

Article 11: Relating to Adult-Use Marijuana

This article proposes the legalization of marijuana for adult-use. The proposed changes are estimated to generate \$1.7 million in net revenue in FY2022, based on an anticipated retail sales start date of April 1, 2022. In FY2023, the first full year of retail sales, the anticipated net revenues increase to \$16.9 million. Revenue estimates were completed by the Office of Management and Budget (OMB) based on Rhode Island population data and adult-use marijuana revenues in other states. Specifically, the article:

- Legalizes the recreational use and purchase of marijuana for individuals aged twenty-one or older.
- Establishes the Marijuana Trust Fund, funded by taxes and fees collected from marijuana revenues, to distribute funds to municipalities, for state expenditures related to the market, and to general revenues.
- Establishes an overall tax rate on adult-use marijuana of approximately 20.0 percent, comprised of excise taxes and retail sales taxes.
- Includes provisions designed to ensure minority access to the industry and to ensure medical marijuana patients are not adversely impacted by the implementation of an adult-use market.

FISCAL IMPACT

The general revenue impact of Article 11 is summarized in the following tables:

Article 11 Revenues		
Initiative	FY2022	FY2023
Licensing Fees	\$3,816,000	\$2,652,250
Retail Excise Tax	2,387,902	9,551,606
Retail Sales Tax	1,671,531	6,686,124
Cultivator Excise Tax - Flower	1,335,073	5,340,292
Medical Cultivator Excise Tax	1,172,703	2,345,407
Cultivator Excise Tax - Trim	410,849	1,643,398
Total	\$10,794,058	\$28,219,077

Article 11 Net Impact		
Initiative	FY2022	FY2023
Total Revenues	\$10,794,058	\$28,219,077
State Expenditures (Increased in FY2022)	(2,698,515)	(7,054,769)
Additional Expenditures in Year 1	(4,805,954)	-
Share Dedicated to Municipalities	(1,619,109)	(4,232,862)
Annual General Revenue Transfer	\$1,670,481	\$16,931,446

Totals may vary due to rounding.

ANALYSIS AND BACKGROUND

Adult-Use Marijuana: The article legalizes the adult-use of marijuana for those aged twenty-one and older and provides the Office of Cannabis Regulation (OCR) within the Department of Business Regulation (DBR) with the authority to oversee the proposed adult-use. The article would allow individuals twenty-one or older to purchase up to one ounce of marijuana per day, and allows storage of up to five ounces of marijuana in a secured, locked container in their home. In households with two or more individuals aged over twenty-one, adults would be permitted to have up to ten ounces secured in a locked container. OCR would be responsible for overseeing the regulation, licensing, and control of the market. OCR will work in coordination with other impacted agencies, offer guidance to municipalities, and work in coordination with other states with a legal market.

The article provides DBR with the authority to limit the potency of products cultivated and sold, with a planned potency limit of 50.0 percent. Potency limitations would decrease production by approximately 12.9 percent. The article limits the amount of tetrahydrocannabinol (THC), which is the part of the marijuana plant that produces a high, to 5mg per serving, or 100mg per edible package. Marijuana products must not be packaged in a way that it is easy for a child to open and cannot be shaped in a way that children may find attractive, such as animals or vehicles.

The article prohibits the use of marijuana in public places, multi-unit housing (unless with explicit permission from the property owner), and places of business. The article does not permit the smoking or vaping of marijuana on public housing properties due to Housing and Urban Development (HUD) requirements for smoke-free public housing to prevent the risk of fire. While HUD does prohibit smoking on property, it does not explicitly prohibit vaping on properties and allows Public Housing Authorities to use their discretion.

Only licensed cultivators are permitted to cultivate marijuana and the article outlines penalties associated with the possession of marijuana plants without a cultivator license. Penalties range from financial penalties starting at \$2,000 per plant to criminal penalties for possession of more than twenty plants. Possessing marijuana in excess of permitted amounts is subject to an administrative penalty of \$2,000 per ounce and the forfeiture and/or destruction of the excess marijuana. Distribution to minors is prohibited and is subject to a \$10,000 fine per violation and a felony.

