



**SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE**  
**STATEMENT OF ESTIMATED FISCAL IMPACT**  
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<b>Bill Number:</b>	H. 3660	Introduced on January 17, 2019
<b>Author:</b>	McCoy	
<b>Subject:</b>	S.C. Compassionate Care Act	
<b>Requestor:</b>	House Medical, Military, Public, and Municipal Affairs	
<b>RFA Analyst(s):</b>	Shuford, Gardner, and R. Martin	
<b>Impact Date:</b>	March 25, 2019	Updated for Additional Agency Response

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### **Fiscal Impact Summary**

This bill will increase expenditures by \$5,062,985 in FY 2019-20 for the Department of Health and Environmental Control (DHEC) to administer the South Carolina Medical Cannabis Program. These expenditures include \$2,294,649 in recurring salaries and employer contributions for 34 FTEs. Non-recurring other operating expenditures will increase by \$2,768,336 in FY 2019-20. Recurring expenditures beginning in FY 2020-21 will total \$3,107,937 and include \$2,294,649 in salaries and employer contributions for 34.00 FTEs. Recurring other operating expenditures will total \$813,288 beginning in FY 2020-21.

While this bill authorizes fees and monetary penalties that must be used for the direct and indirect costs associated with the implementation, administration, and enforcement of this bill, DHEC indicates that revenue collected during the first year may be minimal. Given the potential lag in revenue collections, DHEC expects to rely on General Fund appropriations of \$5,062,985 to establish the program in FY 2019-20. For FY 2020-21, DHEC indicates that Other Funds from fees and monetary penalties will fund the expected \$3,107,937 in recurring expenditures.

The Judicial Department will use existing General Funds to absorb any additional costs resulting from an increase in caseloads. Therefore, there is no expenditure impact on the General Fund, Other Funds, and Federal Funds of Judicial Department from the potential increased caseload due to the new misdemeanor and perjury offenses established by the bill.

The expenditure impact of this bill on the State Law Enforcement Division (SLED) will increase recurring General Fund expenditures by \$7,044,111 in FY 2019-20 for the salaries, fringe benefits, and other operating costs for 77 new FTEs. Non-recurring General Fund expenditures will increase by \$3,845,500 in FY 2019-20. These expenditures are based on the anticipated increase in SLED's statutorily mandated responsibilities in providing narcotics enforcement and interdiction. This fiscal impact statement has been updated based on a response by SLED.

The expenditure impact on the General Fund, Other Funds, and Federal Funds of the Administrative Law Court (ALC) from additional hearings requested by revoked or suspended registry identification cardholders and medical cannabis establishments is undetermined as there is no data available that may be used to estimate the increase in the number of hearings.

The total revenue impact of this bill is undetermined. The amount of fee revenue is unknown given that the bill requires DHEC to set the amount of fees by regulation. Based on medical

marijuana sales data from the first 2 years of a similar program in Arizona, the Revenue and Fiscal Affairs Office estimates that the 6 percent sales tax on the retail sales of medical cannabis would generate \$1,217,000 for the South Carolina Medical Cannabis Program Fund (Fund) in FY 2019-20.

Due to the permissive nature of the bill that allows local governments to choose to enact local ordinances governing the time, place, manner, and number of medical cannabis establishments in the locality, the expenditure impact on local governments is undetermined.

The prohibition on a local government from imposing any tax or fee on the sale of medical cannabis or medical cannabis products sold in a licensed dispensary will not reduce or impact local government tax or fee revenue because sales of medical cannabis are not being taxed currently by local governments.

## **Explanation of Fiscal Impact**

**Updated for Additional Agency Response on March 25, 2019**

**Introduced on January 17, 2019**

### **State Expenditure**

This bill establishes the South Carolina Medical Cannabis Program that creates a seed-to-sale system to provide for the sale of medical cannabis to treat a qualifying patient's debilitating medical condition or alleviate symptoms.

