



GOVERNOR'S OFFICE OF  
BUDGET AND PROGRAM PLANNING

## Fiscal Note 2023 Biennium

**Bill #** SB0381

**Title:** Revise laws related to cannabidiol

**Primary Sponsor:** Morigeau, Shane A

**Status:** As Introduced

- Significant Local Gov Impact     
  Needs to be included in HB 2     
  Technical Concerns  
 Included in the Executive Budget     
  Significant Long-Term Impacts     
  Dedicated Revenue Form Attached

### FISCAL SUMMARY

	<u>FY 2022</u> <u>Difference</u>	<u>FY 2023</u> <u>Difference</u>	<u>FY 2024</u> <u>Difference</u>	<u>FY 2025</u> <u>Difference</u>
<b>Expenditures:</b>				
General Fund	\$416,737	\$176,561	\$178,871	\$181,219
State Special Revenue	\$384,000	\$346,626	\$431,558	\$535,560
<b>Revenue:</b>				
General Fund	\$0	\$95,439	\$177,129	\$276,781
State Special Revenue	\$192,000	\$326,561	\$328,871	\$331,219
<b>Net Impact-General Fund Balance:</b>	<u>(\$416,737)</u>	<u>(\$81,122)</u>	<u>(\$1,742)</u>	<u>\$95,562</u>

**Description of fiscal impact:** SB 381 creates a 4 percent tax on cannabidiol (CBD) products sold by retailers in Montana. SB 381 also requires the Department of Public Health and Human Services to establish and enforce standard operating procedures and testing standards for testing laboratories to ensure consistent and uniform information regarding the potency and quality of cannabidiol and cannabidiol products and to conduct inspections of cannabidiol retailers.

### FISCAL ANALYSIS

#### Assumptions:

#### **Department of Revenue (DOR)**

- SB 381 creates a 4 percent tax on cannabidiol (CBD) products sold by retailers in Montana.
- Cannabidiol is defined as a nonpsychoactive cannabinoid found in the plant Cannabis sativa L. or Cannabis indica with a tetrahydrocannabinol (THC) level of no more than 0.3 percent. It is assumed that the tax in this bill would only apply to CBD products produced from hemp that are legal for purchase by any adult and not CBD products produced from marijuana plants that are only available to medical marijuana cardholders (see technical note #1).

3. Based on the receipts factor on the Montana corporate income tax return for large CBD retailers in the country, it is assumed that Montana’s share of total United States’ CBD product sales is about 0.5 percent. According to Statista, estimated sales of CBD products in the US are \$1.198 billion in 2020, \$1.615 billion in 2021, and \$1.918 billion in 2022.
4. Assuming continued growth of 20 percent per year, and a 0.5 percent market share for Montana, calendar year (CY) sales and corresponding tax revenue are shown in the following table.

CY	Montana Sales	Tax Revenue
2022	\$9,600,000	\$384,000
2023	\$11,500,000	\$460,000
2024	\$13,800,000	\$552,000
2025	\$16,600,000	\$664,000

5. The effective date for the tax portion of this bill is January 1, 2022, so the tax revenue for FY 2022 is assumed to be half of the estimated CY 2022 tax revenue. Similarly, the FY 2023 tax revenue would be 50 percent of the CY 2022 revenue plus 50 percent of the CY 2023 revenue.
6. This bill creates the cannabidiol testing state special revenue account and the tax revenue above would be deposited in this account. The money in this account would be used by the Department of Public Health and Human Services (DPHHS) to administer CBD product testing and then at the end of each fiscal year the balance of the account in excess of \$150,000 would be transferred to the general fund.
7. The transfer amounts to the general fund each year would be used to fund the Montana Promise Grant Program, and K-12 education, if there is additional revenue. These transfer amounts are dependent on the CBD product testing costs incurred by DPHHS.
8. The implementation and administration of this bill would require the DOR to add one tax examiner with two weeks of travel per year and one collections specialist. The collections specialist would only be necessary for the second half of FY 2022. The total personal services costs for these positions would be \$123,932 in FY 2022, \$159,557 in FY 2023, \$161,570 in FY 2024, and \$163,614 in FY 2025.
9. The DOR would also incur a cost of \$400,000 in contracted services to add this new tax type to the department’s integrated revenue information system and would have to create new forms for this tax.
10. Total additional costs to DOR to implement and administer this bill would be \$543,066 in FY 2022, \$176,561 in FY 2023, \$178,871 in FY 2024, and \$181,219 in FY 2025. These costs are assumed to be funded by the general fund.