Massachusetts legalized adult-use marijuana in 2016, with sales beginning in 2018. There are a number of marijuana retailers close to the Rhode Island border including Fall River, Attleboro, and Uxbridge. In 2020, Massachusetts had \$702.4 million in total adult-use retail sales. The Governor of Connecticut included the legalization of adult-use marijuana in his budget proposal with an anticipated starting retail sale date of May 2022.

Medical Marijuana: The article includes provisions that are intended to protect the viability of the medical marijuana program and mitigate any negative impacts on medical marijuana patients. The article permits licensed compassion centers to apply for a hybrid license, which would permit the licensee to have both a compassion center license and a retail adult-use market. A medical marijuana cultivator may also apply for a hybrid cultivator license to cultivate marijuana for both the medical marijuana program and the adult-use market. Applicants must be able to demonstrate that their expansion into the adult-use market will have no adverse impacts on the medical market or patients.

The article requires DBR, in collaboration with the Department of Health (DOH), and the Office of Management and Budget (OMB), to complete and deliver a study to the Governor, the Speaker of the House, and the President of the Senate by April 1, 2023. The study must analyze the impact that implementation of an adult-use market has had on the existing medical marijuana program and offer recommendations for avoiding adverse impacts on the medical marijuana program.

The article establishes a new weight-based cultivator excise tax, applicable to both medical and adult-use cultivators. Medical marijuana cultivators are not currently taxed. The cultivator excise tax is \$10 per ounce of flower, which is used to make products that are smoked, and \$3 per ounce of trim, which is used to make other marijuana products. The tax would be paid by the cultivator upon the transfer of marijuana. The new fee has an effective date of January 1, 2022, and is anticipated to generate \$1.2 million in revenue from the existing medical marijuana market.

Reinvestment Task Force: The article establishes the Governor's Cannabis Reinvestment Task Force, comprised of 15 uncompensated members with one-year terms. The task force would include representatives from municipalities, faith-based organizations, small business owners, and at least two members of the industry. The task force must report findings and recommendations to OCR and OMB by July 1, 2022.

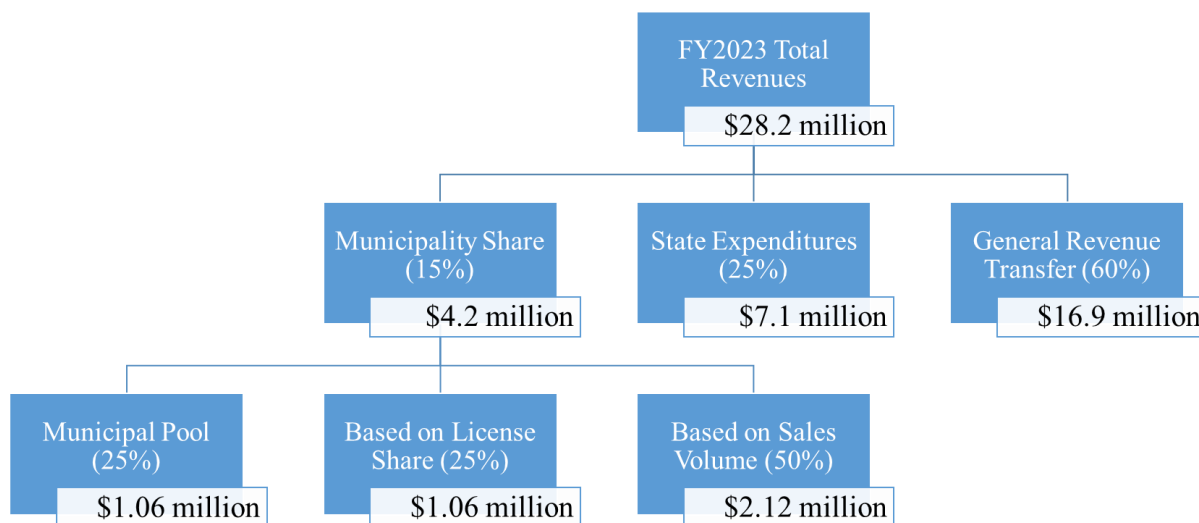
Equal Opportunity Provisions: The article requires adherence with existing equal opportunity laws in the Hemp Growth Act. The article prohibits denial of cannabidiol (CBD) and any marijuana-related licenses on the basis of race, color, religion, sex, sexual orientation, gender identity or expression, age, national origin, or disability. In addition, the article requires that at least five or 20.0 percent, whichever is greater, of all the marijuana establishment licenses, must be awarded to qualifying Minority Business Enterprises (MBEs).

