

Department of Legislative Services

Maryland General Assembly

2023 Session

FISCAL AND POLICY NOTE

First Reader

House Bill 556

(Delegates Wilson and Atterbeary)

Economic Matters

Cannabis Reform

This emergency bill (1) renames the Alcohol and Tobacco Commission as the Alcohol, Tobacco, and Cannabis Commission (ATCC) and expands its duties to include the regulation of cannabis; (2) establishes the Cannabis Regulation and Enforcement Division (the enforcement division) within ATCC to oversee the regulation of adult-use cannabis and designates the enforcement division as the successor of the Maryland Medical Cannabis Commission (MMCC) in all matters concerning the regulation of medical cannabis; (3) establishes a licensing framework for the regulated sale of cannabis in the State; (4) establishes a graduated sales and use tax applicable to the sale of adult-use cannabis; (5) establishes the Office of Social Equity (OSE) and the Social Equity Partnership Grant Program within ATCC; (6) establishes an advisory board; and (7) includes various provisions to encourage participation by “social equity applicants.”

Fiscal Summary

State Effect: General fund revenues increase beginning in FY 2024 from sales and use tax revenue distributions, as shown below. Special fund revenues increase in FY 2023 from specified fees and increase further beginning in FY 2024 from tax revenues and license application fees. Special fund expenditures increase beginning in FY 2023 to establish the enforcement division and OSE; additional significant special fund expenditures are likely but not reflected below. General fund expenditures increase in FY 2023 and 2024 to implement the tax provisions and increase further in FY 2025 due to a mandated appropriation for the Social Equity Partnership Grant Program. **This bill establishes a mandated appropriation beginning in FY 2025.**

(in dollars)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
GF Revenue	\$0	\$15,720,000	\$33,669,200	\$58,273,600	\$89,043,300
SF Revenue	\$107,100,000	\$6,379,400	\$16,289,700	\$33,661,900	\$49,389,100
GF Expenditure	\$312,900	\$934,900	\$5,979,700	\$5,840,600	\$5,878,000
SF Expenditure	\$90,800	\$21,371,100	\$24,502,300	\$37,049,800	\$52,805,400
Net Effect	\$106,696,200	(\$206,600)	\$19,476,900	\$49,045,100	\$79,749,000

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Local revenues and expenditures increase significantly due to the bill's capitalization and distribution of specified special funds and sales and use tax revenues, as discussed below.

Small Business Effect: Meaningful.

Analysis

Bill Summary: In general, the bill redesignates the Alcohol and Tobacco Commission as ATCC and establishes the Cannabis Regulation and Enforcement Division (the enforcement division) within the Office of the Executive Director of ATCC; the enforcement division is funded by the newly established Cannabis Regulation and Enforcement Fund (CREF). The enforcement division is tasked with overseeing the regulation of adult-use cannabis and is the designated successor of MMCC in all matters concerning the regulation of medical cannabis. Among other things, the bill (1) establishes an advisory board on medical and adult-use cannabis; (2) establishes OSE and the Social Equity Partnership Grant Program within ATCC; (3) establishes a cannabis licensing and registration framework; (4) establishes civil and criminal penalties for specified violations; (5) establishes a Maryland Incubator Program; (6) establishes cannabis advertising restrictions; (7) prohibits the State banking regulator from taking specified actions; (8) authorizes a local jurisdiction to establish its own ordinances, with specified limitations; and (9) establishes a graduated sales and use tax applicable to the sale of adult-use cannabis.

Alcohol, Tobacco, and Cannabis Commission

The bill makes numerous changes to reflect the renaming of the former Alcohol and Tobacco Commission as ATCC, establishes cannabis-related duties for ATCC, and adds two members to ATCC who must be knowledgeable and experienced in the cannabis industry. ATCC must develop best practices for regulating the cannabis industry; implementing public health measures related to cannabis; and regulating, to the extent possible, medical and adult-use cannabis in a similar manner.

Advisory Board on Medical and Adult-Use Cannabis: The bill establishes the Advisory Board on Medical and Adult-Use Cannabis within ATCC. The advisory board consists of members who meet specified criteria and are appointed by the Governor with the advice and consent of the Senate. The advisory board must (1) consider all matters submitted to it by ATCC, the Governor, the enforcement division, or the General Assembly; (2) on its own initiative, provide recommendations to ATCC and the enforcement division regarding guidelines, rules, and regulations that the advisory board considers important or necessary for review and consideration; and (3) establish at least two subcommittees to focus on medical and adult-use cannabis.

Social Equity Provisions

The enforcement division must (1) conduct extensive outreach to small, minority, and women business owners and entrepreneurs who may have an interest in applying for a cannabis license before accepting and processing cannabis license applications and (2) connect potential social equity applicants with OSE. By June 30 each year, licensed or registered cannabis entities must report specified information on the participation of minority and women in the cannabis industry to the enforcement division. By January 1 each year, the enforcement division must report this information to the General Assembly.

Office of Social Equity: The bill establishes OSE within ATCC headed by an executive director who meets specified criteria and is appointed by the Governor. OSE may employ staff and retain contractors as necessary to carry out the functions of the office, which include:

- promoting and encouraging full participation in the regulated cannabis industry by people from communities that have been disproportionately harmed by the war on drugs in order to positively impact those communities;
- consulting with and assisting the Comptroller in administering the Community Reinvestment and Repair Fund (CRRF) (established by Chapter 26 of 2022 and moved from the Health-General Article to ATCC by the bill);
- consulting with and assisting the Department of Commerce in administering the Cannabis Business Assistance Fund (also established by Chapter 26 of 2022);
- determining which individuals and entities must be granted loans or grants from the Cannabis Business Assistance Fund;
- identifying and opposing regulations that unnecessarily burden or undermine the legislative intent of OSE, as specified;
- providing recommendations to ATCC on regulations related to diversity and social equity applications;
- working with ATCC to implement free technical assistance for social equity and minority cannabis business applicants;
- producing reports and recommendations on diversity and equity in ownership, management, and employment in the legal cannabis economy; and
- assisting businesses with obtaining financing through the Capital Access Program (discussed below).

OSE must (1) issue a report by March 1 each year on how specified funds were allocated during the immediately preceding calendar year; (2) solicit public input on the uses of each of the specified funds by November 1 each year; and (3) publish a review of the input received by December 15 each year.

Social Equity Partnership Grant Program: The bill establishes the Social Equity Partnership Grant Program within ATCC to promote qualifying partnerships between operational cannabis licensees and “social equity licensees”. The Governor must include in the annual budget bill an annual appropriation of \$5.0 million for the grant program. ATCC must adopt regulations to implement and administer the grant program.

A social equity licensee means a “social equity applicant” who has been awarded a cannabis license or registration. A “social equity applicant” is an applicant for a cannabis license or registration who has at least 65% ownership and control held by one or more individuals who (1) have lived in a disproportionately impacted area for at least 5 of the 10 years immediately preceding the submission of the application; (2) attended a public school in a disproportionately impacted area for at least 5 years; or (3) meets any other criteria established by ATCC based on the results of a disparity study.

Subject to specified limitations, ATCC has discretion to approve, deny, or revoke qualifying partnerships. ATCC must award grants to operational cannabis licensees that have a qualifying partnership, as specified, in an amount that is based on the nature of the qualifying partnership. For converted licenses, the total grant amount may not exceed the license conversion fee paid by the licensee. ATCC may require a grant recipient that fails to fulfill the requirements of the grant to return all or part of the grant.

Community Reinvestment and Repair Fund: The bill repeals and recodifies CRRF (as established by Chapter 26 of 2022) under the Alcoholic Beverages Article (rather than under the Health-General Article). The bill also requires that OSE, in consultation with the Office of the Attorney General (OAG), (rather than OAG alone under existing statute) determine which communities have been the most impacted by the disproportionate enforcement of the cannabis prohibition before July 1, 2022. The Comptroller must distribute funds to each county in an amount that for the period from July 1, 2002, to January 1, 2023, (rather than June 30, 2022, under existing statute) that is proportionate to the total number of *individuals residing in the county who were charged with a cannabis crime compared to the total number of individuals charged with the cannabis crimes in the State*. (Existing statute uses a calculation based on cannabis arrests.)

Capital Access Program: The bill establishes a Capital Access Program within Commerce to (1) stimulate opportunities for social equity licensees that have difficulty obtaining financing and (2) establish a loan loss reserve account. Commerce must collaborate with OSE to identify and assist businesses with obtaining financing from the program. A loan to a social equity licensee qualifies if the loan satisfies the lending criteria of the financial institution, has a term of up to 10 years, and does not exceed \$500,000. To participate in the program, a lender must enroll the qualifying loan in the program within 30 days of the first loan disbursement.

Commerce must establish a loan loss reserve account for a lender when the lender enrolls its first loan under the program. At the time of enrollment, the borrower (which must qualify as a small business), lender, and the enforcement division must make specified payments into the reserve account. The loan loss reserve account must be available for a lender to withdraw from if the borrower defaults on a qualifying loan, subject to procedures that Commerce must establish.

