

Ballot Proposal 1 of 2018



MARIJUANA INITIATIVE

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

Ballot Proposal 18-1
November 6, 2018 General Election
Placed on the ballot by initiative petition
Complete to 10-16-18

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY OF THE BALLOT PROPOSAL:

If approved by the voters, Proposal 18-1 would create a new act, entitled the “Michigan Regulation and Taxation of Marihuana Act.”¹ Broadly speaking, the Act would do all of the following:

- Allow a person who is at least 21 years of age to possess, process, consume, or give to another adult up to 2.5 ounces of marijuana and, in his or her residence, to possess up to 10 ounces and grow and process up to 12 plants.
- Prohibit a person from operating a motor vehicle while consuming or under the influence of marijuana.
- Allow an employer to prohibit employees from working under the influence of marijuana.
- Establish the responsibilities of the Department of Licensing and Regulatory Affairs (LARA) regarding marijuana licensing, regulation, and enforcement. This would include promulgating rules and setting a maximum THC level for all marijuana products and could include regulating industrial hemp.
- Create eight license categories for marijuana establishments. (The categories are similar, but not identical, to existing license categories for medical marijuana.)
- Allow municipalities (cities, villages, or townships) to pass an ordinance to prohibit entirely, or limit the types or numbers of, marijuana establishments within their boundaries and to establish hours of operation.
- Allow municipalities to charge each marijuana establishment an annual fee of up to \$5,000 to defray administrative and enforcement costs. A municipality could also require a marijuana establishment to obtain a municipal license.
- Allow an applicant to apply to a municipality for, and require municipalities to issue, a local marijuana establishment license if LARA does not timely issue rules or accept or process applications.
- Allow the possession, processing, cultivation, transportation, and transfer of industrial hemp.
- Impose a 10% excise tax on retail sales, the revenue to be used for implementing the Act, K-12 education, repairing roads and bridges, distribution to municipalities and counties that have marijuana establishments, and—for the first two years—research on the use of marijuana in treating medical conditions of military veterans and preventing veteran suicides.

¹ The initiative follows Michigan law in using the spelling “marihuana,” rather than the more commonly used “marijuana.” This analysis will use the latter, more familiar spelling, except for proper names or titles that are contained in the initiative or in other state law (e.g., the “Marihuana Regulation Fund”).

The following is the official language as it will appear on the November 2018 general election ballot:

<p>Proposal 18-1</p> <p>A proposed initiated law to authorize and legalize possession, use and cultivation of marijuana products by individuals who are at least 21 years of age and older, and commercial sales of marijuana through state-licensed retailers</p> <p>This proposal would:</p> <ul style="list-style-type: none">• Allow individuals 21 and older to purchase, possess and use marijuana and marijuana-infused edibles, and grow up to 12 marijuana plants for personal consumption.• Impose a 10-ounce limit for marijuana kept at residences and require amounts over 2.5 ounces be secured in locked containers.• Create a state licensing system for marijuana businesses and allow municipalities to ban or restrict them.• Permit retail sales of marijuana and edibles subject to a 10% tax, dedicated to implementation costs, clinical trials, schools, roads, and municipalities where marijuana businesses are located.• Change several current violations from crimes to civil infractions. <p style="text-align: center;">Should this proposal be adopted?</p> <p style="text-align: center;">[] YES</p> <p style="text-align: center;">[] NO</p>

The full text of the proposal as it appeared on the circulated petition can be found here: [https://www.michigan.gov/documents/sos/Petition -
Coalition to Regulate Marijuana Like Alcohol 572185 7.pdf](https://www.michigan.gov/documents/sos/Petition_-_Coalition_to_Regulate_Marijuana_Like_Alcohol_572185_7.pdf)

DETAILED SUMMARY:

Conduct permitted under the Act

The Michigan Regulation and Taxation of Marijuana Act would allow an individual who is at least 21 years old to do the following:

- Possess, use, consume, purchase, transport, or process up to 2.5 ounces of marijuana (of which not more than 15 grams could be in the form of marijuana concentrate). A person could also give this amount for free to another individual who is at least 21 years old, unless the transfer were publicly advertised.
- Within the individual's residence:
 - Cultivate up to 12 marijuana plants for personal use (but no more than 12 plants could be cultivated, possessed, or processed at the same time on the premises).
 - Possess, store, and process up to 10 ounces of marijuana (and any marijuana produced by the plants cultivated on the premises), as long as amounts in excess of 2.5 ounces are stored in a container or area that has locks or other security devices.
- Use, manufacture, possess, and purchase marijuana accessories (products used to grow, process, store, or consume marijuana).

