administrative costs incurred by Commerce must be supported with general funds. Thus, general fund expenditures for Commerce increase further by *at least* \$151,479 in fiscal 2023, which accounts for the bill’s January 1, 2023 effective date, for Commerce to hire (1) one contract administrator to perform overall management of the grant and loan program, including outreach, grant administration, and compliance; (2) one finance specialist to collect loan applications and documentation and approve or deny loans; and (3) one accounting specialist to track all loan transactions, billing, and reconciliations. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	3.0
Salaries and Fringe Benefits	\$130,245
Operating Expenses	<u>21,234</u>
<b>FY 2023 Commerce Admin. Expenditures</b>	<b>\$151,479</b>

Future year administrative expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses. To the extent that additional staff is necessary to administer the grant fund, general fund expenditures increase further.

*Cannabis Public Health Fund*

Assuming the specified contingency is met and the Governor authorizes the use of restricted funds (see “Fiscal 2023 Budget” section above), general fund expenditures increase by \$5.0 million in fiscal 2023 to capitalize the Cannabis Public Health Fund, which reflects the funding restricted for MDH for this purpose in the fiscal 2023 budget; special fund revenues and expenditures increase by corresponding amounts, including staffing/administrative costs, as discussed below. Special fund revenues (and corresponding expenditures) continue in the out-years to the extent that revenues from the adult-use cannabis market (or other sources) are distributed to the Cannabis Public Health Fund, as authorized by the bill.

In addition to administering the fund, MDH must provide staff support and technical assistance to the advisory council. The bill explicitly authorizes the fund to be used to support the advisory council in performing its duties. Accordingly, this analysis assumes that MDH’s administrative costs are supported with special funds. Thus, special fund administrative expenditures (which are covered by the \$5.0 million in capitalization funds referenced above) increase by \$49,561 in fiscal 2023, which accounts for the bill’s January 1, 2023, effective date. This estimate reflects the cost of hiring one program administrator within MDH to provide staff support to the advisory council and administer the fund. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating

expenses. Future year administrative expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

*Community Reinvestment and Repair Fund*

Assuming the specified contingency is met, special fund revenues and expenditures increase, potentially significantly, as early as fiscal 2024 as fees for MMCC licensees to become adult-use licensees (dual licensees) and revenues from the adult-use cannabis market (at least 30% of which must be credited to the fund) are received and expended for specified community-based initiatives. However, an estimate of revenues to and expenditures from the fund (and the timing of such) cannot be accurately determined until an adult-use cannabis market regulatory framework is established.

With respect to similar provisions in separate legislation, the Comptroller advised that additional resources are required to administer the Community Reinvestment and Repair Fund; however, no other specifics were provided. DLS advises that without additional information or actual experience under the bill, the extent of any such expenditure increase cannot be reliably estimated. Thus, special fund expenditures for the Comptroller increase further beginning as early as fiscal 2024 to administer the Community Reinvestment and Repair Fund, including the potential need for additional staff.

*Comprehensive Baseline Study, Review of Data, and Disparity Study*

*Baseline Study:* Upon enactment of the bill, MMCC must conduct a comprehensive baseline study of the cannabis market. Special fund expenditures increase by \$376,220 in fiscal 2023, which accounts for a 30-day start-up delay from the bill’s June 1, 2022 effective date. This estimate reflects the cost of hiring two policy analysts to (1) adopt and implement initiatives, regulations, and policies relating to the legalization of adult-use cannabis; (2) conduct biennial follow-up surveys after the initial baseline study; and (3) submit reports on the findings. It includes salaries, fringe benefits, one-time start-up costs, ongoing operating expenses, a one-time cost (\$100,000) to contract with an outside entity to conduct the initial comprehensive baseline study, and a one-time cost (\$100,000) to contract with an outside entity to conduct a study regarding a home grow program, on-site cannabis consumption, and reducing the use of cannabis by minors.