Minority Business Enterprise Program: To the extent practicable and authorized by the U.S. Constitution, a cannabis licensee must comply with the State's Minority Business Enterprise (MBE) Program. Within six months of issuing a cannabis license, the Governor's Office of Small, Minority, and Women Business Affairs (GOSBA) – in consultation with OAG, OSE, and the cannabis licensee – must establish a clear plan for setting reasonable and appropriate MBE participation goals and procedures for the procurement of goods and services related to cannabis, including the cultivation, manufacturing, and dispensing of cannabis. To the extent practicable, these goals and procedures must be based on the requirements of the State's MBE program.

Cannabis Regulation and Enforcement Division

The bill establishes the Cannabis Regulation and Enforcement Division within the Office of the Executive Director of ATCC, headed by a director who meets specified criteria and is appointed by the Governor. The enforcement division is responsible for administering and enforcing the Medical and Adult-Use Cannabis Title of the Alcoholic Beverages Article, as established by the bill. The enforcement division may (1) employ officers and employees as provided in the State budget and (2) recommend changes to improve the enforcement division's ability to regulate cannabis.

The bill further establishes that the enforcement division is the successor to MMCC in matters concerning the regulation of medical cannabis. As such, all persons who are merit employees or contract staff in budgeted positions of MMCC are transferred to the enforcement division without any change or loss of rights, pay, working conditions, benefits, rights, or status. The transfer of personnel must be conducted in a manner to minimize the costs of the transfer and result in a more cost-efficient operation for the regulation of cannabis.

The enforcement division must evaluate the regulations adopted by MMCC under the Code of Maryland Regulations (COMAR 10.62) and adopt emergency regulations by July 1, 2023, that are supplemental to the existing medical cannabis regulations. The emergency regulations must (1) carry out the requirements for licensure of cannabis businesses, including implementing procedures related to applications, licenses, and registrations; (2) assist the Comptroller in the collection of taxes imposed on the sale of adult-use cannabis; (3) implement inventory management and tracking, as specified; and

(4) establish operating requirements for cannabis licensees, as specified. The enforcement division must also adopt nonemergency regulations by July 1, 2024, as necessary to carry out its responsibilities. Any adopted regulations must, to the extent practicable, regulate medical and adult-use cannabis in the same manner.

The enforcement division must also:

- develop and maintain a seed-to-sale tracking system, as specified;
- conduct financial and criminal background investigations of any cannabis license applicants and licensees, as specified and required;
- solicit, evaluate, and issue or deny applications for cannabis licenses and registrations, as specified;
- award or deny cannabis licenses and registrations and give notice and hold hearings on contested license denials, as specified;
- conduct announced and unannounced inspections of any licensed or registered cannabis business to ensure compliance;
- after determining that a violation has occurred, impose any authorized penalty after giving notice and holding a hearing in accordance with the requirements of the State Government Article; and
- publish specified data, organized by month on a rolling basis to the publicly accessible part of ATCC's website.

The enforcement division may issue subpoenas for witnesses or evidence in investigations, proceedings, or disciplinary actions; delegate its hearing authority; and hold hearings *in absentia* when the person against whom action is contemplated fails to appear after due notice.

Cannabis Regulation and Enforcement Fund: The bill establishes CREF, administered by the Comptroller (at the direction of the enforcement division), with the purpose of covering the costs of operating (1) ATCC and the enforcement division and (2) administering and enforcing the Medical and Adult-Use Cannabis Title of the Alcoholic Beverages Article. The fund is subject to audit by the Office of Legislative Audits (OLA) and generally consists of fees the enforcement division may impose (including registration fees) and tax revenues from the sale of adult-use cannabis sufficient to defray the entire cost of operating the enforcement division. In addition, the balance of the Natalie M. LaPrade Medical Cannabis Fund on the date immediately preceding the bill's effective date must be credited to the fund to cover the costs of implementing the bill and regulating the cannabis industry in Maryland. By March 15 each year, the Comptroller must publish on its website a specified report of the fund's revenues and expenditures.

Medical Cannabis

The bill generally repeals Title 13, Subtitle 33 of the Health-General Article in its entirety and largely recodifies under the Medical and Adult-Use Cannabis Title of the Alcoholic Beverages Article the provisions related to certifying providers, qualifying patients, and caregivers, including that (1) the enforcement division (rather than MMCC) must register certifying providers, as specified; (2) qualifying patients or caregivers may obtain medical cannabis from a licensed dispensary; (3) qualifying patients younger than age 18 may obtain medical cannabis only through a caregiver or designated school personnel, as specified; and (4) a qualifying patient may possess up to 120 grams of usable cannabis or 36 grams of delta-9-tetrahydrocannabinol (THC) for cannabis-infused products. The bill establishes a new authorization that a qualifying patient who is at least age 21 may cultivate up to four cannabis plants and no more than four cannabis plants may be cultivated at a single residence, as specified, provided that the qualifying patient complies with the cannabis cultivation provisions in Chapter 26 of 2022.

Beginning July 1, 2023, a cannabis licensee that is operating a dispensary must ensure that it has adequate supply for qualifying patients and caregivers and set aside operating hours to serve only qualifying patients and caregivers.

Maryland Medical Cannabis Commission Special Fund: The bill repeals without recodification §13-3303 of the Health-General Article, which pertains to the membership of MMCC and the MMCC special fund. As noted above, the bill also transfers the balance of the fund on the date immediately preceding the bill's effective date to CREF.

Medical Cannabis Compassionate Use Fund: The bill also recodifies the Medical Cannabis Compassionate Use Fund administered by the enforcement division (rather than MMCC) to provide access to cannabis for individuals enrolled in Maryland Medicaid or in the Veterans Affairs Maryland Health Care System. The bill expands the authorized uses of the fund to include access to, at a reduced cost, an assessment of the patient's medical history and current medical condition. The special fund consists of fees set by the enforcement division (rather than MMCC) in an amount necessary to provide revenues for the fund; however, the enforcement division may not impose these fees on medical cannabis licensees in the two years immediately following the award of a cannabis business license under the bill.

Cannabis Licensing

To operate a cannabis business in the State, a person must obtain a cannabis license from the enforcement division. A cannabis license issued pursuant to the bill, which is valid for five years on initial licensure and renewal, authorizes the licensee to operate a medical *and* adult-use cannabis business. Medical cannabis licensees (growers, processors, and

dispensaries) convert to a medical and adult-use cannabis business license by paying a conversion fee (as discussed below). Cannabis business licenses include those for dispensaries, growers, processors, incubator spaces, on-site consumption establishments, and micro licenses. The enforcement division must establish renewal fees for all cannabis business licenses (including converted licenses) that do not exceed 10% of the licensee's annual gross revenue. All renewal fees are paid to the enforcement division.

The enforcement division must consider market demand in the issuance of all license types, including awarding dispensary licenses in a manner that encourages a balanced geographic distribution. The enforcement division may (1) conditionally award licenses; (2) inspect cannabis licensees to ensure compliance; (3) suspend, fine, restrict, or revoke a cannabis license, as specified; and (4) impose penalties or rescind the license of a cannabis licensee that does not meet specified licensure standards. **Exhibit 1** shows the maximum number of licenses that may be issued for all license types, including medical-cannabis licenses converted in accordance with the bill, regardless of the number of license awards authorized for first and second round awards (discussed in more detail below). Exhibit 1 also details what is authorized by each license type and the maximum ownership and control interests a person may have for each license type. The enforcement division must adopt regulations limiting a person or fund from acquiring a nonmajority ownership interest in multiple cannabis businesses beyond the ownership interest and control limits established by the bill and listed in Exhibit 1.

Exhibit 1
Participation in the Cannabis Industry for All License Types

<u>License Type</u>	<u>Maximum Number of Licenses Authorized</u>	<u>License Authorizations</u>	<u>Maximum Ownership and Control Interests</u>
Standard Grower	75*	To operate 10,000 to 300,000 square feet of indoor canopy space**	One
Standard Processor	100	To process more than 1,000 pounds of cannabis per year	One
Standard Dispensary	300	To operate a physical location for selling cannabis or cannabis products	Two
Micro Grower	100	To operate not more than 10,000 square feet of indoor canopy space**	One
Micro Processor	100	To process not more than 1,000 pounds of cannabis per year	One
Micro Dispensary	200	To operate a delivery service that sells cannabis or cannabis products without a physical storefront if the licensee employs no more than 10 employees	Two
Incubator Space	10	To operate a facility where a micro licensee may operate, as specified	Two***
On-site Consumption	50	To operate a facility where individuals can smoke, vape, or consume cannabis, as specified	Two***

* A grower license awarded to a class member of specified litigation is in addition to and not subject to the limitations on the total number of licenses the enforcement division may issue.

** Each grower or micro grower must calculate its indoor canopy space (or equivalent) using a specified methodology and submit the calculation to the enforcement division. The enforcement division may take specified actions against a grower who fails to adhere to its canopy authorization.

*** A person who owns or controls an incubator space licensee or an on-site consumption licensee may not own or control any other cannabis licensee.

