LEGISLATIVE FISCAL ESTIMATE
SENATE, No. 20
STATE OF NEW JERSEY
218th LEGISLATURE

DATED: JUNE 27, 2019

SUMMARY

Synopsis:	Revises requirements to authorize and access medical cannabis; establishes Cannabis Regulatory Commission; revises permit requirements for alternative treatment centers; and establishes additional legal protections for patients and caregivers.
Type of Impact:	Annual increase in State expenditures; annual increase in State revenue through June 30, 2022; annual net State revenue loss as of July 1, 2022; annual increase in local revenue for select municipalities.
Agencies Affected:	Department of Health; Department of Treasury; Office of the Secretary of Higher Education; and certain municipalities.

Fiscal Impact	Annual through FY 2022	Annual as of FY 2023
State Expenditure Increase	Indeterminate	Indeterminate
State Revenue Increase – Fee and Penalty Collection	Indeterminate	Indeterminate
State Revenue Impact – Sales Tax Collection	Indeterminate	Indeterminate decrease to $0
Local Revenue Increase	Indeterminate	Indeterminate

- The Office of Legislative Services (OLS) estimates that the bill will increase annual State expenditures associated with regulation and oversight of the State's medical cannabis program by indeterminate amounts. The magnitude of this increase will ultimately be affected by the rules and regulations promulgated by the Cannabis Regulatory Commission (CRC) and the degree of expansion of participation in the medical cannabis program. For reference, the Governor's FY 2020 Budget proposes supporting the administrative expenditures of the medicinal cannabis program with an $857,000 State appropriation, which is unchanged from the FY 2019 Appropriations Act, and an estimated $1.5 million in dedicated program fee collections.

- The OLS also concludes that the amount of registration and permit fees collected by the State under the bill will increase annually by an indeterminate amount due to: 1) the provisions of the bill that are anticipated to increase the number of patients and caregivers participating in the program; and 2) the establishment of new permit types, as well as an increased number of permits issued. The application and fee schedules decided upon by the CRC and any increase in the number of participants in the medical cannabis program will determine the impact on State registration and permit fee revenues which, due to the variables involved, the OLS cannot estimate at this time.

- In addition, the bill will ultimately result in a decrease in State sales tax revenue, as the bill phases out imposition of the sales tax on the sale of medical cannabis over a multi-year period. The OLS is unable to determine the year-to-year impact of this provision due to the countervailing effects of the bill. As of FY 2023, however, the bill provides that no sales tax may be assessed against medical cannabis, providing for a net State revenue loss. For reference, the Executive estimates collecting $20 million in sales tax revenue from the sale of medical cannabis in FY 2020.

- Finally, the bill will result in an indeterminate annual increase in local revenue for certain municipalities, as the bill allows municipalities in which a medical cannabis dispensary or clinical registrant is located to establish a local transfer tax of up to 2 percent on the sale price of all medical cannabis dispensed by that dispensary or clinical registrant.

BILL DESCRIPTION

The bill revises the title of the “Compassionate Use Medical Marijuana Act,” P.L.2009, c.307 (C.24:6I-1 et al.) to the “Jake Honig Compassionate Use Medical Cannabis Act,” and provides for various changes in provisions of the State’s medicinal cannabis program involving patient and caregiver requirements; dispensing requirements for medicinal cannabis; alternative treatment center (ATC) application and permitting requirements, including establishing discrete cultivator, manufacturer, and dispensary permits; ATC operational requirements; a new clinical registrant permit; the authorization of delivery of medical cannabis; other cannabis-related licensures; and legal protections for patients and caregivers. Additionally, the bill establishes a new Cannabis Regulatory Commission to oversee the medical cannabis program. All authority over the medical cannabis program will transfer from the Department of Health (DOH) to the CRC at such time as the members of the CRC are appointed and the commission first organizes.

The bill also provides that the sales tax imposed on medical cannabis will phase out over three years, with the tax going to four percent effective July 1, 2020, to two percent effective July 1, 2021, and medicinal cannabis becoming exempt from sales tax effective July 1, 2022. Finally, the bill allows municipalities in which a medical cannabis dispensary or clinical registrant is located to establish a local transfer tax of up to two percent on the sale price of all medical cannabis dispensed by that dispensary or clinical registrant.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS concludes that the bill will have several impacts on State expenditures and revenues. The OLS estimates that the State will incur indeterminate additional administrative expenses due to the expansion of the medical cannabis program. The amount of registration and permit fees collected by the State under the bill will increase by an indeterminate amount due to: 1) an anticipated increase in the number of patients and caregivers participating in the program; and 2) the establishment of new permit types, as well as an increase in the number of permits issued.