An individual could not be denied custody of, or visitation with, a minor for conduct permitted by the Act, unless the individual's behavior created an unreasonable danger to the minor that can be clearly articulated and substantiated.

Conduct not authorized by the Act

The Act specifies that it would not authorize, among other things, the following:

- Possession, consumption, purchase, cultivation, processing, transport, or sale of marijuana by an individual who is under 21 years old, or the transfer of marijuana or marijuana accessories to an individual who is under 21.
- Possession or consumption of marijuana on a school bus or on the grounds of a public or private K-12 school or a correctional facility.
- Operation of a motor vehicle, aircraft, snowmobile, ORV, or motorboat while consuming or under the influence of marijuana.
- Marijuana smoking in the passenger area of a vehicle on a public way.
- Marijuana smoking if prohibited by a property's owner, occupant, or manager.
- Consumption of marijuana in a public place, except for any areas designated for such consumption that are not accessible to individuals who are under 21.
- Cultivation of marijuana plants where readily visible from a public place or outside of an enclosed area with locks or other security devices.

Employers, property owners, and landlords

The Act further specifies that it would not do the following:

- Require an employer to permit or accommodate conduct otherwise allowed under the Act on the employer's property or in a workplace.
- Prevent an employer from refusing to hire, firing, disciplining, or otherwise taking an adverse employment action against a person who violated a workplace drug policy or was working while under the influence of marijuana.
- Prevent a person who owns, occupies, or manages property from prohibiting or regulating the consumption, cultivation, distribution, processing, sale, or display of marijuana and marijuana accessories on that property. (However, a lease agreement could not prohibit a tenant from lawfully possessing marijuana and consuming it by means other than smoking. [Note: This would appear to apply to tenants of either residential or commercial properties.]

Municipalities

The Act would allow a municipality (a city, village, or township) to do the following:

- Limit the number of marijuana establishments within its boundaries or prohibit them entirely.
- Establish reasonable restrictions on public signs for marijuana establishments.
- Regulate the time, place, and manner of operation of marijuana establishments and the production, manufacture, sale, or display of marijuana accessories.
- Authorize the sale of marijuana for consumption in designated areas not accessible to individuals who are under 21 or at special events in limited areas for a limited time.
- Require a marijuana establishment located in the municipality to obtain a municipal license if the licensure requirements are compatible with the Act.

- Charge an annual fee of up to \$5,000 to defray application, administrative, and enforcement costs associated with the marijuana establishment's operation in the municipality.
- Designate a violation of an ordinance described above as a civil infraction with a civil fine of up to \$500.

However, a municipality could not adopt an ordinance restricting the transportation of marijuana through the municipality. A municipality also could not adopt an ordinance that is unreasonably impracticable, as defined in the Act.

Department of Licensing and Regulatory Affairs

The Department of Licensing and Regulatory Affairs (LARA) would be responsible for administering the Act and would have the powers and duties necessary to control the commercial production and distribution of marijuana. LARA would employ necessary personnel and could contract with advisors and consultants as needed. However, employees, advisors, and consultants involved in implementing, administering, or enforcing the Act could not have a financial interest in a marijuana establishment. The Department of State Police (MSP) would have to assist LARA in conducting background checks of applicants.

Responsibilities of LARA would include:

- Granting or denying applications for licensure, including investigating applicants and persons with an ownership interest in an applicant.
- Ensuring compliance with the Act and rules, including through compliance investigations, regular inspections, and appropriate disciplinary action such as civil fines or the suspension, restriction, or revocation of state licenses.
- Holding at least four public meetings a year to receive public input.
- Collecting license fees and fines under the Act. Fees would be deposited in the Marihuana Regulation Fund; fines would be deposited in the general fund.

LARA would also be responsible for promulgating rules to implement and administer the Act. Among other things, the rules would have to include:

- Procedures for issuing, renewing, suspending, or revoking a state license.
- Qualifications for licensure. (A prior conviction solely for a marijuana-related offense could not be considered in determining eligibility for licensure, and would not affect an individual's eligibility for a license, unless the offense involved distributing a controlled substance to a minor.)
- A schedule of fees to cover the costs of administering the Act that are proportionately scaled to reflect a licensee's size or business volume.
- Record-keeping and inventory tracking requirements for licensees.
- Penalties for failure by a licensee to comply with the Act or the rules. The Act would limit penalties to the imposition of civil fines and license sanctions.
- Requirements and standards for the safe cultivation, processing, and distribution of marijuana. These would include health standards regarding the preparation of marijuana-infused products ("edibles") and prohibitions on certain pesticides.
- Security requirements, which could not prohibit outdoor or greenhouse cultivation of marijuana.