Source: Department of Legislative Services

Additional Grower License Award: As soon as practicable after the bill's effective date, the enforcement division must issue a license to operate as a cannabis grower to

one applicant that is a recognized class member of *Pigford v. Glickman*, 185 F.R.D. 82 (D.D.C. 1999), or *In Re Black Farmers Litig.*, 856 F. Supp. 2d 1 (D.D.C. 2011). An applicant that is awarded the specified license may subsequently apply for and be awarded a license to operate as a cannabis processor pursuant to the bill. A license awarded under these circumstances is in addition to and not subject to the limitations on the total number of licenses that the enforcement division may issue. An applicant that is not awarded the specified license may apply for a license in accordance with the bill's provisions; the enforcement division (1) must allow the applicant to amend, if necessary, and resubmit or withdraw the application and (2) may waive the initial application fee but may charge a reasonable fee for the resubmission of an application.

Conversion of Medical Cannabis Licenses: By July 1, 2023, the enforcement division must convert licenses, including preapproved licenses, issued to medical cannabis growers, processors, and dispensaries to licenses to operate a medical and adult-use cannabis business if a one-time conversion fee is paid to the enforcement division. The enforcement division must adopt regulations requiring converted licensees to reserve a specified amount of cannabis for social equity licensees. **Exhibit 2** outlines the conversion fees set for medical licensees that were either operational before October 1, 2022, or held a Stage One Preapproval and were not operational before October 1, 2022. All conversion fees collected are paid to the enforcement division and credited to CRRF.

It is the stated intent of the General Assembly to preserve production availability for new adult-use cannabis cultivation licenses. Thus, medical cannabis growers who convert licenses under the bill must adhere to expansion limitations, as specified.

Exhibit 2
Medical Cannabis Licensee Conversion Fees

<u>License Type</u>	<u>Gross Revenues in 2022</u>	<u>Conversion Fee</u>
Growers and Processors* (Operating Prior to October 1, 2022)	Less than \$1.0 million	\$100,000
	At least \$1.0 million but not more than \$5.0 million	\$500,000
	More than \$5.0 million but not more than \$10.0 million	\$1.0 million
	More than \$10.0 million but not more than \$15.0 million	\$1.5 million
	More than \$15.0 million but not more than \$20.0 million	\$2.0 million
	More than \$20.0 million	\$2.5 million
Stage One Preapproval Grower and Processor and (Not Operating Prior to October 1, 2022)	n/a	\$50,000
Dispensaries (Operating Prior to October 1, 2022)	Less than \$1.0 million	\$100,000
	At least \$1.0 million but not more than \$5.0 million	\$250,000
	More than \$5.0 million but not more than \$10.0 million	\$500,000
	More than \$10.0 million but not more than \$15.0 million	\$1.0 million
	More than \$15.0 million but not more than \$20.0 million	\$1.5 million
	More than \$20.0 million	\$2.0 million
Stage One Preapproval Dispensary and (Not Operating Prior to October 1, 2022)	n/a	

n/a: not applicable

*If a business holds a grower license and a processor license, the fee must be based on total gross revenues from both licenses.

Source: Department of Legislative Services

Initial Awards of New Licenses: For any new cannabis business licenses, an applicant must submit an application developed by the enforcement division and the initial application fee of \$5,000 for all license types except micro licenses, which have an initial application fee of \$1,000. All application fees are paid to the enforcement division. The enforcement division may not accept from a single applicant in any round (1) more than one application per license or (2) more than two applications. The enforcement division may not require that an applicant possess or own a property or facility to operate a cannabis business at the time of application.

By January 1, 2024, the enforcement division must begin issuing first round licenses. First round application submissions for all license types are limited to social equity applicants. Each applicant that meets the minimum qualifications must be entered into a lottery. The enforcement division must determine whether an applicant meets the minimum qualifications for the lottery on a pass-fail basis, as determined by the enforcement division, after evaluating an applicant's detailed operational plan, business plan, and detailed diversity plan.

Beginning May 1, 2024, the enforcement division must begin issuing second round licenses. The enforcement division must enter each applicant that meets the minimum qualifications into a lottery. The enforcement division must determine whether an application meets the minimum qualifications for the lottery on a pass-fail basis, as determined by the enforcement division, after evaluating an applicant's detailed operational plan, business plan, and detailed diversity plan. If OAG determines that the licenses awarded during the first round are *not* diverse *and* a disparity study determines that there is a compelling interest to implement remedial measures, the enforcement division must also evaluate applicants based on remedial measures. If OAG determines that the licenses awarded during the first round are diverse regardless of the results of a disparity study, the enforcement division must determine whether an application meets the minimum qualifications based on an applicant's detailed operational plan, business plan, detailed diversity plan, and, for all license types except micro licenses, whether or not the applicant qualifies as a social equity applicant. Second round application submissions for micro licenses under this scenario are limited to social equity applicants.

Exhibit 3 shows the maximum number of licenses (by license type) that the enforcement division may issue during the first and second round license awards. The enforcement division must award any subsequent cannabis licenses as needed in accordance with a market demand study and reserve a reasonable number of standard licenses to allow micro licensees to transition. The enforcement division may limit subsequent cannabis licenses (in total or in part) to social equity or minority business applicants if doing so is necessary to ensure diversity and inclusion in the industry as warranted by the disparity study.

Exhibit 3
Maximum Number of Cannabis License Awards

<u>License Type</u>	<u>First Round Awards</u>	<u>Second Round Awards</u>
Standard Grower	20	25
Standard Processor	40	25
Standard Dispensary	80	120
Micro Grower	30	70*
Micro Processor	30	70*
Micro Dispensary	75	125*
Incubator Space	10	10
On-site Consumption	-	15

Note: First round license awards and second round micro license awards are limited to social equity applicants.

Source: Department of Legislative Services

License Transfers: To transfer ownership or control of a cannabis license, a licensee must first submit to the enforcement division an application and fee, as specified by the enforcement division. However, a cannabis licensee (including a converted licensee) may not transfer ownership or control of the license for at least five years following licensure, with limited exceptions and not including the time period that a business is considered to be in a preapproved licensure status. In addition, a cannabis licensee may not surrender a license and apply for a new license in the same or similar category.

On-site Consumption Establishments: The bill establishes additional prohibitions and requirements for on-site consumption establishments, including prohibiting (1) on-duty employees from consuming cannabis on the premises; (2) the distribution of free samples on the premises; (3) the consumption of alcohol on the premises; (4) the growing, processing, or dispensing of cannabis on the premises; and (5) an individual who is younger than age 21 from entering the premises. An on-site consumption establishment must require all employees to successfully complete an annual responsible vendor training program, ensure that the display and consumption of cannabis is not visible from outside of the licensed premises, and provide specified educational materials on the safe consumption of cannabis. The enforcement division must maintain a list of all on-site consumption establishments in the State and make the list available on its website.

Responsible Vendor Training Program: The enforcement division must adopt regulations establishing the responsible vendor training program and the minimum standards for the

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program. Before offering a specified responsible vendor training program, a person must submit an application that the enforcement division must approve if the proposed training program meets specified minimum educational standards, including a core curriculum of relevant statutory and regulatory provisions. An approved program provider must maintain its training records for four years, as specified, and make the records available to the enforcement division for inspection.

Prohibited Acts for Cannabis Licensees: A cannabis licensee may not sell, transfer, or deliver cannabis or cannabis products unless the licensee verifies, as specified, that (1) for adult-use cannabis, the consumer is at least age 21 or (2) for medical cannabis, the patient or caregiver is registered with the enforcement division and is at least age 18. Violators of this prohibition are subject to a civil penalty as follows: \$500 for a first violation; \$1,000 for a second violation within 24 months of the first violation; and \$5,000 for each subsequent violation occurring within 24 months of the immediately preceding violation. The enforcement division may also deny a cannabis license to an applicant, reprimand a licensee, or suspend or revoke a cannabis license if the applicant or licensee commits two or more violations within a 24-month period. A cannabis licensee may not sell transfer or deliver cannabis to an individual who is visibly intoxicated or offer cannabis or cannabis products as a prize. Violators of this prohibition are subject to a fine up to \$1,000 and/or license suspension or revocation.

Cannabis Registrations

Business Registrations: Before providing services to a cannabis licensee, the following businesses must register with the enforcement division: (1) a transporter; (2) a security guard agency; (3) a waste disposal company; and (4) any other type of cannabis business that is authorized by the enforcement division to provide plant or product-touching services to cannabis licensees. A registration to operate specified cannabis businesses issued by the enforcement division on or before July 1, 2023, authorizes the cannabis business to handle medical and adult-use cannabis products.

Agent Registrations: Before an agent may volunteer or work for a cannabis business licensee or registrant, the agent must register with the enforcement division. A registration is valid for two years. To be eligible to register as a cannabis agent, an individual must be at least age 21 and obtain a criminal history records check, as specified. The enforcement division may not register an individual who fails to meet these criteria or has been convicted of or pleaded nolo contendere to a crime involving moral turpitude. The enforcement division may not deny an agent registration based on any cannabis-related offenses that occurred before January 1, 2023.

Cannabis Research and Development: Specified entities may register with the enforcement division to purchase cannabis for the purpose of conducting a *bona fide*

research project relating to the uses, properties, or composition of cannabis, as specified. A registration must include specified information and remains valid until there is a change in the research project or a withdrawal of the registration.

