

HB 556

Department of Legislative Services

Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE Enrolled - Revised

House Bill 556

(Delegates Wilson and Atterbeary)

Economic Matters

Finance and Budget and Taxation

Cannabis Reform

This emergency bill establishes an adult-use cannabis industry in the State by renaming the Alcohol and Tobacco Commission as the Alcohol, Tobacco, and Cannabis Commission (ATCC) (with cannabis-related duties) and establishing (1) the Maryland Cannabis Administration (administration) as an independent unit of State government; (2) a licensing framework for the regulated sale of cannabis; (3) a sales and use tax on the sale of adult-use cannabis; (4) the Office of Social Equity (OSE) in the administration; and (5) the Social Equity Partnership Grant Program in OSE.

Fiscal Summary

State Effect: General fund revenues increase beginning in FY 2024 from sales and use tax revenue distributions, as shown below; the FY 2024 budget assumes \$15.0 million in general fund revenues. Special fund revenues increase beginning in FY 2024 from fees and tax revenues. Special fund expenditures increase beginning in FY 2023 to establish the administration; the FY 2024 budget includes \$1.1 million in special funds in FY 2023. Additional significant increases in special fund expenditures begin in FY 2024; the FY 2024 budget includes \$8.8 million in special funds. General fund expenditures increase beginning in FY 2023; the FY 2024 budget includes \$0.3 million in FY 2023 and \$3.5 million in FY 2024. Future year general fund expenditures reflect a mandated appropriation. Bond expenditures increase in FY 2024; the FY 2024 capital budget includes \$2.0 million. Some of the budgeted funds are contingent on the enactment of this bill or its cross file. **This bill establishes a mandated appropriation beginning in FY 2025.**

(in dollars)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
GF Revenue	\$0	\$18,000,000	\$36,559,600	\$49,670,800	\$64,249,700
SF Revenue	\$0	\$67,952,200	\$52,831,500	\$50,990,800	\$65,555,400
GF Expenditure	\$610,700	\$4,434,900	\$7,389,400	\$7,313,000	\$7,415,100
SF Expenditure	\$128,400	\$62,996,400	\$72,224,300	\$54,567,800	\$68,296,000
Bond Exp.	\$0	\$2,000,000	\$0	\$0	\$0
Net Effect	(\$739,200)	\$16,520,800	\$9,777,500	\$38,780,800	\$54,094,000

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

Local Effect: Local revenues and expenditures increase significantly due to the bill's capitalization and distribution of specified special funds and sales and use tax revenues, as discussed below.

Small Business Effect: Meaningful.

Analysis

Bill Summary: In general, the bill redesignates the Alcohol and Tobacco Commission as ATCC and establishes the Maryland Cannabis Administration (the administration) as an independent unit of State government; the administration is funded by the newly established Cannabis Regulation and Enforcement Fund (CREF). The administration is tasked with overseeing the regulation of adult-use cannabis and is the designated successor of the Maryland Medical Cannabis Commission (MMCC) in all matters concerning the regulation of medical cannabis. As soon as practicable after the bill's effective date, ATCC and the administration must enter into a memorandum of understanding (MOU) that provides that both parties agree to collaborate to enforce the bill's provisions regarding unlicensed cannabis operations in the State. Among other things, the bill (1) establishes an advisory board on medical and adult-use cannabis; (2) establishes OSE in the administration and the Social Equity Partnership Grant Program in OSE; (3) includes various provisions to encourage participation by "social equity applicants"; (4) establishes a cannabis licensing and registration framework; (5) establishes civil and criminal penalties for specified violations; (6) establishes a Maryland Incubator Program; (7) establishes cannabis advertising restrictions; (8) prohibits the Commissioner of Financial Regulation from taking specified actions; (9) authorizes a "political subdivision" (*i.e.*, a county or a municipality) to establish its own ordinances, with specified limitations; and (10) establishes a 9% sales and use tax on the sale of adult-use cannabis.

Alcohol, Tobacco, and Cannabis Commission

The bill makes numerous changes to reflect the renaming of the former Alcohol and Tobacco Commission as ATCC, establishes cannabis-related duties for ATCC, authorizes (rather than requires) the Executive Director of ATCC to be a sworn police officer (while also making conforming changes and authorizing the current Executive Director to continue to serve in that role), and adds two members to ATCC, as specified. ATCC must develop best practices for regulating the cannabis industry; implementing public health measures related to cannabis; and regulating, to the extent possible, medical and adult-use cannabis in a similar manner.

Advisory Board on Medical and Adult-Use Cannabis

The bill establishes the Advisory Board on Medical and Adult-Use Cannabis. The advisory board consists of members who meet specified criteria and are appointed by the Governor with the advice and consent of the Senate. The director of the administration serves as chair of the board. The advisory board must (1) consider all matters submitted to it by ATCC, the Governor, the administration, or the General Assembly; (2) on its own initiative, provide recommendations to ATCC and the administration regarding guidelines, rules, and regulations that the advisory board considers important or necessary for review and consideration; and (3) establish at least two subcommittees to focus on medical and adult-use cannabis.

Social Equity Provisions

The administration must (1) conduct extensive outreach to small, minority, and women business owners and entrepreneurs who may have an interest in applying for a cannabis license before accepting and processing cannabis license applications and (2) connect potential social equity applicants with OSE. By August 1 each year, cannabis licensees and registrants must report specified information determined by the administration to be necessary for assessing the need for remedial measures in the cannabis industry. The administration must report the collected data by August 15 to the certification agency designated by the Board of Public Works under the State's minority business enterprise (MBE) law (*i.e.*, the Maryland Department of Transportation (MDOT)) and by January 1 each year to the General Assembly.

Office of Social Equity: The bill establishes OSE as an independent office that functions within the administration. OSE is headed by an executive director who meets specified criteria and is appointed by the Governor. OSE may employ staff and retain contractors as necessary to carry out the functions of the office, which include:

- promoting and encouraging full participation in the regulated cannabis industry by people from communities that have been disproportionately impacted by the war on drugs in order to positively impact those communities;
- consulting with and assisting the Comptroller in administering the Community Reinvestment and Repair Fund (CRRF) (established by Chapter 26 of 2022 and moved from the Health-General Article to the Alcoholic Beverages Article by the bill);
- consulting with and assisting the Department of Commerce in administering the Cannabis Business Assistance Fund (established by Chapter 26 of 2022; the bill expands the authorized uses of the fund to include start-up operating and capital funding needs for social equity licensees);

- identifying and opposing regulations that unnecessarily burden or undermine the legislative intent of OSE, as specified;
- providing recommendations to ATCC on regulations related to diversity and social equity applications;
- working with the administration to implement free technical assistance for social equity and minority cannabis business applicants;
- producing reports and recommendations on diversity and equity in ownership, management, and employment in the legal cannabis economy; and
- assisting businesses with obtaining financing through the Capital Access Program (discussed below).

OSE must (1) issue and make publicly available a report by March 1 each year on how the CRRF was allocated during the immediately preceding calendar year (and also submit the report to the General Assembly); (2) solicit public input on the use of CRRF by November 1 each year; and (3) publish a review of the input received by December 15 each year.

Social Equity Partnership Grant Program: The bill establishes the Social Equity Partnership Grant Program in OSE to promote qualifying partnerships between operational cannabis licensees and “social equity licensees.” Beginning in fiscal 2025, the Governor must include in the annual budget bill an annual appropriation of \$5.0 million for the grant program. OSE must adopt regulations to implement and administer the grant program.

A “social equity licensee” means a “social equity applicant” who has been awarded a cannabis license or registration and includes a grower, processor, or dispensary that held a stage one preapproval for a license before October 1, 2022, and was not operational before that date. A “social equity applicant” is an applicant for a cannabis license or registration who has at least 65% ownership and control held by one or more individuals who (1) have lived in a disproportionately impacted area for at least 5 of the 10 years immediately preceding the submission of the application; (2) attended a public school in a disproportionately impacted area for at least 5 years; or (3) for at least 2 years, attended a 4-year institution of higher education in the State where at least 40% of the individuals who attend the institution of higher education are eligible for a Pell Grant. Individuals must also meet any other criteria established by the administration. “Disproportionately impacted area” means a geographic area identified by OSE that has had above 150% of the State’s 10-year average for cannabis possession charges.

Subject to specified limitations, OSE has discretion to approve, deny, or revoke qualifying partnerships. OSE must award grants to operational cannabis licensees that have a qualifying partnership, as specified, in an amount that is based on the nature of the qualifying partnership. The total grant amount issued to an operational cannabis licensee

that has a converted license may not exceed the license conversion fee paid by the licensee or \$250,000 per year per qualifying partnership. OSE may require a grant recipient that fails to fulfill the requirements of the grant to return all or part of the grant.

Community Reinvestment and Repair Fund: The bill repeals and recodifies CRRF (as established by Chapter 26 of 2022) under the Alcoholic Beverages Article (rather than its current location under the Health-General Article). The bill also requires that OSE, in consultation with the Office of the Attorney General (OAG), (rather than OAG alone under existing statute) determine which communities have been the most impacted by the disproportionate enforcement of the cannabis prohibition before July 1, 2022. Based on the percentage allocable to each county as determined by OSE and reported to the Office of the Comptroller by July 31 each year, the Comptroller must distribute funds to each county in an amount that for the period from July 1, 2002, to January 1, 2023, is proportionate to the total number of cannabis possession charges in the county compared to the total number in the State. (Current law uses a calculation based on cannabis arrests from July 1, 2002, to June 30, 2022.)

Capital Access Program: The bill establishes a Capital Access Program within Commerce to (1) stimulate opportunities for social equity licensees that have difficulty obtaining financing and (2) establish a loan loss reserve account. Commerce must collaborate with OSE to identify and assist businesses with obtaining financing from the program. A loan to a social equity licensee qualifies if the loan satisfies the lending criteria of the lender and does not exceed \$500,000 for a dispensary or \$1.0 million for a grower or processor. To participate in the program, a lender must enroll the qualifying loan in the program within 30 days of the first loan disbursement.

Commerce must establish a loan loss reserve account for a lender when the lender enrolls its first loan under the program. At the time of enrollment, the borrower (which must qualify as a small business), lender, and the administration must make specified payments into the reserve account. The loan loss reserve account must be available for a lender to withdraw from if the borrower defaults on a qualifying loan, subject to procedures that Commerce must establish.

