

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION

April 26, 2023

TO: Honorable Ken King, Chair, House Committee on Licensing & Administrative Procedures

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB3652 by Moody (Relating to the regulation of the cultivation, manufacture, distribution, sale, testing, possession, and use of cannabis and cannabis products; authorizing the imposition of taxes and fees; requiring an occupational license; creating a criminal offense.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB3652, As Introduced : a negative impact of (\$1,426,184) through the biennium ending August 31, 2025.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five- Year Impact:

<i>Fiscal Year</i>	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2024	(\$3,874,564)
2025	\$2,448,380
2026	\$18,610,939
2027	\$52,006,939
2028	\$74,769,939

All Funds, Five-Year Impact:

<i>Fiscal Year</i>	Probable Savings/(Cost) from General Revenue Fund 1	Probable Revenue Gain/(Loss) from General Revenue Fund 1	Probable Savings/(Cost) from New Cannabis Testing and Quality Control Fund	Probable Revenue Gain/(Loss) from New Cannabis Testing and Quality Control Fund
2024	(\$3,874,564)	\$0	\$0	\$0
2025	(\$6,957,620)	\$9,406,000	(\$150,000)	\$150,000
2026	(\$5,350,061)	\$23,961,000	(\$383,000)	\$383,000
2027	(\$4,824,061)	\$56,831,000	(\$909,000)	\$909,000
2028	(\$4,465,061)	\$79,235,000	(\$1,268,000)	\$1,268,000

<i>Fiscal Year</i>	Probable Savings/(Cost) from New Cannabis Regulation Fund	Probable Revenue Gain/(Loss) from New Cannabis Regulation Fund	Probable Revenue Gain/(Loss) from New Public School Teachers Fund	Probable Revenue Gain/(Loss) from Counties
2024	\$0	\$0	\$0	\$0
2025	(\$1,985,692)	\$1,985,692	\$11,890,000	\$1,895,000
2026	(\$1,878,292)	\$1,878,292	\$30,287,000	\$4,834,000
2027	(\$1,878,292)	\$1,878,292	\$71,834,000	\$11,463,000
2028	(\$1,878,292)	\$1,878,292	\$100,152,000	\$15,978,000

<i>Fiscal Year</i>	<i>Probable Revenue Gain/(Loss) from Municipalities</i>	<i>Probable Revenue Gain/(Loss) from Transit Authorities</i>	<i>Change in Number of State Employees from FY 2023</i>
2024	\$0	\$0	26.0
2025	\$3,235,000	\$570,000	67.0
2026	\$8,234,000	\$1,460,000	67.0
2027	\$19,523,000	\$3,460,000	67.0
2028	\$27,218,000	\$4,830,000	67.0

Fiscal Analysis

The bill would amend the Texas Health and Safety Code to allow an individual 21 years of age or older, to use, possess, transport, transfer, or grow a personal use amount of cannabis, cannabis products, or cannabis-related drug paraphernalia. A person would not be denied an occupational or professional license or a parental right for engaging in conduct authorized by the bill. The bill would allow certain persons to operate as a cannabis grower, cannabis establishment, cannabis secure transporter, or cannabis testing facility in accordance with rules and regulations established by the bill and the Texas Department of Licensing and Regulation (TDLR). A license holder would be allowed to sell cannabis at an approved, licensed, physical establishment.

Under the provisions of the bill, cannabis and cannabis products would be subject to sales tax as well as an additional cannabis tax established by the bill with a rate equal to 10 percent of the sales price. The bill would establish 3 three new funds outside of the treasury: the cannabis regulation fund to be administered by TDLR to license and regulate the new license types, the cannabis testing and quality control fund to be administered by the Department of Public Safety (DPS) to test cannabis and cannabis products in monitoring compliance with testing and quality control requirements, and the public school teachers fund administered by the Comptroller. The comptroller would be required to deposit half of the money allocated to the fund to a teacher retirement support account in the fund and the remainder to a teacher salary support account in the fund. Each month the comptroller would be required to transfer the balance of the teacher retirement support account to the state contribution account of the teacher retirement system trust fund. Money transferred to the state contribution account could not be considered in computing the amount owed by the state under Section 825.404(a), Government Code, and not considered a state contribution for purposes of that section. The comptroller would also be required to transfer the balance of the teacher salary support account to Foundation School Fund No. 193 for the purposes of providing additional state aid to districts for teacher salary increases under the Foundation School Program (FSP). The Commissioner could adopt rules as necessary to implement this section.

The cannabis tax that would be created under the provisions of the bill would provide revenue to be deposited to the credit of these three funds. The net revenue derived from the tax would be allocated as follows: 10 percent to municipalities, 10 percent to counties, 1 percent to the new cannabis testing and quality control fund, the amount of money the comptroller certifies TDLR expended during the preceding month in the implementation and administration of the new chapter to the new cannabis regulation fund, and the remainder to the new public school teachers fund.

Additionally, the bill would create a Class C misdemeanor offense for the sale or distribution of cannabis or a cannabis product to a minor.

The bill would take effect September 1, 2023 and the bill would require TDLR to begin licensing no later than November 1, 2024.

Note: This legislation would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either in, with, or outside the Treasury, or create a dedicated revenue source. The fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

Methodology

The bill would establish a new tax on cannabis and cannabis paraphernalia in addition to sales tax. Based on estimates from the Comptroller, there would be an increase in revenue deposited to the General Revenue Fund, as well increased revenue to counties, municipalities, and transit authorities, as a result of this increase in sales tax revenue.

Based on the analysis of TDLR and DPS, both agencies would incur costs in fiscal year 2025 prior to collecting sufficient revenue from the new funds that they would administer. These costs are reflected in the new funds, but this estimate assumes that General Revenue would be used to cover any additional expenses that the new funds could not cover at that time.

