

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4497

STATE OF NEW JERSEY

DATED: NOVEMBER 26, 2018

The Assembly Appropriations Committee reports favorably Assembly Bill No. 4497.

This bill, re-titled the “New Jersey Cannabis Regulatory and Expungement Aid Modernization Act,” the bill primarily concerns the development, regulation, and enforcement of activities associated with the personal use, by persons 21 years of age or older, of legal cannabis or cannabis resin (the terms provided to distinguish the legalized products from illegal marijuana or hashish). This would be accomplished through the creation of a new regulating entity, the Cannabis Regulatory Commission, to be located in but not of the Department of the Treasury. This commission would additionally assume responsibility from the Department of Health for the further development and expansion, regulation, and enforcement of activities associated with the medical use of cannabis pursuant to the “Jake Honig Compassionate Use Medical Cannabis Act,” P.L.2009, c.307 (C.24:6I-1 et al.), based on the title and provisions of that act being revised by a proposed Senate Committee Substitute for Senate Bill Nos. 10 and 2426 currently under consideration in the Senate.

The bill also addresses criminal justice issues relating to the impact of the State’s prior approach to the illegal marijuana market, most notably in establishing a new expedited expungement process for persons previously charged with, convicted of, or adjudicated delinquent for any number of offenses involving (1) unlawful distribution of, or possessing with intent to distribute, small amounts of marijuana or hashish, (2) possession of small amounts of marijuana or hashish, or (3) using or possessing with intent to use drug paraphernalia for marijuana or hashish, all acts which would have been presumed lawful acts associated with cannabis or cannabis resin in accordance with the bill.

Cannabis Regulatory Commission

The commission would consist of five, full-time members. At least one member would be a State representative of a national organization or State branch of such an organization with a stated mission of studying, advocating, or adjudicating against forms of social injustice or inequality, and additionally all members would possess education, training, or experience with: legal, policy, or criminal justice issues; corporate or industry management, finance, securities, or production or distribution; medicine or pharmacology; or

public health, mental health, or substance use disorders. The chair and two other members would be appointed by the Governor with the advice and consent of the Senate, the fourth member would be appointed by the Governor upon the recommendation of the Senate President, and the fifth member would be appointed by the Governor upon the recommendation of the Speaker of the General Assembly. All five would serve terms of five years (although the initial terms would include one four-year term and one three-year term in order to stagger reappointments). The chair would be provided a salary not to exceed \$141,000, and the other members provided a salary not to exceed \$125,000.

With respect to the personal use of cannabis (and leaving the details on the revised regulation of medical cannabis to the provisions of the Senate Committee Substitute for Senate Bill Nos. 10 and 2426), the general duties, functions, and powers of the commission would include:

- (1) Regulating the purchase, sale, production, processing, packaging, transportation, and delivery of cannabis items – a broadly defined term which incorporates all cannabis, cannabis products, and cannabis extracts;

- (2) Granting, refusing, suspending, or cancelling licenses or conditional licenses for the sale, production, and processing of cannabis items. As further detailed below with respect to licensing activities, a “conditional license” is a type of license that would be issued by the commission pursuant to an abbreviated application process, after which the conditional license holder has a limited period of time in which to become fully licensed by satisfying all of the remaining conditions for full licensure which were not required for the issuance of the conditional license;

- (3) Investigating and aiding in the prosecution of violations of law relating to cannabis items;

- (4) Taking regulatory actions to prohibit advertising of cannabis items in a manner that is appealing to minors, that promotes excessive use, or that promotes illegal activity; and

- (5) Regulating the use of cannabis items for scientific, pharmaceutical, manufacturing, mechanical, industrial, and other purposes.

The commission would be charged with establishing a plan of organization, and employing personnel as it deemed necessary to operate under the direct supervision of a full-time executive director. The new executive director position would be filled by the Governor with the Senate’s advice and consent. Because the commission would be assuming responsibility from the Department of Health concerning the regulation of medical cannabis, the bill would permit, based on the transfer of responsibility, employees of the department who performed the duties of any position to be filled by the commission a one-time right of first refusal offer of employment. Any department employee

who became employed by the commission would retain seniority, and all rights related to seniority, that the employee had with the department as of the last day of employment with the department.

One mandatory aspect to the commission's organization plan would be the inclusion of an Office of Minority, Disabled Veterans, and Women Cannabis Business Development, operating under the supervision of a director appointed by the Governor. This office would establish and administer, under the direction of the commission, unified practices and procedures for promoting participation in the lawful operation of cannabis businesses by persons from socially and economically disadvantaged communities, including by prospective and existing minority owned and women's owned businesses, as these terms are defined in section 2 of P.L.1986, c.195 (C.52:27H-21.18), and disabled veterans' businesses as defined in section 2 of P.L.2015, c.116 (C.52:32-31.2), to be licensed as personal use cannabis establishments under the bill or issued permits for activities concerning the medical use of cannabis under the "Jake Honig Compassionate Use Medical Cannabis Act," P.L.2009, c.307 (C.24:6I-1 et al.).

These unified practices and procedures would include a business' certification and subsequent recertification at regular intervals as a minority owned or women's owned business, or a disabled veterans' business, in accordance with eligibility criteria and a certification application process established by the commission in consultation with the office. The office would develop, recommend, and implement policies, standards, and criteria designed to promote the formulation and participation in the lawful operation of cannabis businesses by persons from socially and economically disadvantaged communities. The effectiveness of these methods would be measured by whether the office's actions resulted in not less than 30 percent of the total number of licenses issued by the commission for personal use establishments, and not less than 30 percent of all new permits issued by the commission for activities concerning the medical use of cannabis, being issued to businesses certified by the office; their effectiveness would be further assessed by considering whether the actions resulted in not less than 15 percent of licenses and permits being issued to certified minority owned businesses, and not less than 15 percent of licenses and permits being issued to certified women's owned and disabled veterans' businesses. The office, in support of these efforts, would conduct advertising and promotional campaigns, as well as sponsor seminars and informational programs, directed toward those persons and prospective and existing certified businesses, which would address personal use or medical cannabis business management, marketing, and other practical business matters.