Minority Business Enterprise Program: To the extent practicable and authorized by the U.S. Constitution, a cannabis licensee must comply with the State's MBE Program. The administration, in consultation with the specified certification agency (MDOT), the Governor's Office of Small, Minority, and Women Business Affairs (GOSBA), the General Assembly, and OAG, must review the disparity study required by Chapter 26 of 2022 to evaluate whether application of the State's MBE program to cannabis licenses would comply with the U.S. Supreme Court decision in *City of Richmond v. J. A. Croson Co.*, 488 U.S. 469 (1989), and any subsequent federal and constitutional requirements. Within six months of issuing a cannabis license, GOSBA – in consultation with OAG,

OSE, and the cannabis licensee – must establish a clear plan for setting reasonable and appropriate MBE participation goals and procedures for the procurement of goods and services related to cannabis, including the cultivation, manufacturing, and dispensing of cannabis. To the extent practicable, these goals and procedures must be based on the requirements of the State’s MBE program.

Maryland Cannabis Administration

The bill establishes the Maryland Cannabis Administration as an independent unit of State government that is headed by a director who meets specified criteria and is appointed by the Governor. The administration is responsible for administering and enforcing the Medical and Adult-Use Cannabis Title of the Alcoholic Beverages Article, as established by the bill. The administration may (1) employ staff and retain contractors as provided in the State budget and (2) recommend changes to improve the administration of the bill’s provisions relating to the regulation of cannabis. The administration is exempt from State procurement requirements until December 31, 2023, if the procurement is for establishing a State cannabis laboratory at a preexisting site, specified consultants, specified banking services, or communication services for specified public and consumer education campaigns.

The bill further establishes that the administration is the successor to MMCC in matters concerning the regulation of medical cannabis. As such, all persons who are merit employees or contract staff in budgeted positions of MMCC are transferred to the administration without any change or loss of rights, pay, working conditions, benefits, rights, or status. The transfer of personnel must be conducted in a manner to minimize the costs of the transfer and result in a more cost-efficient operation for the regulation of cannabis.

The administration must evaluate the regulations adopted by MMCC under the Code of Maryland Regulations (COMAR 10.62) and adopt emergency regulations by July 1, 2023, that are supplemental to the existing medical cannabis regulations and (notwithstanding any other law) remain in effect until the taking effect of nonemergency regulations required to be adopted by July 1, 2024 (discussed below). The emergency regulations must (1) carry out the requirements for licensure of cannabis businesses, including implementing procedures related to applications, licenses, and registrations; (2) assist the Comptroller in the collection of taxes imposed on the sale of adult-use cannabis; (3) implement inventory management and tracking, as specified; and (4) establish operating requirements for cannabis licensees or cannabis registrants, as specified.

By July 1, 2024, the administration must adopt nonemergency regulations to carry out its responsibilities. Any adopted regulations must, to the extent practicable, regulate medical and adult-use cannabis in the same manner. The administration must adopt regulations that

(1) govern Internet sales of cannabis; (2) implement and supplement packaging and labeling requirements for cannabis products as established by the bill; (3) establish procedures for the use of point of sale technologies by dispensaries for all transactions that verify a consumer's age using a driver's license or other specified valid identification; and (4) establish health, safety, security, and tracking requirements for the packaging and repackaging of cannabis by a dispensary. To the extent practicable, the administration must adopt regulations that require cannabis licensees to transition from a cash system and to use traditional banking services. Also, by July 1, 2024, the administration must adopt minimum standards for licensed growers to protect the rights of growers and employees, as specified.

The administration must adopt regulations establishing limits on the maximum potency of cannabis products sold in the State, including limits on the maximum amount of delta-9-tetrahydrocannabinol (THC) in individual cannabis products and limits on the maximum aggregate THC amount for multiple edible cannabis products packaged together.

A package of cannabis for distribution to a consumer or qualifying patient must conform to child-resistant packaging requirements established under federal regulations, tamper-evident packaging, and include specified information and statements. Cannabis labeling and packaging may not include (1) any image that may appeal to children or that is designed or likely to appeal to minors and (2) anything that could reasonably mislead an individual to believe the package contains anything other than a finished cannabis product or has been endorsed, manufactured, or used by any agency of a state or political subdivision. The administration may adopt regulations to allow the sale, on or before July 1, 2024, of cannabis or cannabis products that are labeled or packaged using images that may appeal to children.

The administration must also:

- develop and maintain a seed-to-sale tracking system, as specified;
- conduct financial and criminal background investigations of any cannabis license applicants and licensees, as specified and required;
- develop a process for consumers to purchase clones and seeds, seedlings, stalks, roots, and stems of the cannabis plant for cultivation in compliance with current law;
- solicit, evaluate, and issue or deny applications for cannabis licenses and registrations, as specified;
- award or deny cannabis licenses and registrations and give notice and hold hearings on contested license denials, as specified;

- conduct announced and unannounced inspections of any licensed or registered cannabis business to ensure compliance;
- after determining that a violation has occurred, impose any authorized penalty after giving notice and holding a hearing in accordance with the requirements of the State Government Article; and
- publish specified data, organized by month on a rolling basis to the publicly accessible part of ATCC's website.

The administration may issue subpoenas for witnesses or evidence in investigations, proceedings, or disciplinary actions; delegate its hearing authority to an employee within the administration; and hold hearings *in absentia* when the person against whom action is contemplated fails to appear after due notice.

Required Studies and Reports: As soon as practicable after the bill's effective date, the administration must contract with an independent consultant to complete a study on wholesale cannabis licenses and conduct a study for on-site consumption of cannabis and cannabis products at retail premises of cannabis licensees. The study results must be submitted to the Governor and the General Assembly by June 1, 2024.

By January 1, 2024, the administration must submit to the General Assembly an interim report on the ability of micro dispensary licensees to safely and securely dispense cannabis. A final report is due by December 31, 2024.

Cannabis Regulation and Enforcement Fund: The bill establishes CREF, administered by the Comptroller (at the direction of the administration), with the purpose of covering the costs of (1) operating the administration and (2) administering and enforcing the Medical and Adult-Use Cannabis Title of the Alcoholic Beverages Article. The fund is subject to audit by the Office of Legislative Audits (OLA) and generally consists of fees the administration may impose (including registration fees) and tax revenues from the sale of adult-use cannabis sufficient to defray the entire cost of operating the administration. In addition, the balance of the Natalie M. LaPrade Medical Cannabis Fund on the date immediately preceding the bill's effective date must be credited to the fund to cover the costs of implementing the bill and regulating the cannabis industry in Maryland. By March 15 each year, the Comptroller must publish on its website a specified report of the fund's revenues and expenditures. The report must also be submitted to the General Assembly.

Medical Cannabis

The bill generally repeals Title 13, Subtitle 33 of the Health-General Article in its entirety and largely recodifies under the Medical and Adult-Use Cannabis Title of the Alcoholic Beverages Article the provisions related to certifying providers, qualifying patients, and HB 556/ Page 8

caregivers, including that (1) the administration (rather than MMCC) must register certifying providers, as specified; (2) qualifying patients or caregivers may obtain medical cannabis from a licensed dispensary; (3) qualifying patients younger than age 18 may obtain medical cannabis only through a caregiver or designated school personnel, as specified; and (4) a qualifying patient may possess up to 120 grams of usable cannabis or 36 grams of THC for cannabis-infused products. The bill establishes a new authorization that a qualifying patient who is at least age 21 may cultivate up to four cannabis plants and no more than four cannabis plants may be cultivated at a single residence, as specified, provided that the qualifying patient complies with the cannabis cultivation provisions in Chapter 26 of 2022.

Beginning July 1, 2023, a cannabis licensee that is operating a dispensary must ensure that it has adequate supply for qualifying patients and caregivers and set aside operating hours or dedicated services lines to serve only qualifying patients and caregivers.

Maryland Medical Cannabis Commission Special Fund: The bill repeals without recodification § 13-3303 of the Health-General Article, which pertains to the membership of MMCC and the MMCC special fund. As noted above, the bill also transfers the balance of the fund on the date immediately preceding the bill's effective date to CREF.

Medical Cannabis Compassionate Use Fund: The bill also recodifies the Medical Cannabis Compassionate Use Fund administered by the administration (rather than MMCC) to provide access to cannabis for individuals enrolled in Maryland Medicaid or in the Veterans Affairs Maryland Health Care System. The bill expands the authorized uses of the fund to include access to, at a reduced cost, an assessment of the patient's medical history and current medical condition. The special fund consists of (1) fees set by the administration (rather than MMCC) in an amount necessary to provide revenues for the fund (but these fees may not be imposed on a licensed medical cannabis grower, processor, or dispensary that has not yet become an operational cannabis licensee under the bill); (2) fines assessed by the administration; (3) money appropriated in the State budget to the fund; (4) interest earnings; and (5) any other money from any other source accepted for the benefit of the fund.

Cannabis Licensing

To operate a cannabis business in the State, a person must obtain a cannabis license from the administration. A cannabis license issued pursuant to the bill, which is valid for five years on initial licensure and renewal, authorizes the licensee to operate a medical *and* adult-use cannabis business. Medical cannabis licensees (growers, processors, and dispensaries) convert to a medical and adult-use cannabis business license by paying a conversion fee (as discussed below). Cannabis business licenses include those for dispensaries, growers, processors, incubator spaces, on-site consumption establishments,

and micro licenses. The administration must establish licensing and renewal fees for all cannabis business licenses. Standard license fees for initial licenses may not exceed \$50,000, and fees for renewal may not exceed the lesser of 10% of the licensee's annual gross revenue or \$50,000. Licensing and renewal fees for social equity licenses, micro licenses, incubator space licenses, and on-site consumption licenses must be reduced by at least 50% relative to the fees that apply to standard licensees. All license and renewal fees are paid to the administration. A license issued under the bill (1) is not property and does not confer property rights and (2) is subject to regulations authorized under the bill as well as suspension, revocation, and restrictions authorized by law.

The administration may (1) conditionally award licenses; (2) inspect cannabis licensees to ensure compliance; (3) suspend, fine, restrict, or revoke a cannabis license, as specified; and (4) impose penalties or rescind the license of a cannabis licensee that does not meet specified licensure standards. **Exhibit 1** shows the maximum number of licenses that may be issued for all license types, including medical cannabis licenses converted in accordance with the bill, regardless of the number of license awards authorized for first and second round awards (discussed in more detail below). The administration must issue dispensary licenses in a manner that encourages a balanced geographic distribution based on population and market demand within a specific county, as well as cross-jurisdictional market demand.

Exhibit 1 also details what is authorized by each license type and the maximum ownership and control interests a person may have for each license type. The administration must adopt regulations limiting a person or fund from acquiring a nonmajority ownership interest in multiple cannabis businesses beyond the ownership interest and control limits established by the bill and listed in Exhibit 1. The ownership interest restrictions do not apply to a person or an entity who holds an ownership interest only as a "passive investor" (defined under the bill as an individual or an entity that holds an aggregate ownership interest of less than 5% in a cannabis licensee and does not have control of the cannabis licensee).