The enforcement division may also register an entity to grow, process, test, and transfer cannabis for specified research and development purposes. To obtain a research and development registration, an applicant must submit an application and fee, as set by the enforcement division. A research and development registration is valid for two years on initial issue and renewal.

Cannabis Advertising

The enforcement division must adopt regulations to establish procedures for enforcing advertising restrictions and a process for an individual to voluntarily submit an advertisement to the enforcement division for an advisory opinion on whether the advertisement complies with the applicable restrictions on advertisements. An advertisement for a cannabis licensee, cannabis product, or cannabis-related service may not:

- make materially false or misleading statements;
- contain specified representations that target minors, display the use of cannabis, promote cannabis for use as an intoxicant, or are obscene;
- engage in advertising through specified forms of media unless at least 85% of the audience is reasonably expected to be at least age 21, as specified; and
- engage in advertising by placing the advertisements on specified publicly visible locations.

Advertisements for medical cannabis, products, or services that make therapeutic or medical claims must (1) be supported by substantial clinical evidence or data and (2) include information on the most significant side effects or risks associated with the use of cannabis. Advertisements pertaining to medical cannabis or products must include a statement that the products are for use by a qualifying patient only.

A website owned, managed, or operated by a cannabis licensee must employ a neutral age-screening mechanism verifying the user is at least age 21. Similarly, if an advertisement is placed on social media or a mobile application, it must include a notification that an individual must be at least age 21 to view the content. If a website owned, managed, or operated by a cannabis licensee is appropriate for a qualifying patient who is younger than age 21, the website must provide an alternative screening mechanism for the qualifying patient.

Cannabis Testing Laboratories

State Cannabis Testing Laboratory: By July 1, 2023, the Maryland Department of Agriculture (MDA) or the Maryland Department of Health (MDH) may enter a memorandum of understanding (MOU) with the enforcement division to test cannabis at an existing State-owned laboratory if doing so would be a more economic and efficient alternative to the establishment of a new State testing laboratory. However, if MDA or MDH and the enforcement division determine that co-locating cannabis testing at an existing State-owned laboratory is not operationally feasible, the enforcement division must establish and maintain a State cannabis testing laboratory and sufficient funding must be provided in the annual budget to do so.

The State cannabis testing laboratory is generally responsible for developing specified cannabis testing methodologies and overseeing independent testing laboratories, as specified. The State cannabis testing laboratory must hold medical and adult-use cannabis to the same testing standards.

Independent Testing Laboratory: To be sold or marketed in the State, cannabis or cannabis products must be tested by an independent testing laboratory and determined to meet the enforcement division's testing protocols. The enforcement division must convert any registration to operate an independent testing laboratory issued by MMCC on or before July 1, 2023, to a registration authorizing an independent testing laboratory to test both medical and adult-use cannabis and cannabis products.

The enforcement division must register at least one independent testing laboratory to test cannabis and cannabis products for sale in the State. To become registered, an independent testing laboratory must (1) meet the application requirements, as specified; (2) pay an application fee set by the enforcement division; and (3) meet the standards and requirements for accreditation, inspection, and testing that the enforcement division must establish. A registered independent testing laboratory may operate for two years on initial license and on renewal. A registered independent testing laboratory is authorized to test and transport cannabis and cannabis products on behalf of cannabis licensees. The enforcement division may inspect a registered independent testing laboratory to ensure compliance.

Maryland Incubator Program

The enforcement division must adopt regulations to establish a Maryland Incubator Program based on the best practices in other states. The Maryland Economic Development Corporation (MEDCO), in consultation with the enforcement division, must acquire and construct or refurbish at least one facility to operate an incubator space. MEDCO may fulfill this requirement by entering into an MOU with a nonprofit organization to operate

a State incubator space facility if the enforcement division and MEDCO oversee the facility.

Ownership Interests

An individual wishing to hold an ownership interest of at least 5% in or control of a cannabis licensee must submit an application, with specified information including a criminal history records check, and an application fee set by the enforcement division.

The bill restricts a constitutional officer or secretary of a principal department of the Executive Branch, a member of the General Assembly, or an employee of the enforcement division from having specified financial, employment, or ownership interests with a cannabis business in the State.

Local Jurisdictions

A local jurisdiction may establish reasonable zoning requirements for cannabis businesses and decide how to distribute its allocation of tax revenues. A local jurisdiction may not (1) impose a tax on cannabis; (2) establish zoning or other requirements that unduly burden a cannabis licensee; (3) prohibit transportation through or deliveries within the local jurisdiction; (4) prevent an entity from converting a medical cannabis license that is in compliance with all relevant medical cannabis regulations; or (4) negotiate or enter into an agreement requiring a cannabis licensee or applicant to provide money, donations, in-kind contributions, services, or anything of value to the local jurisdiction. A cannabis licensee that was operating as of January 1, 2023, is not required to be submitted to, or approved by a zoning board, as specified. However, a county or municipality must affirmatively authorize an on-site consumption establishment to operate by issuing a permit or license and may place restrictions on or prohibit the operation of on-site consumption establishments.

Sales and Use Tax on the Sale of Adult-use Cannabis

The bill establishes a graduated sales and use tax rate that applies to the sale of cannabis from a dispensary to a consumer. The tax rate for fiscal 2024 is 6% and increases by 1% each year until fiscal 2028, when the tax rate reaches 10% and remains stable thereafter. The sales and use tax does not apply to the sale of (1) medical cannabis or (2) cannabis between licensed cannabis establishments. After making specified distributions as required under current law, the Comptroller must distribute the sales and use tax collected from consumer sales of adult-use cannabis as follows:

- an amount necessary to defray the entire cost of operating the enforcement division to CREF;

- 30% to CRRF for fiscal 2024 through 2033;
- 1.5% to counties and municipalities, allocated to each jurisdiction based on the percentage of revenues collected from that jurisdiction;
- 1.5% to the Cannabis Public Health Fund;
- 1.5% to the Cannabis Business Assistance Fund for fiscal 2024 through 2028; and
- any remaining balance after the above specified distributions, to the general fund.

Banking and Insurance

The State banking regulator is prohibited from taking specified actions against the following institutions for providing financial services to a “cannabis-related legitimate business” or a “service provider” (as defined under the bill): (1) banks, credit unions, and other entities operating as depository institutions in the State; and (2) insurance companies and producers operating in the State. These specified institutions are also not liable under any State law or regulation solely for providing a cannabis-related legitimate business or a service provider with financial services or for investing any income derived from the financial services.

For purposes of federal law, the proceeds from a transaction involving activities of a cannabis-related legitimate business or service provider may not be considered proceeds from an unlawful activity, as specified. The State is prohibited from cooperating or aiding federal law enforcement authorities attempting to prosecute financial institutions that are lawfully operating under the bill.

Miscellaneous Provisions

The bill establishes various provisions related to professional and occupational licensing, public benefits, parental rights, employer and employee rights, medical care, contract law, and property owners and landlords.

Criminal Offenses: A person may not sell or distribute a product intended for human consumption or inhalation that contains more than 0.5 milligrams of THC or 2.5 milligrams of THC per package unless the person is a cannabis licensee and the product complies with specified standards under the bill, or, even if licensed, sell or distribute the specified THC products to an individual younger than age 21. A violator is guilty of a misdemeanor and on conviction is subject to a maximum \$5,000 fine.

A person may not sell or distribute a cannabinoid product that is not derived from naturally occurring biologically active chemical constituents. A violator is guilty of a misdemeanor and on conviction is subject to a maximum \$10,000 fine.

Legal Protections: The following persons, when acting in accordance with the bill, may not be subject to arrest, prosecution, revocation of mandatory supervision, parole, or probation, or any civil or administrative penalty, or be denied any right or privilege for the use of or possession of cannabis: (1) qualifying patients; (2) cannabis licensees or registrants; (3) certifying providers; (4) caregivers; (5) specified academic research representatives; (6) specified health care facilities where a qualifying patient receives treatment; and (7) and designated school personnel authorized to administer medical cannabis to a qualifying patient who is a student, as specified.

Laws Unaltered by the Bill: The bill does not authorize an individual to drive a vehicle or vessel under the influence of cannabis, use cannabis in a public place, or use cannabis in a motor vehicle. The bill also does not authorize a person to possess cannabis in a correctional facility, including a juvenile detention facility.

Current Law:

Legalization of Cannabis

Pursuant to Chapter 26 of 2022 and the passage of the associated constitutional referendum, as of January 1, 2023, “personal use amount” means (1) up to 1.5 ounces of usable cannabis; (2) up to 12 grams of concentrated cannabis; (3) cannabis products containing up to 750 milligrams of delta-9-THC; or (4) beginning July 1, 2023, up to 2 cannabis plants. “Civil use amount” means (1) more than 1.5 ounces but not more than 2.5 ounces of usable cannabis; (2) more than 12 grams but not more than 20 grams of concentrated cannabis; or (3) cannabis products containing more than 750 milligrams but not more than 1,250 milligrams of delta-9-THC.

