

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



**FISCAL NOTE**

**HB 2413 - SB 2468**

March 28, 2024

**SUMMARY OF BILL:** Authorizes the possession of one ounce or less of marijuana for persons twenty-one years of age or older who have acquired such product from a retail location. Authorizes the purchase at retail of up to one-half ounce of marijuana by persons 21 years of age or older. Authorizes growing, processing, manufacturing, delivery, and sale of marijuana. Specifies that any business involved in such aforementioned activities must register as a business under the *Business Tax Act* and be in compliance with such act, as well as being in compliance with any local zoning regulations. Establishes that a retail location in violation of selling marijuana to a minor commits a Class A misdemeanor offense.

Establishes a state sales tax of 12 percent on the retail sale of marijuana, the proceeds of such tax to be allocated as follows:

- 20 percent to the General Fund;
- 50 percent earmarked specifically to educational purposes; and
- 30 percent state General Fund and credited to a special infrastructure account to be used exclusively to fund projects identified in the annual public infrastructure needs inventory compiled by the Tennessee Advisory Commission on Intergovernmental Relations.

**FISCAL IMPACT:**

**Increase State Revenue - \$38,299,900/FY24-25/General Fund**  
**\$77,308,500/FY25-26/General Fund**  
**\$78,043,400/FY26-27/General Fund**  
**\$78,785,200/FY27-28 and Subsequent Years/General Fund**

**\$20,938,800/FY24-25/Educational Purposes**  
**\$42,275,500/FY25-26/Educational Purposes**  
**\$42,677,100/FY26-27/Educational Purposes**  
**\$43,082,500/FY27-28 and Subsequent Years/Educational Purposes**

**\$12,563,300/FY24-25/Infrastructure**  
**\$25,365,300/FY25-26/Infrastructure**  
**\$25,606,300/FY26-27/Infrastructure**  
**\$25,849,500/FY24-28 and Subsequent Years/Infrastructure**

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**\$300/FY24-25/Secretary of State**  
**\$100/FY25-26 and Subsequent Years/Secretary of State**

**Increase State Expenditures - \$299,700/FY24-25/General Fund**  
**\$291,300/FY25-26 and Subsequent Years/General Fund**

**Decrease State Expenditures - \$143,100/FY24-25 Incarceration**  
**\$144,500/FY25-26 Incarceration**  
**\$145,900/FY26-27 and Subsequent Years Incarceration**

**Increase Local Revenue - \$9,608,100/FY24-25**  
**\$19,398,700/FY25-26**  
**\$19,583,000/FY26-27**  
**\$19,769,100/FY27-28 and Subsequent Years**

**Decrease Local Expenditures - \$12,402,000/FY24-25 and Subsequent Years**

**Other Fiscal Impact – This legislation will result in additional state and local tax revenue under the *Business Tax Act*. Due to variations in the size of separate business entities and the subsequent rate which will be applied to unknown amounts of gross sales of marijuana, exact revenue from this separate tax cannot be determined with reasonable certainty.**

Assumptions:

*State and Local Tax Revenue/Allocations and Business Charter Revenue:*

- It is assumed that cannabis sales will effectively begin on January 1, 2025; therefore, sales of cannabis in FY24-25 are estimated to be equal to one-half of one year of estimated sales.
- The following is the estimated gross sales by fiscal year:

	<b>Gross Sales</b>
<b>FY24-25</b>	\$348,980,401
<b>FY25-26</b>	\$704,591,429
<b>FY26-27</b>	\$711,285,047
<b>FY27-28</b>	\$718,042,255

- All sales will be subject to the state and local sales and use tax.
- The current state sales tax rate is 7.0 percent; the average local option sales tax rate is estimated to be 2.5 percent; the effective rate of apportionment to local government pursuant to the state-shared allocation is estimated to be 3.617 percent.
- Additionally, this legislation imposes a special state marijuana tax of 12 percent on such sales.