Exhibit 1
Participation in the Cannabis Industry for All License Types

<u>License Type</u>	<u>Maximum Number of Licenses Authorized</u>	<u>License Authorizations</u>	<u>Maximum Ownership and Control Interests</u>
Standard Grower	75 ¹	To operate 10,000 to 300,000 square feet of indoor canopy space	One
Standard Processor	100	To process more than 1,000 pounds of cannabis per year	One
Standard Dispensary	300	To operate a physical location for selling cannabis or cannabis products	Four
Micro Grower	100	To operate not more than 10,000 square feet of indoor canopy space	One
Micro Processor	100	To process not more than 1,000 pounds of cannabis per year	One
Micro Dispensary	10	To operate a delivery service that sells cannabis or cannabis products without a physical storefront if the licensee employs no more than 10 employees	Four
Incubator Space	10	To operate a facility where a micro licensee may operate, as specified	Two ²
On-site Consumption	50	To operate a facility where individuals can smoke cannabis outdoors on the premises, vape, or consume cannabis, as specified	Two ²

¹ A grower license awarded to a class member of specified litigation is in addition to and not subject to the limitations on the total number of licenses the administration may issue.

² A person who owns or controls an incubator space licensee or an on-site consumption licensee may not own or control any other cannabis licensee.

Source: Department of Legislative Services

Additional Grower License Award: As soon as practicable after the bill's effective date, the administration must establish, by regulation, a process for issuing up to five licenses to operate as a cannabis grower to five applicants that are (1) recognized class members of *Pigford v. Glickman*, 185 F.R.D. 82 (D.D.C. 1999), or *In Re Black Farmers Litig.*,

856 F. Supp. 2d 1 (D.D.C. 2011); (2) were awarded damages related to farming operation in Maryland pursuant to the claims processes established for the specified class members; (3) have provided specified evidence of not being fully compensated for enduring discrimination and have experienced ongoing discrimination or the continued effects of past discrimination; and (4) satisfy any other criteria established by the administration. Licenses awarded under these circumstances are in addition to and not subject to the limitations on the total number of licenses that the administration may issue. An applicant that is not awarded the specified license may apply for a license in accordance with the bill's provisions; the administration (1) must allow the applicant to amend, if necessary, and resubmit or withdraw the application and (2) may waive the initial application fee but may charge a reasonable fee for the resubmission of an application.

Conversion of Medical Cannabis Licenses: By July 1, 2023, the administration must convert licenses, including preapproved licenses, issued to medical cannabis growers, processors, and dispensaries to licenses to operate a medical and adult-use cannabis business if a one-time conversion fee is paid to the administration and the business complies with specified ownership restrictions. The conversion fee may be paid in separate installments and must be paid in full by January 1, 2025. In addition, the amount of any licensing or renewal fee paid by a medical cannabis licensee for fiscal 2023 must be credited against the one-time conversion fee. The holder of an unconverted medical cannabis license may not operate under the license or renew the license on or after July 1, 2023, but may continue to hold the license for resale to another person for conversion. The purchaser of a license is responsible for paying the one-time conversion fee. The holder of an MMCC-issued dispensary license converted under the bill to a standard dispensary license or a registrant with MMCC may continue to deliver medical cannabis until July 1, 2024, notwithstanding any other provisions. The administration must adopt regulations requiring converted licensees to reserve a specified amount of cannabis for social equity licensees.

Medical licensees that were operational before October 1, 2022, must pay a conversion fee equal to 10% of total gross revenues for calendar 2022 (for growers and processors) and 8% of total gross revenues for calendar 2022 (for dispensaries). However, the conversion fee must be at least \$100,000 but not more than \$2.0 million. Businesses that held a stage one preapproval for a license before October 1, 2022, and were not operational before that date must pay a conversion fee of (1) \$50,000 for a grower or processor and (2) \$25,000 for a dispensary. All conversion fees collected are paid to the administration and credited to CRRF.

It is the stated intent of the General Assembly to preserve production availability for new adult-use cannabis cultivation licenses. Thus, medical cannabis growers who convert licenses under the bill must adhere to expansion limitations, as specified.

Initial Awards of New Licenses: For any new cannabis business licenses, an applicant must submit an application developed by the administration and the initial application fee of \$5,000 for all license types except micro licenses, which have an initial application fee of \$1,000. All application fees are paid to the administration. The administration *may not* (1) accept from a single applicant in any round more than one application per license or more than two applications; (2) require that an applicant possess or own a property or facility to operate a cannabis business at the time of application; or (3) conduct a market demand study prior to the issuance of first round licenses.

By January 1, 2024, the administration must begin issuing first round licenses. First round application submissions for all license types are limited to social equity applicants. Each applicant that meets the minimum qualifications must be entered into a lottery. The administration must determine whether an applicant meets the minimum qualifications for the lottery on a pass-fail basis, as determined by the administration, after evaluating an applicant's detailed operational plan, business plan, and detailed diversity plan. In addition, if an out-of-state applicant seeks social equity status, the applicant must submit evidence that the applicant meets the established criteria for a social equity applicant before the administration may consider the application.

Beginning May 1, 2024, the administration must begin issuing second round licenses in an amount that does not exceed the specified maximum number of licenses allowed for each license type. The administration must consult with the State's designated MBE certification agency (MDOT), GOSBA, the General Assembly, and OAG to determine whether or not a disparity study demonstrates a strong basis in evidence of business discrimination against firms owned by minorities and women in the cannabis market. If the specified discrimination is present, the administration, in issuing second round licenses, must (1) apply minimum licensing qualifications and employ remedial measures consistent with constitutional requirements and (2) award licenses through a lottery process that employs remedial measures (if a lottery system employing remedial measures established in accordance with the disparity study can be conducted consistent with constitutional requirements). If the specified discrimination is *not* present, the administration must enter each applicant that meets the minimum established qualifications into a lottery.

Exhibit 2 shows the maximum number of licenses (by license type) that the administration may issue during the first and second round license awards. The administration must award any subsequent cannabis licenses as needed in accordance with a market demand study and reserve a reasonable number of standard licenses to allow micro licensees to transition. The administration may (1) limit subsequent cannabis licenses (in total or in part) to social equity applicants and (2) employ remedial measures, consistent with constitutional requirements (if the administration in consultation with specified entities determines a disparity study demonstrates a strong basis in evidence for doing so).

Exhibit 2
Maximum Number of Cannabis License Awards

<u>License Type</u>	<u>First Round Awards</u>	<u>Second Round Awards</u>
Standard Grower	20	25
Standard Processor	40	25
Standard Dispensary	80	120
Micro Grower	30	70
Micro Processor	30	70
Micro Dispensary	10	-
Incubator Space	10	10
On-site Consumption	-	15

Note: First round license awards and second round micro license awards under specified circumstances are limited to social equity applicants.

Source: Department of Legislative Services

License Transfers: To transfer ownership or control of a cannabis license, a licensee must first submit to the administration an application and fee, as specified by the administration. However, a cannabis licensee (including a converted licensee) may not transfer ownership or control of the license for at least five years following licensure, with limited exceptions and not including the time period that a business is considered to be in a preapproved licensure status. In addition, a cannabis licensee may not surrender a license and apply for a new license in the same or similar category. The specified limitations do not apply to a transfer of ownership that (1) results from the disability, incapacity or death of the owner of a cannabis license; (2) results from the bankruptcy or receivership in accordance with a lending agreement of a cannabis licensee; (3) occurs pursuant to court order; or (4) is the subject of a legally binding settlement agreement from litigation commenced on or before January 1, 2023.

Dispensary Licensees: A dispensary may not be located within (1) 500 feet of specified schools, child care centers, playgrounds, recreation centers, libraries, or public parks or (2) 1,000 feet of another licensed dispensary. The specified distance requirements do not apply to a dispensary license converted under the bill and properly zoned and operating before July 1, 2023. Beginning July 1, 2023, a dispensary licensee must ensure that at least 25% of cannabis and cannabis products in the dispensary are from social equity licensees and growers and processors that do not share common ownership with the dispensary.

Grower Licensees: Each grower or micro grower must calculate its indoor canopy space (or equivalent) using a specified methodology and submit the calculation annually to the administration; the administration must then submit an annual report to the General Assembly on the canopy areas reported. The administration may take specified actions (including seizure, destruction, confiscation, or placement of administrative hold on any flowering cannabis plants produced in excess of the canopy and reduction of the canopy) against a grower who fails to adhere to its canopy authorization.

Incubator Space Licensees: The administration may issue incubator space licenses authorizing a nonprofit entity to operate a licensed premises in which micro licensees may operate a cannabis business. An incubator space licensee is authorized to purchase equipment for use by other incubator space licensees within the same incubator space.

On-site Consumption Establishments: The bill establishes additional prohibitions and requirements for on-site consumption establishments, including prohibiting (1) the indoor smoking of cannabis or cannabis products on the premises; (2) on-duty employees from consuming cannabis on the premises; (3) the distribution of free samples on the premises; (4) the consumption of alcohol on the premises; (5) the growing, processing, or dispensing of cannabis on the premises; and (6) an individual who is younger than age 21 from entering the premises. An on-site consumption establishment must require all employees to successfully complete an annual responsible vendor training program, ensure that the display and consumption of cannabis is not visible from outside of the licensed premises, and provide specified educational materials on the safe consumption of cannabis. The administration must maintain a list of all on-site consumption establishments in the State and make the list available on its website.

Responsible Vendor Training Program: The administration must adopt regulations establishing the responsible vendor training program and the minimum standards for the program. Before offering a specified responsible vendor training program, a person must submit an application that the administration must approve if the proposed training program meets specified minimum educational standards, including a core curriculum of relevant statutory and regulatory provisions. An approved program provider must maintain its training records for four years, as specified, and make the records available to the administration for inspection.

Prohibited Acts for Cannabis Licensees: A cannabis licensee may not sell, transfer, or deliver cannabis or cannabis products unless the licensee verifies, as specified, that (1) for adult-use cannabis, the consumer is at least age 21 or (2) for medical cannabis, the patient or caregiver is registered with the administration and is at least age 18.

Violators of this prohibition are subject to a civil penalty as follows: \$500 for a first violation; \$1,000 for a second violation within 24 months of the first violation; and

\$5,000 for each subsequent violation occurring within 24 months of the immediately preceding violation. A violation that occurs more than 24 months after the immediately preceding violation is considered a first violation. The administration may also deny a cannabis license to an applicant, reprimand a licensee, or suspend or revoke a cannabis license if the applicant or licensee commits two or more violations within a 24-month period.

