150th GENERAL ASSEMBLY
FISCAL NOTE
REVISED

BILL:	**HOUSE BILL NO. 110**
SPONSOR:	**Representative Osienski**
DESCRIPTION:	**AN ACT TO AMEND TITLE 4, 16, AND 30 OF THE DELAWARE CODE CREATING THE DELAWARE MARIJUANA CONTROL ACT.**

Assumptions:

1. This Act, known as the Delaware Marijuana Control Act, becomes effective upon signature by the Governor.
2. This Act provides for the following:
    a. permits individuals over age 21 to possess, use, purchase, or transport 1 ounce (28 grams) or less of marijuana, no more than 5 grams of which may be in a concentrated form;
    b. permits operation of marijuana businesses (i.e. retail marijuana stores, marijuana testing facilities, marijuana cultivation facilities, and marijuana product manufacturing facilities) if operated under proposed licenses and restrictions as defined within the Act;
    c. creates the Delaware Marijuana Control Act Oversight Committee which will coordinate the implementation of this Act with the Medical Marijuana Program, the Division of Public Health, the Division of Substance Abuse and Mental Health, and the public;
    d. creates the Division of Marijuana Control and Enforcement, within the Department of Safety and Homeland Security, offering similar powers and duties to the existing Delaware Alcohol and Tobacco Enforcement (DATE);
    e. creates a Marijuana Commissioner who would have the authority to adopt regulations to implement this Act including the establishment of requirements related to obtaining licenses for marijuana establishments and the products sold at these establishments;
    f. creates an Appeals Commission who shall hear an applicant or licensee's appeal should the Marijuana Commissioner refuse or cancel a license;
    g. creates the Marijuana Regulation Fund which would consist of the fees collected, penalties imposed, and taxes collected under this Act; and
    h. allows for the expungement of prior marijuana-related offenses if the individual has no convictions for violent felonies.
3. This Act expands upon the duties and powers of the Department of Safety and Homeland Security, DATE, as well as creates an Office of the Marijuana Commissioner. Recurring annual costs are estimated at $1,710,932 and one-time costs are estimated at $498,371 and are as follows:
    a. Addition of 21.0 FTE positions to the DATE for Marijuana Regulation and Enforcement.
        i. Recurring Costs - $1,420,565
            1. $1,370,565 in Personnel Costs, including OECs, for 1.0 FTE, Captain, 1.0 FTE, Lieutenant, 9.0 FTE, Marijuana Enforcement Agent III (same as Alcohol & Tobacco Enforcement Agent III), 6.0 FTE, Investigator II, 1.0 FTE, Agricultural Specialist, 1.0 FTE, Deputy Attorney General, 1.0 FTE, Public Information Officer, 1.0 FTE, Management Analyst II and adjustments to the base salary of the Division Director and Deputy Director for DATE.

2. $50,000 for the estimated rent and utilities for a DATE facility to house new positions.

ii. One-Time Costs - $487,171

1. $65,000 to upgrade current alcohol license tracking and violation system to accommodate marijuana.
2. $7,000 "Train the Trainer" cost for a two-person trip to a regulated State to observe marijuana regulation and enforcement practices.
3. $75,000 for an external evidence storage building with security.
4. $20,000 startup costs for purchase, training, and equipping a drug detection K9 and equipping an existing vehicle in DATE's fleet.
5. $320,171 in supplies for equipment (uniforms, firearms, radios, personal computers), office furniture and office supplies.
6. Indeterminable amount for hiring a consultant to draft marijuana regulations and review the policies and procedures for marijuana regulation and enforcement.

b. Addition of 4.0 FTE positions for the creation of an Office of the Marijuana Commissioner.

i. Recurring Costs - $290,367

1. $290,367 in Personnel Costs, including OECs, for 1.0 FTE, Marijuana Commissioner, 1.0 FTE, Deputy Marijuana Commissioner, 1.0 FTE, for Paralegal I, and 1.0 FTE, for Administrative Specialist II.
2. Indeterminable amount for facility costs to house new positions.

ii. One-Time Costs - $11,200

1. $11,200 for computer equipment, office furniture, and other related startup costs.