Based on information provided by DPS, additional investigations would be required to enforce the regulatory provisions regarding the sale of cannabis. This analysis assumes the agency's Criminal Investigations Division would need 20.0 Special Agent positions totaling \$2,473,620 in fiscal year 2025 and \$2,597,301 in subsequent years for salary and benefits. Other costs including fuel, vehicles, and consumables would total \$1,957,000 in fiscal year 2025 and \$458,760 for subsequent years. This estimate assumes that DPS would fully expend the funds made available to them through the new cannabis testing and quality control fund and that General Revenue funds would be used to cover any additional expenses.

Based on information provided by TDLR, the agency would be responsible for adopting rules, qualifications and fees regarding cannabis grower licenses, cannabis establishment licenses, cannabis secure transporter licenses, and cannabis testing facility licenses. Additionally, TDLR would be responsible for the enforcement and monitoring of the regulations and communication with DPS to ensure compliance. This analysis assumes the agency would require 21.0 additional full-time equivalent (FTE) positions starting in fiscal year 2025 for their licensing, customer service, enforcement, and legal divisions totaling \$1,626,613 in fiscal year 2025 and subsequent years for salary and benefits. Operational and administrative costs associated with the FTEs would be \$251,678 each fiscal year. Additionally, this analysis includes \$100,000 in one-time IT costs in fiscal year 2025 for TDLR to implement the new license types in the licensing system. This analysis assumes that any increased cost to TDLR above Comptroller of Public Accounts revenue estimates to the new cannabis regulation fund authorized in the bill would be offset by an increase in licensing fee generated revenue to the fund because TDLR is statutorily required to generate sufficient revenue to cover its costs of operation and authorized to set the licensing fees in for the new license types.

Based on information provided by the Comptroller of Public Accounts, the agency would need an additional 26.0 FTEs to address the increase in audits, the increase in refund claims from the new tax, and assist in the administration of the new tax. This analysis includes a cost \$2,677,000 each fiscal year in General Revenue funds to cover the cost of the additional staff. Additionally, a one-time IT cost of \$1,039,500 in fiscal year 2024 is included to modify the tax systems to implement the provisions of the bill.

Based on the analysis of the Comptroller of Public Accounts, this analysis assumes that there would be effects on the Economic Stabilization Fund (ESF) balance limit and consequent effects for General Revenue reserves and transfers to ESF. Because pertinent tax revenue is initially deposited to the General Revenue Fund, the increase in tax revenue in the 2024-25 biennium would increase the 2026-27 ESF balance limit by ten percent of the increase in tax, increasing 2025 severance tax reserves for transfer to the ESF by the amount of the balance limit increase, and decreasing available GR in 2025 by the amount of increase of the reserves, however that amount is not expected to be significant.

Based on information provided by the Office of Court Administration, the bill would have a negative, but indeterminate, fiscal impact on the state court system. This analysis assumes that the bill would result in a significant decrease in the number of convictions for the possession or delivery of marijuana and certain drug paraphernalia. This would result in a reduced number of case filings and reduced revenue from collection through the state consolidated court cost; however, the fiscal impact cannot be determined at this time.

According to the Teacher Retirement System (TRS), an increase in revenue to the Pension Trust Fund would have a positive impact to the Pension Trust Fund because it would decrease the unfunded actuarially accrued liability (UAAL). The extent to which the UAAL would be decreased cannot be determined at this time. The amount in the public school teachers fund above reflects the amount estimated by the Comptroller that would

be deposited into the new fund. The bill would require the Comptroller to transfer 50 percent of the funds allocated to the Public School Teachers Fund to a teacher salary support account and the other 50 percent to a teacher retirement support account administered by the Comptroller. The Comptroller would transfer the balance of the teacher salary support account to Foundation School Fund No. 193 for the purposes of providing additional state aid to districts for teacher salary increases under the Foundation School Program (FSP) and the balance of the teacher retirement support account to the TRS pension fund. The Commissioner could adopt rules as necessary to implement this section.

The fiscal impact and any impact on state correctional populations or on the demand for state correctional resources cannot be determined due to the lack of data necessary to identify the prevalence of conduct that would constitute an offense of delivery of marihuana, possession of marihuana, or possession or delivery of drug paraphernalia under the provisions of the bill. It is assumed that any impact on state correctional populations or on the demand for state correctional resources related to the sale or distribution of cannabis or a cannabis product to minors would not be significant.

Based on information provided by the Office of the Attorney General, any legal work resulting from the passage of the bill could be accomplished by utilizing existing resources.

Technology

Based on information provided by the Texas Department of Licensing and Regulation and the Comptroller of Public Accounts, one-time costs relating to IT updates to their systems would be required to implement the provisions of the bill. TDLR would require \$100,000 in fiscal year 2025 from the new cannabis regulation fund to implement the new licensing types into their system. the Comptroller would require \$1,039,500 in fiscal year 2024 from General Revenue to update their tax systems.

Local Government Impact

While the fiscal impact cannot be determined, decreasing the penalty of or exempting certain conduct from the applicability of an existing criminal offense may result in a decrease in demands upon local correctional resources due to a possible decrease in the number of individuals placed under supervision in the community or sentenced to a term of confinement. Additionally, the bill would create a revenue gain estimated by the Comptroller to counties and municipalities associated with the cannabis tax allocations and increased sales tax revenue the bill would provide.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 405 Department of Public Safety, 452 Department of Licensing and Regulation, 696 Department of Criminal Justice, 701 Texas Education Agency

LBB Staff: JMc, SZ, GDZ, BFa, SD