From January 1, 2023, through June 30, 2023, possession of the personal use amount of cannabis and possession of the civil use amount of cannabis are subject to civil penalties. Possession of more than the civil use amount is subject to a criminal penalty. As of July 1, 2023, (1) a person at least age 21 may use and possess the personal use amount of cannabis; (2) possession of the personal use amount of cannabis by a person younger than age 21 and possession of the civil use amount of cannabis are subject to civil penalties; and (3) possession of more than the civil use amount of cannabis is subject to a criminal penalty.

Natalie M. LaPrade Medical Cannabis Commission

MMCC is responsible for implementation of the State’s medical cannabis program, which is intended to make medical cannabis available to qualifying patients in a safe and effective manner. The program allows for the licensure of growers, processors, and dispensaries and the registration of their agents, as well as registration of independent testing laboratories

and their agents. There is a framework to certify health care providers (including physicians, dentists, podiatrists, nurse practitioners, nurse midwives, and physician assistants), qualifying patients, and their caregivers to provide qualifying patients with medical cannabis legally under State law via written certification. Additionally, there are legal protections for third-party vendors authorized by the commission to test, transport, or dispose of medical cannabis, medical cannabis products, and medical cannabis waste.

Status of Medical Cannabis Implementation

Statute limits the number of grower and processor licenses the commission can issue, and regulations establish a limit on the number of dispensary licenses. Specifically, the commission can issue 22 grower, 28 processor, and 102 dispensary licenses. At the close of calendar 2022, the commission had issued 18 final grower licenses, 21 final processor licenses, and 97 final dispensary licenses. In addition, there are three licensed independent testing laboratories. The commission maintains a list of licensees on its [website](#). Also, at the close of calendar 2022, there were 162,300 certified patients, 8,159 caregivers, and 1,560 certifying providers. The commission additionally reports a preliminary total of \$674.2 million in retail sales at cannabis dispensaries in the State for calendar 2022.

Cannabis Business Assistance Fund

Chapter 26 of 2022 (and the subsequent passage of the associated constitutional referendum) established the Cannabis Business Assistance Fund to assist small, minority-owned, and women-owned businesses entering the adult-use cannabis industry. The fund may be used only for (1) grants or loans to small, minority-owned, or women-owned businesses, as specified, and (2) grants to the State's Historically Black Colleges and Universities for cannabis-related programs and business development organizations to train and assist small, minority, and women business owners and entrepreneurs seeking to become licensed to participate in the adult-use cannabis industry.

Commerce must administer the fund and must prioritize awarding grants and loans to (1) populations that have been historically disproportionately impacted by the enforcement of cannabis laws and (2) individuals who have been convicted of cannabis offenses. Commerce may not award grants or loans to small, minority, and women business owners and entrepreneurs with a personal net worth exceeding \$1.7 million. In awarding grants and loans, Commerce must develop partnerships with specified entities. The fiscal 2023 budget included \$40.0 million for initial capitalization of the fund.

Cannabis Public Health Fund and Cannabis Public Health Advisory Council

Chapter 26 of 2022 (and the subsequent passage of the associated constitutional referendum) also established the Cannabis Public Health Advisory Council to study and

report its findings and recommendations by December 1 each year on specified public health impacts of cannabis legalization. The Cannabis Public Health Fund was also established to (1) support the advisory council; (2) support data collection and research on the effects of cannabis legalization in the State; (3) provide funding for education and public awareness campaigns related to cannabis use, including funding for educational programs to be used in schools; (4) support substance use disorder counseling and treatment for individuals; (5) provide training and equipment for law enforcement to recognize impairments due to cannabis; and (6) purchase technology proven to be effective at measuring cannabis levels in drivers. MDH must administer the fund, which consists of revenues distributed to the fund based on revenues from adult-use cannabis, money appropriated in the State budget to the fund, and any other money from any other source accepted for the benefit of the fund. The fiscal 2023 budget included \$5.0 million for initial capitalization of the fund.

Community Reinvestment and Repair Fund

Chapter 26 of 2022 also established CRRF as of July 1, 2023, to be administered by the Comptroller with the stated purpose of providing funds to community-based organizations that serve communities determined by OAG to have been the most impacted by disproportionate enforcement of the cannabis prohibition before July 1, 2022. The fund consists of (1) at least 30% of the sales and use tax revenues generated from adult-use cannabis; (2) licensing fees paid by dual-licensed cannabis establishments; and (3) money from any other source accepted for the benefit of the fund by the Comptroller, as specified.

The fund may be used only for (1) funding community-based initiatives intended to benefit low-income communities; (2) funding community-based initiatives that serve communities disproportionately harmed by the cannabis prohibition and enforcement; and (3) any related administrative expenses. Money may not be expended from the fund for law enforcement agencies or activities.

The Comptroller must distribute funds to each county in an amount that is proportionate to the total number of marijuana arrests in the county compared to the total number of arrests in the State between July 1, 2002, and June 30, 2022. Subject to the authorized uses of the fund specified above, each county must adopt a law establishing the purpose for which money received from the fund may be used. Beginning in 2024, each local jurisdiction must submit a report to specified legislative committees by December 1 every two years on how the funds received were spent during the immediately preceding two fiscal years.

Governor's Office of Small, Minority, and Women Business Affairs

GOSBA is established in the Executive Department; the head of the office is a Special Secretary who is appointed by and serves at the pleasure of the Governor. The Special

Secretary's general duties are to advise the Governor on activities to promote the employment of minority persons in the State and any other matters that affect the rights and interests of minority persons and the communities in which they live. GOSBA has designated oversight, reporting, and outreach responsibilities related to the State's MBE program and responsibility for overseeing the State's Small Business Reserve program.

State Sales and Use Tax

No State or local tax is currently imposed on the sale of cannabis. The State sales and use tax rate is 6%, except for the sale of alcoholic beverages, which is taxed at a rate of 9%.

State Fiscal Effect: The bill results in significant effects on State revenues and expenditures – the bill affects both the general fund and various special funds. After a discussion of the general assumptions used, this analysis provides an estimate of the sales and use tax revenues resulting from the bill (and the distribution of those revenues) as well as the fiscal effects by agency resulting from the bill's various provisions.

General Assumptions Used in the Analysis

This analysis generally assumes that:

- the bill takes effect April 1, 2023 (the bill is an emergency measure that takes effect on the date of passage by both chambers, which cannot be reliably determined);
- CREF may be used to pay for all costs under the Medical and Adult-Use Cannabis Title of the Alcohol Beverages Article, including expenditures for ATCC that pertain to cannabis, the enforcement division, OSE, the Capital Access Program, the State Cannabis Testing Laboratory, and the Maryland Incubator Program;
- all revenues and expenditures related to CREF are attributable to the Comptroller, as the bill requires the Comptroller to administer the fund (at the direction of the enforcement division);
- despite references in the bill indicating that all MMCC staff employed as of *June 30, 2023*, transfer to the enforcement division, this analysis assumes MMCC staff are transferred to the enforcement division on April 1, 2023, (the assumed effective date), as the bill repeals MMCC in its entirety;
- while some of the effects on specified special funds established pursuant to Chapter 26 of 2022 were generally assumed in the fiscal and policy note for that Act, the fiscal and policy note also indicated that the extent of the effects could not be reasonably estimated until a licensing, regulatory, and taxation framework was established; as this bill sets such a framework, additional specificity is added regarding those effects in this fiscal and policy note; and

- the required distribution of the sales and use tax revenues to various special funds and local jurisdictions occurs *after* the distribution to CREF in an amount necessary to defray the entire cost of the operation of the enforcement division.

Sales and Use Tax Revenues

Sales and use tax revenues from adult-use cannabis sales increase significantly beginning in fiscal 2024. **Exhibit 4** shows the estimated annual sales of adult-use cannabis, the applicable tax rate, and associated sales and use tax revenues estimated to be generated under the bill. Sales and use tax revenues are estimated to total \$24.0 million in fiscal 2024, increasing to \$146.6 million by fiscal 2027.

Exhibit 4
Estimated Annual Sales of Cannabis and Associated Sales and Use Tax Revenues
(\$ in Millions)

	<u>FY 2024</u>	<u>FY 2025</u>	<u>FY 2026</u>	<u>FY 2027</u>
Estimated Annual Sales	\$400.0	\$812.4	\$1,242.6	\$1,629.0
Applicable Tax Rate	6%	7%	8%	9%
Estimated Total SUT Revenues	\$24.0	\$56.9	\$99.4	\$146.6

SUT: Sales and Use Tax

Source: Department of Legislative Services

During the 2022 interim, the General Assembly commissioned a study, conducted by Cannabis Public Policy Consulting, to conduct predictive modeling for a potential adult-use cannabis market in the State, including potential cannabis supply, demand, market share, and sales. The consultant's report can be found [here](#). This estimate is based in part on the results of the consultant's study, with consideration also given to the adult-use cannabis markets in Colorado and Massachusetts and estimates of cannabis sales provided by MMCC. While the estimates of cannabis sales from all those sources increase by similar year-over-year growth rates, the estimates of sales in the first year varies significantly across those sources (from approximately \$350.0 million to \$600.0 million). Due in part to the fact that the bill rolls out cannabis licensing more slowly than the consultant's study anticipated, and the fact that the bill establishes canopy restrictions, this analysis assumes a more conservative initial estimate of \$400.0 million in sales in the first fiscal year, increasing by average year-over-year growth rates that are similar to the growth rates assumed by the consultant and the other sources.