Positions	2.0
Salaries and Fringe Benefits	\$161,004
Contractual Services	200,000
Operating Expenses	<u>15,216</u>
<b>FY 2023 MMCC Expenditures</b>	<b>\$376,220</b>

Future year expenditures reflect salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses and the elimination of one-time costs.

*Review of Data:* Transportation Trust Fund (TTF) expenditures increase by \$35,000 in fiscal 2022, which accounts for the bill's June 1, 2022 effective date. This estimate reflects the cost for MDOT to review the specified disparity study and reports by July 1, 2022.

*Disparity Study:* Assuming that the data and analyses described above are determined to be insufficient and MDOT (in conjunction with DLS) must complete a full disparity study of the cannabis industry to determine whether remedial measures would meet required constitutional standards, general fund expenditures increase by \$250,000 in fiscal 2023, which reflects funding provided in the fiscal 2023 budget for DLS to conduct the disparity study (see "Fiscal 2023 Budget" section above). The fiscal 2023 appropriation is contingent on enactment of this bill; this contingency has been met, as the bill has been enacted as Chapter 26.

*Study of the Transfer of Personnel from the Natalie M. LaPrade Medical Cannabis Commission to the Alcohol and Tobacco Commission*

ATC and MMCC must jointly study the transfer of MMCC personnel and the regulation for medical cannabis to ATC, as specified, and make recommendations by January 1, 2023. This analysis assumes that both MMCC and ATC can jointly complete the required study within existing budgeted resources. To the extent that additional resources are necessary, special fund expenditures for MMCC and general fund expenditures for ATC increase in fiscal 2023.

*Income Tax Subtraction Modification*

Subtraction modifications may be claimed beginning in tax year 2022. It is assumed that the proposed changes impact withholdings and estimated payments. As a result, general fund revenues decrease by an estimated \$5.6 million, TTF revenues decrease by \$580,000, and Higher Education Investment Fund revenues decrease by \$238,000 in fiscal 2023. **Exhibit 2** shows the estimated fiscal impact of the bill on State and local revenues.

This estimate assumes ordinary business expenses are 20% of sales and that one-half of taxpayers have sufficient tax liability to benefit from the subtraction modification. To the extent that additional taxpayers do not have sufficient tax liability, revenue losses are less than estimated. The estimate also assumes that (1) one-half of all subtraction modification amounts are deducted against the personal income tax, with the remaining amounts

deducted against the corporate income tax, and (2) future amounts subtracted increase by 10% annually.

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**Exhibit 2**  
**State and Local Revenues**  
**Fiscal 2023-2027**

	<u>FY 2023</u>	<u>FY 2024</u>	<u>FY 2025</u>	<u>FY 2026</u>	<u>FY 2027</u>
<b>State Revenues</b>					
General Fund	(\$5,564,000)	(\$4,146,000)	(\$4,560,000)	(\$5,016,000)	(\$5,518,000)
HEIF	(238,000)	(178,000)	(195,000)	(215,000)	(236,000)
TTF	(580,000)	(432,000)	(475,000)	(523,000)	(575,000)
<b>Total</b>	<b>(\$6,382,000)</b>	<b>(\$4,756,000)</b>	<b>(\$5,230,000)</b>	<b>(\$5,754,000)</b>	<b>(\$6,329,000)</b>
<b>Local Revenues</b>					
Income Tax	(\$1,493,000)	(\$1,113,000)	(\$1,224,000)	(\$1,346,000)	(\$1,481,000)
LHUR	(78,300)	(58,300)	(45,600)	(50,200)	(55,200)
<b>Total</b>	<b>(\$1,571,300)</b>	<b>(\$1,171,300)</b>	<b>(\$1,269,600)</b>	<b>(\$1,396,200)</b>	<b>(\$1,536,200)</b>

HEIF: Higher Education Investment Fund

LHUR: local highway user revenue

TTF: Transportation Trust Fund

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The Comptroller’s Office reports that it incurs a one-time general fund expenditure increase of \$120,000 in fiscal 2023 to add the subtraction modification to the personal and corporate income tax returns. This includes data processing changes to the income tax return processing and imaging systems and system testing.