4. The Department of Safety and Homeland Security, Division of Forensic Science, Toxicology Unit projects that its workload will increase due to the additional testing needs related to driving under the influence cases. To meet this increased caseload, the unit would require additional laboratory equipment, known as a Liquid Chromatography Triple Quadrupole Mass Spectrometer (LC-MS/MS) system. Recurring annual costs are estimated at $487,445 and one-time costs are estimated at $453,400 and are as follows:

a. Addition of 3.0 FTE positions to support the anticipated increase in testing needs of the Toxicology Unit.

i. Recurring Costs - $487,445

1. $217,445 in Personnel Costs, including OECs, for 2.0 FTE, Analytical Chemist III and 1.0 FTE, Laboratory Manager II.
2. $270,000 in recurring operating costs related to a service contract for the LC-MS/MS system as well as an anticipated need for additional laboratory and testing supplies due to projected increased testing.

ii. One-Time Costs - $453,400

1. $400,000 is estimated for the purchase of an LC-MS/MS system and associated service contract.
2. $45,000 for the retention of expert services to validate the new THC LC-MS/MS method.
3. $8,400 for computer equipment, office furniture, and other related startup costs related to the additional positions.

5. This Act expands upon the regulatory responsibilities and oversight of the growing operations with the Department of Health and Social Services, Division of Public Health. Recurring annual costs are estimated at $1,035,548 and one-time costs are estimated at $128,900 and are as follows:

    a. Addition of 16.0 FTE positions to inspect and monitor the additional facilities.

        i. Recurring Costs - $1,035,548

            1. $789,148 in Personnel Costs, including OECs, for 1.0 FTE, Investigative Supervisor, 3.0 FTE, Investigator III, 9.0 FTE, Investigator II, 1.0 FTE, Management Analyst III, and 1.0 FTE, Public Health Administrator I, and 1.0 FTE, Administrative Specialist II.

            2. $246,400 in recurring operating costs related to the additional positions for things such as fleet vehicles, lease obligations, training, and supplies.

        ii. One-Time Costs - $128,900

            1. $128,900 is estimated in one-time costs related to computer equipment, office furniture, software modifications, and other related startup costs.

6. This Act expands upon the regulatory responsibilities and oversight related to pesticide management, seed inspection, nutrient management, nursery stock, and the weights and measures associated with the cultivation of marijuana with the Department of Agriculture. Recurring annual costs are estimated at $254,165 and one-time costs are estimated at $14,000 and are as follows:

    a. Addition of 5.0 FTE positions to inspect and monitor the cultivation facilities.

        i. Recurring Costs - $254,165

            1. $254,165 in Personnel Costs, including OECs, for 3.0 FTE, Environmental Scientist III, 1.0 FTE, Agriculture Commodity Inspector III, and 1.0 FTE, Weights and Measures Inspector II.

        ii. One-Time Costs - $14,000

            1. $14,000 is estimated in one-time costs related to computer equipment, office furniture, software modifications, and other related startup costs.

7. This Act requires the State Bureau of Identification (SBI) to conduct a mandatory expungement of prior marijuana-related offenses if the individual has no convictions for violent felonies. The SBI anticipates a significant increase in the number of mandatory expungements that it would need to process as a result of this Act. The expungement process is complex and detailed and requires research and coordination among various SBI sections. Recurring annual costs are estimated at $230,641 and one-time costs are estimated at $16,800 and are as follows:

    a. Addition of 6.0 FTE positions to conduct research and perform mandatory expungements.

        i. Recurring Costs - $230,641

            1. $230,641 in Personnel Costs, including OECs, for 3.0 FTE, Administrative Specialist I, 1.0 FTE, Application Program Manager (Application Programmer), 2.0 FTE, Criminal History Technician II.

        ii. One-Time Costs - $16,800

            1. $16,800 is estimated in one-time costs related to computer equipment, office furniture, and other related startup costs.