Sales and Use Tax Revenues – Impact on General Fund After Other Required Distributions

General fund revenues increase by an estimated \$15.7 million in fiscal 2024, increasing to \$89.0 million by fiscal 2027, due to the distribution to the general fund of the sales and use tax revenue remaining after other required distributions are made. **Exhibit 5** shows the distribution of the sales and use tax revenues as required by the bill, based on the total estimated sales and use tax revenues (as shown in Exhibit 4).

Exhibit 5 Sales and Use Tax Revenue Distribution (\$ in Millions)

	<u>FY 2024</u>	<u>FY 2025</u>	<u>FY 2026</u>	<u>FY 2027</u>
Total SUT Revenues	\$24.0	\$56.9	\$99.4	\$146.6
Amount to CREF to Defray the Cost of the Enforcement Division	0	5.5	10.4	10.7
30% to CRRF	7.2	15.4	26.7	40.8
1.5% to Local Jurisdictions	0.4	0.8	1.3	2.0
1.5% to the Cannabis Public Health Fund	0.4	0.8	1.3	2.0
1.5% to the Cannabis Business Assistance Fund	0.4	0.8	1.3	2.0
General Fund	15.7	33.7	58.3	89.0

CREF: Cannabis Regulation and Enforcement Fund

CRRF: Community Reinvestment and Repair Fund

SUT: Sales and Use Tax

Source: Department of Legislative Services

Comptroller – Administration of the Sales and Use Tax, the Cannabis Regulation and Enforcement Fund, and the Community Reinvestment and Repair Fund

Administration of the Sales and Use Tax: The Comptroller advises that significant personnel resources are needed immediately to be able to implement the new tax when adult-use cannabis sales begin on July 1, 2023, including (1) 9 full-time positions and 1 part-time (50%) position for its Revenue Administration Division (RAD) to process a significant increase in the number of sales and income tax return filings; (2) 9 full-time positions for its Compliance Division due to the uniquely challenging compliance efforts of creating a sales and use tax on a formerly illegal industry; (3) 3 full-time positions in the Hearings and Appeals Division to handle an increased number of assessment appeals; (4) 11 full-time positions to provide administrative support to ATCC under an existing MOU with the Alcohol and Tobacco Commission; and (5) 2 contractual positions for the

first two full fiscal years for information technology (IT) support to establish a cannabis revenue reporting system.

The Department of Legislative Services (DLS) advises that without actual experience under the bill, it is difficult to determine the number of additional staff that may be needed; however, DLS acknowledges that the increase in workload for the Comptroller is significant. In addition, DLS notes that the 11 positions that the Comptroller indicates it needs pursuant to the specified MOU significantly overlap with existing resources at MMCC that transfer to ATCC under the bill; the DLS estimate of such costs is addressed under the discussion of the enforcement division (below).

Accordingly, general fund expenditures for the Comptroller increase by at least \$312,947 in fiscal 2023, which accounts for the bill's emergency status. This estimate reflects the cost of hiring (1) two revenue examiners in RAD to review sales and income tax return filings for cannabis business licensees; (2) two revenue field auditors for the Compliance Division to conduct onsite audits; (3) two staff attorneys for the Hearings and Appeals Division to handle additional assessment appeals; (4) three accountants to provide assistance related to the sales and use tax for cannabis across both divisions; (5) one contractual webmaster to adjust tax forms; and (6) one contractual IT programmer to establish a new revenue reporting system. This estimate assumes that staff are hired on April 1, 2023, as the new tax will apply to any adult-use cannabis sales from medical licensees who have converted to cannabis business licenses as of July 1, 2023.

	<u>FY 2023</u>	<u>FY 2024</u>
Regular Positions	9.0	-
Contractual Positions	2.0	-
Salaries and Fringe Benefits	\$237,278	\$923,171
Operating Expenses	<u>75,669</u>	<u>11,777</u>
Minimum Comptroller GF Exp.	\$312,947	\$934,948

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses and the termination of the contractual IT staff at the end of fiscal 2025. This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State's implementation of the federal Patient Protection and Affordable Care Act.

In addition to the personnel costs above, the Comptroller advises that at least \$3.0 million in computer programming expenditures are expected to be incurred in fiscal 2023 to upgrade the sales and use tax system and connect it to the existing MMCC licensing software. DLS is unable to independently verify the Comptroller's estimate at this time but acknowledges that contractual computer programming costs are likely significant.

Accordingly, general fund expenditures for the Comptroller in fiscal 2023 are likely significantly higher than the minimum estimate provided above.

Cannabis Regulation and Enforcement Fund: Special fund revenues for CREF increase by approximately \$12.3 million in fiscal 2023 only due to the balance transfer of the MMCC special fund (as calculated on the date immediately preceding the effective date of the bill) to CREF when the bill becomes effective. Special fund revenues for CREF increase further beginning in fiscal 2024 from application fees. MMCC advises it anticipates receiving 10 applications for each of the available licenses. This analysis further assumes:

- there are 783 available licenses (400 micro licenses and 383 standard licenses) based on the bill's authorization to award up to 935 licenses total and the existence of 152 medical licensees all of which are presumed to convert to cannabis business licensees;
- the licenses are issued in equal measures during five rounds of license awards (two in fiscal 2024 as required under the bill and one each in the next three fiscal years 2025, 2026, and 2027); and
- during each of the rounds, 80 micro licenses and 76 standard licenses are offered for award with 10 applications submitted per license (800 micro license applications and 760 standard license applications).

Thus, special fund revenues increase by \$9.2 million in fiscal 2024 and by \$4.6 million annually thereafter through fiscal 2027 from application fee revenues. Special fund revenues increase further to the extent that the enforcement division sets other fees authorized by the bill (*e.g.*, registration fees) and credited to CREF.

Beginning in fiscal 2025, special fund revenues increase further due to the sales and use tax revenues distributed to CREF in an amount sufficient to defray the entire cost of the enforcement division. Special fund revenues from other sources, as estimated and discussed above, are sufficient to cover the entire estimated cost of the enforcement division in fiscal 2024 (as discussed below), but sales and use tax revenue distributions to CREF are required beginning in fiscal 2025. **Exhibit 6** details these effects.

Exhibit 6
Cannabis Regulation and Enforcement Fund Finances and the
Estimated Distribution of Sales and Use Tax Revenues to Defray Costs
(\$ in Millions)

	<u>FY 2023</u>	<u>FY 2024</u>	<u>FY 2025</u>	<u>FY 2026</u>	<u>FY 2027</u>
MMCC SF Balance					
Transfer	\$12.3	\$0	\$0	\$0	\$0
Application Fee Revenues	9.2	4.6	4.6	4.6	4.6
Cumulative Revenues*	21.5	23.7	6.8	4.6	4.6
Total Expenditures	\$2.4	\$18.8	\$14.9	\$15.0	\$15.3
Net Effect	19.1	4.9	(9.5)	(10.4)	(10.7)
SUT Distribution to CREF	-	-	5.4	10.4	10.7

CREF: Cannabis Regulation and Enforcement Fund

MMCC: Maryland Medical Cannabis Commission

SF: special funds

SUT: sales and use tax

*Cumulative revenues do not include revenues distributed to CREF from the sales and use tax.

**Net effect represents whether a deficiency exists from revenue sources prior to the distribution of sales and use tax revenues to CREF.

Source: Department of Legislative Services

Cannabis Regulation and Enforcement Division: The enforcement division within ATCC is responsible for administering, regulating, and enforcing the laws related to medical and adult-use cannabis in the State. The bill generally requires the transfer of MMCC personnel to the enforcement division, including 77 full-time positions (31 merit employees and 46 contractual employees) on April 1, 2023. Special fund expenditures from CREF increase beginning in fiscal 2023 due to the personnel transfer and related expenditures (detailed below); special fund expenditures increase further to convert the 46 contractual employees to merit employees to promote retention of personnel within the enforcement division. This analysis further assumes that all equipment, supplies, office space, and other expenses attributed to MMCC also transfer to ATCC effective April 1, 2023.

Despite the transfer of MMCC personnel to the enforcement division, MMCC and the Alcohol and Tobacco Commission both indicate that significant additional staff resources are necessary to implement the adult-use cannabis industry established under the bill. MMCC advises the need to hire an additional 32 full-time staff, and the Alcohol and Tobacco Commission advises the need to hire an additional 21 full-time staff, for a total of 53 full-time staff. Based on the information submitted by those agencies as well as

information in the [Joint Report on the Transition of Medical Cannabis Personnel to the Alcohol and Tobacco Commission](#), DLS advises that there is significant overlap in the estimates provided by MMCC and the Alcohol and Tobacco Commission regarding the additional personnel necessary to carry out the requirements of the enforcement division; nevertheless, a significant increase in personnel is necessary.