Ethical and Conflicts-of-Interest Considerations for the Commission, its Employees, and Other Parties

The members of the commission and all commission employees would be subject to ethical and conflicts-of-interest restrictions, addressing activities engaged in prior to, during, and following service with the commission. For instance, a person generally could not be a member or employee of the commission if, during the period commencing three years prior to appointment or employment, the person held any direct or indirect interest in, or any employment by, a holder of or applicant for a cannabis license or permit issued pursuant to this bill or the “Jake Honig Compassionate Use Medical Cannabis Act,” unless the person’s prior interest would not, in the opinion of the commission, interfere with the person’s obligations of appointment or employment; and generally, for a period of two years commencing from the date that a member’s or employee’s service terminates, that former member or employee would not be permitted to hold any direct or indirect interest in, or any employment by, a holder of or applicant for a cannabis license or permit (this two-year post-service restriction would not apply to secretarial or clerical employees).

At the time of commencing service, each member and employee, with the exception of secretarial and clerical employees, would be required to file a financial disclosure statement with the State Ethics Commission, listing all assets and liabilities, property and business interests, and sources of income of the person, and the person’s spouse, domestic partner, or partner in a civil union couple. Additionally, commission members would have to supply the same information for each dependent child or stepchild of the member, or of the spouse, domestic partner, or partner in a civil union couple residing in the same household as the member.

The members and employees would generally be subject to the “New Jersey Conflicts of Interest Law,” P.L.1971, c.182 (C.52:13D-12 et seq.), as well as a Code of Ethics promulgated by the commission that is modeled upon the Code of Judicial Conduct of the American Bar Association, as amended and adopted by the New Jersey Supreme Court. All members and employees would be prohibited from using any official authority to interfere with or affect the result of an election or nomination for office, coerce or advise any person to contribute anything of value to another person or organization for political purposes, or take active part in any political campaign. For the commission members, the executive director of the commission, and any other employee holding a supervisory or policy-making management position, the bill also provides a prohibition on making any political contributions as that term is defined in “The New Jersey Campaign Contributions and Expenditures Reporting Act,” P.L.1973, c.83 (C.19:44A-1 et seq.).

The “New Jersey Conflicts of Interest Law” is also amended to establish restrictions on various State officers or employees, the

Governor and full-time professionals employed in the Governor's Office, the President of the Senate and Speaker of the General Assembly, full-time members of the Judiciary, and municipal officers in which licensed or permitted cannabis entities are located. These restrictions concern not only their own activities, but in some instances the activities of their associated partnerships, firms, or corporations, and their family members in connection with either employment or another interest in, or representation of, current license or permit holders or applicants. The restrictions are similar to the restrictions on these people and businesses under the current law concerning casino licensees and applicants, and casino-related activities, and include a general prohibition on employment, representation, appearance for, or negotiation on behalf of, any license or permit holder or applicant in connection with any cause, application, or matter, and these restrictions can carry over into the post-employment or post-service period following the departure of a person from State or local employment or office.

The ethical and conflicts-of-interest restrictions would be enforced by the State Ethics Commission, and any person found to have committed a violation would be subject to a civil penalty of not less than \$500 or more than \$10,000. Additionally, any willful violation of the restrictions similar to the restrictions concerning casino licensees and applicants that are applicable to the above State or municipal elected, appointed, or employed persons, their associated partnerships, firms, or corporations, and their family members would be considered a disorderly persons offense, punishable by a term of imprisonment of up to six months, a fine of up to \$1,000, or both.

If the Cannabis Regulatory Commission found that a license holder, permit holder, or applicant for a license or permit, had committed a violation involving a commission member or employee with respect to pre-service activities, activities during service, or post-service activities, that license or permit holder or applicant would be subject to a civil penalty of not less than \$500 or more than \$10,000, and possible license or permit revocation or suspension, or denial of an application, as applicable.

Licensing of Cannabis Establishments

The bill would establish four classes of licensed establishments: a Class 1 Cannabis Grower license, for facilities involved in growing and cultivating cannabis; a Class 2 Cannabis Processor license, for facilities involved in the manufacturing, preparation, and packaging of cannabis items; a Class 3 Wholesaler license, for facilities involved in obtaining and selling cannabis items or cannabis paraphernalia for later resale by other licensees; and a Class 4 Cannabis Retailer license, for locations at which cannabis items and paraphernalia are sold to consumers. The commission would determine the maximum number of licenses for each class based upon market demands, and would be

authorized to make requests for new license applications as it deemed necessary to meet those demands.

The commission would be responsible for reviewing each application for a full, annual license, or application for a conditional license, intended to be issued and then subsequently replaced with a full license. In accordance with the bill, at least 35 percent of the total licenses issued for each class would be conditional licenses. Either a full license or conditional license would only be issued for applications which presented an ownership structure that includes a “significantly involved person,” being someone who holds at least a five percent investment interest or is a member of a group who holds at least a 20 percent investment interest and would have authority to make controlling decisions about the cannabis establishment; this person would additionally have to be a resident of New Jersey for at least two years as of the date of application. Another requirement, applicable only to a conditional license, would be that the significantly involved person and any other person with a financial interest who also has decision making authority for a proposed cannabis establishment could only have, for the immediately preceding taxable year, an adjusted gross income of no more than \$200,000 or no more than \$400,000 if filing jointly with another, or had, at any time in the past five taxable years, received federal or State financial assistance. For purposes of calculating the 35 percent figure for conditional licenses, the figure would include any conditional license issued to an applicant that was subsequently replaced with a full, annual license (which process is further detailed below).

