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FISCAL IMPACT STATEMENT

LS 7128
BILL NUMBER: SB 336

NOTE PREPARED: Jan 5, 2023
BILL AMENDED:

SUBJECT: Cannabis.

FIRST AUTHOR: Sen. Niezgodski
FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: The bill establishes a procedure for the lawful production and sale of cannabis in Indiana. It makes conforming amendments, and it makes an appropriation.

Effective Date: July 1, 2023.

Explanation of State Expenditures: *Summary* - The bill establishes a Cannabis Commission that may function similar to the Alcohol and Tobacco Commission (ATC) in regulating production and sale of cannabis. It imposes taxes, and adds and removes felony offenses. The bill appropriates from the state General Fund the amount necessary for implementation and administration of the Commission.

Cannabis Commission: In the initial years, the bill is estimated to increase annual state expenditures by \$509,000 for the Cannabis Commission. After an indeterminate implementation period, the commission's total costs may be similar to the Alcohol and Tobacco Commission (ATC) with \$10 M annual expenditures. The commission's expenditures will depend on the number of employees needed to regulate cannabis with support personnel, a prosecutor's office, and enforcement officers. The costs will be offset with fees and penalties established by the commission.

Cannabis Excise Tax: Implementing the Cannabis Excise Tax would require additional workload and expenditures for the Department of State Revenue (DOR) outside of the agency's routine administrative functions. The DOR would need to update computer software and create forms, guidance, and processes to implement the bill's provisions regarding the new tax. The bill also requires the DOR to adopt rules to implement the tax. The additional funds and resources required could be supplied through existing staff and resources currently being used in another program or with new appropriations. Ultimately, the source of

funds and resources required to satisfy the requirements of this bill will depend on legislative and administrative actions.

Additional Information - Marijuana is federally classified as a Schedule I controlled drug with no medically indicated uses. Although 16 states have comprehensive medical marijuana programs and 21 states have combined adult and medical use regulatory programs, future federal responses to state initiatives is unknown.

Cannabis Commission: The commission will operate a statewide monitoring system through a service provider selected by bid to track sales, seeds, and third party inventory data. The system expense may be offset with plant tag purchases and other fees.

The Cannabis Commission is comprised of six commissioners, five are appointed by the Governor with the advise and consent of the Legislative Council and an executive director who is a nonvoting member. Each commissioner is entitled to salary per diem and reimbursement of traveling and other expenses. The commissioners must execute surety bonds of \$10,000 and an oath of office. The commission may employ all necessary employees, determine their duties, and fix their salaries with the approval of the State Budget Agency.

The commission's prosecutor may hire clerical staff with the consent of the commission to carry out duties concerning prosecution of cannabis law violations and to assist local prosecutors with cannabis law violation investigations and prosecutions. The prosecutor must execute a \$5,000 surety bond and may administer oaths of office. The superintendent of enforcement officers will have 10 years in active law enforcement and at least 5 years in law enforcement management. Enforcement officers will execute surety bonds of \$1,000.

The agency expenditure estimate is based on the Alcohol and Tobacco Commission (ATC), which has five commissioners, an executive secretary, and average annual expenditures for administration and internal services of about \$509,000 between FY 2018 and FY 2022. The general counsel and lieutenants, captains, and corporals of the excise police have combined average of \$91,300 in salary expense, with an average of 19.5 years of service. [Internal services include databases, software, human resources services, and telephone expenses. Commissioner and executive personnel salaries are not included in these expenses. Additionally, the ATC has 11 executive and commission staff, 16 support and accounting staff, and 73 excise police with total salary and benefits expense of \$8.6 M. The ATC commissioners receive salary, while the commissioners of the new entity do not.

Penalty Provisions: This bill could result in a minor reduction in the Department of Correction (DOC) offender population. [Eleven persons were committed to DOC for felony possession of marijuana between FY 2017 and FY 2021. In FY 2022, no person was convicted and sentenced for possession of marijuana as a Level 6 felony and committed to DOC for possession. For persons dealing in either marijuana or hashish, 140 out of 1,432 persons between FY 2017 and 2022 were convicted and sentenced to DOC for dealing]

This bill removes the following offenses:

- Dealing in marijuana, hash oil, or hashish as Class A misdemeanors and as Level 5 and 6 felonies.
- Possessing marijuana, hash oil, or hashish as Class A and B misdemeanors and as Level 6 felonies.
- Paraphernalia related offenses as Class A infractions, Class A misdemeanors, and Level 6 felonies.

It adds the following new felonies:

- Dealing in mislabeled low THC hemp extract, a Level 5 felony.
- Knowingly or intentionally growing or selling cannabis without a permit, a Level 6 felony.

- Retail sales violations, a Level 6 felony.
- Knowingly, recklessly, or intentionally providing cannabis to a person under 21 years old resulting in serious bodily injury or death, a Level 6 felony.