Accordingly, special fund expenditures for the enforcement division from CREF increase by approximately \$2.4 million in fiscal 2023, which accounts for the bill's emergency status, to transfer MMCC personnel to the enforcement division, convert 46 full-time contractual employees to full-time merit employees, and hire new staff to promulgate emergency regulations and process license conversions. Special fund expenditures increase by \$18.8 million in fiscal 2024, reflecting the need for additional staff, vehicles for specified staff, and other one-time costs. Special fund expenditures increase by approximately \$14.9 million in fiscal 2025 reflecting the need for additional staff, annualization, inflation, and the elimination of one-time costs. The information and assumptions used in calculating the estimate are stated below:

- three positions must begin immediately to promulgate emergency regulations by July 1, 2023, including one director of operations for the enforcement division, one executive assistant to the director, and one licensing and regulations policy analyst;
- 22 positions begin July 1, 2023, to carry out various functions as required under the bill, including (1) one director of laboratory services to oversee the State cannabis testing laboratory; (2) one director and one additional policy analyst for cannabis licensing and regulation; (3) nine positions for the cannabis inspection division to carry out enforcement (including one sworn law enforcement officer); (4) one director and two program administrators for cannabis data and analytics; (5) one human resources director; (6) three positions to carry out research and education functions; and (7) two assistant Attorneys General and one paralegal;
- one-time expenditures in fiscal 2024 include (1) \$310,000 for a seed to sale tracking contract; (2) \$2.0 million for cannabis banking service contract procurement; (3) \$1.0 million in licensing software upgrades; (4) \$1.0 million in contracts for outreach to potential social equity applicants; and (5) nine vehicles for the cannabis inspection division;
- ongoing expenditures beginning in fiscal 2024 include rent for 5,000 square feet of additional office space; fuel and maintenance for purchased vehicles; and \$1.8 million in contractual services for application reviews and post award financial reviews; and
- three additional positions for the cannabis inspection division are hired in fiscal 2025, requiring three additional vehicles and associated ongoing costs.

	<u>FY 2023</u>	<u>FY 2024</u>	<u>FY 2025</u>
New Regular Positions	3.0	22.0	3.0
Salaries and Fringe Benefits (Total)	\$93,100	\$2,951,679	\$3,406,313
Contractual Services	0	6,180,000	1,870,000
Transfer MMCC Staff as Merit	2,294,316	9,247,652	9,323,102
Office Space (Rent)	0	125,000	127,500
Vehicle Purchase and Related Costs	0	163,007	142,481
Other Operating Expenses	<u>20,637</u>	<u>172,273</u>	<u>50,119</u>
CREF Exp. for the Enf. Div.	\$2,408,053	\$18,839,611	\$14,919,515

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses, continued rent payments and contractual services, and the elimination of one-time costs. It should be noted that the \$310,000 expenditure for the Seed-to-Sale Tracking Contract is included in the fiscal 2024 budget as introduced for MMCC.

State Testing Laboratory: The enforcement division must also establish and maintain a State cannabis testing laboratory, unless MDA or MDH enter into an MOU with the enforcement division to test cannabis at an existing State-owned laboratory by July 1, 2023. The [Joint Report on the Transition of Medical Cannabis Personnel to the Alcohol and Tobacco Commission](#) indicates that MMCC incurred significant expenditures during fiscal 2023 to construct and equip a state reference laboratory for cannabis testing. Thus, the State laboratory can likely be established within existing budgeted resources. Special fund expenditures from CREF increase beginning in fiscal 2024 for any ongoing costs associated with maintaining the State laboratory. Personnel expenditures to hire a director for the State laboratory are included in the personnel expenditures for the enforcement division above.

Office of Social Equity: The bill establishes OSE to carry out significant functions related to diversity and equity within the cannabis industry. Among other things, the bill requires that OSE be headed by an executive director and authorizes OSE to employ staff as necessary to carry out its responsibilities. MMCC advises that in addition to the required executive director, OSE requires one diversity and inclusion specialist, with both positions starting as soon as possible to consult on licensing regulations related to social equity applications (which must be adopted by July 1, 2023). MMCC further advises that one community outreach manager and two community outreach coordinators are necessary beginning July 1, 2023.

Accordingly, special fund expenditures for OSE (from CREF) increase by \$82,754 in fiscal 2023, which accounts for the bill's emergency status, and by \$2.6 million in fiscal 2024. This estimate reflects the cost of hiring one executive director and one diversity inclusion specialist in fiscal 2023, assumed to begin on April 1, 2023, and one community

outreach manager and two community outreach coordinators in fiscal 2024, assumed to begin on July 1, 2023. It includes salaries, fringe benefits, one-time start-up costs, ongoing operating expenses, and one-time contractual services in fiscal 2024. The information and assumptions used in calculating the estimate are stated below:

- a one-time contract estimated to cost \$1.5 million in fiscal 2024 is necessary to conduct technical assistance for social equity applicants; and
- a one-time contract estimated to cost \$500,000 in fiscal 2024 is necessary to provide training and business assistance to awardees.

	<u>FY 2023</u>	<u>FY 2024</u>
Positions (New)	2.0	3.0
Contractual Services	-	\$2,000,000
Salaries and Fringe Benefits (Total)	\$68,996	586,262
Operating Expenses	<u>13,758</u>	<u>25,195</u>
CREF Expenditures for OSE	\$82,754	\$2,611,457

Future year expenditures reflect full salaries with annual increases and employee turnover, annual increases in ongoing operating expenses, and the elimination of one-time costs.

Community Reinvestment and Repair Fund: While the impact to CRRF of unspecified fees and tax revenues was assumed under the fiscal and policy note for Chapter 26 of 2022, this bill establishes the relevant conversion fees, establishes the tax rate on the sale of adult-use cannabis, and specifies the distribution to CRRF of 30% of the sales and use tax revenues. (Chapter 26 of 2022 specified that at least 30% of the revenues generated from adult-use cannabis must be deposited into CRRF, though that provision is repealed by the bill.)

Medical cannabis licensees must pay a specified fee by July 1, 2023, to convert to cannabis business licensees under the bill. Assuming that all medical cannabis licensees pay the specified fee, special fund revenues to CRRF increase by \$107.1 million in fiscal 2023 only. Special fund revenues increase further beginning in fiscal 2024 from the distribution of sales and use tax revenues as required by the bill. Based on estimated tax revenues available, special fund revenues to CRRF are estimated to increase by \$7.2 million in fiscal 2024, increasing to \$40.8 million by fiscal 2027.

While significant spending from CRRF is anticipated, the timing and amount of any expenditures is unknown and has not been accounted for in this analysis.

Alcohol, Tobacco, and Cannabis Commission

In addition to the impacts on ATCC discussed above that are funded through CREF, the bill has other effects on ATCC, as discussed below.

Social Equity Partnership Grant Program: General fund expenditures increase by \$5.0 million annually beginning in fiscal 2025 due to the bill's mandated appropriation to the Social Equity Partnership Grant Program administered by ATCC; it is assumed that ATCC spends the full amount of the mandated appropriation each year as grants are awarded.

Medical Cannabis Compassionate Use Fund: The fund is recodified to be administered by the enforcement division within ATCC (rather than by MDH). The bill also expands the authorized uses of the fund to include supplementing the cost of certifying provider assessments for specified qualifying patients. MMCC advises that this additional authorization significantly increases the usefulness of the fund, as few expenditures occur from the fund currently due to the difficulty in identifying at the dispensary level which qualifying patients are enrolled in the specified medical assistance programs. MMCC anticipates that identifying the specified qualifying patients at the provider level will be more feasible.

Thus, special fund revenues for ATCC increase by approximately \$1.9 million in fiscal 2023 from transferring the administration of the special fund from MMCC to ATCC. As discussed below, special fund revenues for MDH decrease by a corresponding amount. Special fund revenues to the fund within ATCC increase further beginning in fiscal 2026 to the extent the enforcement division imposes fees on cannabis licensees to provide revenues for the purposes of the fund.

Special fund expenditures for ATCC increase, potentially significantly, beginning in fiscal 2023 due to the transfer of the fund and the expanded authorization under the bill to pay qualifying providers rather than dispensaries. MDH special fund expenditures are not materially affected.

Commerce

Cannabis Business Assistance Fund: While the impact of unspecified tax revenues on the Cannabis Business Assistance Fund (as administered by Commerce) was assumed under the fiscal and policy note for Chapter 26 of 2022, this bill establishes the applicable tax rate on the sale of adult-use cannabis and requires that 1.5% of the sales and use tax revenues from adult-use cannabis be distributed to the Cannabis Business Assistance Fund from fiscal 2024 through 2028. Based on estimated sales and use tax revenues available, special fund revenues from the required distribution are estimated to total \$360,000 in fiscal 2024, increasing to \$2.0 million by fiscal 2027. Special fund expenditures increase correspondingly for the authorized purposes.

Capital Access Program: Commerce advises that since its implementation, there has been no interest in using the Maryland Capital Access Program, which is significantly similar to

the program established under the bill. Commerce further advises that its other programs that specifically target historically underserved populations are more successful at meeting the capital needs of small and underserved businesses. Thus, Commerce advises that this provision likely has no impact on the agency. Nevertheless, to the extent the bill generates applications for participation in the Capital Access Program, special fund expenditures may increase to hire additional staff.