- Standards for testing, packaging, and labeling marijuana and marijuana edibles. This would include a maximum THC level (the main psychoactive component of marijuana) for edibles and requiring the amount of marijuana or marijuana concentrate to be listed on the product label.
- Reasonable restrictions on advertising, marketing, and display of marijuana and marijuana establishments.
- A plan to encourage participation in the marijuana industry by people from communities that have been disproportionately affected by marijuana prohibition and enforcement, and a plan to have a positive impact on those communities.

The rules could include:

- Regulation of the cultivation, processing, distribution, and sale of industrial hemp.
- Additional types or classes of state licenses for, among other things, operating marijuana-related businesses, engaging in scientific research or education, or consuming marijuana in designated areas or at special events.

The rules could not do any of the following:

- Limit the number of any type of state licenses that may be granted.
- Require a customer to provide a marijuana retailer with any identifying information other than that required to determine the customer's age.
- Require a marijuana retailer to acquire or record personal information about customers other than information typically required in a retail transaction.
- Contain a provision or requirement that is unreasonably impracticable.

State licenses

The commercial licenses that LARA would issue under the Act are similar, but not identical, to the license categories under the Marijuana Facilities Licensing Act, and would include state licenses for the following marijuana establishments:

- Marijuana microbusiness—may cultivate up to 150 plants, process and package marijuana, and sell or transfer it to individuals who are 21 or older or to a safety compliance facility (but not to other marijuana establishments).
- Class A marijuana grower—may cultivate up to 100 plants and sell or transfer marijuana to marijuana establishments.
- Class B marijuana grower—may cultivate up to 500 plants and sell or transfer marijuana to marijuana establishments.
- Class C marijuana grower—may cultivate up to 2,000 plants and sell or transfer marijuana to marijuana establishments.
- Marijuana retailer—may obtain marijuana from marijuana establishments and sell or transfer it to establishments or individuals who are 21 or older.
- Marijuana processor—may obtain marijuana from marijuana establishments, process and package it, and sell or transfer it to marijuana establishments.
- Marijuana safety compliance facility—may test marijuana for potency and contaminants.
- Marijuana secure transporter—may obtain marijuana from, and transport it to, marijuana establishments.

Application for a state license would be submitted to LARA. Within 90 days after receiving a complete application and the application fee, LARA would have to forward a copy of the application to the municipality where the establishment will be located. Within this 90-day time period, LARA would also have to determine whether the applicant qualifies for the license and either issue the license or send the applicant a notice of rejection with the specific reasons why the license was not approved.

LARA would have to begin accepting applications within one year after the effective date of the Act. For the first two years after LARA began accepting applications, it could only accept applications for a class A grower license or a microbusiness license from Michigan residents. During that same period, only persons licensed under the Medical Marihuana Facilities Licensing Act could apply for a retailer, processor, class B or C grower, or secure transporter license. Applications from any applicant could be accepted for a safety compliance facility license.

Beginning one year after LARA began accepting license applications, however, the restrictions described above would not apply, and LARA could accept applications from any applicant, if LARA determined that additional licenses were necessary to efficiently meet the demand for marijuana, curtail the illegal market, or provide reasonable access to marijuana in rural areas.

LARA would have to approve an application and issue a license if all of the following were met:

- The applicant has submitted an application in compliance with the rules, has paid the required fee, and is in compliance with the Act and the rules.
- The municipality where the establishment will be located does not notify LARA that the proposed establishment is not in compliance with an ordinance that is consistent with the Act **and** that was in effect when the application was submitted.
- The property where the establishment will be located is not in an area zoned exclusively for residential use.
- The property where the establishment will be located is not within 1,000 feet of an existing public or private K-12 school.
- The establishment is not owned, in whole or part, by a person with other specific ownership interests in marijuana businesses, as outlined in the Act.

If a state license could not be issued to all applicants because a municipality had limited the number of marijuana establishments that may be licensed there, the municipality would decide which of the competing applicants would receive a license.

State licenses would be effective for one year or a longer term if determined by LARA. A marijuana establishment in good standing could renew its license by renewal application and payment of a renewal fee. Information obtained from an applicant related to licensure would be exempt from disclosure under the Freedom of Information Act.