Per Se Intoxication Level – This section would likely have a minor effect on DOC facilities based on the few OWI felonies when Schedule I and II controlled substances or its metabolite are found in the person’s blood. [A metabolite is a byproduct of the body breaking down, or “metabolizing,” a drug into a different substance, and THC would be one of the possible byproducts.]

OFMA used the citations issued by the Bureau of Motor Vehicles and the Abstracts of Judgment maintained by the Indiana Supreme Court to estimate the number of potential cases that might be affected.

There are two reasons that few OWI felonies would be affected.

First, there are few OWI felony cases in which persons have been convicted and sentenced for OWI causing either serious bodily injury or death in which a controlled substance or a metabolite has been found in the person’s blood. See following table.

Second, marijuana is one of over 250 schedule I and II drugs that could be included in the schedule drugs that these persons may have in their blood when a blood test is performed.

The offenses affected by this bill and the frequency of convictions of these offenses are shown in the following table based on citations from the Bureau of Motor Vehicles and the Abstracts of Judgment maintained by the Indiana Supreme Court.

Number of OWI Offenses in which a Controlled Substance or Metabolite is Found in the Person’s Blood					
	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
IC 9-30-5-1 OWI as a Class C misdemeanor with metabolite (BMV guilty citations)	424	341	486	513	289
IC 9-30-5-4 OWI causing serious bodily injury as Level 6 or Class D felonies	14	27	3	11	N/R
IC 9-30-5-4 OWI causing serious bodily injury with a prior conviction as a Level 5 felony or Class C felonies	N/R	N/R	N/R	11	21
IC 9-30-5-5 OWI causing death of service animal as a Level 6 felony	N/R	N/R	N/R	N/R	N/R
IC 9-30-5-5 OWI causing death of another person with a prior conviction as a Level 4 felony or Class B felony	N/R	N/R	N/R	13	16
IC 35-46-9-6(a)(2) Operate Boat with a Schedule I or II Controlled Substance	N/R	N/R	N/R	N/R	N/R

The following table shows the sentencing ranges for Level 5 and 6 felonies.

	Minimum	Advisory	Maximum
Level 5	1 years	3 years	6 years
Level 6	6 mos.	1 year	30 months

The average expenditure to house an adult offender was \$27,185 annually, or \$74.43 daily, in FY 2022. (This

does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$4,456 annually, or \$12.21 daily, per prisoner. These marginal cost estimates are based on contractual agreements with food and medical vendors and projections based on prior years for clothing and hygiene. The estimated average cost of housing a juvenile in a state juvenile facility was \$130,547, or \$357.42 daily, in FY 2022. The marginal cost for juvenile facilities was \$5,125 annually or \$14.04 daily.

Explanation of State Revenues: *Excise and Sales Taxes:* Significant revenue from the Cannabis Excise Tax and Sales Tax could potentially be collected when legal retail sales begin. However, the timing of revenue collections will depend on the length of time necessary to implement the cannabis regulatory program. The following table summarizes the estimated revenue that could be collected when the program is fully implemented.

Revenue Source	Estimated Revenue upon Full Implementation
Cannabis Excise Tax	\$21.2 M to \$45.6 M
Sales Tax	\$14.8 M to \$31.9 M
Total	\$36.0 M to \$77.5 M

All revenue from the Cannabis Excise Tax will be deposited in the Cannabis Regulation Fund. Sales Tax revenue is deposited in the state General Fund (99.838%), Commuter Rail Service Fund (0.131%), and Industrial Rail Service Fund (0.031%).

Cannabis Regulation Fund: The bill creates the Cannabis Regulation Fund to receive taxes, fees, and penalty revenue. Money remaining in the fund at the end of the year is distributed among state and local entities. If money remains in the fund at the end of the year, the State Police will receive 25% of the remaining funds, and the Department of Health will receive 25% to distribute to the Division of Mental Health and Addiction (in the Family and Social Services Administration), 20% to provide a youth cannabis abuse prevention and education program in consultation with the Department of Education, and 15% each to prosecuting attorneys in counties with cannabis retail facilities and cities, towns, or counties with cannabis facilities. The commission will allow use of credit cards to pay fees and may charge processing fees of its permittees.

Surety Bond: A permit applicant must post a \$15,000 surety bond payable to the state, and the commission may recover between \$250 and \$500 for violations, or up to the full amount for failure to pay taxes or fees.

Penalty Provisions: The potential revenue loss is estimated to be \$120,000 to the state General Fund, \$20,700 to the State User Fee Fund, and an indeterminable revenue loss to the Common School Fund. Additionally, a court may impose a fine of \$1,000 to \$25,000 for failing to remediate a public nuisance.