Additionally, at least 10 percent of the total licenses issued for each license class, and at least 25 percent of the overall total number of licenses issued would be designated for and only issued to “microbusinesses.” A microbusiness is described in the bill as employing no more than 10 employees, and: possessing no more than 1,000 cannabis plants each month; operating an establishment occupying an area of no more than 2,500 square feet, and in the case of a cannabis grower, growing on an area no more than 2,500 square feet measured on a horizontal plane and growing above that plane not higher than 24 feet; in the case of a cannabis processor, acquiring and processing no more than 1,000 pounds of cannabis in dried form each month; in the case of a cannabis wholesaler, acquiring for resale no more than 1,000 pounds of cannabis in dried form, or the equivalent amount in any other form, or any combination thereof, each month; and in the case of a cannabis retailer, acquiring for retail sale no more than 1,000 pounds of cannabis in dried form, or the equivalent amount in any other form, or any combination thereof, each month. For this subset of the four classes of cannabis establishments, 100 percent of the ownership would have to involve New Jersey residents who have resided in the State for at least two years.

The 10 percent per class, and 25 percent overall, of microbusiness-designated licenses issued would include the number of conditional licenses issued for each class, as these two categories are not considered mutually exclusive of one another.

When processing applications, the commission would also incorporate the licensing efforts developed by the Office of Minority, Disabled Veterans, and Women Cannabis Business Development designed to promote the formulation and participation in the lawful operation of cannabis businesses by persons from socially and economically disadvantaged communities. Additionally, the commission would prioritize applications for licensure using two other factors.

One factor would be based on “impact zones,” which are identified under the bill as any municipality (referred to as a “local governmental entity” in the bill) that: (1) has a population of 120,000 or more according to the most recently compiled federal decennial census as of the bill taking effect; or (2) ranks in the top 33 percent of local governmental entities in the State for small amount marijuana possession arrests in the calendar year next preceding the bill taking effect; has a crime index total of 1,000 or higher based upon the indexes listed in the most recently issued annual Uniform Crime Report by the Division of State Police, as of the bill taking effect; and has an annual average unemployment rate that ranks in the top 15 percent of all local governmental entities in the State in the calendar year next preceding the bill taking effect.

Concerning impact zones, the commission would prioritize any application that: included a person who is a current resident of an impact zone and had resided therein for three or more consecutive years at the time of making the application (to the extent possible the commission would grant at least 25 percent of the total licenses issued, regardless of license class, to such applicants); or included a plan to employ 25 percent of employees who reside in an impact zone. The second prioritization would be based upon a point system used to rank applications, which gave higher rankings to an applicant for meeting one of the following conditions for its labor environment: being a party to a collective bargaining agreement with a labor organization that currently represents, or is actively seeking to represent cannabis workers in New Jersey; being a party to a collective bargaining agreement with a labor organization that currently represents cannabis workers in another state; or submitting an attestation affirming that the applicant will use best efforts to utilize union labor in the construction or retrofit of the facilities associated with the cannabis establishment.

The commission would require that an applicant for licensure, other than an applicant seeking to operate a microbusiness of any class or seeking a conditional license, submit an attestation signed by a bona fide labor organization stating that the applicant entered into a labor peace agreement with such bona fide organization. The maintenance

of an agreement would be an ongoing material condition of a full, annual license, unless the business was a microbusiness. Submission of proof of an agreement from an applicant originally issued a conditional license would be a requirement for final approval granting full licensure. Failure to enter, or to make a good faith effort to enter, into a collective bargaining agreement within 200 days of the opening of a cannabis establishment would result in the suspension or revocation of a license.

Any applicant for a license or conditional license would have to provide proof for each person with any investment interest as being 21 years of age or older, and each of the following persons associated with the applied-for cannabis establishment would be subject to a criminal history record background check: any owner, other than an owner who holds less than a five percent investment interest or who is a member of a group that holds less than a 20 percent investment interest, and who has no authority for making controlling business decisions; any director; any officer; and any employee. With respect to qualification or disqualification for licensure based on the background check, the commission would be prohibited from considering any prior convictions involving the manufacturing, distribution or possession with intent to distribute, or simple possession of, small amounts of marijuana or hashish under the laws of this or another state, or under federal law, or any other prior conviction, unless less than five years have passed since convicted and the conviction involved fraud, deceit, embezzlement, employing a minor in a drug distribution scheme, or some other conviction “substantially related to the qualifications, functions, or duties for which the license is required,” as determined by the commission. Such a conviction would not be an automatic disqualifier, as the commission would still have the authority to issue a license or conditional license to an applicant which included a person with a “substantially related” conviction, after examining the nature of the offense associated with the conviction, the circumstances at the time of committing the offense, and evidence of rehabilitation since conviction.

With respect to the application for a full license, the commission would complete its review for license approval or denial within 90 days of the submission of the application, unless the commission determined that more time is required. If approved, a license would be issued by the commission not later than 30 days after it gave notice of the approval, unless the applicant was subsequently found to not be in compliance with relevant regulations or local regulating ordinances applicable to the applicant’s business operations. An issued license would expire after one year, but could be renewed following submission of a new application, in which the applicant would detail aspects of the cannabis licensee’s operations and on-going compliance measures as part of the renewal process.

With respect to the application for a conditional license, the commission would complete an expedited review for approval or denial within 30 days, unless the commission determined that more time is required. If approved, a conditional license would be issued by the commission not later than 30 days after it gave notice of the approval, unless the applicant was subsequently found to not be in compliance with relevant regulations or local regulating ordinances applicable to conditionally licensed operations. The applicant would not need to be in compliance with every aspect of the regulatory requirements expected for full licensure in order to obtain a conditional license, but would need to provide sufficient plans for actions to be taken to eventually achieve compliance for full licensure. During a 120-day period following issuance of the conditional license, if the commission determined that the conditional licensee was in compliance with all plans and other measures necessary to achieve full licensure, it would replace the conditional license with a full, annual license, dated to expire one year from its date of issuance and which could be subsequently renewed; if the conditional licensee was not in compliance as needed for full licensure, the conditional license would automatically expire at the end of the 120-day period.