A portion of TTF revenues is used to provide capital transportation grants to local governments. Thus, any decrease in TTF revenues from corporate income tax revenues results in a 13.5% decrease in TTF expenditures to local governments (9.6% beginning in fiscal 2025). Accordingly, TTF expenditures decrease by \$78,300 in fiscal 2023 and by \$55,200 in fiscal 2027, as shown in Exhibit 2.

*Office of the Attorney General*

General fund expenditures for OAG increase in fiscal 2023 only to outsource a community impact study. The bill requires OAG to determine which communities have been the most impacted by disproportionate enforcement of the cannabis prohibition in effect prior to July 1, 2022. The Community Reinvestment and Repair Fund must use OAG’s determinations when making funding decisions. OAG advises that it does not have the

resources to conduct the study required to make these determinations. Therefore, OAG needs to outsource the community impact study, the cost of which is unknown at this time. Despite the July 1, 2023 effective date for the bill's provisions related to the Community Reinvestment and Repair Fund, DLS advises that OAG must complete the community impact study in fiscal 2023 so the results are available on the July 1, 2023 effective date.

By December 1, 2022, the Attorney General must issue a formal opinion regarding the impact of cannabis legalization on the authority of police officers to conduct specified searches. Issuing formal opinions on matters of legal interpretation is a routine activity for OAG. Thus, DLS advises that the formal opinion can likely be issued within existing budgeted resources.

### *Judiciary*

Assuming the specified contingency is met (see "Fiscal 2023 Budget" section above), general fund expenditures for the Judiciary increase by \$5.5 million in fiscal 2023, which reflects funding provided for the Judiciary in the fiscal 2023 budget to implement the bill. Specifically, the fiscal 2023 budget includes (1) \$3.0 million in general funds for the Judiciary to process expungements involving cannabis; (2) 41.0 regular positions for the purpose of processing cannabis-related expungements; and (3) \$2.5 million in general funds for MLSC to educate individuals on changes to cannabis and expungement laws and to otherwise support expungement efforts.

Future year expenditures reflect expenditures associated with the added positions, including full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses and the elimination of one-time costs.

Assuming the specified contingency is met, the overall effect of the bill on general fund revenues is indeterminate beginning in fiscal 2023. The Judiciary collects a \$30 fee for filing an expungement petition of a guilty disposition, subject to a waiver of the fee for indigent petitioners. Assuming the specified contingency is met, general fund revenues increase to the extent that the number of filing fees collected for expungement petitions increase due to the bill's expanded eligibility to petition for expungement of cannabis charges under § 5-601 of the Criminal Law Article. General fund revenues may also increase minimally beginning July 1, 2023, from any criminal penalties imposed for violating the bill's provisions related to cannabis cultivation and any civil or criminal penalties imposed for smoking cannabis in the passenger area of a vehicle on a highway for cases heard in the District Court. However, general fund revenues decrease due to the bill's reduced application of existing monetary penalties for cases involving use or possession of marijuana/cannabis heard in the District Court.

*Department of Public Safety and Correctional Services*

CJIS, which is housed within DPSCS, is the Central Repository for criminal record history information in Maryland. Assuming the specified contingency is met and the Governor authorizes the use of restricted funds (see “Fiscal 2023 Budget” section above), general fund expenditures for DPSCS increase by \$1.5 million in fiscal 2023, which reflects funding restricted in the fiscal 2023 budget for DPSCS for enhancements to CJIS necessary to comply with changes to statutory expungement provisions.

As the bill authorizes partial expungements, DPSCS advises that in order to separate an expungable charge from the unit it would have to reprogram its systems, requiring DPSCS to authorize additional contractual hours under an existing contract for two mainframe programmers and one business analyst at a cost of \$364,000 (\$175 per hour for 2,080 hours) each in the first full year (fiscal 2023 and 2024), and one mainframe programmer thereafter, at a total cost of \$546,000 in fiscal 2023 and \$728,000 in fiscal 2024, declining to \$364,000 annually thereafter.

