

**State of North Dakota**  
**OFFICE OF MANAGEMENT AND BUDGET**

600 East Boulevard Avenue, Dept. 110 • Bismarck, North Dakota 58505-0400  
FAX – 701.328.3230

September 11, 2018

Sheila Sandness  
Legislative Council  
State Capitol  
Bismarck, ND 58505

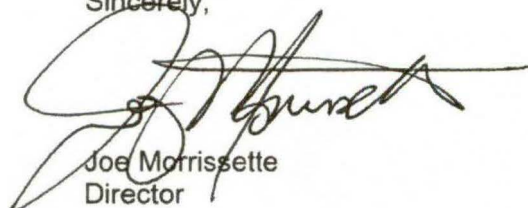
Dear Sheila,

This is in response to your letter dated July 12, 2018, requesting OMB to determine the estimated fiscal impact of an initiated measure related to recreational marijuana.

If approved by the voters in the November 2018 general election, the measure will become effective thirty days after the election. The fiscal impact for this initiated measure involves several state and local entities. While several agencies could not determine the fiscal impact, the combined known fiscal impact is estimated to be over \$6 million. An explanation of each entity's fiscal impact is attached.

If you have any questions, please contact me.

Sincerely,



Joe Morrissette  
Director

<b>Agency:</b>	<b>Known Cost:</b>
<p data-bbox="99 113 1279 149">Agriculture Department</p> <p data-bbox="99 149 1279 394">If the measure passes it would greatly impact the Industrial Hemp (IH) program. The measure would deregulate the enforcement of overseeing IH regulations. The amount in the current budget for this program is \$120,000 of special funds. However, the federal government in the farm bill being drafted still requires states to test for THC levels in IH. The fees will be reduced, but the level is unknown. The program would still have expenses that the hemp growers would have to pay fees to cover. Thus, the impact is unable to be determined until the farm bill and upcoming legislative session are finalized.</p>	<p data-bbox="1279 113 1520 149">Unknown</p>
<p data-bbox="99 394 1279 430">Attorney General</p> <p data-bbox="99 430 1279 579">The estimated fiscal impact on the Office of Attorney General to expunge 179,101 records is \$1.1 million. An estimated 124 temporary staff will be needed to complete all of the expungements in 30 days and a week of training is included prior to the expungements occurring.</p>	<p data-bbox="1279 394 1520 430">\$1,100,000</p>
<p data-bbox="99 579 1279 615">Commission on Legal Counsel for Indigents</p> <p data-bbox="99 615 1279 1014">The Commission will likely see some impact from the measure, but the exact cost and/or savings are not possible to predict. The agency will see a reduction in delivery and possession of marijuana charges, and possession of marijuana paraphernalia charges. However, case assignments are not specifically tracked by type of controlled substance, nor is tracking of the age of the defendant (or person to whom controlled substances were provided) required, so the percentage of cases for which there could still be a charge for marijuana related activities under the measure cannot be calculated. The basis for police investigation for some non-marijuana related charges would have been marijuana related activity; if this measure passes, that basis will be reduced, and as a result there could be less investigation of some situations that would have previously resulted in other criminal charges. However, on the other hand, some police activity currently directed to marijuana related activity will be directed to other activity, which could result in an increase in other types of charges.</p>	<p data-bbox="1279 579 1520 615">Unknown</p>
<p data-bbox="99 1014 1279 1050">Department of Corrections and Rehabilitation</p> <p data-bbox="99 1050 1279 1289">The DOCR does not anticipate a material fiscal impact to its operations if the measure passes. The DOCR currently has less than 10 individuals in custody for a marijuana only offense. The average sentence for those individuals with a good time release date is 1.61 years. The DOCR currently has less than 250 individuals on community supervision for a marijuana only offense. The average length of supervision for those individuals is 3 years. If both the custody and supervision individuals were not involved with the DOCR the estimated fiscal impact to DOCR appropriations would be minimal at best for both 17-19 and 19-21.</p>	<p data-bbox="1279 1014 1520 1050">\$0</p>
<p data-bbox="99 1289 1279 1325">Department of Human Services</p> <p data-bbox="99 1325 1279 1932">There is not enough substantiated research to quantify the potential increase in costs to the Department of Human Services and we are not comfortable making those types of estimates.</p> <p data-bbox="99 1415 1279 1629">For reference, however, a 1% increase or decrease in cost for applicable services in CFS, Field Services and Economic Assistance would be approximately \$3.5M and the general fund portion of that would exceed \$1.2M. However the impacts to the CFS and Field Services expenditures would not be felt on the department's budget until the associated cost and caseload impacts are approved by legislature; until then, these costs represent a mix shift of service utilization (e.g., more time is spent by assigned FTEs on marijuana-related cases at the expense of others or wait times for addiction treatment or child welfare response increasing).</p> <p data-bbox="99 1661 1279 1780">Additionally, there is some research to support an increase in emergency department use. Based on some high level estimates from Illinois and applying the data to North Dakota population statistics, suggests an additional cost to North Dakota Medicaid of \$300k, of which \$150k would be general fund.</p> <p data-bbox="99 1812 1279 1902">Beyond that, there would need to be additional investment in prevention and community education. If equated to Parents lead, it could reach a cost of \$600k (\$450k in operating costs and \$150k for an FTE).</p>	<p data-bbox="1279 1289 1520 1325">Unknown</p>