- The following are the estimated state tax revenue to the General Fund by fiscal year and tax:

	<b>State Sales Tax (7%)</b>	<b>State Special Sales Tax (12%)</b>	<b>Excise Tax</b>	<b>Franchise Tax</b>
<b>FY24-25</b>	\$23,545,045	\$41,877,648	\$3,402,559	\$872,451
<b>FY25-26</b>	\$47,537,445	\$84,550,971	\$6,869,766	\$1,761,479
<b>FY26-27</b>	\$47,989,051	\$85,354,206	\$6,935,029	\$1,778,213
<b>FY27-28</b>	\$48,444,947	\$86,165,071	\$7,000,912	\$1,795,106

- The following are the estimated revenue allocations of the 12 percent state sales tax by fiscal year:

	<b>General Fund (20%)</b>	<b>Educational Purposes (50%)</b>	<b>Infrastructure (30%)</b>
<b>FY24-25</b>	\$10,469,412	\$20,938,824	\$12,563,294
<b>FY25-26</b>	\$21,137,743	\$42,275,486	\$25,365,291
<b>FY26-27</b>	\$21,338,551	\$42,677,103	\$25,606,262
<b>FY27-28</b>	\$21,541,268	\$43,082,535	\$25,849,521

- The following provides total General Fund tax revenue:

	<b>State Sales Tax (7%)</b>	<b>Excise Tax</b>	<b>Franchise Tax</b>	<b>GF Allocations from State Special Tax (12%).</b>	<b>Total</b>
<b>FY24-25</b>	\$23,545,045	\$3,402,559	\$872,451	\$10,469,412	\$38,289,466
<b>FY25-26</b>	\$47,537,445	\$6,869,766	\$1,761,479	\$21,137,743	\$77,306,433
<b>FY26-27</b>	\$47,989,051	\$6,935,029	\$1,778,213	\$21,338,551	\$78,040,844
<b>FY27-28</b>	\$48,444,947	\$7,000,912	\$1,795,106	\$21,541,268	\$78,782,232

- The following are the estimated total local sales tax revenue by fiscal year:

	<b>Local Sales Tax Revenue (2.5%)</b>
<b>FY24-25</b>	\$9,608,093
<b>FY25-26</b>	\$19,398,741
<b>FY26-27</b>	\$19,583,029
<b>FY27-28</b>	\$19,769,068

*Revenue - Business Charters*

- All marijuana establishments will be required to file a business charter with the Secretary of State’s Office (SOS).
- The business charter fee is one-time at \$100.
- Revenue from charter fees is allocated 97 percent to the General Fund and three percent to the SOS.
- The following is the estimated total revenue by fiscal year and allocations to the General Fund and SOS:

		<b>FY24-25</b>	<b>FY25-26</b>	<b>FY26-27</b>	<b>FY27-28</b>
<b>New Establishments</b>		108	22	26	31
<b>Revenue</b>		\$10,800	\$2,160	\$2,592	\$3,110
<b>Allocations</b>	<b>General Fund</b>	\$10,476	\$2,095	\$2,514	\$3,017
	<b>SOS</b>	\$324	\$65	\$78	\$93

*Expenditures - Department of Revenue:*

- The DOR will require three additional tax auditor-advanced positions to audit tax returns submitted from marijuana establishments.
- It is assumed that these new positions will be filled on July 1, 2024.
- The total recurring increase in state expenditures is as follows:

<b>Title</b>	<b>Salary</b>	<b>Benefits</b>	<b>Other</b>	<b>Positions</b>	<b>Total</b>
Tax Auditor-Expert	\$74,604	\$19,985	\$2,500	3	\$291,266

- There will be a one-time increase in state expenditures in FY24-25 of \$8,400 for computers, office furniture, training, and rent.
- There will be an increase in state expenditures in FY24-25 of \$299,666 (\$291,266 + \$8,400).
- There will be a recurring increase in state expenditures in FY25-26 and subsequent years of \$291,266.
- It is assumed that all businesses will file electronically, rather than manually, resulting in no significant increase in revenue to DOR.