Certification of Cannabis Handlers

In addition to the above described licensing requirements, any individual who performed work for or on behalf of any class of licensee (or conditional licensee) would need to have a valid certification issued by the commission, in order to participate in: the possession, securing, or selling of cannabis items at the licensed premises; the recording of the possession, securing, or selling of cannabis items at that premises; or the home delivery of cannabis items and related supplies to a retail consumer. The commission could require that anyone applying for a handler certification successfully complete a one-time course which provides training on checking identification, detecting intoxication, the proper handling of cannabis items, and statutory and regulatory provisions relating to cannabis. A person seeking a certification would also be subject to a criminal history record background check; a person would be disqualified for any criminal conviction which is less than 10 years old as of the time of making the application, unless the conviction was for the manufacturing or delivery of marijuana, in which case it would only apply if less than two years old.

Transition to Legal Market for Cannabis Items

The commission, within 180 days after the bill is signed into law, and after consultation with the Attorney General, State Treasurer, Commissioner of Health, and Commission of Banking and Insurance, would, upon filing proper notice with the Office of Administrative Law, and notwithstanding the provisions of the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), immediately adopt rules and regulations it prepared that are necessary and proper to

enable it to carry out the commission's duties, functions, and powers with respect to activities associated with the personal use of cannabis or cannabis resin under this bill and with the medical use of cannabis under the "Jake Honig Compassionate Use Medical Cannabis Act." These initial rules and regulations would be in effect for a period not to exceed one year after the date of filing, and thereafter be adopted, amended, or readopted, and any subsequent rules and regulations adopted, amended, or readopted, in accordance with the "Administrative Procedure Act."

The commission would begin accepting and processing applications for licenses and conditional licenses within 30 days after the commission's initial rules and regulations have been adopted. Also, at the time of initial adoption, provisions of the bill concerning the lawful operations of licensed cannabis growers, processors, wholesalers, and retailers would become operative to permit those cannabis establishments issued licenses by the commission to commence work in growing, cultivating, processing, and packaging cannabis and cannabis items, as well as cannabis paraphernalia, for future retail sales which would not yet be authorized.

Also becoming operative at this time would be provisions, linked to provisions contained in the Senate Committee Substitute for Senate Bill Nos. 10 and 2426, which would deem every current medical cannabis alternative treatment center issued a permit prior to the effective date of that substitute bill, or issued a permit after the effective date pursuant to a permit application submitted prior to that date, to concurrently hold a Class 1 Cannabis Grower license, a Class 2 Cannabis Processor license, a Class 3 Cannabis Wholesaler license, and a Class 4 Cannabis Retail license, plus an additional Class 4 Cannabis Retail license for each satellite dispensary that was approved prior to the effective date of the substitute bill, or approved after the effective date pursuant to an application submitted prior to that date. However, any such deemed alternative treatment center could not engage in any preparatory work to incorporate personal use cannabis items into its operations, and thus simultaneously function as cannabis establishments and to eventually, if opted for, engage in retail sales, until it submitted written approval to operate as one or more classes of a cannabis establishment from the local governmental entity in which the establishment is to be located, and the commission in turn issues an actual license or licenses.

Prior to and during this transition phase leading up to eventual retail sales, every local governmental entity would have the option to authorize and regulate the time, place, manner, and number of establishments operating within its jurisdiction, in a manner consistent with the bill's regulation of cannabis establishments, or alternatively enact an ordinance to prohibit such operations by any one or more classes of establishments. Only an ordinance to prohibit one or more classes of cannabis establishment enacted pursuant to the specific

authority to do so by the bill would be valid and enforceable; any ordinance enacted prior to the bill's effective date addressing the issue of prohibition within the jurisdiction of a local governmental entity would be null and void, and that entity could only prohibit the operation of one or more classes of cannabis establishment by enactment of a new ordinance in accordance with the bill's provisions.

The failure of a local governmental entity to enact an ordinance prohibiting such operations within 180 days following the commission's initial adoption of rules and regulations would result in any class of cannabis establishment that is not prohibited from operating within the local jurisdiction as being permitted to operate therein for a period of five years as follows: the growing, cultivating, processing, and selling and reselling of cannabis and cannabis items by a cannabis grower, cannabis processor, or cannabis wholesaler would be permitted uses in all industrial zones of the local governmental entity; and the selling of cannabis items to consumers from a retail store by a cannabis retailer would be a conditional use in all commercial zones or retail zones, subject to meeting the conditions set forth in any applicable zoning ordinance or receiving a variance from one or more of those conditions in accordance with the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.). At the end of any five-year period following a failure to enact a local ordinance, the local governmental entity could revisit the issue of prohibition, but any ordinance would be prospective only and not apply to any cannabis establishment operating within the local jurisdiction subject to the ordinance.

If a local governmental entity allowed the operation of cannabis establishments, a copy of each license application submitted to the commission for an establishment to be located within that local jurisdiction would be provided to the local governmental entity, which in turn would inform the commission whether the application complies with its local regulatory scheme, and which could be the basis for a denial of an application if not in compliance.

Lastly, during the time that local governmental entities are acting to regulate or prohibit cannabis activities, and applications are being processed and licensed cannabis establishments starting operations or medical alternative treatment centers starting preparatory work to incorporate personal use cannabis items into their operations, the commission would determine the first date on which retail sales of personal use cannabis items may occur. This date would be no more than 180 days after the adoption of the commission's initial rules and regulations, and the commission would provide at least 30 days' notice of the date to every licensed cannabis establishment and alternative treatment center deemed to be a licensed cannabis establishment. On that date and thereafter, legal retail sales and consumption of personal use cannabis items would begin; provided, that in order for an alternative treatment center to engage in retail personal use sales, it

would be required to first certify to the commission that it has sufficient quantities of medical cannabis and medical cannabis products available to meet the reasonably anticipated treatment needs of registered qualifying patients.