A cannabis licensee may not sell, transfer, or deliver cannabis to an individual who is visibly intoxicated; offer cannabis or cannabis products as a prize; or conduct direct-to-consumer Internet sales of adult-use cannabis on or before July 1, 2025. A cannabis licensee that violates any of these prohibitions is subject to a fine up to \$1,000 and/or license suspension or revocation.

Cannabis Registrations

Business Registrations: Before providing services to a cannabis licensee, the following businesses must register with the administration: (1) a transporter; (2) a security guard agency; (3) a waste disposal company; and (4) any other type of cannabis business that is authorized by the administration to provide plant or product-touching services to cannabis licensees. A registration to operate specified cannabis businesses issued by MMCC on or before July 1, 2023, authorizes the cannabis business to handle medical and adult-use cannabis products.

Agent Registrations: Before an agent may volunteer or work for a cannabis business licensee or registrant, the agent must register with the administration. A registration is valid for two years. To register as a cannabis agent, an individual must be at least age 21 and obtain a criminal history records check, as specified. The administration may not register an individual who fails to meet these criteria or has been convicted of or pleaded *nolo contendere* to a crime involving moral turpitude. The administration may not deny an agent registration based on any cannabis-related offenses that occurred before July 1, 2023. Each cannabis licensee must require that each registered agent complete an annual responsible vendor training program.

An agent registration issued by MMCC on or before July 1, 2023, is valid under the bill and authorizes the registered agent to be employed by or volunteer with a licensed cannabis business.

Cannabis Research and Development: Specified entities may register with the administration to purchase cannabis for the purpose of conducting a *bona fide* research project relating to the uses, properties, or composition of cannabis, as specified. An academic research representative may purchase cannabis from a licensed dispensary or a supplier of cannabis that is licensed by any federal agency to supply cannabis to

researchers. A registration must include specified information and remains valid until there is a change in the research project or a withdrawal of the registration.

The administration may also register an entity to grow, process, test, and transfer cannabis for specified research and development purposes. To obtain a research and development registration, an applicant must submit an application and fee, as set by the administration. A research and development registration is valid for two years on initial issue and renewal.

Cannabis Advertising

The administration must adopt regulations to establish procedures for enforcing advertising restrictions. “Advertisement” means the publication, dissemination, or circulation of any auditory, visual, digital, oral, or written matter which is directly or indirectly calculated to induce the sale of cannabis or any cannabis-related product or service. “Advertisement” does not include packaging or labeling. An advertisement for cannabis, cannabis products, or cannabis-related services that make therapeutic or medical claims must (1) be supported by competent and reliable scientific evidence and (2) include information on the most serious and common side effects or risks associated with the use of cannabis. An advertisement for a cannabis licensee, cannabis product, or cannabis-related services, excluding those placed on property owned or leased by a dispensary, grower, or processor, may not:

- violate Title 13, Subtitle 3 of the Commercial Law Article (Consumer Protection Act – Unfair, Abusive, or Deceptive Trade Practices);
- directly or indirectly target individuals younger than age 21;
- contain specified representations that target minors, display the use of cannabis, promote cannabis for use as an intoxicant, or are obscene;
- engage in advertising through specified forms of media unless at least 85% of the audience is reasonably expected to be at least age 21, as specified; and
- engage in advertising by placing the advertisements on specified publicly visible locations.

A cannabis-related website must employ a neutral age-screening mechanism verifying the user is at least age 21 before the user may access or view any content and before the website may collect any contact information to disseminate advertisements. Similarly, if an advertisement is placed on social media or a mobile application, it must include a notification that an individual must be at least age 21 to view the content. If a website is appropriate for a qualifying patient who is younger than age 21, the website must provide an alternative screening mechanism for the qualifying patient.

Cannabis Testing Laboratories

State Cannabis Testing Laboratory: By July 1, 2023, the Maryland Department of Agriculture (MDA) or the Maryland Department of Health (MDH) may enter an MOU with the administration to test cannabis at an existing State-owned laboratory if doing so would be a more economic and efficient alternative to the establishment of a new State testing laboratory. However, if MDA or MDH and the administration determine that co-locating cannabis testing at an existing State-owned laboratory is not operationally feasible, the administration must establish and maintain a State cannabis testing laboratory and sufficient funding must be provided in the annual budget to do so.

The State cannabis testing laboratory is generally responsible for developing specified cannabis testing methodologies and overseeing independent testing laboratories, as specified. The State cannabis testing laboratory must hold medical and adult-use cannabis to the same testing standards.

Independent Testing Laboratory: To be sold or marketed in the State, cannabis or cannabis products must be tested by an independent testing laboratory and determined to meet the administration's testing protocols. The administration must convert any registration to operate an independent testing laboratory issued by MMCC on or before July 1, 2023, to a registration authorizing an independent testing laboratory to test both medical and adult-use cannabis and cannabis products.

The administration must register at least one independent testing laboratory to test cannabis and cannabis products for sale in the State. To become registered, an independent testing laboratory must (1) meet the application requirements, as specified; (2) pay an application fee set by the administration; and (3) meet the standards and requirements for accreditation, inspection, and testing that the administration must establish. A registered independent testing laboratory may operate for two years on initial license and on renewal. A registered independent testing laboratory is authorized to test and transport cannabis and cannabis products on behalf of cannabis licensees. The administration may inspect a registered independent testing laboratory to ensure compliance.

Maryland Incubator Program

The administration must adopt regulations to establish a Maryland Incubator Program based on the best practices in other states. The Maryland Economic Development Corporation (MEDCO), in consultation with the administration, must acquire and construct or refurbish at least one facility to operate an incubator space. After the completion of the construction or refurbishment, ownership of the facility must transfer to the Department of General Services (DGS). DGS must contract with a nonprofit organization to operate a State incubator space facility.

MEDCO must also identify a site (including sites that may be converted) for proposed use as an incubator space in each of four specified regions/locations. The site identifications must include (1) the proposed locations for incubator spaces; (2) the square footage of the identified locations; and (3) the estimated costs for construction or renovation of the proposed location to prepare the location for use as an incubator space. MEDCO must submit a report on the identified sites and the qualifying criteria to the Governor and the General Assembly by January 1, 2024.

Ownership Interests

A person wishing to hold an ownership interest of at least 5% in or control of a cannabis licensee must submit an application, with specified information including a criminal history records check, and an application fee set by the administration.

The bill applies the conflict of interest provisions in Title 5 of the General Provisions Article for specified individuals and restricts a constitutional officer or secretary of a principal department of the Executive Branch, a member of the General Assembly, or an employee of the administration from having specified financial, employment, or ownership interests with a cannabis business in the State.

Political Subdivisions

A “political subdivision” (defined in the bill as a county or a municipality) may establish reasonable zoning requirements for cannabis businesses and decide how to distribute its allocation of tax revenues. A political subdivision may not (1) establish zoning or other requirements that unduly burden a cannabis licensee; (2) impose licensing, operating, or other fees or requirements on a cannabis licensee that are disproportionately greater or more burdensome than those imposed on other businesses with a similar impact on the area where the cannabis licensee is located; (3) prohibit transportation through or deliveries within the political subdivision by cannabis establishments located in other political subdivisions; (4) prevent an entity from converting a medical cannabis license that is in compliance with all relevant medical cannabis regulations; or (5) negotiate or enter into an agreement requiring a cannabis licensee or applicant to provide money, donations, in-kind contributions, services, or anything of value to the political subdivision. The use of a facility by a cannabis licensee is not required to be submitted to, or approved by a zoning board, as specified, if the facility (1) was properly zoned and operating on or before January 1, 2023 or (2) is used by a grower, processor, or dispensary that held a stage one preapproval for a license before October 1, 2022, and was not operational before that date. A political subdivision may adopt an ordinance reducing the distance from specified locations within which a dispensary may be located (as discussed above). However, a county or municipality must affirmatively authorize an on-site consumption establishment

to operate by issuing a permit or license and may place restrictions on or prohibit the operation of on-site consumption establishments.

A political subdivision or a special taxing district may not impose a tax on cannabis.

Sales and Use Tax on the Sale of Adult-use Cannabis

Beginning in fiscal 2024, the bill establishes a sales and use tax rate of 9% on the sale of cannabis. The sales and use tax does not apply to the sale of (1) medical cannabis or (2) cannabis between licensed cannabis businesses. After making specified distributions as required under current law, the Comptroller must distribute the sales and use tax collected from sales of adult-use cannabis on a quarterly basis to CREF in an amount necessary to defray the entire administrative and operational costs of the administration. After that distribution, the Comptroller must distribute the funds on a quarterly basis as follows:

- 35% to CRRF for fiscal 2024 through 2033;
- 5% to counties, allocated to each county based on the percentage of revenue collected from that county (except that each county must distribute to a municipality located in the county 50% of the county's allocation that is attributable to the cannabis sales and use tax revenue generated by a dispensary located in that municipality);
- 5% to the Cannabis Public Health Fund;
- 5% to the Cannabis Business Assistance Fund for fiscal 2024 through 2028; and
- any remaining balance after the above specified distributions, to the general fund.

Banking and Insurance

The Commissioner of Financial Regulation is prohibited from taking specified actions against the following institutions for providing financial services to a “cannabis business” or a “service provider” (as defined under the bill): (1) banks, credit unions, and other entities operating as depository institutions in the State; and (2) insurance companies and producers operating in the State. These specified institutions are also not liable under any State law or regulation solely for providing a cannabis business or a service provider with financial services or for investing any income derived from the financial services.

For purposes of federal law, the proceeds from a transaction involving activities of a cannabis business or service provider may not be considered proceeds from an unlawful activity, as specified. The State is prohibited from cooperating or aiding federal law enforcement authorities attempting to prosecute financial institutions that are lawfully operating under the bill.

Criminal Offenses: A person may not sell or distribute a product intended for human consumption or inhalation that contains more than 0.5 milligrams of THC or 2.5 milligrams of THC per package unless the person is a cannabis licensee and the product complies with specified standards under the bill, or, even if licensed, sell or distribute the specified THC products to an individual younger than age 21. A violator is guilty of a misdemeanor and on conviction is subject to a maximum \$5,000 fine. However, it is not a violation of this prohibition for a person to sell or distribute a hemp-derived tincture intended for human consumption that contains (1) a ratio of cannabidiol to THC of at least 15 to 1 and (2) 2.5 milligrams or less of THC per serving and 100 milligrams or less of THC per package. To sell or distribute a hemp-derived tincture intended for human consumption, a person must provide, as required by the administration, tincture samples for the purpose of testing to determine chemical potency and composition and to detect and quantify contaminants.

A person may not sell or distribute a cannabinoid product that is not derived from naturally occurring biologically active chemical constituents. A violator is guilty of a misdemeanor and on conviction is subject to a maximum \$10,000 fine.

