

# New Hampshire Department of Revenue Administration

## Fiscal Note Quick Guide

19-0028

**HB 481**, relative to the legalization and regulation of cannabis and making appropriations therefor.

House Ways & Means

This proposed bill would legalize and tax the sale of cannabis in the State of New Hampshire for anyone 21 years of age or older. The DRA would be responsible for the taxation of cannabis at the rate of \$30 per an ounce on all cannabis flower, \$10 per ounce on all parts of cannabis other than cannabis flowers and immature cannabis plants, and \$15 per immature cannabis plant sold or transferred from a cannabis cultivation facility to a retail cannabis store or cannabis product manufacturing facility. The DRA shall collect the tax and adjust the rates annually for inflation.

The tax shall not be levied on any transfers of cannabis to retail cannabis stores that are also alternative treatment centers if the untaxed cannabis is stored separately and is reserved for transfers to qualifying patients or designated caregivers pursuant to RSA 126-X. However, the cannabis cultivation facilities shall pay the cannabis excise tax to the DRA on the 15th day each month for the cannabis transferred or sold in the prior calendar month. The DRA commissioner shall collect all taxes, fees, and fines generated pursuant to this chapter and RSA 318-F and deposit the funds into the cannabis control fund. (See Technical Defects Section).

Secondly, RSA 77-H:3, I establishes a nonlapsing cannabis control fund in the DRA. It also requires the DRA commissioner to credit all fees, taxes and civil penalties imposed for cannabis and all other moneys from public or private sources to the fund. The fund shall be nonlapsing and continually appropriated to the DRA to administer the provisions of RSA 77-H and RSA 318-F. (See Technical Defects Section). RSA 77-H:3, II allows the DRA commissioner to expend money form the cannabis control fund to administer the provisions of RSA 318-F. (See Technical Defects Section).

Lastly, on or before March 15 and September 5 of each year, the DRA commissioner shall determine the cost of administration of RSA 77-H for the next 2 fiscal quarters and shall notify the state treasurer of these costs. The DRA commissioner may expend moneys form the fund to administer the provisions of RSA 77-H. (See Technical or Mechanical Defects Section). RSA 77-H:3, IV allocates the remaining funds every six months to different departments, agencies, municipalities, and to the general fund. (See Technical Defects Section).

### **Fiscal Impact**

The fiscal impact of this bill with respect to taxation is indeterminable. The DRA has no way of knowing the amount of cannabis flowers or parts, or the number of immature cannabis plants that would be sold or transferred from a cannabis cultivation facility to a retail cannabis store or cannabis product manufacturing facility in any fiscal year.

However, the DRA has calculated a possible range for the impact of the cannabis excise tax on revenues based on a number of estimates and assumptions, including NH population by age groups, the percentage of the population by age group using cannabis in the past year, and the number of ounces of cannabis consumed per person per year. The source of these assumptions and estimates are detailed below.

Lastly, it is important to note that, without information to separate out the use of cannabis flowers and parts, and immature cannabis plants, we assumed that every estimated consumer of cannabis would only use cannabis flowers. The proposed legislation’s tax on cannabis flowers is at the highest rate of \$30 per ounce. So the range is likely overestimated. And the U.S. Census population figures are not available for persons aged 21 and older. As a result, the DRA has completed these calculations using the population figures that include all persons aged 20 and older. This is the best available data, but it again inflates the range. **\*Please note: For all the reasons described above and below, the estimated range almost certainly exaggerates the increase in revenues. It represents a maximum range.\***

**Additional State Revenue - \$30/ounce**

A tax shall be levied upon cannabis sold or transferred by a cannabis cultivation facility to a cannabis product manufacturing facility or a retail cannabis store at a rate of \$30 per ounce on cannabis flowers or proportionate part thereof. The DRA has no way to determine the amount of cannabis that would be sold at the rate of \$30 per ounce versus the other rates. For purposes of calculating a range, the DRA assumes that only the cannabis flower would be sold to manufacturing facilities and retail stores. The DRA is also unable to deduct from the calculation the amount of medical cannabis that would remain untaxed.