In addition, the bill will result in a decrease in State sales tax revenue, as the bill phases out imposition of the sales tax on the sale of medical cannabis over a multi-year period. The OLS is unable to determine the year to year impact of this provision due to the countervailing effects of the bill. As of FY 2023, however, the bill provides that no sales tax may be assessed against medical cannabis, ultimately providing for a net State revenue loss. For reference, the Executive estimates collecting $20 million in sales tax revenue from the sale of medical cannabis in FY 2020.

Finally, the bill allows municipalities in which a medical cannabis dispensary or clinical registrant is located to establish a local transfer tax of up to two percent on the sales price of all medical cannabis dispensed by that dispensary or clinical registrant.

Program Administration: The bill will transfer regulatory responsibility for the State's medical cannabis program from the DOH to the CRC – an entity that will be established in, but not of, the Department of the Treasury pursuant to the bill. The bill's provisions also provide for the transfer of State employees within the existing DOH medicinal cannabis program to the CRC. The OLS notes that there may be one-time costs incurred by the State to implement this transition.

The bill expands the responsibilities of the CRC beyond the scope of the DOH's current program; for example, under the bill, the CRC must: employ five, full-time commission members, with the chair receiving a maximum salary of $141,000 and the other members each receiving a maximum salary of $125,000, for an annual cost of $641,000; employ an Executive Director receiving a maximum salary of $141,000; include an Office of Minority Disabled, Veterans, and Women Cannabis Business Development within the commission's organization plan that is charged with promoting and informing women-owned and disabled veterans' businesses about participation in the medicinal cannabis program; establish a tracking system for medicinal cannabis throughout the cultivation, manufacturing, and dispensing process; and contract with a public research university, three years after organization, to conduct an independent study to review the commission's work.

In addition, the bill directs the CRC to: review and issue new permit types; develop certain curricula for practitioners and employees of certain permit holders; conduct a disparity study; establish standardized procedures for testing medicinal cannabis; license and inspect medical cannabis testing laboratories; and establish a registry for institutional caregivers. The OLS notes that several of these tasks are similar to existing DOH program duties, such as the review and issuance of ATC permits and the registration of qualifying caregivers. Therefore, there may be certain procedures in place that may minimize the cost of these provisions.

It is unclear the extent to which fee revenues generated under the program will offset these expenses as the fee schedule is at the discretion of the CRC. Historically, the program has been supported by a State appropriation as well as these program revenues. For example, in FY 2018, the DOH spent approximately $2.5 million, of which $857,000 was appropriated from the General Fund and the remainder was generated from program revenues, to administer the program. Generally, the revenue collected has been in excess of anticipated receipts, which has provided a carry forward balance in recent fiscal years: $113,014 in FY 2016; $91,386 in FY 2017; $653,324 in FY 2018; and over $1.0 million in FY 2019.

In addition, the OLS notes that in shifting medicinal cannabis testing from the CRC to external laboratories, as provided under the bill, the CRC may experience an indeterminate decrease in State revenue and a decline in State expenditures. However, in response to FY 2020 OLS Budget Discussion Point questions, the DOH indicated it did not anticipate any cost savings from this policy change, as current staff that perform these duties would be reassigned to oversee the external labs. N.J.A.C.8:64-13.4 currently requires that the DOH conduct testing of medicinal cannabis samples. According to the department, ATCs pay the cost of lab testing, up to $2,000 per test, to the department. The OLS does not have information on the number of such tests that the DOH performs.

Under the bill, any revenue and expenditures associated with testing will be transferred to external laboratories, at such a time when the CRC certifies that a sufficient number of laboratories have been licensed. As such, it is likely that the DOH will be responsible for medicinal cannabis testing for an indeterminate time period following the bill's enactment.

<u>Patient and Caregiver Registration Fees</u>: The OLS finds that is it likely that the provisions of the bill which expand access to medical cannabis for qualifying patients will increase the number of patients and caregivers participating in the medicinal cannabis program and, therefore, the amount of registration fees collected by the CRC. These provisions include: providing that medical cannabis may be used as a treatment of first resort; expanding the list of professionals who can authorize patients for the medical use of cannabis; eliminating the existing regulatory requirement that a minor must have written confirmation from a psychiatrist to receive authorization as a qualifying patient; permitting each caregiver to serve up to two patients and each patient to have up to two designated caregivers; removing the criminal history record background check for an immediate family member serving as designated caregiver; establishing the position of "institutional caregiver," as described in the bill; and providing for reciprocity with other states regarding the authorization of qualifying patients and designated caregivers. The DOH's report submitted pursuant to Executive Order 6 indicated that such provisions, if adopted, would generally remove barriers to program access.