DLS advises that the number of additional expungement orders that DPSCS will receive cannot be reliably estimated, but could be significant. Depending on the overall effect of the bill on CJIS workloads, CJIS may require additional personnel. DPSCS advises that it needs one administrative employee for every additional 2,500 court expungement orders received annually. DLS notes that while the workload for CJIS has generally increased in recent years, the unit has not experienced a corresponding increase in staffing, and CJIS has been accommodating workloads beyond the 2,500-caseload standard; the current caseload is 6,426 (for traditional expungements). *For illustrative purposes only*, using the 2,500-caseload standard, if there are 10,000 additional expungement orders received annually as a result of the bill, DPSCS needs to hire four additional full-time staff at a cost of \$181,527 in fiscal 2023, which accounts for the bill’s January 1, 2023 effective date, increasing to \$322,011 in fiscal 2026.

General fund expenditures for DPSCS decrease minimally due to reduced incarceration penalties for and potentially reduced application of specified cannabis offenses.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$4,700 per month. Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or a State correctional facility. The State provides assistance to the counties for locally sentenced inmates and for (1) inmates who are sentenced to and awaiting transfer to the State correctional system; (2) sentenced inmates confined in a local detention center between 12 and 18 months; and (3) inmates who have



been sentenced to the custody of the State but are confined in or who receive reentry or other prerelease programming and services from a local facility.

The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in State correctional facilities. The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

#### *Maryland State Archives*

The Maryland State Archives (MSA) is the repository for older court records. MSA advises that a modest increase in expungements has no fiscal impact; however, a significant increase requires operational adjustments to staff allocations to absorb the workload and may have a fiscal impact requiring additional staff resources. DLS advises that the number of records requests that MSA will receive cannot be readily estimated but could be *significant*. Assuming the specified contingency is met, general fund expenditures increase if MSA must hire additional staff to handle the increased workload. Any such costs cannot be reliably estimated without actual experience under the bill.

#### *Maryland Department of Health*

*Maryland Medical Cannabis Commission:* Assuming the specified contingency is met, beginning July 1, 2023, a person at least age 21 may possess up to 1.5 ounces of cannabis. MMCC advises that the legalization of adult-use cannabis may result in some patients and caregivers shifting away from the medical cannabis market. MMCC further advises that approximately 90% of its operating budget comes from fees to license medical cannabis businesses and to issue or renew patient identification cards. Thus, special fund revenues for MMCC may decrease as early as fiscal 2024 if medical cannabis qualifying patients shift to the adult use market.

MMCC indicates it can participate as a member on the Cannabis Public Health Advisory Council and implement the bill's requirements regarding the collection and reporting of information from its licensees and preapproved applicants using existing resources.

*Marijuana Citation Fund:* Civil penalties imposed for cannabis-related offenses under § 5-601 of the Criminal Law Article are currently remitted to the Marijuana Citation Fund for drug education and treatment programs. Assuming the specified contingency is met: (1) special fund revenues for MDH increase in fiscal 2023 as more individuals are subject to civil penalties (as opposed to criminal penalties) due to the higher threshold (possession of up to 1.5 ounces of cannabis for the personal use amount of cannabis and possession of at least 1.5 ounces but not more than 2.5 ounces of cannabis for the civil use amount of cannabis) for which civil penalties are imposed under the bill beginning January 1, 2023,

and (2) special fund revenues for MDH decrease in fiscal 2024 as fewer individuals (only those younger than age 21) are subject to civil penalties for the possession of up to 1.5 ounces of cannabis (the personal use amount of cannabis) beginning July 1, 2023. However, the bill's effect on special fund expenditures for the Marijuana Citation Fund cannot be reliably determined at this time and is dependent on judicial behavior, as the bill *authorizes* (but does not require) courts to refer underage individuals to drug education programs. Any impacts on the costs of substance abuse assessments have not been addressed in this analysis. For context, special fund revenues for the Marijuana Citation Fund totaled \$317,288 in fiscal 2020 and \$546,559 in fiscal 2019. MDH advises that the reduced revenues in fiscal 2020 were a result of the ongoing COVID-19 pandemic.