**The Department of Health and Environmental Control.** This bill requires DHEC to promulgate regulations no later than 120 days after the effective date of this legislation to develop a registry identification card application form for qualifying patients and designated caregivers and establish the process for their issuance. No later than 90 days after the effective date of the promulgated regulations, DHEC shall begin accepting applications for registry identification cards. DHEC shall either create or engage a company to develop the necessary software for an electronic registry of the qualifying patients and designated caregivers. These identification cards must be printed with tamper-resistant technology. Once the system is implemented, DHEC must issue a registry identification card with 25 days of receiving the application from the qualifying patient or designated caregiver.

DHEC shall establish a secure phone or web-based verification system to allow law enforcement personnel and medical cannabis establishments to verify registry identification cards. The verification system must provide specified information on the cardholder. Confidentiality of this data is a responsibility of DHEC.

Additional duties for DHEC include: developing a written certification form for physicians; developing a safety flyer, which shall be provided to each registry patient; promulgating regulations for medical cannabis establishment licenses; issuing licenses for cultivation centers, processing facilities, dispensaries, and 5 independent testing laboratories; and performing inspections of medical cannabis establishments for violations of the bill and regulations developed by DHEC.

DHEC indicates that this bill will increase expenditures by \$5,062,985 in FY 2019-20. These expenditures include \$2,294,649 in recurring salaries and employer contributions for 34 FTEs. Non-recurring other operating expenditures of \$2,768,336 for start-up operations will include the following:

- Consultants to assist with the initial establishment and implementation of the program - \$650,000
- Implementation of the seed-to-sale tracking system - \$400,000
- Implementation of the electronic registry of qualifying patients and designated caregivers - \$450,000
- Registry identification card equipment and card stock - \$26,000
- Computer equipment, vehicles, and office furniture.

Recurring expenditures in year two will total \$3,107,937 and include \$2,294,649 in salaries and employer contributions for 34 FTEs. Recurring other operating expenditures of \$813,288 will include the following:

- Maintenance of the seed-to-sale tracking system - \$80,000
- Maintenance of the electronic registry of qualifying patients and designated caregivers - \$130,000
- Registry identification card equipment and card stock - \$120,000
- Computer software subscriptions, equipment, office supplies, and consulting services.

While this bill authorizes fees and monetary penalties that must be used for the direct and indirect costs associated with the implementation, administration, and enforcement of this bill, DHEC indicates that revenue collected during the first year may be minimal. Given the potential lag in revenue collections, DHEC expects to rely on General Fund appropriations of \$5,062,985 to establish the program in FY 2019-20. For FY 2020-21, DHEC indicates that Other Funds from fees and monetary penalties will fund the expected \$3,107,937 in recurring expenditures.

**Judicial Department.** The bill requires certified patient and designated caregiver applicants to provide certain information, including a statement attesting that false statements included in an application constitute perjury. This form of perjury is a misdemeanor offense punishable by imprisonment for not more than 6 months or a fine of not less than \$100, or both. Additionally, diversion of cannabis from a legal possession or use to an illegal or unauthorized use by a qualifying patient or designated caregiver is a felony, and subjects the person to a fine of not more than \$5,000, imprisonment of not more than 5 years, or both.

The bill also creates 2 new misdemeanors for knowingly making a misrepresentation to a law enforcement official of any fact or circumstance related to the medical use of cannabis to avoid arrest or prosecution and knowingly making a misrepresentation of a medical condition to a physician in order to obtain a registry identification card. Upon conviction, these actions are punishable by a fine of up to \$1,000 per offense.

As the bill creates new mechanisms for committing misdemeanors and perjury, there is no data available that may be used to estimate any increase in the number of hearings or trials that will be held. The department will use existing General Funds to absorb any additional costs resulting

from an increase in caseloads. Therefore, there is no expenditure impact on the General Fund, Other Funds, and Federal Funds of Judicial Department.