Once retail sales have begun, there would be a prohibition on any one licensee having a complete “vertical integration,” from grower to retailer, on its cannabis operations for a period of 18 months. During this time, the bill would not permit a licensed grower, processor, or wholesaler to also be a licensed retailer, and vice versa, plus a grower or processor could only concurrently hold two licenses, and a wholesaler would be limited to just one license; these restrictions would not apply to a medical alternative treatment center deemed to possess one of each type of cannabis license class as described above (and thus the treatment centers would have complete “vertical integration” during this 18-month period). Following the 18-month period, a license holder could concurrently hold one, but not more than one, of each type of license class in order to establish a “vertical integration” of cannabis operations.

As to those alternative treatment centers deemed from the onset to hold every class of cannabis license and actually issued licenses based upon local approval, after a period no greater than one year from the date that retail sales have begun, all such centers, in order to continue their operations concerning personal use cannabis, would be required to submit a certification, prior to the date that a cannabis license was set to expire, as to the continued material accuracy of their previously approved medical permit application to the Department of Health, and their compliance with the provisions of this bill as required by the commission. The certification would also need to be supported by a new written approval from the local governmental entity in order for the commission to renew a license for continued personal use operations.

Cannabis Consumption Areas

A licensed cannabis retailer, or an alternative treatment center that has a permit to dispense medical cannabis pursuant to the “Jake Honig Compassionate Use Medical Cannabis Act” may apply to the commission seeking an endorsement to operate a cannabis consumption area at which the on-premises consumption of personal use or medical cannabis could occur. Along with the commission’s endorsement, the local governmental entity in which the consumption area would operate would also review the application and have to provide a local endorsement.

An endorsed cannabis retailer could only allow the consumption of personal use cannabis at its consumption area. An alternative treatment center could only allow the consumption of medical cannabis at its consumption area, unless it was also deemed during the transition period to the legal cannabis market (see above) to have one or more Class 4 Cannabis Retailer licenses and actually issued a

license or licenses, or had otherwise been issued such a license by the commission, in which case both personal use and medical cannabis could be consumed.

An on-premises consumption area could either be indoors or outdoors. An indoor consumption area would be a structurally enclosed area within a cannabis retailer or alternative treatment center that is separated by solid walls or windows from the area in which retail sales of cannabis or the dispensing of medical cannabis occurs, would only be accessible through an interior door after first entering the retailer or center, and would need to comply with all ventilation requirements applicable to cigar lounges under the “New Jersey Smoke-Free Air Act,” P.L.2005, c.383 (C.26:3D-55 et seq.). An outdoor consumption area would be an exterior structure on the same premises as the cannabis retailer or alternative treatment center, that is either separate from or connected to the retailer or center and that is not required to be completely enclosed, but would need to have enough walls, fences, or other barriers to prevent any view of persons consuming personal use cannabis items or medical cannabis from any sidewalk or other pedestrian or non-motorist right-of-way; and with respect to any consumption by smoking at an outdoor area, the cannabis retailer or alternative treatment center would need to ensure that any smoking does not result in migration, seepage, or recirculation of smoke to any indoor public place or workplace.

Taxation and Other Business Treatment of Cannabis Establishments

The bill would impose a State-level tax at the rate of 5.375 percent on the retail sale of cannabis items. This tax would be imposed in addition to the State sales and use tax, which presently is imposed at the rate of 6.625 percent. Cannabis retailers would be required to collect the tax at the point of sale and remit the monies to the Division of Taxation in the Department of the Treasury, and the tax would have to be reported and paid on a monthly basis. The revenue from the State-level tax would be deposited into a new fund, referred to as the “Cannabis Regulatory and Expungement Aid Modernization Fund.” This fund would be used to pay for the operational costs of the commission, as well as to defray costs, in an amount determined by the Legislature, associated with the filing and review of expedited expungement applications, a new process established by the bill for persons previously arrested, charged, or convicted for distribution or possession of small amounts of marijuana or hashish, or possession or using drug paraphernalia for marijuana or hashish, which past act would have been presumed to be lawful possession of cannabis or cannabis resin in accordance with the bill (further discussed below).

The bill would also permit any local governmental entity to adopt an ordinance that authorizes a local tax. This tax could be imposed on sales that occur within the local governmental entity: between cannabis retailers and customers; between a cannabis establishment

that holds any class of cannabis license and another cannabis establishment that holds any class of cannabis license; or any combination thereof. The local governmental entity would have discretion to set the rate or rates of the local-level tax, but the rate could not exceed two percent of the receipts from each sale. The seller would be required to collect the tax and remit the monies to the chief financial officer of the local governmental entity, in a manner to be set by the local governmental entity.

Neither the State-level or local-level tax would apply to medical cannabis dispensed pursuant to the “Jake Honig Compassionate Use Medical Cannabis Act.”

Concerning other business treatment of any licensed establishment:

(1) A cannabis grower would be prohibited from operating or being located on any land that is valued, assessed, or taxed as an agricultural or horticultural use pursuant to the “Farmland Assessment Act of 1964,” P.L.1964, c.48 (C.54:4-23.1 et seq.);

(2) A property owner, developer, or operator of a project to be used, in whole or in part, as any class of cannabis establishment would not be eligible for a State or local economic incentive during the period of time that the economic incentive is in effect;

(3) The issuance of a license to operate as any class of cannabis establishment to a person or entity that has been awarded a State or local economic incentive would invalidate the right of the person or entity to benefit from the economic incentive as of the date of issuance of the license; and

(4) The issuance of a license to operate as any class of cannabis establishment at a location that is the subject of a State or local economic incentive would invalidate the right of a property owner, developer, or operator to benefit from the economic incentive as of the date of issuance of the license.