Municipal licenses

If LARA did not timely promulgate rules or accept or process applications in accordance with the Act, beginning one year after the effective date of the Act, a person could submit an application for a marijuana establishment directly to the municipality where the

establishment will be located. The municipality would have to issue a municipal license to the applicant within 90 days after receipt of the application unless the municipality found that the applicant is not in compliance with the Act or rules and notifies the applicant of that finding. The municipality would have to notify LARA of the issuance of a municipal license. The municipal license would have the same force and effect as a state license. However, the holder of the municipal license would not be subject to regulation or enforcement by LARA during the municipal license term.

Marijuana establishments

A marijuana establishment could not do the following:

- Allow an individual who is less than 21 years old to work or volunteer.
- Sell or transfer marijuana that was not produced, distributed, and taxed in compliance with the Act.
- Sell or transfer tobacco.
- Allow cultivation, processing, sale, or display of marijuana or marijuana accessories to be readily visible from a public place outside the establishment.
- Cultivate, process, test, or store marijuana anywhere other than at a physical address approved by LARA and within a secured, enclosed, restricted-access area.
- Deny LARA the right to inspect the premises or audit books and records during its hours of operation.
- Process or sell edible marijuana-infused candy in shapes or packages that are attractive to children or could be confused with a non-marijuana candy brand.
- If a retailer, sell or transfer marijuana that is not contained in an opaque, resealable, child-resistant package, unless it is for on-premises consumption.

A marijuana establishment would have to restrict access to areas containing marijuana and secure its inventory and equipment during and after its hours of operation.

A person acting as an agent of a marijuana retailer would not be penalized for selling or transferring marijuana or marijuana accessories to an individual who is under 21 if the person reasonably verified that the individual appeared to be 21 or older by means of a government-issued photo ID containing a date of birth and otherwise complied with the rules promulgated under the Act.

A marijuana establishment could deduct from state taxes ordinary and necessary business expenses paid or incurred during the tax year.

The Act would declare it to be the public policy of the state that contracts related to the operation of marijuana establishments be enforceable, and would also expressly allow all of the following:

- Leasing or otherwise allowing the use of property owned, occupied, or managed for activities allowed under the Act.
- Providing professional services to prospective or licensed marijuana establishments related to activity under the Act.
- Enrolling or employing a person who engages in marijuana-related activities allowed under the Act.
- Possessing, cultivating, processing, obtaining, transferring, or transporting industrial hemp.

Excise tax and distributions

An excise tax would be imposed on each marijuana retailer and each marijuana microbusiness at the rate of 10% of the sale price for marijuana sold or transferred to anyone other than another marijuana establishment. The Department of Treasury would administer the taxes imposed under the Act and could promulgate rules prescribing the method and manner for payment of the tax.

The Act would create the Marijuana Regulation Fund in the state treasury. Excise taxes collected under the Act by the Department of Treasury, and fees collected by LARA, would be deposited into the Fund. The money in the Fund would be expended as follows:

- First, for the implementation, administration, and enforcement of the Act.
- Second (for at least two years or until 2022), to provide \$20.0 million annually to one or more FDA-approved clinical trials, sponsored by a nonprofit organization or university-based researcher, studying the efficacy of marijuana in medically treating U.S. armed services veterans and in preventing veteran suicide.
- Third, unexpended balances would be allocated, upon appropriation, as follows:
 - 15% to municipalities where a marijuana retail store or microbusiness is located, in proportion to the number of the businesses in the municipality.
 - 15% to counties in which a marijuana retail store or microbusiness is located, in proportion to the number of such businesses within the county.
 - 35% to the School Aid Fund, to be used for K-12 education.
 - 35% to the Michigan Transportation Fund, to be used for the repair and maintenance of roads and bridges.

Sanctions and penalties

The Act would provide sanctions or penalties for certain acts, described in the table below. The penalties described below would be in addition to forfeiture of the marijuana. The penalties would not apply if the person had also violated certain provisions described in **Conduct not authorized by the Act**, above, such as, for example, operating a vehicle under the influence. The penalties also would not apply if a person were otherwise authorized under the Act to conduct the activity (e.g., as a licensee).