**Department of Public Health and Human Services (DPHHS)**

11. Section 14(1)(d) states the state laboratory shall conduct random inspections of cannabidiol (CDB) retailers.
12. DPHHS estimates there are approximately 1,900 retailers that sell CDB products.
13. DPHHS would require 2.0 FTE Chemists for inspections of 1,900 CDB retailers. DPHHS assumes each chemist can conduct an average of four retailer inspections per day. Eight retailer inspections per day would take approximately 238 days per year to inspect all retailers (2 FTE x 4 Inspections each daily x 238 = 1,904 inspections).
14. Salary of \$26.79 per hour and benefits for the 2.0 FTE are \$156,557 in FY 2022; \$156,670 in FY 2023, \$158,509 in FY 2024; and \$161,405 in FY 2025.
15. Operating costs associate with FTE are estimated at 3 percent of personal services: \$4,697 in FY 2022, \$4,700 in FY 2023, \$4,755 in FY 2024, and \$4,842 in FY 2025.
16. New employee package including furniture, chair and computer is \$5,600 and is a one-time-only cost.
17. Travel for two FTE to conduct retailer inspections is estimated to be \$89,817, including hotel, per diem and motor pool.
18. DPHHS estimates 20 pages of associated rule changes in the passage of this bill at \$50 per page for a cost of \$1,000 in FY 2022.

	<u>FY 2022</u> <u>Difference</u>	<u>FY 2023</u> <u>Difference</u>	<u>FY 2024</u> <u>Difference</u>	<u>FY 2025</u> <u>Difference</u>
<b><u>Fiscal Impact:</u></b>				
FTE	3.50	4.00	4.00	4.00
<b><u>Expenditures:</u></b>				
Personal Services	\$280,489	\$316,227	\$320,079	\$325,019
Operating Expenses	\$520,248	\$111,521	\$113,221	\$114,979
Transfers to General Fund	\$0	\$95,439	\$177,129	\$276,781
<b>TOTAL Expenditures</b>	<b>\$800,737</b>	<b>\$523,187</b>	<b>\$610,429</b>	<b>\$716,779</b>
<b><u>Funding of Expenditures:</u></b>				
General Fund (01)	\$416,737	\$176,561	\$178,871	\$181,219
State Special Revenue (02)	\$384,000	\$346,626	\$431,558	\$535,560
Federal Special Revenue (03)	\$0	\$0	\$0	\$0
Other	\$0	\$0	\$0	\$0
<b>TOTAL Funding of Exp.</b>	<b>\$800,737</b>	<b>\$523,187</b>	<b>\$610,429</b>	<b>\$716,779</b>
<b><u>Revenues:</u></b>				
General Fund (01)	\$0	\$95,439	\$177,129	\$276,781
State Special Revenue (02)	\$192,000	\$326,561	\$328,871	\$331,219
Federal Special Revenue (03)	\$0	\$0	\$0	\$0
Other	\$0	\$0	\$0	\$0
<b>TOTAL Revenues</b>	<b>\$192,000</b>	<b>\$422,000</b>	<b>\$506,000</b>	<b>\$608,000</b>
<b><u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u></b>				
General Fund (01)	(\$416,737)	(\$81,122)	(\$1,742)	\$95,562
State Special Revenue (02)	(\$192,000)	(\$20,065)	(\$102,687)	(\$204,341)

**Technical Notes:**

- It is assumed that the intent of this bill is to only apply the tax to CBD products derived from hemp, but the definition of “cannabidiol” in Section 1 could include any CBD oil with less than 0.3 percent THC, even if it was derived from a marijuana plant that had a THC content of greater than 0.3 percent. Additional clarification may be needed.

NO SPONSOR SIGNATURE

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Sponsor's Initials

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Date

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Budget Director's Initials

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