Legalized, Decriminalized, and Prohibited Activities Concerning the Consumption of Personal Use Cannabis Items

Once the provisions for the lawful personal use of cannabis items become operative and retail sales of cannabis items have begun, the following acts would not be an offense under the “New Jersey Code of Criminal Justice,” Title 2C of the New Jersey Statutes, for a person 21 years of age or older:

(1) Possessing, purchasing, or transporting: cannabis paraphernalia; one ounce or less of cannabis; the equivalent of one ounce or less of cannabis infused product in solid, liquid, or concentrate form, based upon an equivalency calculation for different product forms set by the commission in its regulations, and for which the commission may utilize research conducted in other states on the issue of product equivalency calculations when setting this equivalency; or five grams or less of cannabis resin;

(2) Transferring any cannabis item in any amount described above to another person 21 years of age or older, so long as the transfer is for non-promotional, non-business purposes; and

(3) Consuming any lawfully acquired cannabis item, provided that nothing in the bill is intended to permit a person to smoke or otherwise consume a cannabis item in a public place, other than a designated consumption area as detailed above.

A person possessing, purchasing, transporting, or transferring to another at any one time any cannabis or resin in an amount greater than as permitted, or an infused product in solid, liquid, or concentrate form with more than the equivalency permitted would generally be considered a violation of the “Comprehensive Drug Reform Act of 1987,” P.L.1987, c.106 (N.J.S.2C:35-1 et al.), and subject the person to a civil penalty or prosecution as if the person possessed, purchased, transported, or transferred illegal marijuana or hashish in violation of that act. In addition to establishing the legalized amounts of possession for personal use cannabis items, the bill would decriminalize the possession of illegal marijuana or hashish. Possession of more than 50 grams of marijuana, or more than five grams of hashish would be reduced from a crime of the fourth degree to a disorderly persons offense (punishable by imprisonment for up to six months, a fine of up to \$1,000, or both). Possession of 50 grams or less of marijuana, or five grams or less of hashish would be reduced from a disorderly persons offense to a civil penalty of \$50.

With respect to consumption, the smoking of a cannabis item would be prohibited in any place pursuant to law that prohibits the smoking of tobacco, including the “New Jersey Smoke-Free Air Act,” P.L.2005, c.383 (C.26:3D-55 et seq.), as well as any “indoor public place” as defined in that act (even if such a place is otherwise permitted to allow the smoking of tobacco), except that smoking would be permitted in a designated consumption area or in up to 20 percent of the guest rooms of a hotel, motel, or other lodging establishment as permitted by the person or entity that owns or controls that establishment. The smoking of cannabis items could also be prohibited in private multifamily housing, as decided by the person or entity that owns or controls the housing. Any fines or civil penalties that could be assessed for the smoking of tobacco where prohibited under the “New Jersey Smoke-Free Air Act” would be applicable to the smoking of cannabis where prohibited under this bill.

As to consumption other than by smoking: a person or entity that owns or controls a property, except for multifamily housing, could prohibit or otherwise regulate consumption on or in that property, and a local governmental entity would be empowered to enact an ordinance making it unlawful for any person 21 years of age or older to consume any cannabis item in a public place, and provide for a civil penalty of up to \$200 per violation. The bill would also prohibit consumption in any area of any building of, on the grounds of, or in

any facility owned, leased, or controlled by, any public or private institution of higher education or a related entity thereof, regardless of whether the area or facility is an indoor place or outdoors, and the penalty provisions of the “New Jersey Smoke-Free Air Act” would be applicable for a violation.

Mere possession of a cannabis item on elementary or secondary school property by a person of legal age to purchase such item, without proper permission, would be guilty of a disorderly persons offense, as is the case currently with respect to the possession of alcohol (punishable by imprisonment for up to six months, a fine of up to \$1,000, or both). Additionally, similar to the statutory law’s treatment of the possession of an “open container” of alcohol, or consumption of alcohol, while operating or a passenger in a motor vehicle, the bill would amend relevant laws in Title 39 of the Revised Statutes to make it a motor vehicle offense to possess an “open container” or “open package” of a cannabis item, or to consume a cannabis item, in a motor vehicle. A first offense would be a fine of \$200, and a subsequent offense would be a fine of \$250 plus imposition of a period of community service, the same penalties applied to violations involving an alcoholic beverage.

Regarding the possession or consumption of a cannabis item by a person under the legal age to purchase cannabis, the bill expands the current laws addressing underage possession or consumption of alcoholic beverages to include cannabis items, although different penalties would apply:

- for possession, in a public place, of an amount that may be lawfully possessed by a person of legal age to purchase cannabis items, a first offense would be a civil penalty of \$100, and a second offense would be a civil penalty of \$200. Only a third or subsequent offense would be a disorderly persons offense, which is the same as a first or subsequent offense for possession of an alcoholic beverage; for possession, in a public place, of an amount of cannabis items that exceeds what may be lawfully possessed, or public consumption of cannabis items, an offense is graded as a disorderly persons offense (the same as possession or consumption of an alcoholic beverage);

- for possession, on private property, of an amount that may be lawfully possessed by a person of legal age to purchase cannabis items, a first offense would be a civil penalty of \$100, and a second offense would be a civil penalty of \$200. Only a third or subsequent offense would be a municipal fine of \$350, which is the same as a first or subsequent offense for possession of an alcoholic beverage on private property; for possession, on private property, of an amount of cannabis items that exceeds what may be lawfully possessed, or consumption on private property, a first offense would be a municipal fine of \$250, and a second or subsequent offense would be a municipal fine of \$350 (the same penalties as applicable to possession or consumption of an alcoholic beverage).