The OLS notes that the bill codifies certain conditions as qualifying medical conditions that were added to the program by the Medicinal Marijuana Review Panel in March of 2018, a change that has largely been cited as the source for the program's growth in calendar year (CY) 2018. These conditions include: anxiety, migraines, Tourette's syndrome, chronic pain related to musculoskeletal disorders, and chronic pain of visceral origin. According to a press release published by the DOH in October 2018, a majority of the 17,000 patients who signed up for the medicinal cannabis program between January 2018 and October 2018 have one of the five medical conditions noted above. The bill also codifies opioid use disorder as a qualifying medical condition, which was added to the program via a Final Agency Decision issued by the Commissioner of Health on January 23, 2019. The addition of these conditions under the bill does not change the existing program and, therefore, are not a factor in this fiscal analysis. However, the OLS notes that under the bill chronic pain is not specified and is applied broadly, which may impact the number of new patients who qualify for the program.

Other reforms implemented in CY 2018, but not codified in this bill, include: reducing the general registration fee for patients and designated caregivers from $200 to $100; authorizing senior citizens and military veterans to pay the $20 registration fee previously authorized for recipients of certain government assistance programs; and establishing mobile phone access to the program's patient portal. Reforms implemented in CY 2018, and codified in the bill, include eliminating the requirement that participating physicians must have their names published on the DOH's website in order to authorize qualifying patients.

The OLS cannot predict the number of new patients and caregivers who may register for the medicinal cannabis program due to the bill's provisions that expand the program beyond current standards and, therefore, cannot quantify the revenue generated by the collection of registration fees under the bill. Generally, patient participation trends indicate growth on a calendar year basis, which further complicates this analysis. During the FY 2019 budget process, the DOH indicated that the number of new patients per calendar year has historically almost doubled year over year. As such the OLS cannot determine how much of patient growth will be due to program trends, recent reforms initiated by the department, or the provisions of this bill.

For context, according to the department's responses to FY 2020 OLS budget discussion point questions, with no changes to the existing program, the DOH anticipates program enrollment increasing between 35,000 and 50,000 patients with total enrollment reaching 85,000 to 105,000 patients by the end of FY 2020. Currently, there are 46,875 patients in the program. According to the DOH's Executive Order 6 Report, approximately 18 percent of registered patients and caregivers receive the reduced application fee of $20, which at the time was only provided to recipients of certain government assistance programs.

Based upon this data, and assuming the current registration fees continue under the bill and that 36 percent of patients qualify for the reduced $20 fee with the expansion of the reduced fee to include veterans and senior citizens, the FY 2020 revenue for new patient registration will be between $2.5 and $3.6 million. If new patient registrations increase by 10 percent due to the provisions of the bill in the first year following enactment, and the assumptions above are maintained, revenue generated from patient registration due to the provisions of the bill would be between $249,200 and $356,000. Increasing patient registrations by 20 percent provides for additional revenues between $498,400 and $712,000 under the bill.

<u>Medicinal Cannabis Permit Fees</u>: The OLS notes that the establishment of new permit types under the bill may lead to an increase in permit fee collections. The amount of revenue generated will be dependent upon the permit fee schedule and the number of permits issued, as determined by the CRC. Under the bill, three new basic permit types – cultivator, manufacturer, and dispensary – are established and phased in over an 18 month implementation period for most new applications. Existing ATCs, current ATC applicants that are issued permits after the enactment of the bill, and the first seven ATC permits issued by the commission following enactment will be deemed to hold all three permit types.

These permit types reflect the three individual functions currently authorized by a single ATC permit under existing law. Put another way, for every one ATC permit issued under existing law, the bill would require three separate permits to authorize the equivalent functions. The bill also establishes a medical cannabis handler certification that certain individuals involved in the medicinal cannabis process must hold, which will provide for additional sources of revenue due to fee collections.

Currently, there are six ATCs operating in the State, and the DOH has issued permits for an additional six ATCs, for a total of 12 ATC permits. Pursuant to regulation, the current application fee for an ATC permit or permit renewal is $20,000 for each application. If an application is unsuccessful, the State retains a $2,000 fee and returns the remaining $18,000 to the applicant. As provided in the bill, the CRC is to establish fees for the permit applications and successful candidates, which may or may not reflect current fees. For example, the CRC may decrease the current fee to reflect the division of functions among the new permits.