Department of Transportation	\$0
The Department of Transportation has reviewed the recreational marijuana measure and determined that the initiated measure, if passed, would have no fiscal impact on the agency.	
Health Department	\$4,364,462
<p>The North Dakota Department of Health has the responsibility of protecting the health and safety of all North Dakotans. Because of our commitment to public health, the North Dakota Department of Health anticipates the need for the following:</p> <ul style="list-style-type: none"> <li>• An educational campaign on the health impact and physical addiction attributed to marijuana use among youth. The campaign would include research, paid media, educational pieces, a website and social media. <ul style="list-style-type: none"> <li>○ 2017 – 2019 biennium - \$ 95,000</li> <li>○ 2019 – 2021 biennium - \$3,740,000</li> </ul> </li> <li>• A full-time program manager to maintain an educational program that informs on the dangers to vulnerable populations such as youth, as well as pregnant and breastfeeding mothers. <ul style="list-style-type: none"> <li>○ 2017 – 2019 biennium - \$ 30,775</li> <li>○ 2019 – 2021 biennium - \$163,808</li> </ul> </li> <li>• Enhance existing survey tools such as the Behavioral Risk Factor Surveillance System (BRFSS), the Pregnancy Risk Assessment Monitoring System (PRAMS), and potentially the Youth Risk Behavior Survey (YRBS) to capture information for analysis. <ul style="list-style-type: none"> <li>○ 2017 – 2019 biennium - \$ 0</li> <li>○ 2019 – 2021 biennium - \$184,000</li> </ul> </li> <li>• A full-time epidemiologist to monitor trends such as increased ER visits or hospitalizations by youth, product tampering, changes in health among populations, etc. Additionally, this position will perform data analysis of hospital discharge information, emergency room visits, poison control information along with gathering other relevant data related to marijuana use. Evaluation of the prevention messages and education campaign will also be a function of this position. <ul style="list-style-type: none"> <li>○ 2017 – 2019 biennium - \$ 0</li> <li>○ 2019 – 2021 biennium - \$150,879</li> </ul> </li> </ul> <p>Overall Department of Health costs:</p> <ul style="list-style-type: none"> <li>• 2017 – 2019 biennium - \$ 125,775</li> <li>• 2019 – 2021 biennium - \$4,238,687</li> </ul>	
Highway Patrol	Unknown
<p>The fiscal impacts to the NDHP are dependent on the final wording and legal interpretation of the measure. There are some potential areas which would have a fiscal impact to the agency.</p> <p><u>NDHP K9 program:</u> It appears that the measure, as written, does not have any limitations on the quantity of marijuana a person may possess, which would essentially make all possession amounts legal at the state level. The narcotics detection K9's are trained to indicate on several different types of drugs, including marijuana. There is the potential that a marijuana trained K9 would now provide a false indicator if a person was arrested with drugs other than marijuana, but also had marijuana in the vehicle. The argument could be used that the dog smelled the marijuana (which would be legal) and there was no basis to further search the vehicle to find the other drugs. In other states with legal recreational marijuana, it is still often considered contraband because of quantity limitations. Should courts find that the marijuana trained dogs are no longer a valid tool, below are the replacement costs associated with the K9 program.</p> <ul style="list-style-type: none"> <li>• Current Narcotics K9's x 6 x \$6500 = \$39,000</li> <li>• 6 weeks (240 hours) of training by the handler and trainer: 240 x \$46.00/hr. x 2 (trainer and handler) x 6 dogs = \$132,480</li> <li>• Travel, lodging and per diem for trainers and handlers (in-state and out of state) = \$15,000 (approx.)</li> </ul> <p>Total = \$186,480.00</p>	