Marijuana Trust Fund: The article establishes the Marijuana Trust Fund as a restricted receipt account. All adult-use marijuana revenue would be deposited into the Marijuana Trust Fund; 25.0 percent of the funds would be allocated for state expenditures to be allocated to the appropriate agencies based on need, 15.0 percent of funds are dedicated to municipalities, and 60.0 percent of funds would be transferred to the general fund. The article allocates \$4.8 million in funding from the trust fund for expenditures related to adult-use marijuana for first-year expenditures of the adult-use marijuana program. First-year expenditures include additional training and resources for public safety departments and funding for substance use disorder prevention.

The Marijuana Trust Fund would be exempt from the indirect cost recovery provision of RIGL 35-4-27. The exclusion of the fund from indirect cost recovery requirements prevents 10.0 percent of the fund's balance from being deposited as general revenues.

Municipalities: The article outlines mechanisms for municipalities to prohibit some or all marijuana-related activities. Municipalities would have the opportunity to ban any or all marijuana licenses through zoning ordinances within their jurisdiction, but such ordinances may only remain in effect until November 2, 2021. At that point, a referendum would need to be conducted to continue the prohibitions, with a separate question for each type of license. If a referendum prohibiting a specific license were approved by a simple majority, no application for that license would be approved. For example, if a municipality prohibits retail licenses within their jurisdiction, OCR would not approve that license.

The Marijuana Trust Fund allocates 15.0 percent of revenues to municipalities, of which all municipalities would receive 25.0 percent regardless of their volume, an estimated \$10,378.90 per municipality in FY2022 and \$42,860 in FY2023. The remaining funding would be based on volume; 25.0 percent of the municipality allocation would be allocated based on license volume and the remaining 50.0 percent would be allocated based on sales volume. The following tables display the total municipality allocation for FY2022 and FY2023.



Estimated Municipality Distribution		
Allocation	FY2022	FY2023
Sales Volume (50%)	\$835,766	\$2,116,431
License Volume (25%)	417,883	1,058,216
All Municipalities (25%)	417,883	1,058,216
Total	\$1,671,531	\$4,232,862

Public Safety: The article allows the testimony of certified drug recognition experts as evidence in cases of driving under the influence of drugs or alcohol and allows for the chemical analysis of saliva. The article amends RIGL 37-27-2.1 to add saliva to the list of chemical tests that drivers are deemed to have given consent to. The article requires a course on driving under the influence or a program for convicted individuals that meets the standards established by the Department of Behavioral Healthcare, Developmental Disabilities and Hospitals (BHDDH).

The Department of Public Safety and municipal police departments would require additional resources to train officers on recognizing individuals who are impaired by marijuana. The Budget allocates \$849,997 in FY2022, including \$494,762 for local police departments and \$355,255 for personnel and training to enforce provisions prohibiting driving under the influence.

Tax Administration: The article establishes tax rates on the retail sale of adult-use marijuana. An excise tax of \$10 per ounce of flower, which is used to make products that are smoked, is anticipated to generate \$1.3 million in FY2022 and \$5.3 million in FY2023. An excise tax of \$3 per ounce of trim, parts of the plant that can be used to make other products, is anticipated to generate \$410,849 in FY2022 and \$1.6 million in FY2023. The two weight-based excise taxes on flowers and trims equal approximately a 3.0 percent effective tax rate and would be paid upon the transfer of marijuana from the cultivator to the processor or retailer.