Furthermore, the bill authorizes the CRC to establish incentives, such as a revised permit fee, to encourage applicants to seek an integrated curriculum (IC) permit, which is a permit established under the bill involving the development medicinal cannabis curriculum at an institution of higher education that is approved by the CRC and the Office of the Secretary of Higher Education. It is unknown how many new IC permits may be issued under the bill, or the nature of the incentives that the CRC may offer these applicants.

The bill also provides that at least 10 percent of the total permits issued for each medical cannabis permit type are issued to microbusinesses, and that at least 25 percent of the total permits are issued to microbusinesses. The maximum fee assessed by the CRC for issuance or renewal of a permit issued to a microbusiness, however, can be no more than half the standard application fee.

The bill directs the CRC to begin processing applications for seven ATC permits and four clinical registrant permits, a permit type established under the bill that provides for clinical research of medicinal cannabis, within 90 days of the effective date of the bill. Thereafter, the CRC is authorized to determine the need to request additional permits. Under the bill, an entity may not concurrently hold a basic permit type and a clinical registrant permit.

Assuming that the CRC issues 10 permits in the first year following implementation and that 2 permits are to microbusinesses and the current application fee is maintained, State revenue would increase by a minimum of $180,000. Additional revenue of $2,000 per unsuccessful applicant would be also collected. For reference, the recent request for ATC permit applications produced a total of 146 applicants for six permits. The OLS cannot determine how and by what standard subsequent permit applications will be requested and issued by the CRC. It is likely, however, that demand for medical cannabis will fluctuate from year to year and ultimately plateau, and that this fee revenue will not be maintained annually.

<u>Fines and Penalties</u>: The bill establishes several penalties and fines for non-compliance with certain provisions of the bill. For example, it is a crime of the fourth degree – which is punishable by imprisonment for up to 18 months, up to a $10,000 fine, or both – for a health care practitioner, or a practitioner's immediate family member, who has authorized the medical use of cannabis within the past 90 days to hold interest in, or receive any form of compensation from an entity holding a permit issued pursuant to the bill. However, there is a presumption of non-incarceration for the first conviction for a crime of the fourth degree and so significant expenditures related to imprisonment are unlikely. Additional penalties include a criminal penalty of up to $10,000 for violating the prohibition of CRC members or employees who hold a supervisory or management position from making political contributions and a civil penalty of not less than $500 or more than $10,000 for a violation of certain ethical and conflicts-of-interest restrictions by CRC members and employees. The collection of fines and penalties pursuant to these provisions would result in an increase in State revenues. The nature and number of infractions that may be committed, however, is unpredictable. As such, the OLS cannot quantify the amount of revenue generated from penalties and fines under the bill.

<u>Sales Tax</u>: Under this bill, the sales tax currently imposed on medicinal cannabis will be phased out over a multiple-year period. The OLS is unable to determine the year-to-year impact of this provision due to the countervailing effects of a decreasing sales tax rate; anticipated growth in sale amounts due to an increase in program participation and an increase in the maximum amount of medical cannabis that can be dispensed in a 30-day period, as provided under the bill; and the potential that competition created by the issuance of additional permits may decrease the sales price of medical cannabis. Depending on the growth of medicinal cannabis sales, the sales tax revenue generated under the bill may increase even as the current sales tax rate decreases. However, as of FY 2023, the bill provides that no sales tax may be assessed against medical cannabis, ultimately providing for a net State revenue loss.

For reference, according to information provided during the FY 2019 budget process, the Executive anticipates collecting between $2.5 and $5.0 million in sales tax revenue from medicinal cannabis sales in FY 2019. Based on the current sales tax rate of 6.625 percent, this data indicates between $37.7 million and $75.5 million in medicinal cannabis sales in FY 2019.

Local Transfer Tax: The bill will result in an annual increase in local revenue, as the bill allows municipalities in which a medical cannabis dispensary or clinical registrant is located to establish a local transfer tax of up to two percent on the sale price of all medical cannabis dispensed by that dispensary or clinical registrant. The six ATCs currently operating are located in: Egg Harbor Township, Montclair, Woodbridge, Cranbury, Secaucus, and Bellmawr. The six ATCs approved by the DOH in December of 2018 are located in: Philipsburg, Patterson, Elizabeth, Ewing, Atlantic City, and Vineland. Based on an estimate of $301.9 million in medicinal cannabis sales in FY 2020, a local transfer tax, as established under the bill, could generate as much as $6 million in local revenue in FY 2020 for the above municipalities. The OLS cannot predict with any certainty which of the eligible municipalities may implement the local transfer tax.

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This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).