Legal Protections: The following persons, when acting in accordance with the bill, may not be subject to arrest, prosecution, revocation of mandatory supervision, parole, or probation, or any civil or administrative penalty, or be denied any right or privilege for the authorized use of or possession of cannabis: (1) qualifying patients; (2) cannabis licensees or registrants; (3) certifying providers; (4) caregivers; (5) specified academic research representatives; (6) specified health care facilities where a qualifying patient receives treatment; and (7) and designated school personnel authorized to administer medical cannabis to a qualifying patient who is a student, as specified.

Prevailing Law

A provision in the bill under Division III (Cannabis) within the Alcoholic Beverages Article prevails over any conflicting or inconsistent provision in Division I of the Alcoholic Beverages Article or the Tax – General Article relating to cannabis.

Authority to Transfer Budgeted Positions and Funds

The bill authorizes the Governor, on or before June 30, 2024, to transfer to the administration any positions and associated funds, and any amount of the unexpended appropriation, included in the fiscal 2024 operating budget for the Alcohol and Tobacco Commission for the bill's implementation, as specified.

Current Law:

Legalization of Cannabis

Pursuant to Chapter 26 of 2022 and the passage of the associated constitutional referendum, as of 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) beginning July 1, 2023, up to 2 cannabis plants. “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 but not more than 1,250 milligrams of delta-9-THC.

From January 1, 2023, through June 30, 2023, possession of the personal use amount of cannabis and possession of the civil use amount of cannabis are subject to civil penalties. Possession of more than the civil use amount is subject to a criminal penalty. As of July 1, 2023, (1) a person at least age 21 may use and possess the personal use amount of cannabis; (2) possession of the personal use amount of cannabis by a person younger than age 21 and possession of the civil use amount of cannabis are subject to civil penalties; and (3) possession of more than the civil use amount of cannabis is subject to a criminal penalty.

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 2022, the commission had issued 18 final grower licenses, 21 final processor licenses, and 97 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 2022, there were 162,300 certified patients, 8,159 caregivers, and 1,560 certifying providers. The commission additionally reports a preliminary total of \$674.2 million in retail sales at cannabis dispensaries in the State for calendar 2022.

Cannabis Business Assistance Fund

Chapter 26 of 2022 (and the subsequent passage of the associated constitutional referendum) established the Cannabis Business Assistance Fund to assist small, minority-owned, and women-owned businesses entering the adult-use cannabis industry. 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 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.

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. The fiscal 2023 budget included \$40.0 million for initial capitalization of the fund, and the fiscal 2024 budget includes \$40.0 million for the fund.

Cannabis Public Health Fund and Cannabis Public Health Advisory Council

Chapter 26 of 2022 (and the subsequent passage of the associated constitutional referendum) also established the Cannabis Public Health Advisory Council to study and report its findings and recommendations by December 1 each year on specified public health impacts of cannabis legalization. The Cannabis Public Health Fund was also established 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. MDH must administer the fund, which 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. The fiscal 2023 budget included \$5.0 million for initial capitalization of the fund.

Community Reinvestment and Repair Fund

Chapter 26 of 2022 also established CRRF as of July 1, 2023, to be 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 sales and use tax 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.

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.

Governor's Office of Small, Minority, and Women Business Affairs

GOSBA is established in the Executive Department; the head of the office is a Special Secretary who is appointed by and serves at the pleasure of the Governor. The Special Secretary's general duties are to advise the Governor on activities to promote the employment of minority persons in the State and any other matters that affect the rights and interests of minority persons and the communities in which they live. GOSBA has designated oversight, reporting, and outreach responsibilities related to the State's MBE program and responsibility for overseeing the State's Small Business Reserve program. MDOT is designated in State regulations as the State's MBE certification agency.

State Sales and Use Tax

No State or local tax is currently imposed on the sale of cannabis. The State sales and use tax rate is 6%, except for the sale of alcoholic beverages, which is taxed at a rate of 9%.

State Fiscal Effect: The bill results in significant effects on State revenues and expenditures – the bill affects both the general fund and various special funds. After a

discussion of related funding included in the fiscal 2024 budget and the general assumptions used, this analysis provides an estimate of the sales and use tax revenues resulting from the bill (and the distribution of those revenues) as well as the fiscal effects by agency resulting from the bill's various provisions.

Related Funding in the Fiscal 2024 Operating Budget

As noted above, the bill authorizes the Governor, on or before June 30, 2024, to transfer to the administration any positions and associated funds, and any amount of the unexpended appropriation, included in the fiscal 2024 operating budget for the Alcohol and Tobacco Commission for the bill's implementation, as specified.

Alcohol, Tobacco, and Cannabis Commission: Contingent upon the enactment of this bill or its cross file, the fiscal 2024 budget includes \$317,000 in general funds for fiscal 2023 for the Alcohol and Tobacco Commission for three regular positions. Contingent on the enactment of this bill or its cross file, the fiscal 2024 budget also includes the following funding and positions for the Alcohol and Tobacco Commission: (1) \$1.5 million in general funds for 12 positions and contractual services; (2) \$3.2 million in special funds for 13 positions and contractual services; and (3) \$2.0 million in general funds to capitalize the Social Equity Partnership Grant Program (administered by OSE within the administration). While the bill does not authorize any special funds to be used by the Alcohol and Tobacco Commission, the administration is wholly funded by special funds through CREF. Thus, pursuant to the bill's authorization for the Governor to transfer funds and positions in the budget from the Alcohol and Tobacco Commission to the administration, this analysis assumes that the \$3.2 million in budgeted special funds for 13 positions and contractual services are transferred to the administration. Additionally, the \$2.0 million in budgeted general funds to capitalize the Social Equity Partnership Grant Program (within OSE/the administration) are also assumed to be transferred to the administration.

Contingent on the enactment of this bill or its cross file, the fiscal 2024 budget also includes language transferring the MMCC funding and positions to the Alcohol and Tobacco Commission in fiscal 2024. The bill, however, transfers these positions to the *administration and the corresponding funds to CREF upon enactment*. Accordingly, this analysis assumes the positions are transferred to the administration in fiscal 2023.

Maryland Cannabis Administration: The fiscal 2024 budget includes \$1.1 million in special funds for fiscal 2023 to convert 38 MMCC contractual positions to full-time merit positions and hire seven new staff for MMCC. The fiscal 2024 budget includes \$1.8 million in special funds to (1) maintain the fiscal 2023 conversions and convert an additional eight MMCC contractual staff to merit positions and (2) maintain the seven MMCC staff hired in fiscal 2023.

Further Capitalization of Cannabis Business Assistance Fund: The fiscal 2024 budget also includes \$40.0 million in general funds for Commerce to further capitalize the Cannabis Business Assistance Fund, which was established by Chapter 26 of 2022.

Related Funding in the Fiscal 2024 Capital Budget

Contingent upon the enactment of this bill or its cross file, the fiscal 2024 capital budget includes \$2.0 million in bond funding for MEDCO for the acquisition, planning, design, construction, repair, renovation, reconstruction, site improvement, and capital equipping of facilities to be used as cannabis incubator spaces.

General Assumptions Used in the Analysis

This analysis generally assumes that:

- the bill takes effect April 8, 2023 (the bill is an emergency measure that takes effect on the date of passage by both chambers; House Bill 556 and Senate Bill 516 are identical cross files, and House Bill 556 passed both chambers on April 8, 2023);
- CREF may be used to pay for all costs under the Medical and Adult-Use Cannabis Title of the Alcohol Beverages Article, including expenditures for the administration, OSE, the Capital Access Program, the State Cannabis Testing Laboratory, and the Maryland Incubator Program;
- all revenues and expenditures related to CREF are attributable to the Comptroller, as the bill requires the Comptroller to administer the fund (at the direction of the administration);
- MMCC staff are transferred to the administration on April 8, 2023, (the effective date); and
- while some of the effects on specified special funds established pursuant to Chapter 26 of 2022 were generally assumed in the fiscal and policy note for that Act, the fiscal and policy note also indicated that the extent of the effects could not be reasonably estimated until a licensing, regulatory, and taxation framework was established; as this bill sets such a framework, additional specificity is added regarding those effects in this fiscal and policy note.

Sales and Use Tax Revenues

Sales and use tax revenues from adult-use cannabis sales increase significantly beginning in fiscal 2024. **Exhibit 3** shows the estimated annual sales of adult-use cannabis, the applicable tax rate, and associated sales and use tax revenues estimated to be generated under the bill. Sales and use tax revenues are estimated to total \$36.0 million in fiscal 2024, increasing to \$146.6 million by fiscal 2027.

Exhibit 3
Estimated Annual Sales of Cannabis and Associated Sales and Use Tax Revenues
(\$ in Millions)

	<u>FY 2024</u>	<u>FY 2025</u>	<u>FY 2026</u>	<u>FY 2027</u>
Estimated Annual Sales	\$400.0	\$812.4	\$1,242.6	\$1,629.0
Applicable Tax Rate	9%	9%	9%	9%
Estimated Total SUT Revenues	\$36.0	\$73.1	\$111.8	\$146.6

SUT: Sales and Use Tax

Source: Department of Legislative Services

During the 2022 interim, the General Assembly commissioned a study, conducted by Cannabis Public Policy Consulting, to conduct predictive modeling for a potential adult-use cannabis market in the State, including potential cannabis supply, demand, market share, and sales. The consultant's report can be found [here](#). This estimate is based in part on the results of the consultant's study, with consideration also given to the adult-use cannabis markets in Colorado and Massachusetts and estimates of cannabis sales provided by MMCC. While the estimates of cannabis sales from all those sources increase by similar year-over-year growth rates, the estimates of sales in the first year varies significantly across those sources (from approximately \$350.0 million to \$600.0 million). Due in part to the fact that the bill rolls out cannabis licensing more slowly than the consultant's study anticipated, and the fact that the bill establishes canopy restrictions, this analysis assumes a more conservative initial estimate of \$400.0 million in sales in the first fiscal year, increasing by average year-over-year growth rates that are similar to the growth rates assumed by the consultant and the other sources.

Sales and Use Tax Revenues – Impact on General Fund After Other Required Distributions

General fund revenues increase by an estimated \$18.0 million in fiscal 2024, increasing to \$64.2 million by fiscal 2027, due to the distribution to the general fund of the sales and use tax revenue remaining after other required distributions are made. **Exhibit 4** shows the distribution of the sales and use tax revenues as required by the bill, based on the total estimated sales and use tax revenues (as shown in Exhibit 3). The fiscal 2024 budget assumes \$15.0 million in general fund revenues due to the enactment of cannabis reform legislation.