*Impact on Incarceration/State and Local Court Costs:*

- The proposed legislation will reduce convictions for simple possession involving an amount of marijuana less than one-half ounce.
- Based on information provided by the Administrative Office of the Courts (AOC) and the Department of Correction Jail Summary Reports, there has been an average of 13,997 Class A misdemeanor convictions under Tenn. Code Ann. § 39-17-418 in each of the last five years.
- It is assumed that an individual convicted of a Class A misdemeanor offense will spend an average of 15 days in a local jail.

- Based on cost estimates provided by local government entities throughout the state and reported bed capacity within such facilities, the weighted average cost per day to house an inmate in a local jail facility is \$59.07.
- The proposed legislation will lead to a recurring mandatory decrease in local incarceration expenditures estimated to be \$12,402,042 (\$59.07 x 13,997) offenders x 15 days).
- There will be a recurring mandatory decrease in local incarceration expenditures in FY24-25 and subsequent years of \$12,402,042.
- Pursuant to Tenn. Code Ann. § 39-17-417(g)(1), the sale, manufacture, delivery of, and possession with intent to sell, manufacture, or deliver a Schedule VI controlled substance classified as marijuana containing not less than one half ounce nor more than ten pounds, or a Schedule VI controlled substance defined as a non-leafy, resinous material containing tetrahydrocannabinol (hashish), containing not more than two pounds of hashish is a Class E felony offense.
- Based on information provided by the Department of Correction (DOC), there has been an average of 125.90 admissions in each of the last 10 years for the Class E felony offense under Tenn. Code Ann. § 39-17-417(g).
- However, these admissions include a Schedule VI controlled substance classified as marijuana containing up to ten pounds and a Schedule VI controlled substance classified as hashish containing up to two pounds.
- It is assumed that 15 percent, or 18.89 (125.90 x 15%) of these admissions involved between one half ounce and one ounce of a Schedule VI controlled substance classified as marijuana.
- After adjusting for pre-trial jail credits, the average time served for a Class E felony offense under Tenn. Code Ann. § 39- 17-417(g) is 0.39 years.
- Based on population data from the U.S. Census Bureau, population growth in Tennessee averaged 0.95 percent per year (from 2020 to 2023).
- The proposed legislation will result in 18.89 admissions annually serving 0.39 less years incarcerated.
- The weighted average operational costs per inmate per day are estimated to be \$54.04 for inmates housed at state facilities and \$49.88 for inmates housed at local facilities.
- Pursuant to Public Chapter 1007 of 2022, cost decreases are to be estimated on the actual estimated costs to be reduced over the next three-year period; therefore, the decrease in incarceration costs is estimated to be the following over the next three-year period:

Decrease in State Expenditures	
Amount	Fiscal Year
\$ 143,100	FY24-25
\$ 144,500	FY25-26
\$ 145,900	FY26-27

- Based on the Fiscal Review Committee’s 2008 study and the Administrative Office of the Courts’ 2012 study on collection of court costs, fees, and fines, collection in criminal cases is insignificant. The proposed legislation will not significantly change state or local revenue.

- The estimated fiscal impact of the proposed legislation does not consider the availability of beds in state and local facilities, but is based solely on the current operating costs of state facilities and the reimbursement rates for local facilities as is required by Tenn. Code Ann. § 9-4-210.
- This legislation establishes that it is a Class A misdemeanor offense for a person or business to either sell to a minor or fail to make such sale from a retail location, but also references that selling to a minor is currently a violation punishable as a Class E felony, as listed in Tenn. Code Ann. §§ 39-17-417 & 418. It is assumed that there will be no significant impact on the number of convictions directly resulting from offenses committed by retail marijuana establishments, either from the failure to prohibit sales to minors or to perform such sales from retail locations.