Activity	Quantity of marijuana	Sanction or penalty
Cultivating, possessing, or giving (for free) marijuana to an individual who is at least 21 years old	Less than or equal to the applicable amounts described above (up to 2.5 ounces; 12 plants)	Civil infraction, up to \$100 fine
Cultivating, possessing, or giving (for free) marijuana to an individual who is at least 21 years old	Up to twice the applicable amounts (up to 5.0 ounces; 24 plants)	First violation: Civil infraction, up to \$500 fine Second violation: Civil infraction, up to \$1,000 fine Third or subsequent violation: Misdemeanor, up to \$2,000 fine

Cultivating, possessing, or giving (for free) marijuana to an individual who is at least 21 years old	More than twice the applicable amounts (more than 5.0 ounces; 24 plants)	Misdemeanor, but the person would not be subject to imprisonment unless the violation involved violence or was habitual, willful, <u>and</u> for a commercial purpose [<u>Note</u> : Michigan’s default misdemeanor penalty is imprisonment for not more than 90 days and/or a fine of up to \$500]
Possession or cultivation of marijuana by a person less than 18 years old	Less than or equal to the applicable amounts (up to 2.5 ounces; 12 plants)	First violation: Civil infraction, up to \$100 fine or community service and completion of 4 hours of drug education or counseling Second violation: Civil infraction, up to \$500 fine or community service and completion of 8 hours of drug education or counseling
Possession or cultivation of marijuana by a person at least 18 years old but under 21	Less than or equal to the applicable amounts (up to 2.5 ounces; 12 plants)	First violation: Civil infraction, up to \$100 fine Second violation: Civil infraction, up to \$500 fine

[Note: Without a mechanism in place to track civil infractions, it is not clear how a violation would be determined to be repeat or habitual. Michigan also does not track misdemeanors for which the maximum term of imprisonment is less than 93 days.]

The Act stipulates that the penalties described above would exclude, without the person’s consent, “any other form of punishment or disqualification” for the conduct in question.

BACKGROUND INFORMATION:

On April 26, 2018, the Michigan Board of Canvassers certified that an initiative petition filed by the ballot question committee Coalition to Regulate Marijuana Like Alcohol (CRMLA) had an adequate number of signatures for it to be placed before the legislature, which then had 40 days to enact the initiative or propose a different law on the same subject. When the legislature did not act before the June 5 deadline, the initiative was placed on the November 2018 general election ballot as Proposal 18-1.

An initiative that is submitted to and approved by the voters takes effect 10 days after the official declaration of the vote. It is not subject to veto by the governor, and it cannot be amended or repealed by the legislature without a three-fourths majority in each chamber.

FISCAL IMPACT:

The initiative would have a significant impact on revenues and expenditures for various units of state and local government. The net impact of the proposal would likely result in revenues exceeding expenditures in a fully established market by an indeterminate amount, though both expenditures and revenues would probably increase. The initiative would have significant cost implications for the Departments of Licensing and Regulatory Affairs (LARA), State Police (MSP), Treasury, and Corrections (MDOC) and for municipalities. Significant revenue implications would affect LARA, the School Aid Fund (SAF), the Michigan Transportation Fund (MTF), municipalities, and counties.

COSTS:

Responsibility for the implementation of the initiative would be vested in LARA, which would be tasked with promulgating rules, processing applications, and inspecting facilities, among other things. Initial estimates from LARA project that an additional 27.0 full-time equated positions (FTEs) would be necessary to accommodate increased volumes of departmental activity related to application processing, enforcement actions, and legal services. Costs for increased staffing levels are estimated by the department to total approximately \$2.5 million, which would be an ongoing annual cost. Increased costs for additional facilities and IT support would likely materialize; a precise estimate of total ancillary costs is unattainable, though both one-time and ongoing costs are likely to result. The initiative stipulates that funds for initial implementation are to be appropriated from the general fund, with repayment to be made to the general fund with revenues deposited to the Marihuana Regulation Fund (MRF). That said, the appropriation from the general fund would be subject to subsequent legislative action.

Under the initiative, MSP would be responsible for assisting LARA with background checks of licensure applicants. Costs resulting from this activity would likely be recovered through fees assessed on applicants for licensure. Total costs to MSP and other law enforcement agencies for assisting with enforcement of provisions within—and likely to arise in rules promulgated under—the initiative are indeterminate.

The Department of Treasury would experience increased administrative, regulatory, and information technology costs associated with its responsibilities related to excise and sales tax collection. Initial estimates from the Department of Treasury reflect ongoing information technology costs of \$1.2 million and one-time implementation costs of \$1.9 million. The Department of Treasury also expects to need between 12.0 and 22.0 new FTEs at a cost of between \$1.8 million and \$3.1 million annually.