It would also be unlawful, generally punishable as a \$50 civil penalty, for an underage person to present a false identification in order to enter a cannabis establishment or obtain cannabis items; this would differ than using a false identification with respect to alcoholic beverages, which is expressly noted in State law as not constituting an offense and therefore carries with it no statutory punishment.

Expedited Expungements and Other Criminal Justice Relief

Expedited expungements would be available to persons who were charged with, convicted of, or adjudicated delinquent for any number of offenses involving (1) unlawful distribution of, or possessing with intent to distribute, small amounts of marijuana or hashish, (2) possession of small amounts of marijuana or hashish, or (3) using or possessing with intent to use drug paraphernalia for marijuana or hashish, which acts would have been presumed to be lawful acts associated with cannabis or cannabis resin in accordance with the bill. There would be no waiting period before becoming eligible for the expedited expungement, and the Judiciary Ombudsman in each vicinage would assist persons with the filing of expungement petitions, for which no filing fees would be charged. The Administrative Office of the Courts would also develop an expungement e-filing system, to be used in the future for all expungement filings, which upon implementation would result in no more fees being charged by the Judiciary for any expungement filings.

As to other criminal justice relief, a person charged with any violation based on the above described three categories of offenses could not have his or her driving privileges suspended or forfeited, or delayed if the person is less than 17 years old, for failing to appear at any scheduled court proceeding, or as an additional punishment after conviction for such offenses; such a suspension, forfeiture, or delay is normally an action available to a court based on failing to appear or following conviction.

Law Enforcement Training

The bill provides that for two years next following the bill taking effect, the Police Training Commission, in the Department of Law and Public Safety, would reimburse the expenses incurred by any county or municipality for the training costs associated with the attendance and participation of a police officer in a Drug Recognition Expert program for detecting, identifying, and apprehending drug-impaired motor vehicle operators.

Reporting Requirements by the Commission

The commission would biannually report to the Governor and Legislature regarding the commission's regulation and enforcement activities associated with the personal use of cannabis pursuant to the bill and the medical use of cannabis pursuant to the "Jake Honig Compassionate Use Medical Cannabis Act." The biannual report would include information on: the number of criminal arrests or charges for small amount marijuana or hashish possession or

distribution, cataloged by race, ethnicity, gender, and age; the number of motor vehicle stops by law enforcement for driving under the influence of cannabis or marijuana, or suspicion thereof, cataloged by race, ethnicity, gender, and age; the total number of personal use cannabis licenses and medical use cannabis permits issued since the distribution of the previous report to the Governor and Legislature, as well as the number for each class of license and permit issued; the total number and type of applicants that submitted applications for licenses and permits and whether they were approved, reapproved, or denied, plus data compiled by the Office of Minority, Disabled Veterans, and Women Cannabis Business Development about participation in the lawful operation of cannabis businesses by persons from socially and economically disadvantaged communities, as well as minority owned, disabled veterans' owned, and women's owned business development in the personal use cannabis and medical use cannabis marketplaces; and the total amount of tax revenue generated by the State-level taxes on personal use cannabis collected by the State, and any optional local-level tax thereon collected by local governmental entities.

Review of the Commission by a Public Research University

Lastly, beginning on the third anniversary of the commission's first organizational meeting, one of the State's public research universities, designated by the Governor, would engage in a study of the commission's organization, and regulation and enforcement activities, with a focus on the commission's effectiveness as established and operating pursuant to the bill, and whether a better execution of the laws concerning the personal use of cannabis and medical use of cannabis could be more effectively managed, and more efficiently promoted through a reorganization of the commission, consolidation of the commission within the Department of the Treasury or another Executive Branch department, change to a part-time commission, or the transfer of some or all of the commission's operations elsewhere within the Executive Branch. Any study recommendations would be designed to take effect beginning on the fifth anniversary of the commission's first meeting. The university's findings would be issued in a report to the Governor and Legislature, after which they would take any administrative and legislative action, respectively, concerning the continuation, modification, or abolition of the commission or its operations as recommended by the university.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that this bill will result in an annual net increase in State revenues and potential increase in revenues for local governments; however, in the initial few years of the bill's implementation, the State may incur additional expenses associated with establishing a new regulatory body and reimbursing local and county governments for police training costs. The largest impact on State revenues will be from

the imposition of the sales tax and a new tax on recreational cannabis items. Municipalities will benefit from the authorization to impose a local tax on receipts from the sale of cannabis and cannabis products between cannabis licensees and to retail customers. Several provisions in the bill that directly impact the State's realization of these revenues are dependent upon future decisions made by a commission required to be established by the bill. Since the OLS cannot predict the behavior of a commission that is yet to exist, the OLS cannot quantify each provision of the bill. Furthermore, the OLS notes that there are certain temporal requirements that impact when the recreational cannabis market will come to full fruition and may delay the State's realization of new revenue.

The establishment of the Cannabis Regulatory Commission ("commission"), in but not of the Department of the Treasury, is expected to increase State expenditures at the onset of the bill's implementation by an indeterminate amount and will require funding each year during which the commission is in operation. Specifically, the commission's operations, including the development, regulation, reporting, and enforcement and tracking of activities associated with personal use of cannabis are to be funded by the "Cannabis Regulatory and Expungement Aid Modernization Fund," ("fund") established pursuant to this bill. Monies received by the fund include revenues from the new tax imposed under this bill on the retail sale of cannabis items, all fees and penalties collected by the commission, and other tax revenues collected by the Director of the Division of Taxation in the Department of the Treasury pursuant to the "Jake Honig Compassionate Use Medical Cannabis Act," P.L.2009, c.307 (C.24:6I-1 et al.), based on the title and provisions of that act being revised by a proposed Senate Committee Substitute for Senate Bill Nos. 10 and 2426 currently under consideration in the Senate. Certain dedicated revenues, such as the tax on retail sales of cannabis items, will not be generated until cannabis operations across the State are up and running. Thus, the commission may require an annual appropriation by the Legislature until the revenues generated pursuant to the provisions of this bill allow for the commission to be self-sufficient.