**State Law Enforcement Division.** SLED is required to promulgate regulations on a portion of revenues deposited to the South Carolina Medical Cannabis Program Fund (Fund). SLED is directed to consult with DHEC on security, transportation, and storage requirements for medical cannabis establishments. Also, SLED shall check for criminal records for patients, caregivers, and every person seeking to become a medical cannabis establishment principal or agent.

SLED, pursuant to Section 23-3-15(A)(3), has the exclusive statewide jurisdiction and authority for covert investigations of illegal activities pertaining to the interdiction of narcotics and other illicit substances. In addition, Section 44-53-480 requires SLED to establish a Department of Narcotics and Dangerous Drugs, which is primarily responsible for the enforcement of all laws pertaining to illicit traffic in controlled and counterfeit substances.

Based on a review of crime statistics from states that have adopted similar medical cannabis statutes, SLED anticipates the Medical Cannabis Program will increase violent crimes, other illegal drug use, and black market sales of marijuana. SLED suggests that the bill will significantly increase their responsibilities in providing statutorily mandated narcotics enforcement and interdiction.

These increased responsibilities may require the agency to establish a new Marijuana Enforcement Unit to manage instances of unlawful use or purchase of cannabis products. This unit will be comprised of at least 56 new narcotics agents to provide enforcement, as well as 3 lieutenants and 1 captain to provide oversight. The unit will also require 4 administrative support staff members, 1 for each of the agency's 4 regional offices. The unit will incur recurring costs associated with salaries and fringe for new staff, as well as charges for gasoline, cellular telephone and Wi-Fi hotspot services, mobile and portable 800 radio services, uniform replacements, training, information technology licenses, and vehicle maintenance. The unit will also incur non-recurring operating costs, including those associated with the purchase of vehicles, protective vests, ammunition, duty belts and holsters, uniforms, personal protective equipment, computer equipment, and Law Enforcement Academy expenses.

SLED anticipates that state and local law enforcement actions in support of the bill will require additional laboratory testing and analysis as it is impossible to visually discern the difference between a hemp and a marijuana plant. This will require the agency to create a Laboratory Marijuana Unit consisting of at least 6 additional drug chemists and 4 additional forensic technicians. This unit will incur recurring costs associated with salaries and fringe for new staff; charges for cellular telephone service, training, and travel; charges related to the continuous operation of the gas chromatography mass spectrometer instruments (including consumables, licenses, and maintenance); and real estate charges for expanded space to house the new staff and equipment. The unit will incur non-recurring operating costs to include charges for new cellular telephones and computers, as well as one-time costs for the purchase of 4 new gas chromatography mass spectrometers.

The agency will also hire additional administrative support staff in order to implement the provisions of the bill. This new staff will include 1 additional attorney to provide specialized guidance and legal support. To support the increased number of agents and lab staff, the agency indicates the need for 1 additional fiscal analyst, and 1 additional information technology staff member.

Overall, the bill will require the agency to hire 77 new FTEs, and will result in a total recurring General Fund expenditure impact of \$7,044,111 and a total non-recurring General Fund expenditure impact of \$3,845,500 in FY 2019-20. This fiscal impact statement has been updated based on a response by SLED.

**Administrative Law Court.** This bill allows a person whose registry identification card is revoked or suspended to request a hearing with the Administrative Law Court. A similar provision allows a medical cannabis establishment to request a ALC hearing when the establishment's license is denied, suspended, or revoked. In addition, if DHEC fails to promulgate regulations to implement this bill within 200 days of the effective date, a qualifying patient may commence an action in the ALC to compel action by DHEC. While ALC currently conducts contested cases from multiple permitting processes through DHEC, there is no data available that may be used to estimate the increase in the number of hearings that will be held. Therefore, the expenditure impact on the General Fund, Other Funds, and Federal Funds of the ALC is undetermined.

