

# New Hampshire Department of Revenue Administration

## Fiscal Note Quick Guide

24-2804.1

**HB 1633**, *relative to the legalization and regulation of cannabis and making appropriations therefor.*

Commerce and Consumer Affairs

**Establishes procedures for the legalization, regulation, ad taxation of cannabis; the licensing and regulation of cannabis establishments; and makes appropriations therefor.**

1. The proposed legislation creates a comprehensive framework for the legalization and taxation of the sale of cannabis in the State of New Hampshire for anyone 21 years of age or older. The proposed legislation assigns most of the oversight of the commercial sale of cannabis in New Hampshire to the newly created Cannabis Commission. In this fiscal note, the DRA has limited its analysis to the sections of the proposed legislation that fall within the DRA's purview, namely the taxation of a cannabis establishment as reflected in section 17, the taxation of the sale of cannabis as reflected in sections 18 through 28, and the calculation of the education tax (SWEPT) as reflected in sections 7 and 29.
2. Section 17 of the proposed legislation amends the Business Profits Tax (BPT), specifically RSA 77-A:4, to allow a deduction from gross business profits for the ordinary and necessary expenses paid or incurred on a trade or business as a cannabis establishment as defined by RSA 318-F:1 or an alternative treatment center as defined by RSA 126-X:1.
3. Sections 18 through 28 of the proposed legislation would subject taxable sales of cannabis to the tax imposed through the Meals and Rooms (M&R) tax, which will be renamed as Meals, Rooms, and Cannabis (MR&C) tax. The tax shall be collected by the operator, from the purchaser of cannabis, and remitted to the DRA on or before the fifteenth day of the calendar month following the collection of the tax.
4. Section 22 requires each cannabis retail store or other cannabis establishment, registered with the Cannabis Commission to sell directly to consumers, to obtain a cannabis sales license from the DRA for each place of business within the state where these stores or establishments sell directly to consumers before making a cannabis sale.
5. Section 25 of the proposed legislation excludes the sale of therapeutic cannabis to registered qualified patients from qualifying as a taxable cannabis sale. These sales shall be sales made by registered alternative treatment centers and a limit is placed on the amount of cannabis products each registered qualifying patient may purchase in a 10-day period.
6. The newly enacted RSA 318-F:23, through Section 7 of the proposed legislation, establishes a Cannabis Fund where all MR&C tax revenue from the taxable sale of cannabis shall be deposited and distributed. After deducting certain appropriations and accrued unfunded liabilities, 55% of the remaining funds shall be disbursed to the education trust fund to reduce

the amount required to be collected by municipalities for the SWEPT. RSA 318-F:23 refers to RSA 77-H, which the DRA assumes to be an error and should mean RSA 78-A, the M&R Tax or the renamed MR&C Tax.

7. Section 29 of the proposed legislation amends the funding of the SWEPT by setting the tax rate to a level sufficient to generate revenue of \$363 million less any amount credited to the education trust fund pursuant to RSA 318-F:23.
8. The fiscal impact of this proposed legislation as it relates to taxation of cannabis is indeterminable. The DRA is unable to know the amount of cannabis products that would be sold or the selling price of the cannabis products. However, the DRA has calculated an estimate for the potential tax that may be collected from the taxable sale of cannabis, using the data that is available from the neighboring states, namely Massachusetts and Maine. There is currently no data from Vermont as adult-use marijuana sales began in late October 2022.
9. The DRA's estimates are based on the 2020 US Census population demographics data, the adult-use marijuana sales reported by Massachusetts and Maine for calendar year 2022, and other demographic data collected through the internet. The DRA estimated New Hampshire tax revenue should the taxable sale cannabis trend for New Hampshire mirror either Massachusetts or Maine. Due to the limitation in available demographic data, the DRA's estimates had to assume that Massachusetts' and Maine's population make-up did not change since the US Census of April 1, 2020. The DRA also assumed that the price of the cannabis products that will be sold in New Hampshire also mirrors the price of the products sold in Massachusetts and Maine in each respective scenario.
10. Based on current law, the M&R tax rate is at 8.5% on taxable sales of cannabis.
11. The table below shows the results of the DRA's estimates. This estimate is before the 3% that may be retained by operators under existing law to compensate operators for keeping proper records and accounting of the collection of the tax and for timely filing and remitting the tax to the DRA.