Additional Information - Excise and Sales Taxes: The bill establishes the Cannabis Excise Tax at a rate of 10% of the retail price of cannabis. This tax could potentially generate an estimated \$21.2 M to \$45.6 M in the first full year of regulated cannabis sales. Before the cannabis program is fully implemented, a lesser but potentially significant amount of revenue could be collected. The 7% state Sales Tax would also apply to sales of cannabis. The revenue increase could be approximately \$14.8 M to \$31.9 M in the first full year of

sales.

The estimated potential tax revenue is based on retail sales of cannabis and revenue collections in states that have implemented similar programs, adjusted for tax rate, population, and prevalence of cannabis use. The estimate also assumes that retailers in Indiana will make fewer sales to non-residents than dispensaries and retailers in other states. A review of 21 states found that the average time to implement a medical marijuana program is 29 months. If Indiana's implementation time is similar, revenue collection may begin in FY 2026, and the first full year of collections may be FY 2027.

Permits, Fees, and Fines: Permit fees and civil penalties imposed by the commission will increase revenue to the Cannabis Regulation Fund by a potentially significant amount. The bill creates permits for growers, processors, retailers, safety compliance facilities, carriers and transporters, and up to nine integrated permittees that combine grower, processor, and retailer permits. [Once permits are established, fee and fine revenue may be similar to the ATC. In FY 2021, the ATC had \$17 M in alcoholic beverage and tobacco permit fee revenue and \$470,890 in fine revenue.]

Individuals will be allowed to grow cannabis for personal use without permit fees. The integrated permits have a \$1 M annual fee. Up to 25 commercial growers will pay permit fees based on the surface area utilized to grow cannabis plants, with fees ranging from \$30,000 to \$200,000. Growers permits with a surface area greater than 15,000 square feet are limited to four. Processors will pay \$30,000 annually, carrier permits will be \$5,000 annually, and the 269 retail permits statewide will have a \$1,000 annual fee. Within a county the number of retail permits may not exceed 1 per 25,000 residents. One business may not hold more than 25% of all issued permits.

Cannabis grower permittees may have a license revoked or not renewed, and a civil penalty imposed of up to \$2,500, for violation of a permit requirement, permit term or condition, or a rule related to the growing of cannabis. Additionally, the commission may assess a civil penalty for violations of the law by any permittee up to \$50,000.

Penalty Provisions: The bill adds the following misdemeanors and infractions:

- Class A misdemeanors for transporting cannabis in an unidentified vehicle; providing cannabis to a person less than 21 years old with a prior conviction; permittees who violate sections; knowingly or intentionally possessing marijuana, hash oil, hashish, or salvia falsely identified as low THC hemp extract.
- Class A misdemeanor for possession of mislabeled low THC hemp extract
- Class B misdemeanors for providing cannabis to a person less than 21 years old; allowing or enabling a person less than 21 years old to use cannabis with a prior conviction or adjudication; knowingly and intentionally employing a person under 21 years old.
- Class A infraction for county vendors spending money to promote a public question.
- Class C infraction for allowing or enabling a person less than 21 years old to use cannabis; knowingly or intentionally aiding, inducing, or causing a person less than 21 years old to unlawfully possess cannabis; a person under 21 years old entering the premises of a cannabis retailer; a permittee allowing or a parent, guardian, trustee, or other person with custody of a child under 18 years old taking a child to a cannabis retailer or other location where cannabis is sold.

Explanation of Local Expenditures: Counties may hold public questions on permitting cannabis retailers within the county either during a regular primary or general election or through a special election.

Penalty Provisions: These provisions would likely reduce the costs to counties for public defense expenses and the pre and post trial jail confinement for persons who are charged with possessing or dealing marijuana as either misdemeanors or felonies. The bill would also reduce the supervisory burden on community corrections agencies and probation departments.

For persons who were sentenced for marijuana possession as a Level 6 felony, about 85% were confined in a county jail pretrial. In addition, 48% of these persons were confined in a county jail after trial for an average of 121 days, and 86% were supervised by a community corrections agency, a probation department, or both. No similar information was available about persons convicted and sentenced for marijuana possession as a misdemeanor.

Explanation of Local Revenues: *Cannabis Regulation Fund:* The bill will distribute 15% of money remaining in the Cannabis Regulation Fund at the end of the year to county prosecuting attorneys where retail facilities are allowed and 15% to cities, towns, and counties that have cannabis growing, processing, or retail facilities.

Penalty Provisions: Revenue loss from removing marijuana, hash oil, and hashish from the list of illegal drugs is estimated to be \$51,000.

State Agencies Affected: Department of State Revenue; Department of Correction.

Local Agencies Affected: Courts with criminal jurisdiction; prosecuting attorneys

Information Sources: State program websites and contacts available from LSA upon request. U.S. Substance Abuse and Mental Health Services Administration, National Survey on Drug Use and Health, December 2020. U.S. Census Bureau, Annual Estimates of the Resident Population by Single Year of Age and Sex. Indiana Supreme Court Abstracts of Judgment.

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