Exhibit 4
Sales and Use Tax Revenue Distribution
(*\$ in Millions*)

	<u>FY 2024</u>	<u>FY 2025</u>	<u>FY 2026</u>	<u>FY 2027</u>
Total SUT Revenues	\$36.0	\$73.1	\$111.8	\$146.6
Amount to CREF to Defray the Cost of the				
Administration	0.0	0.0	12.5	18.1
35% to CRRF	12.6	25.6	34.8	45.0
5% to Counties	1.8	3.7	5.0	6.4
5% to the Cannabis Public Health Fund	1.8	3.7	5.0	6.4
5% to the Cannabis Business Assistance Fund	1.8	3.7	5.0	6.4
General Fund	18.0	36.6	49.7	64.2

CREF: Cannabis Regulation and Enforcement Fund

CRRF: Community Reinvestment and Repair Fund

SUT: Sales and Use Tax

Note: Numbers may not sum to total due to rounding.

Source: Department of Legislative Services

Comptroller – Administration of the Sales and Use Tax, the Community Reinvestment and Repair Fund, and the Cannabis Regulation and Enforcement Fund

Administration of the Sales and Use Tax: The Comptroller advises that significant personnel resources are needed immediately to be able to implement the new tax when adult-use cannabis sales begin on July 1, 2023, including (1) 9 full-time positions and 1 part-time (50%) position for its Revenue Administration Division (RAD) to process a significant increase in the number of sales and income tax return filings; (2) 9 full-time positions for its Compliance Division due to the uniquely challenging compliance efforts of creating a sales and use tax on a formerly illegal industry; (3) 3 full-time positions in the Hearings and Appeals Division to handle an increased number of assessment appeals; (4) 11 full-time positions to provide administrative support to ATCC under an existing MOU with the Alcohol and Tobacco Commission; and (5) 2 contractual positions for the first two full fiscal years for information technology (IT) support to establish a cannabis revenue reporting system.

The Department of Legislative Services (DLS) advises that without actual experience under the bill, it is difficult to determine the number of additional staff that may be needed; however, DLS acknowledges that the increase in workload for the Comptroller is

significant. In addition, DLS notes that the 11 positions that the Comptroller indicates it needs pursuant to the specified MOU with the Alcohol and Tobacco Commission significantly overlap with new positions authorized for the Alcohol and Tobacco Commission in the fiscal 2024 budget; the DLS estimate of such costs is addressed under the discussion of ATCC (below).

Accordingly, general fund expenditures for the Comptroller increase by at least \$293,732 in fiscal 2023, which accounts for the bill's emergency status. This estimate reflects the cost of hiring (1) two revenue examiners in RAD to review sales and income tax return filings for cannabis business licensees; (2) two revenue field auditors for the Compliance Division to conduct onsite audits; (3) two staff attorneys for the Hearings and Appeals Division to handle additional assessment appeals; (4) three accountants to provide assistance related to the sales and use tax for cannabis across both divisions; (5) one contractual webmaster to adjust tax forms; and (6) one contractual IT programmer to establish a new revenue reporting system. This estimate assumes that staff are hired on April 8, 2023, as the new tax will apply to any adult-use cannabis sales from medical licensees who have converted to cannabis business licenses as of July 1, 2023.

	<u>FY 2023</u>	<u>FY 2024</u>
Regular Positions	9.0	-
Contractual Positions	2.0	-
Salaries and Fringe Benefits	\$218,296	\$923,171
Operating Expenses	<u>75,436</u>	<u>11,777</u>
Minimum Comptroller GF Exp.	\$293,732	\$934,948

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses and the termination of the contractual IT staff at the end of fiscal 2025. This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State's implementation of the federal Patient Protection and Affordable Care Act.

In addition to the personnel costs above, the Comptroller advises that at least \$3.0 million in computer programming expenditures are expected to be incurred in fiscal 2023 to upgrade the sales and use tax system and connect it to the existing MMCC licensing software. DLS is unable to independently verify the Comptroller's estimate at this time but acknowledges that contractual computer programming costs are likely significant. Accordingly, general fund expenditures for the Comptroller in fiscal 2023 are likely significantly higher than the minimum estimate provided above.

Community Reinvestment and Repair Fund: While the impact to CRRF of unspecified fees and tax revenues was assumed under the fiscal and policy note for Chapter 26 of 2022, this bill establishes the relevant conversion fees, establishes the tax rate on the sale of adult-use

cannabis, and specifies the distribution to CRRF of 35% of the sales and use tax revenues. (Chapter 26 of 2022 specified that at least 30% of the revenues generated from adult-use cannabis must be deposited into CRRF, though that provision is repealed by the bill.)

Medical cannabis licensees must pay or enter into an installment agreement to pay a specified fee by July 1, 2023, to convert their licenses to cannabis business licenses under the bill. Medical cannabis licensees that enter into an installment agreement must pay their conversion fees in full by January 1, 2025. The amount of any renewal fee paid by a licensee to MMCC for fiscal 2023 must be credited toward the business's conversion fee. Special fund revenues to CRRF from conversion fees increase by approximately \$30.4 million in each of fiscal 2024 and 2025, assuming that all medical cannabis licensees convert their licenses and pay the applicable conversion fees in four equal installments (two in each of fiscal 2024 and 2025). Special fund revenues increase further beginning in fiscal 2024 from the distribution of sales and use tax revenues as required by the bill. Thus, special fund revenues to CRRF are estimated to increase by a total of \$43.0 million in fiscal 2024, \$56.0 million in fiscal 2025, \$34.8 million in fiscal 2026, and \$45.0 million in fiscal 2027. CRRF expenditures increase accordingly.

Cannabis Regulation and Enforcement Fund: Special fund revenues for CREF increase by approximately \$12.3 million in fiscal 2023 only due to the balance transfer of the MMCC special fund (as calculated on the date immediately preceding the effective date of the bill) to CREF when the bill becomes effective. (As noted above, the fiscal 2024 budget provides for the transfer of the MMCC fund balance to the Alcohol and Tobacco Commission in fiscal 2024, contingent on the enactment of this bill or its cross file.) Special fund revenues for CREF increase further beginning in fiscal 2024 from application fees. MMCC advises it anticipates receiving 10 applications for each license available for standard growers, standard processors, and incubator spaces and 20 applications for each license available for standard dispensaries, on-site consumption sites, and all micro licenses (growers, processors, and dispensaries). This analysis further assumes:

- all licenses authorized to be awarded in any given round are actually awarded;
- during the first round (fiscal 2024), the administration will award licenses to 20 standard growers, 40 standard processors, 10 incubator spaces, 80 standard dispensaries, 70 micro licensees, and zero on-site consumption locations, with 200 standard grower, 400 standard processor, 100 incubator space, 1,600 standard dispensary, and 1,400 micro license applications received for these licenses;
- during the second round (fiscal 2024), the administration will award licenses to 25 standard growers, 25 standard processors, zero incubator spaces, 120 standard dispensaries, 140 micro licensees, and 15 on-site consumption locations, with 250 standard grower, 250 standard processor, 2,400 standard dispensary, 2,800 micro license, and 300 on-site consumption license applications received for these licenses; and

- during any subsequent round(s), all remaining licenses are offered for award (fiscal 2025 or later as determined by the administration), resulting in 12 standard growers, 18 standard processors, zero incubator spaces, 3 standard dispensaries, 35 on-site consumption locations, and zero micro licensees receiving licenses, with 120 standard growers, 180 standard processor, 60 standard dispensary, and 700 on-site consumption license applications submitted for these licenses.

Thus, special fund revenues increase by \$31.7 million in fiscal 2024 and by \$5.3 million in total beginning as early as fiscal 2025 from application fee revenues, depending on when the administration begins accepting applications for the licenses remaining after rounds 1 and 2.

Special fund revenues also increase from licensing fees. The maximum licensing fee that may be set is \$50,000 for standard licenses; licensing fees must be reduced by at least 50% for social equity, micro, on-site consumption, and incubator licenses.

Under the emergency regulations adopted pursuant to this legislation, the administration has set the following standard licensing fees: \$50,000 for standard growers; \$25,000 for standard processors and dispensaries; and \$10,000 for micro licenses, incubator spaces, and on-site consumption licenses. According to statute, these licensing fees must be reduced by 50% for licenses awarded to social equity applicants.

While the exact number of social equity licenses cannot be accurately determined, this analysis estimates the revenues generated using the following assumptions:

- the number of licenses issued are equal to the number of licenses authorized for award in rounds 1 and 2 (fiscal 2024) as discussed above (*i.e.*, 45 standard growers, 65 standard processors, 10 incubator spaces, 200 standard dispensaries, 210 micro licenses, and 15 on-site consumption licenses);
- the number of licenses issued in fiscal 2025 or later are also as discussed above (*i.e.*, 12 standard growers, 18 standard processors, zero incubator spaces, 3 standard dispensaries, 35 on-site consumption licenses, and zero micro license types); and
- all license fees are paid upon the licensee becoming *operational*, assumed to take 4 months for micro licensees, incubator spaces, and on-site consumption licensees and 18 months for standard grower, processor, and dispensary licensees.

Thus, special fund revenues increase by \$400,000 in fiscal 2024 and by \$775,000 in fiscal 2025 and \$4.4 million in fiscal 2026 from the round one and two license issues (if all licensees are social equity applicants) or by \$1.5 million in fiscal 2025 and \$6.9 million in fiscal 2026 (if none of the licensees beyond the first round are social equity applicants). Beginning as early as fiscal 2026, special fund revenues from subsequent licensing rounds

increase by *at least* \$737,500 and *as much as* \$1.5 million, depending on the number of social equity licensees.

Special fund revenues increase further from other fees set by the administration pursuant to the emergency regulations (*e.g.*, registration fees, permit fees, and renewal fees) and credited to CREF. An estimate of such revenues cannot be made at this time.

Special fund revenues from the balance transfer of the MMCC special fund are sufficient to cover the entire estimated cost of the administration in fiscal 2023. Application and licensing fees are sufficient to cover the entire estimated cost of the administration in fiscal 2024 and 2025. Beginning in fiscal 2026, special fund revenues increase further due to the sales and use tax revenues distributed to CREF in an amount sufficient to defray the entire cost of the administration. **Exhibit 5** details these effects. To the extent that special fund revenues increase further due to the other fees set by the administration that cannot be estimated at this time (as noted above), the sales and use tax distribution to CREF decreases correspondingly.