<b>Summary of Assumptions &amp; Adjustments for Calculation of First Year Potential NH Cannabis Tax Revenues</b>			
	<b>Massachusetts</b>	<b>Maine</b>	
1	Total population as of April 1, 2020 <sup>1, 2</sup>	7,029,917	1,362,359
2	Population aged 21 years and over as of 2021 <sup>3</sup>	5,288,828	1,050,000
3	<i>Assumption is made that the total population data above remained the same for 2022.</i>		
4	Percentage aged 21 years and over in 2022 (Line 3 / Line 1)	75%	77%
5	Adult-use cannabis retailer sales in 2022 <sup>4, 5</sup>	\$ 1,505,653,805	\$ 158,904,377
	<b>If New Hampshire sales mirrored Massachusetts</b>	<b>If New Hampshire sales mirrored Maine</b>	
6	Total population as of April 1, 2020 <sup>6</sup>	1,377,529	1,377,529
7	Population aged 21 years and over as of 2021 <sup>3</sup>	1,054,041	1,054,041
8	<i>Assumption is made that the total population data above remained the same for 2022.</i>		
9	Percentage aged 21 years and over in 2022 (Line 7 / Line -6)	77%	77%
10	Estimated adult-use cannabis retailer sale in 2022 ((Line 5 / Line 2) x Line 9)	\$ 300,070,421	\$ 158,875,587
11	Tax rate	8.50%	8.50%
12	<b>Estimated Tax Revenue (Line 10 x Line 11) Rounded</b>	<b>\$ 25,500,000</b>	<b>\$ 13,500,000</b>

References:

- 1 <https://www.census.gov/library/stories/state-by-state/massachusetts-population-change-between-census-decade.html>
- 2 <https://www.census.gov/library/stories/state-by-state/maine-population-change-between-census-decade.html>
- 3 <https://data.census.gov/table?q=age&g=0400000US23,25,33&tid=ACSST5Y2021.S0101>
- 4 <https://masscannabiscontrol.com/open-data/sales-and-product-distribution/>
- 5 <https://www.maine.gov/dafs/ocp/open-data/adult-use>
- 6 <https://www.census.gov/library/stories/state-by-state/new-hampshire-population-change-between-census-decade.html>

6. Cannabis establishments and alternative treatment centers conducting business activity in the state shall be subject to the BPT and the Business Enterprise Tax (BET), and are expected to increase the state revenue. However, the DRA is unable to determine that increase as we do not know how many businesses will be participating in this activity and unable to estimate the taxable income of these businesses. At the same time, section 17 of the proposed legislation allows the business organization to deduct all ordinary and necessary expenses in the carrying on a trade or business as a cannabis establishment or an alternative treatment center. Deduction is also allowed for reasonable allowance for salaries or other compensation for personal services rendered. The DRA is unable to know the amount or effect of the deduction of ordinary and necessary business expenses paid or incurred by a cannabis establishment or an alternative treatment center on BPT revenues.
7. The fiscal impact of the proposed legislation as it relates to section 29 is indeterminable. The DRA is unable to know the available funds that will remain after deducting the cost as outlined in RSA 318-F:23, V(b)(2). However, any amount remaining that is deposited into the Education Trust Fund that would go towards the collection of the SWEPT of \$363 million would likely decrease revenues, relative to the tax to be collected by the municipalities to fund the SWEPT.
8. To administer the proposed legislation’s tax on cannabis, the DRA would need five additional positions at the total cost noted below.

Position	FY2024	FY2025	FY2026	FY2027
Administrative Secretary (LG 14 with annual steps)	\$0	\$73,000	\$70,000	\$71,000
Tax Auditor IV (LG 29 with annual steps) – 2 positions	\$0	\$222,000	\$220,000	\$228,000
Attorney I (LG 30 with annual steps)	\$0	\$115,000	\$113,000	\$118,000
Administrator III (LG 31 with annual steps)	\$0	\$118,000	\$118,000	\$122,000
<b>Total</b>	<b>\$0</b>	<b>\$528,000</b>	<b>\$521,000</b>	<b>\$539,000</b>

9. The DRA would need additional appropriation for costs associated to upgrading the system to accommodate the proposed tax, as well other anticipated costs, such as 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.
10. The DRA assumes that the taxable sale of cannabis will begin no earlier than July 1, 2025 of FY 2026. Section 7 of the bill, RSA 318-F:12, I, provides that voters of every municipality to decide by election held in November 2024 on whether to allow cannabis establishments in their municipality. In addition, Section 44 states that appropriations will be made to the department of safety and the liquor and cannabis commission for the fiscal year ending June 30, 2025.
11. RSA 318-F:23, V requires that funds in the Cannabis Fund shall be appropriated and distributed by the Cannabis Commission after deducting appropriations charged to the fund for the cost of administration of RSA 318-F and RSA 77-H (presumed RSA 78-A). However,

earlier paragraphs of RSA 318-F:23 provides appropriations only for the cost of administration of RSA 318-F and no mention of appropriations for RSA 77-H (presumed RSA 78-A). DRA suggests additional clarifying language to be provided and whether any appropriations for the cost of administering RSA 77-H (presumed RSA 78-A) shall only be limited to the activities related to the administration of the cannabis tax and not the entire MR&C tax.

12. The proposed legislation does not address the timing of the excess Cannabis Fund revenues deposited into the Education Trust Fund (ETF) and the setting of the Education Tax rate. For the DRA to set the tax rate at a level sufficient to generate SWEPT revenue of \$363 million, the amount of excess Cannabis Fund revenue deposited into the ETF must be known. The DRA suggests further clarifying language be included in the proposed legislation.