The initiative would authorize local governments to adopt licensing ordinances that would a) require marijuana establishments with a physical presence in the local jurisdiction to obtain a license and b) regulate various aspects of the marijuana industry. While the local unit would experience increased costs related to administration, oversight, and enforcement of the licensing process, the local government could charge an annual licensing fee of up to \$5,000 to defray some or all of these costs. Local governments would likely realize additional administrative costs associated with record keeping and administration of other ordinances adopted by the local government. Costs associated with these activities are unknown.

Michigan Department of Corrections/Judiciary implications

Currently, in Michigan, if you do not have a debilitating medical condition and have not registered as a qualifying patient or primary caregiver, penalties for violation of marijuana laws are as follows:

<u>Violation</u>	<u>Charge</u>	<u>Incarceration</u>	<u>Fine</u>
<i>Possession:</i>			
Any amount	Misdemeanor	Max. of 1 year	Max. of \$2,000
In or within 1,000 feet of a park	Misdemeanor or Felony (discretion of the judge)	Max. of 2 years	Max. of \$2,000
<i>Use of marijuana</i>	Misdemeanor	Max. of 90 days	Max. of \$100
<i>Sale:</i>			
Without remuneration	Misdemeanor	Max. of 1 year	Max. of \$1,000
Less than 5 kilograms	Felony	Max. of 4 years	Max. of \$20,000
5 kilograms – less than 45 kilograms	Felony	Max. of 7 years	Max. of \$500,000
45 kilograms or more	Felony	Max. of 15 years	Max. of \$10,000,000
(Maximum penalties are doubled within 1,000 feet of a school or library)			
<i>Gifting:</i>			
Any amount	Misdemeanor	Max. of 1 year	Max. of \$2,000
Less than 5 kilograms or 20 plants	Misdemeanor or Felony (discretion of the judge)	Max. of 2 years	Max. of \$2,000
5 kilograms – less than 45 kilograms	Misdemeanor or Felony (discretion of the judge)	Max. of 4 years	Max. of \$20,000
20 plants – fewer than 200 plants	Misdemeanor or Felony (discretion of the judge)	Max. of 4 years	Max. of \$20,000
<i>Cultivation:</i>			
Fewer than 20 plants	Felony	Max. of 4 years	Max. of \$20,000
20 – fewer than 200 plants	Felony	Max. of 7 years	Max. of \$500,000
More than 200 plants	Felony	Max. of 15 years	Max. of \$10,000,000
<i>Paraphernalia</i>	Misdemeanor	Max. of 90 days	Max. of \$5,000
<i>Hash and Concentrates</i> punished in the same manner as above.			
Any conviction will result in a driver's license suspension for 6 months.			
There are separate penalties for marijuana possession under federal law. Specific penalties vary depending on the circumstances of the case.			
With regard to medical marijuana, patients with a valid doctor's recommendation and registration as a qualifying patient may possess up to 2.5 ounces of usable marijuana and may cultivate up to 12 marijuana plants for personal use. A registered primary caregiver who is also a qualifying patient may grow up to 12 plants for each of up to 5 patients and also 12 plants for personal use, with a maximum of 2.5 ounces of usable marijuana for each patient or for his or her own personal use. Medical marijuana is not recognized by federal law.			

Under the initiative, many of the current offenses would no longer be considered offenses, and current penalties would no longer apply, for both individuals 21 and older and medical marijuana establishments. Depending on the number of people and number of establishments that would no longer be convicted of offenses, the initiative could result in a decrease in costs for the state and for local units of government. Reduced felony charges would result in reduced general fund/general purpose costs related to the state correctional system, and reduced misdemeanor charges would result in reduced costs related to county jails and/or local misdemeanor probation supervision. In fiscal year 2017, the average cost of prison incarceration in a state facility was roughly \$37,000 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,600 per supervised offender in the same year. The costs of local incarceration in county jails and local misdemeanor probation supervision, and how those costs are financed, vary by jurisdiction. A decrease in costs for local court systems would occur as a result of a decrease in the number of court cases and associated administrative costs. There would also be a decrease in penal fine revenues, which would decrease funding for local libraries, which are the constitutionally designated recipients of those revenues.

Under section 6(2)(d), municipalities would be authorized to adopt ordinances that do not conflict with the initiative, designate violations of the ordinances as civil infractions, and provide for penalties of not more than \$500 for violations. Depending on the number of ordinances adopted and marijuana establishments that violated ordinances, this could increase revenues to the state. Revenue collected from payment of civil infraction penalties is deposited into the state Justice System Fund, which supports various justice-related endeavors in the judicial and legislative branches of government and the Departments of State Police, Corrections, Health and Human Services, and Treasury.