Exhibit 5
Cannabis Regulation and Enforcement Fund Finances and the
Estimated Distribution of Sales and Use Tax Revenues to Defray Costs
(\$ in Millions)

	<u>FY 2023</u>	<u>FY 2024</u>	<u>FY 2025</u>	<u>FY 2026</u>	<u>FY 2027</u>
MMCC SF Balance Transfer	\$12.3	\$0	\$0	\$0	\$0
Application Fee Revenues	0.0	31.7	-	-	-
Licensing Fee Revenues	0.0	0.4	0.8	4.4	-
Cumulative Revenues ¹	12.3	41.9	18.3	5.3	-
Total Expenditures	\$2.5	\$24.4	\$17.4	\$17.8	\$18.1
Net Effect²	9.8	17.5	0.8	(12.5)	(18.1)
SUT Distribution to CREF	0.0	0.0	0.0	12.5	18.1

CREF: Cannabis Regulation and Enforcement Fund

MMCC: Maryland Medical Cannabis Commission

SF: special funds

SUT: sales and use tax

¹ Cumulative revenues do not include revenues distributed to CREF from the sales and use tax.

² Net effect represents whether a deficiency exists from revenue sources prior to the distribution of sales and use tax revenues to CREF.

Source: Department of Legislative Services

Maryland Cannabis Administration

Operations and Staffing: The administration is responsible for administering, regulating, and enforcing the laws related to medical and adult-use cannabis in the State. The bill generally establishes the administration as the successor to MMCC and requires the transfer of MMCC personnel to the administration on April 8, 2023, (the effective date of the bill); however, as noted above, budget language transfers the funding and positions for MMCC to the Alcohol and Tobacco Commission in fiscal 2024, contingent on the enactment of this bill or its cross file. Despite the conflicting provisions of the bill and the fiscal 2024 budget, this analysis assumes that MMCC personnel transfer immediately to the administration upon enactment, as required by the bill. This analysis further assumes that all equipment, supplies, office space, and other expenses attributed to MMCC also transfer to the administration effective April 8, 2023. Notwithstanding the transfer of MMCC personnel to the administration, MMCC indicates that significant additional staff resources are necessary to implement the adult-use cannabis industry established under the bill.

The fiscal 2024 budget includes \$1.1 million in special funds for fiscal 2023 and approximately \$4.8 million in special funds for fiscal 2024 as follows: (1) \$922,420 to convert 38 MMCC contractual staff to regular positions in fiscal 2023; (2) \$207,179 to hire seven regular positions for MMCC in fiscal 2023 (which, under the bill, transfer to the administration on the bill's effective date of April 8, 2023); (3) \$952,781 to convert an additional eight contractual staff to regular positions in fiscal 2024; (4) \$3.8 million for 24 regular positions in fiscal 2024 for the Cannabis Regulatory and Enforcement Division (contingent on the enactment of this bill or its cross file, appropriated to the Cannabis Regulatory and Enforcement Division in the Alcohol and Tobacco Commission in the budget, but assumed in this analysis to be transferred to the administration, given the administration's role in regulating and enforcing medical and adult-use cannabis under the bill); and (5) \$3.2 million for 13 regular positions (contingent on the enactment of this bill or its cross file, appropriated to the Alcohol and Tobacco Commission in the budget, but assumed to be transferred to the administration).

Accordingly, special fund expenditures for the administration from CREF increase by approximately \$2.5 million in fiscal 2023, which accounts for the bill's emergency status, to hire seven new staff for MMCC to promulgate emergency regulations and process license conversions, convert 38 full-time contractual employees to full-time merit employees, and transfer MMCC personnel to the administration immediately. Special fund expenditures increase by \$24.4 million in fiscal 2024, reflecting ongoing expenses for the seven staff from fiscal 2023, the conversion of an additional eight full-time contractual employees to full-time merit employees, the need for 37 additional staff, vehicles for

specified staff, and other one-time costs. The information and assumptions used in calculating the estimate are stated below:

- seven staff begin on April 8, 2023, to promulgate emergency regulations by July 1, 2023, (included in the budget for MMCC, as detailed above, for fiscal 2023);
- 38 MMCC contractual staff convert to full-time merit staff immediately, (included in the budget for MMCC, as detailed above, for fiscal 2023) and transfer to the administration;
- 31 existing MMCC merit staff transfer to the administration;
- 37 positions begin within the administration on July 1, 2023, to carry out various functions as required under the bill (the funding for which is provided in the fiscal 2024 budget, contingent on the enactment of this bill or its cross file, as specified above);
- eight remaining MMCC contractual staff convert to full-time merit staff effective July 1, 2023, (included in the budget for MMCC, as detailed above, for fiscal 2024) and transfer to the administration under the bill;
- one-time expenditures in fiscal 2024 include (1) \$310,000 for a seed to sale tracking contract (included in the fiscal 2024 budget for MMCC); (2) \$2.0 million for cannabis banking service contract procurement; (3) \$1.0 million in licensing software upgrades; (4) \$1.0 million in contracts for outreach to potential social equity applicants; (5) nine vehicles for the cannabis inspection division; (6) \$150,000 for a contract to study wholesale cannabis licenses; (7) \$50,000 for a contract to study on-site consumption; and (8) \$1.0 million to procure equipment for an existing MMCC State laboratory to transition to a State cannabis testing laboratory (discussed in more detail below) under the bill; and
- ongoing expenditures beginning in fiscal 2024 include rent for 5,000 square feet of additional office space; fuel and maintenance for purchased vehicles; and \$1.8 million in contractual services for application reviews and post award financial reviews.

	<u>FY 2023</u>	<u>FY 2024</u>
Regular Positions (New)	7.0	37.0
Salaries and Fringe Benefits (Total)	\$209,646	\$5,695,492
Contractual Services	0	7,890,703
Transfer MMCC Staff as Merit	2,270,771	9,247,652
Additional State Lab Equipment	0	1,000,000
Office Space (Rent)	0	125,000
Vehicle Purchase and Related Costs	0	239,083
Other Operating Expenses	48,005	205,705
CREF Exp. For the Administration	\$2,528,422	\$24,403,635

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses, continued rent payments and contractual services, and the elimination of one-time costs.

State Testing Laboratory: The administration must also establish and maintain a State cannabis testing laboratory, unless MDA or MDH enter into an MOU with the administration to test cannabis at an existing State-owned laboratory by July 1, 2023. The [Joint Report on the Transition of Medical Cannabis Personnel to the Alcohol and Tobacco Commission](#) indicates that MMCC incurred significant expenditures during fiscal 2023 to construct and equip a state reference laboratory for cannabis testing. Thus, the State laboratory can likely be *established* within existing budgeted resources. Special fund expenditures from CREF increase by \$1.0 million in fiscal 2024 only to further equip the reference library (as discussed and included in the expenditure estimate for the administration above) beyond what MMCC had previously budgeted; special fund expenditures increase further beginning in fiscal 2024 for any ongoing costs associated with maintaining the State laboratory. Personnel expenditures to hire a director for the State laboratory are included in the personnel expenditures for the administration above.

Office of Social Equity: The bill establishes OSE as an independent office that functions within the administration. While the bill establishes significant functions for OSE related to diversity and equity within the cannabis industry, this analysis assumes that the significant staff resources allocated to the administration (including current MMCC staff that transfers to the administration and the additional staff allocated to the administration in the fiscal 2024 budget, as discussed above) are sufficient to staff OSE and carry out its responsibilities under the bill.

Social Equity Partnership Grant Program: General fund expenditures increase by \$2.0 million in fiscal 2024 for initial capitalization of the Social Equity Partnership Grant Program administered by OSE, which reflects funding included in the fiscal 2024 budget (contingent on the enactment of this bill or its cross file). General fund expenditures increase by \$5.0 million annually thereafter due to the bill's mandated appropriation to the grant program beginning in fiscal 2025. It is assumed that OSE spends the full amount of the appropriations provided to the grant program each year as grants are awarded.

Medical Cannabis Compassionate Use Fund: The Medical Cannabis Compassionate Use Fund is recodified to be administered by the administration (rather than by MDH). The bill also expands the authorized uses of the fund to include supplementing the cost of certifying provider assessments for specified qualifying patients. MMCC advises that this additional authorization significantly increases the usefulness of the fund, as few expenditures occur from the fund currently due to the difficulty in identifying at the dispensary level which qualifying patients are enrolled in the specified medical assistance programs. MMCC

anticipates that identifying the specified qualifying patients at the provider level will be more feasible.

Thus, special fund revenues for the administration increase by approximately \$1.9 million in fiscal 2023 from transferring the administration of the special fund from MMCC to the administration. As discussed below, special fund revenues for MDH decrease by a corresponding amount. Special fund revenues to the fund within the administration increase as early as fiscal 2024 from any fine revenues assessed; special fund revenues increase further beginning in fiscal 2026 to the extent the administration imposes fees on cannabis licensees to provide revenues for the purposes of the fund.

Special fund expenditures for the administration increase, potentially significantly, beginning in fiscal 2023 due to the transfer of the fund and the expanded authorization under the bill to pay qualifying providers rather than dispensaries. MDH special fund expenditures are not materially affected.

Alcohol, Tobacco, and Cannabis Commission

As discussed above, the fiscal 2024 budget includes funding and positions for the Alcohol and Tobacco Commission to implement cannabis reform, contingent on the enactment of this bill or its cross file. Specifically, the fiscal 2024 budget includes \$317,000 in general funds for 3 positions in fiscal 2023 and \$4.7 million (\$1.5 million in general funds and \$3.2 million in special funds) for 22 positions in fiscal 2024. This bill does not, however, allow ATCC costs to be paid for with special funds from CREF. Thus, this analysis assumes that only the \$1.5 million in budgeted general funds (and the 12 associated positions, including the continuation of the 3 positions that begin in fiscal 2023) are transferred to ATCC. The \$3.2 million in contingent special funds (and the 13 associated positions) included in the fiscal 2024 budget are not available to ATCC and are instead transferred to the administration, as discussed above.

Accordingly, general fund expenditures for ATCC increase by \$317,000 in fiscal 2023, which accounts for the bill's emergency status and reflects the contingent funding included in the budget (described above); the estimate reflects costs for initial implementation of the bill by ATCC, including hiring three staff. In fiscal 2024, general fund expenditures for ATCC increase by \$1.5 million, which reflects costs to hire an additional nine staff. The estimates include salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The estimates also include contractual services totaling \$62,619 in fiscal 2023 and \$241,546 in fiscal 2024.

	<u>FY 2023</u>	<u>FY 2024</u>
Positions (New)	3.0	9.0
Salaries and Fringe Benefits (Total)	\$79,501	\$1,186,081
Contractual Services	62,619	241,546
Operating Expenses	<u>174,880</u>	<u>72,373</u>
ATCC GF Expenditures	\$317,000	\$1,500,000

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

Department of Commerce

Cannabis Business Assistance Fund: While the impact of unspecified tax revenues on the Cannabis Business Assistance Fund (as administered by Commerce) was assumed under the fiscal and policy note for Chapter 26 of 2022, this bill establishes the applicable tax rate on the sale of adult-use cannabis and requires that 5% of the sales and use tax revenues from adult-use cannabis be distributed to the Cannabis Business Assistance Fund from fiscal 2024 through 2028. Based on estimated sales and use tax revenues available, special fund revenues from the required distribution are estimated to total \$1.8 million in fiscal 2024, increasing to \$6.4 million by fiscal 2027. Special fund expenditures increase correspondingly for the authorized purposes.