<b>Summary of Assumptions &amp; Adjustments for Calculation of First Year Potential NH Cannabis Tax Revenues Based on NY Methodology<sup>1</sup></b>		
<b><u>Consumers of Cannabis</u></b>	<b>Low</b>	<b>High</b>
1 Estimated Number of NH Residents Ages 20+ Using Cannabis <sup>2</sup>	130,000	130,000
2 Tourism Factor <sup>3</sup>	1,563	1,563
3 <b><i>Total Estimated Consumers of Cannabis (Line 1 + Line 2)</i></b>	<b><i>131,563</i></b>	<b><i>131,563</i></b>
<b><u>Amount and Price of Cannabis</u></b>		
4 Ounces Used per Year per Person	5.0	7.9
5 Estimated Ounces Consumed Annually (Line 3 x Line 4)	657,815	1,039,348
6 Tax Rate	\$30	\$30
7 <b><i>Estimated Additional Revenue</i></b>	<b><i>\$19,734,450</i></b>	<b><i>\$31,180,431</i></b>

References

<sup>1</sup>[https://www.health.ny.gov/regulations/regulated\\_Cannabis/docs/Cannabis\\_legalization\\_impact\\_assessment.pdf](https://www.health.ny.gov/regulations/regulated_Cannabis/docs/Cannabis_legalization_impact_assessment.pdf)

<sup>2</sup><https://www.census.gov/quickfacts/fact/table/nh,ny/PST045217#iewtop>

<sup>2</sup> <http://samhda.s3-us-gov-west-1.amazonaws.com/s3fs-public/fieldploads/2k15StateFiles/NSDUHsaeShortTermCHG2015.htm>

<sup>3</sup> <https://www.ahla.com/statefacts>

**Additional State Expenditures**

In order to administer the proposed legislation’s excise tax on cannabis, the DRA would need five additional positions at the total salary and benefit cost as noted below. The Department would also need an additional \$2,000,000 for the cost to implement the new tax into the DRA system plus other anticipated cost such as the armored car transportation for deposits of tax, updates to secure rooms holding cash, cash counting machines and other essential items to process the expected increase in cash tax payments.

	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>
<b>Administrative Secretary Salary</b> (Labor Grade 14, with annual steps)	\$65,000	\$63,000	\$66,000	\$69,000
<b>Administrator Salary</b> (Labor Grade 31, with annual steps)	\$104,000	\$105,000	\$110,000	\$115,000
<b>Tax Auditor IV Salary – 2 Positions</b> (Unclassified CC, with annual steps)	\$196,000	\$196,000	\$204,000	\$216,000
<b>Attorney Salary</b> (Unclassified DD, with annual steps)	\$101,000	\$101,000	\$106,000	\$111,000
	<b>\$466,000</b>	<b>\$465,000</b>	<b>\$486,000</b>	<b>\$511,000</b>

**Technical Defects**

RSA 77-H:2, III requires the DRA to adjust the tax rates annually based on the Consumer Price Index. However, it does not identify the exact index to use or the applicable time period. For example, the filing threshold provision with respect to the Business Enterprise Tax (namely, RSA 77-E:5, I) provides: “the commissioner shall biennially adjust these threshold amounts rounding to the nearest \$1,000 *based on the 2-year (24-month) percentage change in the Consumer Price Index for All Urban Consumers, Northeast Region* as published by the Bureau of Labor Statistics, United States Department of Labor *using the amount published for the month of June in the year prior to the start of the tax year.*” (Emphasis added).

The DRA notes that there are no return filing requirements contained in the bill. Typically, a tax statute contains requirements in terms of when documents and money shall be filed with the DRA and what information shall be filed with the DRA. Without this information the DRA has no ability to verify that any money remitted is the correct amount.

Pursuant to this proposed legislation the DRA commissioner is required to collect all taxes, fees, and fines generated pursuant to RSA 77-H and RSA 318-F and deposit the funds into the cannabis control fund. Currently there is no mechanism for the department to collect fees, and

finer from other state agencies or to access other state agencies' accounts to transfer funds. The DRA would recommend each agency responsible for collecting cannabis fees and fines to transfer their own funds collected into the cannabis control fund.

RSA 77-H:3, IV allocates funds every six months, including to municipalities "based on the percent of all cannabis retail sales that were made in those municipalities during the prior 3 months." This may result in a violation of the DRA's confidentiality statute, RSA 21-J:14, to the extent that it would identify or permit identification of particular taxpayers or information from particular returns or related documents. The proposed legislation may need to include an exception to RSA 21-J:14. It is also not clear who is responsible for allocating these funds. The DRA would recommend the Department of Treasury to allocate funds to municipalities in the same manner it does when allocating Meals and Rentals Funds to municipalities per RSA 78-A:26 Disposition of Revenue.

Lastly, section 280E of the United States Internal Revenue Code (IRC) denies a business involved in the sale of cannabis from deducting all ordinary and necessary business expenses. The proposed legislation does not currently provide an adjustment to this provision for Business Profits Tax purposes, and so the business would not be allowed to deduct them even in New Hampshire.