Maryland Department of Health

Transfer of MMCC Personnel and Special Fund: As mentioned earlier, the bill generally repeals MMCC and the associated special funds from the Health-General Article and transfers control of medical cannabis regulation from MDH to ATCC. As such, MMCC personnel (assumed to include related office space, equipment, supplies, and contracts held by MMCC) transfer to the enforcement division within ATCC, and the corresponding MMCC special fund balance transfers to CREF. Thus, MDH special fund revenues decrease by approximately \$12.3 million in fiscal 2023 due to the transfer of the fund balance. Special fund revenues decrease further beginning in fiscal 2024 by approximately \$10.7 million annually due to the repeal of the MMCC special fund and associated revenue sources. Similarly, special fund expenditures for MDH decrease by approximately \$2.4 million in fiscal 2023 and by \$8.0 million annually beginning in fiscal 2024 due to the transfer of MMCC personnel, associated expenditures, and the repeal of the MMCC special fund and its associated spending.

Cannabis Public Health Fund: While the impact of unspecified tax revenues on the Cannabis Public Health Fund (as administered by MDH) was assumed under the fiscal and policy note for Chapter 26 of 2022, this bill establishes the applicable tax rate on the sale of adult-use cannabis and requires that 1.5% of the sales and use tax revenue be distributed to the Cannabis Public Health Fund. Based on estimated sales and use tax revenues available, special fund revenues from the required distribution are estimated to total \$360,000 in fiscal 2024, increasing to \$2.0 million by fiscal 2027. Special fund expenditures increase correspondingly for the authorized purposes.

Medical Cannabis Compassionate Use Fund: Under current law, MMCC (within MDH) administers the fund; however, as noted earlier, the bill shifts responsibility for administering the fund to the enforcement division within ATCC. The current balance of the fund is approximately \$1.9 million. As such, MDH special fund revenues decrease by an estimated \$1.9 million in fiscal 2023 only due to the transfer. There are no ongoing revenues assumed for the fund in MDH in the absence of the bill.

Maryland Incubator Program

The bill requires MEDCO, in consultation with the enforcement division, to acquire and construct or refurbish at least one facility to operate an incubator space (or enter an MOU to do so). MEDCO advises that with the benefit of budgeted capital funds, it could act on behalf of the enforcement division as a development agent or consultant to establish a State incubator space on a fee-for-service basis. Thus, special fund expenditures from CREF increase, likely in the out years, to pay any fees to MEDCO for this purpose; special fund revenues for MEDCO increase correspondingly.

This analysis does not include any capital costs that may be incurred to acquire, construct, and/or refurbish such a facility.

Office of Administrative Hearings

The bill requires the enforcement division to give notice and hold hearings pursuant to Title 10, Subtitle 2 of the State Government Article for contested cannabis license denials or specified violations. The Office of Administrative Hearings (OAH) advises that MMCC currently delegates contested case hearings to OAH. MMCC currently oversees 152 licensees. The bill authorizes growth in the cannabis industry to a maximum of 936 cannabis licensees, serving both the medical and adult-use cannabis markets, which is more than six times the current size of the medical cannabis industry in the State. To date, OAH has held three hearings for cases delegated by MMCC. Each has involved multi-day proceedings that included prehearing conferences with written decisions. OAH further advises that due to the complexity of the types of cases likely to be delegated to OAH under the bill, the increased size of the cannabis industry may result in the need for OAH to hire an additional Administrative Law Judge (ALJ).

Reimbursable fund expenditures for OAH and special fund expenditures for the Comptroller from CREF may increase beginning as early as fiscal 2024 to the extent that the number of hearings increases to the point where existing OAH staff cannot handle the increase in workload. Offsetting reimbursable fund revenues for OAH increase correspondingly. *For illustrative purposes only*, the cost to hire one ALJ for the first full fiscal year is approximately \$175,800.

Governor's Office of Small, Minority, and Women Business Affairs

The bill requires that a cannabis licensee comply with the State's MBE, to the extent legal and practicable. Before a cannabis business participates with MBE, it is necessary to identify existing MBE capacity and or potential disparities (usually accomplished through conducting or reanalyzing a disparity study for a specified industry). The Maryland Department of Transportation, which is the designated certification agency for MBE, is in

the process of conducting a statewide disparity study that will include an analysis of Maryland's cannabis industry pursuant to Chapter 26 of 2022.

If a disparity study determines that remedial measures are required, GOSBA must set cannabis licensee standards for procurements. This analysis assumes that GOSBA can establish a general goal for each license type and apply that standard to new licenses of the same type (similar to what GOSBA does when setting the statewide MBE program goals). As this is a standard practice for GOSBA, the bill's requirements related to MBE participation can likely be absorbed within existing budgeted resources.

Office of Legislative Audits

The bill establishes CREF, a special fund administered by the Comptroller at the direction of the enforcement division, which is subject to audit by OLA. The bill also recodifies the Medical Cannabis Compassionate Use Fund administered by the enforcement division (rather than by MMCC) and continues to subject the fund to audit by OLA. OLA advises that if the funds have significant activity, an equally significant audit effort may be required. OLA further advises that it plans to audit the funds during the regularly scheduled fiscal compliance audits of each fund's administering entity (the Comptroller or ATCC, as applicable). While the expansion of OLA's audit responsibilities may have an operational impact, it is assumed to be absorbable within existing budgeted resources.

Judiciary

General fund revenues may increase minimally from the bill's monetary penalty provisions from cases heard in the District Court.

Local Fiscal Effect: Local revenues increase from the required distribution of 1.5% of the sales and use tax revenues from adult-use cannabis sales. The required distribution must be allocated to each jurisdiction based on the percentage of adult-use cannabis revenues collected from that jurisdiction. Based on the estimated sales and use tax revenues available, the required distribution to local jurisdictions is estimated to total \$360,000 in fiscal 2024, increasing to \$2.0 million by fiscal 2027. Local government expenditures increase correspondingly as local jurisdictions use the tax revenue distributed under the bill. (A local jurisdiction is authorized by the bill to decide how to distribute its allocation of such revenue.)

Local jurisdictions are also affected by the bill's changes regarding CRRF, which was established by Chapter 26 of 2022. Under the bill, funding from CRRF must be distributed to each county in an amount that is proportionate to the total number of individuals residing in the county who were charged with a cannabis crime compared to the total number of individuals charged with cannabis crimes in the State. Under current law, the distribution

is related to arrests. Thus, local revenues may be affected due to this change. Also, while the potential effects of CRRF on local jurisdictions were discussed in the fiscal and policy note for Chapter 26 of 2022, this bill establishes a funding source for CRRF through fiscal 2033, so local revenues increase from distributions from CRRF under the bill. As noted in the fiscal and policy note for Chapter 26 of 2022, local expenditures likely increase for each county to (1) adopt a law establishing the purpose for which money received from the CRRF may be used; (2) use the funds received subject to the authorized purposes under the bill; and (3) issue a report on how these funds were spent every two years beginning December 1, 2024.

Local revenues and expenditures also increase, potentially significantly, to the extent that local governments receive funding from the Cannabis Public Health Fund (1) to support local health departments with substance abuse disorder counseling and treatment for individuals; (2) to provide training and equipment for local law enforcement to recognize impairments due to cannabis; and (3) for educational programs to be used in schools. While this impact was assumed in the fiscal and policy note for Chapter 26 of 2022, the bill establishes an ongoing funding source for the fund.

Local expenditures may increase minimally to the extent that (1) local jurisdictions incur administrative costs to affirmatively authorize on-site consumption establishments to operate in the jurisdiction and (2) additional contested hearings delegated by the enforcement division to OAH are appealed to the circuit courts.

Small Business Effect: The bill establishes a significant business opportunity for individuals to enter the cannabis industry as a small business, particularly by the establishment of micro licenses and the Maryland Incubator Program. The bill also establishes an opportunity for particular types of existing small businesses (*e.g.*, transporters, security guard companies, and waste disposal companies) to register with the enforcement division and participate in the cannabis industry.

Existing small businesses that are MMCC-licensed medical cannabis growers, processors, or dispensaries convert to a cannabis business license under the bill, authorizing participation in the adult-use *and* medical cannabis industry.

Small businesses also benefit from the further capitalization of both the Cannabis Business Assistance Fund and the Cannabis Public Health Fund under the bill.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 516 (Senators Feldman and Hayes) - Finance and Budget and Taxation.

Information Source(s): Alcohol and Tobacco Commission; Comptroller's Office; Maryland Department of Health; Department of Commerce; Governor's Office of Small, Minority, and Women Business Affairs; Maryland Economic Development Corporation; Office of Administrative Hearings; Judiciary (Administrative Office of the Courts); Maryland Department of Agriculture; Department of Budget and Management; Maryland State Commission on Criminal Sentencing Policy; Maryland State's Attorneys' Association; Maryland State Department of Education; Maryland Higher Education Commission; University System of Maryland; Morgan State University; Department of General Services; Department of Public Safety and Correctional Services; Maryland Insurance Administration; Prince George's County; Maryland Municipal League; Department of Legislative Services

Fiscal Note History: First Reader - February 17, 2023
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