



October 5, 2021

Hon. Steve Barnett  
Secretary of State  
500 E Capitol Avenue  
Pierre, SD 57501

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S.D. SEC. OF STATE

Dear Secretary Barnett,

The Legislative Research Council received an initiated measure (thirteen sections) to legalize marijuana in small amounts for those twenty-one years of age or older. The initiated measure requires a fiscal note because it was determined it may have an impact on revenues, expenditures, or fiscal liability of the state or its agencies and subdivisions. SDCL 2-9-31 requires the fiscal note be no longer than fifty words.

The fiscal note examines the fiscal impacts associated with legalizing marijuana. The initiated measure seeks to legalize the possession, use, ingestion, transportation, processing, delivering, and distribution of one ounce or less of marijuana. In addition, the cultivation of three or fewer plants and the possession of the marijuana produced would also be legalized as long as the plants and marijuana grown are kept in a locked space and out of public view.

The fiscal impact of decreased incarceration due to the nullification of some marijuana-related laws is projected to be negligible at this time due to 1) the de minimis number of individuals in prison due to crimes related to an ounce or less of marijuana and 2) the unknown but likely minimal effect on marijuana laws related to the cultivation and possession of marijuana directly from plants.

In addition to decriminalization of marijuana, the measure also includes a 15% excise tax on the sale of marijuana to be collected by the Department of Revenue. This is in addition to the 4.5% sales tax on all goods and services sold in South Dakota.

The calculation below uses data on taxable marijuana sales from Colorado, Washington, Oregon, California, and Nevada and assumes 1) South Dakota citizens will spend dollars on marijuana at the same rate on average as citizens in these five states did in the first three years after marijuana legalization and 2) South Dakota's population will increase at a rate of 0.9% per year through 2026.

South Dakota could expect to earn up to the following from taxing marijuana starting in FY 2024:

- In FY 2024, \$11.4 million from excise tax, \$3.3 million from sales tax for a total of \$14.8 million;
- In FY 2025, \$16.7 million from excise tax, \$4.8 million from sales tax for a total of \$21.5 million; and
- In FY 2026, \$21.4 million from excise tax, \$6.2 million from sales tax for a total of \$27.6 million.

Therefore, through FY 2026, South Dakota can expect up to \$63.9 million in tax revenue from marijuana sales if this initiated measure were to pass. Estimations beyond FY 2026 would not be prudent at this time due to the limited number of states that have legalized marijuana for more than three years.

Section 7 of the measure would allow the Department of Revenue to promulgate rules to regulate the marijuana industry. The cost to regulate the industry would be covered in Section 7, subsection 2, as stated, "Application, licensing, and renewal fees, not to exceed the amount necessary to cover the costs to the department of implementing and enforcing this chapter". It is expected that there will be a fee to license a marijuana grower, distributor, or seller in the industry and that the fee would offset the cost of regulation. The fiscal impact of the regulation of the marijuana industry and fees for the application, licensing, and renewal of licenses would net to zero.

Enclosed is a copy of the initiated measure, in final form, that was submitted to this office. In accordance with SDCL 2-9-31, I hereby submit the Legislative Research Council's fiscal note with respect to this initiated measure.

Sincerely,



Reed Holwegner  
Director

Enclosures

Cc: Brendan Johnson

**SOUTH DAKOTA LEGISLATIVE RESEARCH COUNCIL**

FISCAL NOTE

**INITIATED MEASURE**

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**AN INITIATED MEASURE TO LEGALIZE AND REGULATE MARIJUANA (THIRTEEN SECTIONS).**

Legalizing marijuana and taxing marijuana sales beginning July 1, 2023, through the state sales tax and an excise tax, could generate estimated additional revenue up to \$14.8 million in FY 2024, \$21.5 million in FY 2025, and \$27.6 million in FY 2026, totaling \$63.9 million over three years.

Approved:

*Reed Holwegner*

Date:

*October 5, 2021*

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Director, Legislative Research Council