



**SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE**  
**STATEMENT OF ESTIMATED FISCAL IMPACT**  
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*This fiscal impact statement is produced in compliance with the South Carolina Code of Laws and House and Senate rules. The focus of the analysis is on governmental expenditure and revenue impacts and may not provide a comprehensive summary of the legislation.*

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<b>Bill Number:</b>	H. 3361	Introduced on January 12, 2021
<b>Author:</b>	Herbkersman	
<b>Subject:</b>	SC Compassionate Care Act	
<b>Requestor:</b>	House Medical, Military, Public, and Municipal Affairs	
<b>RFA Analyst(s):</b>	Griffith, Gallagher, and Gardner	
<b>Impact Date:</b>	March 17, 2021	

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### **Fiscal Impact Summary**

This bill will increase expenditures by \$5,033,742 in FY 2021-22 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 \$1,989,175 in FY 2021-22. Recurring expenditures beginning in FY 2022-23 will total \$3,044,567 and include \$2,294,649 in salaries and employer contributions for 34.00 FTEs. Recurring other operating expenditures will total \$749,918 beginning in FY 2022-23.

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 \$5,033,742 to establish the program in FY 2021-22. For FY 2022-23, DHEC indicates that Other Funds from fees and monetary penalties will fund the expected \$3,044,567 in recurring expenditures.

The Judicial Department will use existing General Funds to manage 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) is pending, contingent on a response from the agency.

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 \$1,216,800 for the South Carolina Medical Cannabis Program Fund in FY 2021-22.

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**

### **Introduced on January 12, 2021**

#### **State Expenditure**

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

**The Department of Health and Environmental Control.** This bill requires DHEC to promulgate regulations no later than one year after the effective date of this legislation to develop a registry identification card application form for qualifying patients and designated caregivers and to establish the process for their issuance. No later than 90 days (per Section 3 of the bill) or no later than 30 days (per Section 8 of the bill) 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 within 25 days of receiving the application from the qualifying patient or designated caregiver.

DHEC shall establish a secure 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 the 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 five 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 \$5,033,742 in FY 2021-22. These expenditures include \$2,294,649 in recurring salaries and employer contributions for 34 FTEs. Non-recurring other operating expenditures of \$1,989,175 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 \$3,044,567 and include \$2,294,649 in salaries and employer contributions for 34 FTEs. Recurring other operating expenditures of \$749,918 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 2021-22. For FY 2022-23, DHEC indicates that Other Funds from fees and monetary penalties will fund the expected \$3,044,567 in recurring expenditures.

**Judicial Department.** This bill creates two 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.

Additionally, the bill creates a new misdemeanor for a cardholder who gives cannabis to an unauthorized person. This misdemeanor subjects the qualifying patient to a fine of not more than \$1,000, imprisonment of not more than 180 days, or both. Finally, the sale 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 qualifying patient to a fine of not more than \$5,000, imprisonment of not more than five years, or both.

As the bill creates new mechanisms for committing misdemeanors and felonies, 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 manage any additional costs

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

**State Law Enforcement Division.** SLED is directed to consult with DHEC on security regulations and applicants' security plans. 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, SLED maintains 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.

The expenditure impact on SLED is pending, contingent upon a response from the agency.

**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 an 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 two years 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 (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 \$1,216,800 for the fund in FY 2021-22.

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 \$5,033,742 to establish the program in FY 2021-22. For FY 2022-23, DHEC indicates that Other Funds from fees and monetary penalties will fund the expected \$3,044,567 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 the University of South Carolina School Medicine, the Medical University of South Carolina, the South Carolina Department of Education, and the state's general fund.

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. Charleston County and MASC provided responses. MASC does not expect any additional expenditures, and Charleston County indicates that it expects no expenditures because it will defer to DHEC to administer the program. 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.

### **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.



Frank A. Rainwater, Executive Director