*Cigarette Restitution Fund:* Assuming the specified contingency is met, special fund revenues may increase minimally for the Cigarette Restitution Fund, administered by MDH, if more civil fines are issued for violations due to the expanded application of the CIAA to smoke from cannabis and hemp products. MDH advises that as the enforcement agency for CIAA, it must adopt regulations to implement the bill's changes and notify businesses and local health departments about the changes. Thus, general fund expenditures increase by \$5,640 in fiscal 2023 only, which accounts for the bill's January 1, 2023 effective date. This estimate reflects the cost of mailing out an estimated 8,000 letters to notify businesses and local health departments of the bill's changes to CIAA. It includes a cost of \$1,000 to produce the mailing and \$4,640 in postage costs. MDH advises that it can adopt regulations using existing budgeted resources.

*State Insurance Trust Fund:* The bill alters the waiting period for filing a petition to expunge a conviction for possession of marijuana under § 5-601 of the Criminal Law Article from four years after the conviction or satisfactory completion of the sentence (whichever is later) to after satisfactory completion of the sentence, including probation. With respect to other recent legislation altering waiting periods for filing expungement petitions, the State Treasurer's Office (STO) has advised that it is still possible to obtain the necessary information that may have been contained in an expunged record through discovery and/or notice of claim requirements within the Maryland Tort Claims Act. Therefore, this analysis assumes that the bill has no material effect on STO investigations and payments of claims from the State Insurance Trust Fund.

#### *Other Agency Effects*

*Maryland State Department of Education:* Assuming the specified contingency is met, special fund revenues (and corresponding expenditures) increase for the Maryland State Department of Education (MSDE) to the extent that it receives funding from the Cannabis Public Health Fund for education and public awareness campaigns related to cannabis for use in schools. MSDE advises that they can participate on the Cannabis Public Health Advisory Council with existing budgeted resources.

*Historically Black Colleges and Universities:* Assuming the specified contingency is met, special fund revenues (and corresponding expenditures) increase for HBCUs to the extent that an HBCU applies and receives grant funding from the Cannabis Business Assistance Fund for cannabis-related programs.

*Governor's Office of Small, Minority, and Women Business Affairs:* GOSBA advises that consulting with MDOT on the disparity study and issuing the required report on race- and gender-neutral approaches for addressing the needs of minority and women businesses are routine activities under the MBE program; thus, GOSBA can implement the bill's requirements within existing budgeted resources.

*Department of State Police:* The Department of State Police (DSP) advises that if DSP only has to expunge a record in response to a notification by a court, it can handle the bill's requirements with existing budgeted resources.

*Office of the Public Defender:* Assuming the specified contingency is met, the bill decriminalizes possession of cannabis, as specified, which likely reduces caseloads for the Office of the Public Defender (OPD). Given the caseloads and resources of OPD, it is assumed that the reduction in OPD caseloads generated under the bill is redirected to other cases.

*Maryland Poison Center:* The Maryland Poison Center (MPC) advises that it has seen a significant increase in calls to MPC since the approval of medical cannabis. MPC further advises that to the extent that call volumes increase as a result of the bill, additional staff will be necessary. Specifically, one full-time poison specialist is needed for every 2,000 additional calls MPC receives annually. It is assumed that MPC can consult with MMCC to complete the comprehensive baseline study within existing budgeted resources.

*Office of Legislative Audits:* OLA can audit the Community Reinvestment and Repair Fund with existing budgeted resources during its regularly scheduled audits of the Comptroller.

**Local Fiscal Effect:** Local income tax revenues decrease by about 3% of the total net State subtraction modifications claimed against the personal income tax. Local income tax revenues decrease by approximately \$1.5 million in fiscal 2023 and by \$1.5 million in fiscal 2027, as shown in Exhibit 2 above. Additionally, local governments receive a portion of corporate income tax revenues as local highway user revenues through capital transportation grants. Under this bill, local highway user revenues decrease by approximately \$78,300 in fiscal 2023 and by \$55,200 in fiscal 2027 as a result of deductions taken against the corporate income tax.