Under section 15, for individuals who are not otherwise authorized by the initiative to possess or cultivate marijuana, new offenses are established, as well as new charges, penalties, and fines. Most offenders would be responsible for civil infractions and fines, but, in some instances, offenders would be charged with misdemeanors. Also, in some instances, marijuana could be forfeited and offenders could be required to do community service and/or complete a specified number of hours of drug education or counseling. The number of hours would depend on the specific offense committed. New convictions resulting in civil infractions and fines would increase revenues to the state. Revenue collected from payment of civil infraction penalties is deposited into the state Justice System Fund, described above. New misdemeanor convictions could increase costs related to county jails and/or local misdemeanor probation supervision, which vary by jurisdiction. Any fiscal impact on local court systems would depend on how provisions of the initiative affect caseloads and related administrative costs. Any increase in penal fine revenues would increase funding for local libraries, the constitutionally designated recipients of those revenues.

REVENUES:

LARA would have the authority to promulgate rules stipulating penalties for noncompliance with the initiative or with rules promulgated under the initiative, and to create a schedule of fees to be assessed for licensure (at a level not to exceed the amount necessary to defray implementation, administration, and enforcement costs of the Act). The initiative would establish an excise tax on marijuana retailers and microbusinesses at

a rate of 10% of the sales price of the marijuana sold. Fees collected by LARA and revenue from the excise tax would be deposited to the MRF, established in section 14 of the initiative and administered by LARA. Fines collected by LARA would be remitted to the state's general fund.

The potential revenue impact from recreational marijuana depends on a variety of factors, most of which can only be estimated with fairly wide margins of error. For example, initial prices can be quite high, although recent experience in Colorado, Oregon, and Washington has seen prices fall dramatically relative to their initial levels. In addition, the number of consumers cannot be accurately estimated, especially the degree to which current users stop buying illegally and instead choose legal channels. Also, Michigan's initiative would permit users to grow more plants for individual use than other states that have legalized recreational marijuana, which might reduce retail purchases comparatively. An additional uncertainty is the time frame under which rules would be promulgated and the degree to which the retail market would expand from its initial inception. Finally, Michigan's combined 10% excise tax and 6% sales tax would be lower than in Colorado (15% excise tax plus a 15% retail sales tax), Oregon (17% plus optional local sales taxes up to 3%), and Washington (37% plus a 6.5% sales tax), which makes cross-state comparisons more difficult.

It is anticipated that in FY 2019-20, revenue from the 10% excise tax would generate approximately \$39.0 million, along with an additional \$23.4 million from the 6% sales tax. During the first full fiscal year (FY 2020-21), revenue from the 10% excise tax would be projected to increase to \$81.6 million, with a corresponding increase in sales tax revenue to \$49.0 million. When fully established, total revenue from the 10% excise tax could approach \$125 million, although that estimate is highly dependent on projections of price and usage and could vary significantly. Revenue from the 10% excise tax would be distributed in accordance with the schedule of MRF distributions described below. The sales tax would be distributed with approximately 72.8% earmarked to the SAF and 10% to cities, villages, and townships (CVTs) as constitutional revenue sharing. The remainder would accrue to the general fund.

This analysis assumes that the additional sales tax revenue represents new taxable purchases that would otherwise have not been made. However, at least some of the corresponding sales tax from purchases of recreational marijuana may simply represent a shift from one taxable purchase to another, and as such would not be considered additional sales tax revenue. Thus, the sales tax estimates are probably overstated to some extent, though the magnitude cannot be determined.

Note that these estimates explicitly do not account for cross-border effects (residents of neighboring states coming to Michigan to purchase marijuana to take back to their home states as opposed to tourism use) or users of medical marijuana who decide to instead purchase through recreational establishments.

The proposed initiative specifies the following distribution schedule for the MRF; however, any expenditure would be subject to appropriation by the legislature:

- 1) To LARA for the initiative's implementation, administration, and enforcement costs.

- 2) Until 2022, or for at least two years, \$20.0 million annually to one or more U.S. Food and Drug Administration-approved clinical trials sponsored by nonprofit organizations or academic institutions researching the efficacy of marijuana for treatment of medical conditions of armed services veterans and for prevention of veteran suicide.
- 3) Unexpended balances of the MRF, following the first two expenditures, to be distributed as follows:
 - 15% to CVTs in which a marijuana retail store or marijuana microbusiness is located, allocated proportionately based on the number of retail stores or microbusinesses within the municipality.
 - 15% to counties in which a marijuana retail store or marijuana microbusiness is located, allocated proportionately based on the number of retail stores or microbusinesses within the county.
 - 35% to the SAF for K-12 education.
 - 35% to the Michigan Transportation Fund (MTF).