### **State Revenue**

This bill requires DHEC to establish a South Carolina Medical Cannabis Program Fund. All fees and monetary penalties collected must be used for the direct and indirect costs associated with the implementation, administration, and enforcement of this bill. All sales of medical cannabis are subject to a 6 percent sales tax, and all revenue collected from this sales tax must be remitted to the Fund.

Based on medical marijuana sales data from the first two years of a similar program in Arizona, the Revenue and Fiscal Affairs Office estimates that approximately 67,600 ounces of medical cannabis will be sold in South Carolina during the first year of the program. A survey of states with similar programs suggests that an average price per ounce is approximately \$300. This amount of medical cannabis at the \$300 average price times the 6 percent tax rate would generate \$1,217,000 for the Fund in FY 2019-20.

Additionally, DHEC must establish application and renewal fees for the following:

- Registry identification cards for qualifying patients and designated caregivers provided that the fees must be no greater than the cost of processing and issuing the cards
- Nonresident cardholders to access medical cannabis from a licensed dispensary
- Discounts for patient fees based on household income and a waiver of fees for veterans
- Replacement registry cards
- Medical cannabis establishments
- Cultivation centers
- Processing facilities
- Dispensaries

- Independent testing laboratories.

DHEC indicates that revenue collected during the first year may be minimal. Given the potential lag in revenue collections, DHEC expects to rely on General Fund appropriations of \$5,062,985 to establish the program in FY 2019-20. For FY 2020-21, DHEC indicates that Other Funds from fees and monetary penalties will fund the expected \$3,107,937 in recurring expenditures. Since DHEC will set these fees by regulation, we are unable to estimate the total amount of Other Funds fee revenue that will be deposited into the Fund.

In summary, the total revenue impact of this bill is undetermined. The amount of fee and registration revenue is unknown given that the bill requires DHEC to set the amount of fees by regulation. Any revenues generated in excess of the amounts needed to implement and enforce this program must be distributed to SLED, county sheriffs, Department of Education, the General Fund, the University of South Carolina School of Medicine, and the Medical University of South Carolina.

In addition, the bill amends Section 12-36-2120 to add a sales and use tax exemption for cannabis sold by a dispensary to a cardholder pursuant to Article 20, Chapter 53, Title 44. Currently, any medicine or FDA-approved drug prescribed by a licensed physician and sold by prescription is exempt from state sales and use tax pursuant to Section 12-36-2120(28). The sale of cannabis by a physician authorized prescription through DHEC regulated dispensaries would exempt the collection of sales and use tax. Because sales taxes on cannabis are not currently being collected and are not included in the Board of Economic Advisors' General Fund sales tax revenue estimate, this section will not reduce General Fund sales and use tax revenue.

### **Local Expenditure**

This bill allows local governments to enact ordinances or regulations not in conflict with this bill governing the time, place, manner, and number of medical cannabis establishments in the locality. Further, a local government may establish penalties for violation of an ordinance or regulation in regards to medical cannabis. Counties and municipalities, through the Municipal Association of South Carolina (MASC), were surveyed to determine what, if any, expenditure impact the passage of the bill will have on local operations. The counties of Clarendon, Florence, Greenville, Lancaster, and the MASC provided responses. Most responses indicated general concern with how local governments would appropriately implement any local ordinances or regulations regarding medical cannabis establishments. Lancaster County noted that additional costs could be incurred due to the increase in staff time required for the modification of local ordinances. As such, local governments anticipate the bill will have some expenditure impact, the extent of which cannot be determined at this time. Additionally, due to the permissive nature of the bill that allows local governments to choose to enact local ordinances, the expenditure impact on local governments is undetermined.

### **Local Revenue**

The bill prohibits a local government from imposing any tax or fee on the sale of medical cannabis or medical cannabis products sold in a licensed dispensary. Because sales of medical cannabis are not being taxed currently, this prohibition will not reduce local government tax or fee revenue.

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Frank A. Rainwater, Executive Director