



Senate Bill 516

Cannabis Reform

MACo Position: **SUPPORT**
WITH AMENDMENTS

Date: March 9, 2023

To: Finance and Budget and Taxation
Committees

From: Kevin Kinnally and Michael Sanderson

The Maryland Association of Counties (MACo) **SUPPORTS SB 516 WITH AMENDMENTS**. This bill seeks to implement a wide range of remaining matters regarding the governance, oversight, licensure, and taxation of the voter-approved adult use cannabis industry. Counties seek multiple changes – a re-framing of the bill’s revenue sharing structure, a clear authority for local jurisdictions to decline to play host to related facilities, and clarifying language regarding local zoning.

Revenue Sharing Nowhere Near Other States’ Systems

Maryland has joined 20 other states in making cannabis use legal under state law. While implementation across jurisdictions has been a variable as different states have taken a variety of approaches, one commonality is that virtually all states have empowered a meaningful local revenue source to support local services. Some have fully authorized local excise taxes where rates are set and collections are overseen locally. Others have authorized local sales taxes at either standardized or variable rates, locally. Maryland legislation introduced during recent sessions, prior to voter approval, included a 3% local tax rate.

SB 516 proposes a different model, unusual in its design but structurally similar to two other states farther along in implementation – a statewide tax, with distributions to local governments. Michigan collects a 10% tax, but distributes the equivalent of a 3% tax to its local governments. New York State, similarly, collects a 13% tax, and distributes a 4% tax locally. SB 516, however, proposes a local distribution of a remarkably small share – the equivalent of a 0.09% local tax, across the counties and municipalities playing host to retail licensees.

Local governments do not contest the policy decision to avoid overburdening this new industry with unreasonable taxes, in the interests of avoiding counterproductive incentives.

Taxes on cannabis, under any scenario, will not create the resources to “fund the Blueprint” or any other large-scale initiative at either the state or local level.

SB 516, however – either by design, or by oversight – specifies that the local share of revenue is set at 1.5%. Not at an effective tax rate of 1.5%, but at 1.5% of the state’s modest sales tax yield... **translating to an effective local tax rate of 0.09%.**

A local tax rate of 1.5% (one fourth of the state sales tax collected) would still be lower than the other states employing the Maryland model, but would at least represent a good faith shared distribution of revenues. Local governments are granted no revenue authority at all in SB 516, in contrast to the State-established regime for county-level Boards of License Commissioners with license and penalty revenue capacity of their own. *Counties defer to the State on the appropriate amount of taxes to place upon the newly created industry, but respectfully request a realistic division of whatever revenue stream arises from that system. A 30% share to local governments would fit with other states employing the all-state collection system envisioned in this bill, but the current trivial distribution does not reasonably support local services.*

Local Government “Opt Out” Authority

Most states implementing adult use cannabis have granted deference to local jurisdictions who, through local enactments, decline to play host to certain facilities (either growing/cultivation or retail/dispensary). Even the most well-known states like Colorado and Washington – seen as vanguards of “legal cannabis” – took measures to ensure community input and a process for opting out.

SB 516 includes no such provision, effectively denying this level of local flexibility. Voter support for the broadly-worded measure to legalize the use of cannabis, motivated by any number of reasons, does not necessarily translate to voter support for the placement of facilities across each jurisdiction, district, precinct, or neighborhood. *Local governments, through their public-driven processes, should retain the right to guide this implementation (facility location) at the local level.*

Zoning Language Should Explicitly Protect Obvious Safeguards

SB 516 makes a clear effort to grant zoning authority to local governments, but its wording may leave that intention subject to legal challenge. On page 48, the bill specifies that a local jurisdiction may “establish reasonable zoning for cannabis businesses,” and on page 49, continues that a local jurisdiction may not “establish zoning or other requirements that unduly

burden a cannabis licensee.” These phrases introduce undefined terms that would effectively defer to the courts to set the true standard for what is reasonable or unduly burdensome.

Local governments, when siting certain facilities like adult-only retail locations, may rightfully seek to create guidance to recognize the surrounding area to any such facility. A county may seek to create a minimum distance from a school or other sensitive facility as a condition of zoning approval, or require certain roadway setbacks or advertising limitations. In each case, licensees seem to have a direct cause of action to contest even modest local restrictions under the new Section 36-405. *Counties would welcome language to add more clarity that such implementation paths are fully expected by the bill, and are among the matters to be considered in the main as “reasonable” and would not “unduly burden” the licensee.*

MACo would gladly work with Committee Counsel to develop modest amendment language to clarify this intended role of local oversight, and hopefully smoothen the bill’s implementation. The most straightforward language seems to be: simply subject licensed retailers under this new law to “zoning” rather than the newly-coined “reasonable zoning” and remove references to zoning from the “unduly burden” clause in the bill.

Public Employers May Need to Retain “Drug Free” Standards

The ongoing friction between state laws legalizing cannabis and federal laws continuing to make the substance illegal raises practical matters, most notably in employment settings. On numerous bills introduced in Maryland in recent years, during the full implementation of the medical cannabis program, this concern has been reliably attended to. Local government public safety agencies, in specific, often depend heavily on support from federal grants and collaboration, much of which obligates a drug-free workplace, including cannabis use. *SB 516 should clearly authorize, at the very least, this narrow exception to any general provisions regarding standards and limitations on employers with respect to cannabis.*

Overall, SB 516 has broad provisions to advance social justice, and promote fairness in the setup of this newly legal industry. Counties advance these matters to be productive participants in the development of a final scheme to bring about the voters’ wishes reasonably, with appropriate support for local services and governance. For these reasons, MACo **SUPPORTS SB 516 WITH AMENDMENTS** and welcomes the chance to work with the Committee on changes to the bill’s language described herein.