Retail sales would be taxed at the state sales tax rate of 7.0 percent and a 10.0 percent retail excise tax. The Budget assumes adult-use marijuana will increase sales tax revenues by \$1.7 million in FY2022 and \$6.7 million in FY2023. The retail excise tax is anticipated to generate \$2.4 million in FY2022 and \$9.6 million in FY2023. A 10.0 percent surcharge on tax payments made in cash will be collected from retail locations and deposited into a restricted receipt account for the handling of cash payments. The Budget did not assume any revenues from the cash surcharge.

Proposed Tax Rates on Adult-Use Marijuana			
Initiative	Rate	FY2022	FY2023
Flower Excise Tax (per ounce)	\$10	\$1,335,073	\$5,340,292
Trim Excise Tax (per ounce)	\$3	410,849	1,643,398
Retail Excise Tax	10%	2,387,902	9,551,606
Sales Tax	7%	1,671,531	6,686,124
Total	20%	\$5,805,355	\$23,221,420

License and Application Fees: The article authorizes OCR to establish new licenses and the fees associated with applying for and obtaining licenses for adult-use marijuana retailers, labs, processors, cultivators, manufacturers, employees who work in the marijuana industry, and other ancillary licenses. The proposed licenses are separate from the existing medical marijuana cultivator and compassion center licenses. Hybrid licensees would be required to pay license fees for both the medical marijuana and adult-use markets. The anticipated revenues were estimated based on assumed regulations and are anticipated to generate \$3.8 million in FY2022 and \$2.7 million in FY2023.

- **Cultivator License:** In order to cultivate marijuana, an entity would be required to have a cultivator license with an application fee of \$5,000. Medical marijuana cultivators may apply for a hybrid license that would permit them to cultivate for both the adult-use and medical markets, however, they must demonstrate that doing so will not adversely impact the medical marijuana market. The State estimates

they would receive and approve 73 applications, at an average license fee of \$15,000. The cultivator licensing and application fees are projected to generate \$1.5 million in revenues for FY2022.

- **Manufacturer License:** Manufacturers, or those who compound controlled substances to be sold or dispensed, would be required to pay an application fee of \$5,000 and an average license fee of \$15,000. The State estimates they would receive and approve 55 manufacturer applications. The manufacturer licensing and application fees are projected to generate \$1.1 million in revenues for FY2022.
- **Retail License:** A retail license will be required to sell marijuana for adult-use. There would be a limit of 25 licenses issued per year for the first three years, for a maximum of 75 retail licenses. The retail license application fee would be \$5,000 and the license fee would be an additional \$15,000. The State estimates they will receive one-hundred applications and will approve 34 applicants, including nine hybrid licenses. Locations for marijuana retail sales cannot be within 1,000 feet of the property line of school, and must be permitted by zoning classifications or receive specific zoning approval. Retailers must have security measures in place, including video surveillance and alarms, a record-keeping system, and inventory tracking. Applications for retail locations that are in areas where residents have passed a majority referendum banning the retail sale of marijuana will be denied. The retail license fees are projected to generate \$1.0 million in revenues for FY2022.
- **Employee License:** The State estimates there would be an average of 20 employees per business, equaling 760 total new employee licenses. Employees must obtain an employee card at a cost of \$100 annually. The employee registration fees would generate a projected \$76,000 in revenues for FY2022.
- **Lab Testing:** Testing facilities are required to obtain a lab license with an associated application fee of \$5,000 and a license fee of \$20,000. The Budget anticipates they would receive five applications and approve three applications. The lab testing facility fees would generate \$85,000 in revenue in FY2022.
- **Ancillary Licenses:** Ancillary licenses are required by any other company providing products or services to the industry. Ancillary license fees are anticipated to generate \$90,000 at a fee of \$9,000 per license.