The commission is composed of five, full-time members. Those members are to be provided a salary as follows: 1) the chair of the commission is to receive a salary not in excess of \$141,000 annually; and 2) the other four members of the commission are to receive a salary not to exceed \$125,000 annually. Thus, the combined salaries of the five-member commission would be \$641,000 annually if each member is paid the maximum statutory amount (not including fringe benefits). Additionally, the commission is charged with establishing a plan of organization, which includes hiring personnel to fulfill the duties, functions, and

powers of the commission and the establishment of an Office of Minority, Disabled Veterans, and Women Cannabis Business Development (“office”). An executive director position for the commission and a separate director for the office are to be filled by the Governor, with annual salaries not to exceed that of a member of the commission (\$125,000) and that of the executive director, respectively. If the new commission and office require the hiring of new employees or the reclassification of existing employees from the Department of Health, the State would be responsible for salary and fringe benefit costs. The OLS cannot predict the future personnel management process of the commission, and thus is unable to provide an accurate cost projection of newly appointed or hired commission personnel.

Furthermore, the establishment of the commission may require the State to purchase or lease property and to purchase the necessary furnishings for such property in order for the commission to perform its duties. Expenditure examples may include the purchase of vehicles to conduct necessary cannabis site visits and advertising and promotional campaigns by the office to encourage minority, women’s, or disabled veterans’ owned businesses to apply for cannabis licenses.

The bill imposes the existing 6.625 percent sales tax and a new 5.375 percent tax on the retail sale of cannabis items by a cannabis retailer. These taxes would be imposed on a newly legalized industry, and the OLS is unaware of New Jersey specific data sets that focus on personal cannabis consumption expenditures. However, other states, such as Colorado and Washington, have legalized recreational cannabis. Thus, the experience of these states can be utilized by the OLS to project the potential annual revenue increase the State may realize as a result of legalizing recreational cannabis.

According to the Colorado Department of Revenue, retail cannabis sales, excluding medical cannabis, totaled \$1.091 billion in calendar year 2017. Based on the most recent U.S. Census Data, Colorado is estimated to have a population of roughly 5.607 million people. In comparison, New Jersey’s population is projected at 9.006 million people. Using Colorado retail cannabis sales data and Colorado population data, the OLS calculated the per person annual expenditure on retail cannabis to be approximately \$194.61. If New Jersey experiences similar sales of recreational cannabis as Colorado, total retail cannabis sales for New Jersey could be approximately \$1.753 billion. Applying the sales tax (6.625 percent) and new tax (5.375 percent) yields aggregate revenues of approximately \$210.3 million annually.

The OLS must caution that revenues will be significantly lower during the initial years of implementation as cannabis retailers and cannabis supply are established. For example, retail cannabis sales

in Colorado during the first year (2014) of legalization totaled \$303.2 million, 27.8 percent of total sales in 2017. The OLS notes that the commission is responsible for determining the number of licenses available. Thus, the OLS cannot predict the number of cannabis retailers that will exist following the enactment of this bill. The OLS emphasizes that these taxes are strictly imposed on the retail sale of cannabis products to a consumer and are not imposed on the sale of cannabis between other cannabis licensees.

Furthermore, other provisions of the bill allow municipalities to further regulate cannabis operations within their boundaries. The prevalence of cannabis retailers across the State will be an issue that impacts revenues. To put this in perspective, according to the Federal Reserve Bank of Kansas City, as of June 2017, 65 percent of Colorado jurisdictions (out of 320) had prohibited both medical and retail cannabis establishments. However, the State may benefit from out-of-State persons traveling to the State to purchase recreational cannabis since other states in the area have not legalized recreational cannabis.

From a global perspective, the legalization of recreational cannabis may lead to increased employment opportunities for New Jerseyans. As these new businesses are established, existing State taxes, such as the corporation business tax and the gross income tax, and local taxes, such as the property tax, could realize indirect growth as a result of this expansion. Although the revenues generated from the new tax on recreational cannabis are dedicated for purposes specified in the bill, such as funding the operational costs of the commission, the indirect benefits may result in additional revenues for the State's General Fund and Property Tax Relief Fund.

Certain provisions of the bill, related to violations and penalties and fees, will result in additional revenues to the State and local municipalities, such as persons found in violation of conflict-of-interest restrictions. For conflict-of-interest violations, a person could be subject to a civil penalty up to \$10,000, and a member or employee of the commission who makes or causes to be made certain prohibited political contributions could be subject to a fine not to exceed \$200,000. In any instance where a penalty or fine is levied upon a person pursuant to the provisions of the bill, the State will realize revenues that it otherwise wouldn't absent the provisions of the bill. In regard to the licensing of cannabis establishments, the commission controls the annual renewal fee for cannabis licenses and the number of licenses available. The OLS cannot predict the number of licenses that will be available and the cost of those licenses.

Since the possession of certain quantities of cannabis would be legal under the bill, the number of cannabis related arrests may decline subsequently impacting local revenue collections.

Additionally, counties and municipalities would be required to train police officers under the new bill in detecting, identifying, and apprehending drug-impaired motor vehicle operators. The counties and municipalities would be reimbursed for those training costs by the Police Training Commission in the Department of Law and Public Safety. Expenses related to the expungement process established in the bill for persons previously arrested, charged, or convicted for distribution or possession of small amounts of marijuana or hashish, or possession or using drug paraphernalia for marijuana or hashish, which past act would be presumed to be lawful possession of cannabis or cannabis resin in accordance with the bill, are to be paid out of the fund established by the bill.