Assuming the specified contingency is met, the bill requires that money from the Community Reinvestment and Repair Fund be distributed to each county in proportion to the total number of marijuana arrests over a specified period in the county compared to the total number in the State. Thus, local revenues increase, potentially significantly, beginning in fiscal 2024. However, expenditures likely increase for each county to (1) adopt a law establishing the purpose for which money received from the Community Reinvestment and Repair Fund may be used; (2) use the funds received subject to the authorized purposes under the bill; and (3) issue a report on how these funds were spent every two years beginning in fiscal 2024.

Assuming the specified contingency is met, local revenues and expenditures increase to the extent that a local government qualifies, applies for, and receives grant funding from the Cannabis Business Assistance Fund as a business development organization to train and assist small, minority, and women business owners and entrepreneurs seeking to become licensed to participate in the adult-use cannabis industry.

Local revenues and expenditures increase, potentially significantly, to the extent that local governments receive funding from the Cannabis Public Health Fund (1) to support local health departments with substance abuse disorder counseling and treatment for individuals; (2) to provide training and equipment for local law enforcement to recognize impairments due to cannabis; and (3) for educational programs to be used in schools.

Local revenues decrease minimally due to a reduced monetary penalty and reduced application of monetary penalties under the bill for cases heard in the circuit courts.

Local expenditures decrease minimally as a result of the bill's reduced application of an existing incarceration penalty. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per diem operating costs of local detention facilities have ranged from approximately \$90 to \$300 per inmate in recent years.

Local expenditures and/or workloads for State's Attorneys' offices decrease minimally due to reduced prosecutions resulting from the bill's decriminalization/legalization of specified offenses. However, depending on workloads and existing resources, State's Attorneys' offices and local law enforcement agencies may experience increased expenditures and workloads to comply with the expanded expungement provisions under the bill.

Local government expenditures may increase to the extent the bill's alteration of the waiting period to file an expungement of a conviction for use or possession of marijuana affects the ability of a local government to investigate or defend a claim/lawsuit. The existence or magnitude of such an effect is unknown at this time.

**Small Business Effect:** Assuming the specified contingency is met, small businesses benefit significantly from the establishment of the Cannabis Business Assistance Fund. As noted above, the stated purpose of the fund is to assist small, minority-owned, and women-owned businesses entering the adult-use cannabis industry. Specifically, small businesses may apply for grants or loans from the fund to assist with (1) license applications for participation in the adult-use cannabis industry; (2) operating or capital expenses of a business participating in the adult-use cannabis industry; and (3) targeted training to support participation in the adult-use cannabis industry. In addition, small business owners also benefit from any training and assistance received from business development organizations that receive grants from the fund to train and assist small, minority, and women business owners and entrepreneurs seeking to become licensed to participate in the adult-use cannabis industry.

Small businesses also benefit from the establishment of the Cannabis Public Health Fund. Assuming the specified contingency is met, small business behavioral health providers may receive additional funding to provide substance use disorder counseling and treatment for individuals.

Small businesses that are State licensed medical cannabis growers, processors, or dispensaries (or any other type of cannabis establishment) benefit from the bill's income tax subtraction modification. The magnitude of the benefit depends on their tax liability and the amount of ordinary and necessary expenses disallowed under IRC Section 280E.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** Governor's Office of Small, Minority, and Women Business Affairs; Department of Commerce; Howard, Montgomery, and Prince George's counties; Governor's Office of Crime Prevention, Youth, and Victim Services; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of Administrative Hearings; Office of the Public Defender; Maryland State's Attorneys' Association; Maryland State Department of Education; University System of Maryland; Maryland Department of Health; Department of Public Safety and Correctional Services; Board of Public Works; Department of State Police; Maryland Department of Transportation; Maryland State Archives; Office of the Attorney General; Department of Legislative Services

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