Based on the above estimates, and assuming that \$20.0 million is allocated in FY 2019-20 and FY 2020-21 for the required studies, the approximate distribution of excise and sales tax revenue would be as shown in the table below.

Table: Estimated Revenue and Distribution (in Millions)

Fiscal Year	Revenues		Distribution				
	10% Excise Tax	6% Sales Tax	SAF	MTF	Counties	CVTs	General Fund
FY 2019-20	\$29.8	\$17.9	\$23.4	\$10.4	\$4.5	\$6.3	\$3.1
FY 2020-21	\$54.8	\$32.9	\$43.1	\$19.2	\$8.2	\$11.5	\$5.7
Full Implementation	\$94.9	\$57.0	\$74.7	\$33.2	\$14.2	\$19.9	\$9.8

The MTF is a fund established in section 10 of Public Act 51 of 1951 as Michigan’s primary collection and distribution fund for state-restricted transportation revenue. The MTF receives money from Michigan’s motor fuel taxes and vehicle registration taxes and, starting in FY 2018-19, certain income tax revenue earmarked for road and bridge programs under Public Act 179 of 2015. Estimated MTF revenue in FY 2018-19 is approximately \$3.0 billion. Section 10 of Public Act 51 provides for the formula distribution of MTF revenue to various subsidiary transportation funds and categorical program accounts, to the State Trunkline Fund (STF) for preservation of the state trunkline system of roads and bridges, and to local road agencies (83 county road commissions and 533 cities and villages) for the preservation of local roads and streets. While the initiative directs that 35% of the unexpended balance of the MRF “be used for the repair and maintenance of roads and bridges,” the initiative does not establish a specific earmark for specific funds or road agencies.

MTF revenue derived from the MRF could be distributed to the STF and to local road agencies according to the formula established in section 10(1)(l) of Public Act 51, although this is not explicitly stated in the initiative. Presumably the legislature could establish an alternative distribution as long as the funds were used for the repair and maintenance of roads and bridges.

It is unknown how much revenue would be available for distribution to counties and municipalities in any given year. Based on other state markets, it is presumed that the marijuana market will take a few years to become fully established; therefore, annual revenues to the MRF are expected to vary substantially prior to reaching a more normalized level. The initiative does not specify a required purpose for distributions to counties and municipalities.

Impact on Medical Marijuana Excise Fund

Enactment of the initiative would also have ramifications for future revenues anticipated to be collected under the Medical Marijuana Facilities Licensing Act (MMFLA), Public Act 281 of 2016, due to the elimination of the excise tax on sales made by provisioning centers licensed under the MMFLA. Provisioning centers, once licensed, are currently subject to taxation at a rate of 3% of the centers' gross retail receipts. (Due to delays in the licensing process, little, if any, revenue has been collected to date from this excise tax.) However, section 601 of the MMFLA stipulates that "if a law authorizing the recreational or nonmedical use of marijuana in this state is enacted, this section [allowing for the collection of the 3% excise tax] does not apply beginning 90 days after the effective date of that law." Under the MMFLA, excise tax revenues are deposited to the Medical Marijuana Excise Fund (MMEF) for distribution as follows:

- 25% to municipalities in which a marijuana facility is located, allocated in proportion to the number of marijuana facilities within the municipality.
- 30% to counties in which a marijuana facility is located, allocated in proportion to the number of marijuana facilities within the county.
- 5% to counties with marijuana facilities and allocated in proportion to the number of marijuana facilities within the county for county sheriffs.
- 30% for the State's First Responder Presumed Coverage Fund (FRPCF).
- 5% to the Michigan Commission on Law Enforcement Standards.
- 5% to MSP.

The initiative would significantly decrease the amount of funding anticipated to be allocated to these entities, as the only remaining source of revenue for the MMEF would be fines collected under the MMFLA. Primarily this would affect law enforcement agencies and the FRPCF, since the other recipients would instead receive funding from the MRF under the initiative. Revenues from the MMEF are the sole designated long-term funding source for the First Responder Presumed Coverage program, which pays benefits to qualifying first responders who develop certain types of cancers during their careers.

Legislative Analysts: Susan Stutzky
Rick Yuille

Fiscal Analysts: Marcus Coffin
Robin Risko
Jim Stansell
Ben Gielczyk
William E. Hamilton

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.