8. In addition to mandatory expungements performed by the SBI, the Superior Court will also have to conduct expungements on each of its paper files that are housed in each county. This is a labor-intensive and tedious process as court personnel must make redactions in the least restrictive manner possible as to not conflict with the public right to access. Court personnel will be required to have sufficient knowledge to read each document contained in a file to ensure there are no references to an expunged charge. Recurring annual costs are estimated at $195,302 and one-time costs are estimated at $11,200 and are as follows:

    a. Addition of 4.0 FTE positions to coordinate, conduct research, and perform mandatory expungements of paper files for the Superior Court.

        i. Recurring Costs - $195,302

            1. $195,302 in Personnel Costs, including OECs, for 3.0 FTE, Paralegal III (one for each county), and 1.0 FTE, Operations Support Specialist (for New Castle County).

        ii. One-Time Costs - $11,200

            1. $11,200 is estimated in one-time costs related to computer equipment, office furniture, and other related startup costs.

9. This Act would require the Delaware Criminal Justice Information System (DELJIS) to make significant programming and system modifications to the Criminal Justice Information System (CJIS) to ensure compliance related to the expungement provision. Recurring annual costs are estimated at $59,541 and one-time costs are estimated at $152,800 and are as follows:

    a. Addition of 1.0 FTE position to address ongoing maintenance programming, fixing, testing, auditing, and other post-implementation issues surrounding data integrity and continued coordination with the SBI upon implementation of this Act.

        i. Recurring Costs - $59,541

            1. $59,541 in Personnel Costs, including OECs, for 1.0 FTE, Management Analyst III.

        ii. One-Time Costs - $152,800

            1. $150,000 for specialized contractual staff to make coding changes relating to the criminal justice impacts from this Act.

            2. $2,800 for projected startup costs for technology, software, and furniture related to the 1.0 FTE position.

10. This analysis does not consider the following:

    a. costs associated with the training of state and local law enforcement officers to increase the number of Drug Recognition Officers; and

    b. possible losses in revenue to the Fund to Combat Violent Crime which provides funding for state and local law enforcement from a surcharge on certain types of convictions.

11. This Act will result in additional revenue through the introduction of application fees, license fees, and a marijuana control enforcement tax. Based upon annual sales estimates ranging between 250,000 and 450,000 ounces annually, estimated revenue from the marijuana control enforcement tax on marijuana ranges from $9,375,000 to $23,625,000 per year. This assumes a price range per ounce to be around the national average of $250 to $350 per ounce. It is difficult to determine initial demand for the products, and in addition, there are many difficulties surrounding the projection of revenue that will be generated including the many uncertainties with federal law relating to the treatment of marijuana income. However, any additional revenue collected would not occur until after the implementation of this Act and the hiring of the FTE positions.

12. All Fiscal Year 2021 personnel costs have been estimated for 9-months of funding with the annualization of the remaining 3-months of personnel costs incorporated into subsequent year estimates. Additionally, a 2% inflation cost has been included for projected increases to salary, benefit, and other employment costs.
13. Lastly, it is assumed that the Fiscal Year 2021 operational costs associated with this Act would have to initially be funded through the General Fund. This fiscal impact assumes subsequent years would be funded through revenues received by the generation of fees and taxes to the Marijuana Regulation Fund, provided that enough revenue is collected to offset the operational costs identified.

Cost:

	One-Time	General Fund	Marijuana Regulation Fund
Fiscal Year 2021:	**$1,275,471**	**$3,973,573**	**$0**
Fiscal Year 2022:	**$0**	**$0**	**$5,188,112**
Fiscal Year 2023:	**$0**	**$0**	**$5,280,546**

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