*Total Impacts:*

*General Fund – Revenue from the State Sales Tax, Excise Tax, Franchise Tax, and Special State Sales Tax (see table above):*

- The following is the estimated net revenue impact to the General Fund:
  - There will be an increase in state revenue in FY24-25 of \$38,299,942 (\$38,289,466 tax + \$10,476 business charters).
  - There will be an increase in state revenue in FY25-26 of \$77,308,528 (\$77,306,433 tax + \$2,095 business charters).
  - There will be an increase in state revenue in FY26-27 of \$78,043,358 (\$78,040,844 tax + \$2,514 business charters).
  - A recurring net increase in state revenue in FY27-28 and subsequent years of \$78,785,249 (\$78,782,232 tax + \$3,017 business charters).

*General Fund – Expenditures:*

- The following is the estimated increase of expenditures to the General Fund:
  - There will be an increase in state expenditures in FY24-25 of \$299,666 in DOR positions and resources, software, etc.
  - There will be a recurring increase in state expenditures in FY25-26 and subsequent years of \$291,266 in DOR positions and resources, software, etc.

*Secretary of State Revenue – Revenue*

- The following is the estimated increase in revenue to the SOS for business licenses:
  - There will be an increase in state revenue in FY24-25 of \$324.
  - There will be an increase in state revenue in FY25-26 of \$65.
  - There will be an increase in state revenue in FY26-27 of \$78.
  - There will be a recurring increase in state revenue in FY27-28 and subsequent years of \$93.

*Revenue for Educational Purposes – Allocations of Special Sales Tax Revenue*

- The following is the estimated increase in revenue to the DOS:
  - There will be an increase in state revenue in FY24-25 of \$20,938,824.
  - There will be an increase in state revenue in FY25-26 of \$42,275,486.
  - There will be an increase in state revenue in FY26-27 of \$42,677,103.

- There will be recurring increase in state revenue in FY27-28 and subsequent years of \$43,082,535.

*Revenue for Infrastructure – Allocations of Special Sales Tax Revenue*

- The following is the estimated increase in revenue to the DOE:
  - There will be an increase in state revenue in FY24-25 of \$12,563,294.
  - There will be an increase in state revenue in FY25-26 of \$25,365,291.
  - There will be an increase in state revenue in FY26-27 of \$25,606,262.
  - There will be a recurring increase in state revenue in FY27-28 and subsequent years of \$25,849,521.

*Incarceration – Decrease in State Expenditures*

- The following is the estimated decrease in expenditures for state incarceration:
  - There will be a decrease in state incarceration expenditures in FY24-25 of \$71,550.
  - There will be a decrease in state incarceration expenditures in FY25-26 of \$144,500.
  - There will be a recurring increase in state incarceration expenditures in FY26-27 and subsequent years of \$145,900.

*Local Revenue*

- The following is the estimated increase in revenue to local governments:
  - There will be an increase in local revenue in FY24-25 of \$9,608,093.
  - There will be an increase in local revenue in FY25-26 of \$19,398,741.
  - There will be an increase in local revenue in FY26-27 of \$19,583,029.
  - There will be a recurring increase in local revenue in FY27-28 and subsequent years of \$19,769,068.

*Incarceration – Decrease in Local Expenditures*

- There will be a recurring mandatory decrease in local incarceration expenditures in FY24-25 and subsequent years of \$12,402,042.

*Other:*

- This legislation could result in reduced expenditures for incarceration at the state and local level in terms of bail, parole, probation, or suspended sentences and increase expenditures at the state and local for additional public benefits; however, due to multiple unknown variables, any such impact cannot be reasonably determined at this time.
- This legislation will result in additional state and local tax revenue under the *Business Tax Act*. Due to variations in the size of separate business entities and the subsequent rate which will be applied to unknown amounts of gross sales of marijuana, exact revenue from this separate tax cannot be determined with reasonable certainty.
- All calculations used in the completion of this fiscal analysis are available upon request.

**CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Krista Lee Carsner". The signature is written in a cursive, flowing style.

Krista Lee Carsner, Executive Director

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