Capital Access Program: Commerce advises that since its implementation, there has been no interest in using the Maryland Capital Access Program, which is significantly similar to the program established under the bill. Commerce further advises that its other programs that specifically target historically underserved populations are more successful at meeting the capital needs of small and underserved businesses. Thus, Commerce advises that this provision likely has no impact on the agency. Nevertheless, to the extent the bill generates applications for participation in the Capital Access Program, special fund expenditures may increase to hire additional staff.

Maryland Department of Health

Transfer of MMCC Personnel and Special Fund: As mentioned earlier, the bill generally repeals MMCC and the associated special funds from the Health-General Article and transfers control of medical cannabis regulation from MDH to the administration. As such, MMCC personnel (assumed to include related office space, equipment, supplies, and contracts held by MMCC) transfer to the administration within ATCC, and the corresponding MMCC special fund balance transfers to CREF. Thus, MDH special fund revenues decrease by approximately \$12.3 million in fiscal 2023 due to the transfer of the fund balance. Special fund revenues decrease further beginning in fiscal 2024 by approximately \$10.7 million annually due to the repeal of the MMCC special fund and

associated revenue sources. Similarly, special fund expenditures for MDH decrease by approximately \$2.4 million in fiscal 2023 and by \$8.0 million annually beginning in fiscal 2024 due to the transfer of MMCC personnel, associated expenditures, and the repeal of the MMCC special fund and its associated spending.

As noted above, the fiscal 2024 budget assumes the transfer of MMCC funding and personnel to the Alcohol and Tobacco Commission in fiscal 2024.

Cannabis Public Health Fund: While the impact of unspecified tax revenues on the Cannabis Public Health Fund (as administered by MDH) was assumed under the fiscal and policy note for Chapter 26 of 2022, this bill establishes the applicable tax rate on the sale of adult-use cannabis and requires that 5% of the sales and use tax revenue be distributed to the Cannabis Public Health Fund. Based on estimated sales and use tax revenues available, special fund revenues from the required distribution are estimated to total \$1.8 million in fiscal 2024, increasing to \$6.4 million by fiscal 2027. Special fund expenditures increase correspondingly for the authorized purposes.

Medical Cannabis Compassionate Use Fund: Under current law, MMCC (within MDH) administers the fund; however, as noted earlier, the bill shifts responsibility for administering the fund to the administration. The current balance of the fund is approximately \$1.9 million. As such, MDH special fund revenues decrease by an estimated \$1.9 million in fiscal 2023 only due to the transfer. There are no ongoing revenues assumed for the fund in MDH in the absence of the bill.

Maryland Economic Development Corporation and Department of General Services – Maryland Incubator Program

The bill requires MEDCO to identify sites for proposed use as incubator spaces across four specified regions of the State and report information about the proposed sites for each location by January 1, 2024. MEDCO advises that it can identify potential incubator space sites and prepare the associated report with existing budgeted resources.

MEDCO must also, in consultation with the administration, acquire and construct or refurbish at least one facility to operate an incubator space. MEDCO advises that with the benefit of budgeted capital funds, it could act on behalf of the administration as a development agent or consultant to establish a State incubator space on a fee-for-service basis. Thus, special fund expenditures from CREF increase, likely in the out years, to pay any fees to MEDCO for this purpose; special fund revenues for MEDCO increase correspondingly. The fiscal 2024 capital budget includes \$2.0 million in bond funding for MEDCO to acquire, plan, design, construct, repair, renovate, reconstruct, improve the site of, and capitally equip facilities to be used as incubator spaces (contingent on the enactment of this bill or its cross file). As such, bond expenditures for MEDCO increase by

\$2.0 million in fiscal 2024. Additional capital expenditures for MEDCO are indeterminate but likely occur beginning in fiscal 2025.

Following completion of the construction or refurbishment of the incubator space, ownership must transfer to DGS. While a timeline for the completion of either the construction or refurbishment of the incubator space is not contemplated by the bill, this analysis assumes that the transfer of ownership of the incubator space occurs beyond the first five fiscal years addressed in this fiscal and policy note. *For illustrative purposes only*, DGS advises that it costs approximately \$500,000 annually to operate a 30,000-square foot office building, (including maintenance, repairs, utilities, housekeeping, security, and necessary personnel), and costs are higher to the extent that any building contains specialized spaces (*e.g.*, manufacturing and secure storage). Thus, general fund expenditures for DGS increase by *at least* \$500,000 annually, assumed to begin sometime after fiscal 2027.

Office of Administrative Hearings

The bill requires the administration to give notice and hold hearings pursuant to Title 10, Subtitle 2 of the State Government Article for contested cannabis license or registration denials or specified violations. The bill specifically authorizes the administration to delegate its hearing authority to an employee within the administration. The Office of Administrative Hearings (OAH) advises that MMCC currently delegates contested case hearings to OAH. MMCC currently oversees 152 licensees. The bill authorizes growth in the cannabis industry to a maximum of 750 cannabis licensees, serving both the medical and adult-use cannabis markets, which is nearly five times the current size of the medical cannabis industry in the State. To date, OAH has held three hearings for cases delegated by MMCC. Each has involved multi-day proceedings that included prehearing conferences with written decisions. OAH further advises that due to the complexity of the types of cases potentially delegated to OAH under the bill, the increased size of the cannabis industry may result in the need for OAH to hire an additional Administrative Law Judge (ALJ).

To the extent that the administration delegates cases to OAH, reimbursable fund expenditures for OAH and special fund expenditures for the Comptroller from CREF may increase beginning as early as fiscal 2024, assuming the number of hearings increases to the point where existing OAH staff cannot handle the increase in workload. Offsetting reimbursable fund revenues for OAH increase correspondingly. *For illustrative purposes only*, the cost to hire one ALJ for the first full fiscal year is approximately \$175,800.

Governor's Office of Small, Minority, and Women Business Affairs

The bill requires that a cannabis licensee comply with the State's MBE program, to the extent legal and practicable. Before a cannabis business participates with the MBE

program, it is necessary to identify existing MBE capacity and or potential disparities (usually accomplished through conducting or reanalyzing a disparity study for a specified industry). MDOT, which is the designated certification agency for MBE program, is in the process of conducting a statewide disparity study that will include an analysis of Maryland's cannabis industry pursuant to Chapter 26 of 2022.

If a disparity study determines that remedial measures are required, GOSBA must set cannabis licensee standards for procurements. This analysis assumes that GOSBA can establish a general goal for each license type and apply that standard to new licenses of the same type (similar to what GOSBA does when setting the statewide MBE program goals). As this is a standard practice for GOSBA, the bill's requirements related to MBE participation can likely be absorbed within existing budgeted resources.

Office of Legislative Audits

The bill establishes CREF, a special fund administered by the Comptroller at the direction of the administration, which is subject to audit by OLA. The bill also recodifies the Medical Cannabis Compassionate Use Fund administered by the administration (rather than by MMCC) and continues to subject the fund to audit by OLA. OLA advises that if the funds have significant activity, an equally significant audit effort may be required. OLA further advises that it plans to audit the funds during the regularly scheduled fiscal compliance audits of each fund's administering entity (the Comptroller or ATCC, as applicable). While the expansion of OLA's audit responsibilities may have an operational impact, it is assumed to be absorbable within existing budgeted resources.

Judiciary

General fund revenues may increase minimally from the bill's monetary penalty provisions from cases heard in the District Court. It is assumed that the bill does not otherwise materially affect the operations or finances of the Judiciary.

Local Fiscal Effect: Local revenues increase from the required distribution to each county of 5% of the revenue collected from the sales and use tax on adult-use cannabis sales in the county. Based on the estimated sales and use tax revenues available, the required distribution to counties is estimated to total \$1.8 million in fiscal 2024, increasing to \$6.4 million by fiscal 2027. County expenditures increase correspondingly as funds are expended and/or distributed. A political subdivision is authorized by the bill to decide how to distribute its allocation of such revenue for the authorized purposes. However, each county must distribute to a municipality located in the county 50% of the county's allocation that is attributable to the cannabis sales and use tax revenue generated by a dispensary located in that municipality.

While the potential effects of CRRF on local jurisdictions were assumed in the fiscal and policy note for Chapter 26 of 2022, this bill establishes a funding source for CRRF through fiscal 2033, so local revenues increase from distributions from CRRF under the bill. As noted in the fiscal and policy note for Chapter 26 of 2022, local expenditures likely increase for each county to (1) adopt a law establishing the purpose for which money received from the CRRF 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 December 1, 2024.

Local revenues and expenditures also 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. While this impact was assumed in the fiscal and policy note for Chapter 26 of 2022, the bill establishes an ongoing funding source for the fund.

Local expenditures may increase minimally to the extent that (1) local jurisdictions incur administrative costs to affirmatively authorize on-site consumption establishments to operate in the jurisdiction and (2) additional contested hearings are appealed to the circuit courts.

Small Business Effect: The bill establishes a significant business opportunity for individuals to enter the cannabis industry as a small business, particularly by the establishment of micro licenses and the Maryland Incubator Program. The bill also establishes an opportunity for particular types of existing small businesses (*e.g.*, transporters, security guard companies, and waste disposal companies) to register with the administration and participate in the cannabis industry.

Existing small businesses that are MMCC-licensed medical cannabis growers, processors, or dispensaries convert to a cannabis business license under the bill, authorizing participation in the adult-use *and* medical cannabis industry.

Small businesses also benefit from the further capitalization of both the Cannabis Business Assistance Fund and the Cannabis Public Health Fund under the bill.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 516 (Senators Feldman and Hayes) - Finance and Budget and Taxation.

Information Source(s): Alcohol and Tobacco Commission; Comptroller's Office; Maryland Department of Health; Department of Commerce; Governor's Office of Small, Minority, and Women Business Affairs; Maryland Economic Development Corporation; Office of Administrative Hearings; Judiciary (Administrative Office of the Courts); Maryland Department of Agriculture; Department of Budget and Management; Maryland State Commission on Criminal Sentencing Policy; Maryland State's Attorneys' Association; Maryland State Department of Education; Maryland Higher Education Commission; University System of Maryland; Morgan State University; Department of General Services; Department of Public Safety and Correctional Services; Maryland Insurance Administration; Prince George's County; Maryland Municipal League; Department of Legislative Services

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