<p><u>Additional Training:</u> There are some questions on the impact the initiated measure, as written, will have on the current driving under the influence law. If the DUI law is not impacted, there may be a need to further expand our Drug Recognition Expert (DRE) trained officers and expand the frequency and level of training for all officers to better detect a drug impaired driver. Currently, this training is being done, but legalized marijuana may dictate the need for more training. The funding relating to an officer becoming trained to become a drug recognition expert is coming from two difference sources. The agency pays for the salary and benefits for the officer while attending the training. NDDOT pays for the training costs, travel, lodging, etc. At this point, the extent of DRE expansion needed to undertake by the Highway Patrol is unknown, but it should be noted as a potential cost with the initiated measure. The NDDOT cost is approximately 2000.00 per student and the salary for 80 hours is approximately 2800.00 (35.00/hour). Total = \$4,800.00/Officer</p>	
<p>North Dakota City Governments</p>	<p>Unknown</p>
<p>North Dakota City Governments would not be able to provide reasonable fiscal impact data for cities.</p> <p>Every state that legalized recreational marijuana had the State Legislature pass regulatory rules to conform to existing law/regulation, not only at the initial onset of the legalization, but ongoing through subsequent legislative sessions. As an example, Oregon passed recreational marijuana in 2014 and statutory changes were still being made up to and including the 2018 Session.</p> <p>A <u>non-comprehensive</u> list of revenue and expense items could include:</p> <ul style="list-style-type: none"> <li>• City sales tax</li> <li>• State revenue sharing (e.g.--as we currently have with the State Aid Distribution Fund)</li> <li>• Initial licensing/permit and renewal costs based on regulated activities such as producers, processors, wholesalers and retailers</li> <li>• City attorney fees with promulgation of ordinances to address: <ul style="list-style-type: none"> <li>○ Land use/zoning</li> <li>○ Inspection</li> <li>○ Audits</li> <li>○ License transfer</li> <li>○ Signage</li> </ul> </li> <li>• Civil and criminal enforcement costs/fines</li> <li>• Election costs if there is an opt-in process for a municipality that originally opted out</li> <li>• Costs associated with any State preemption</li> <li>• Costs if medical and recreational rules are consolidated at some point</li> </ul>	
<p>North Dakota County Governments</p>	<p>\$612,000</p>
<p>Counties anticipate Measure #3 will have some fiscal impacts but to what degree is hard to fully determine.</p> <p>The underlying assumption is legalization will increase use to some extent. Increased use will lead to additional law enforcement and social services contacts. However, some of those costs may be offset by less arrests and jail costs. Those fiscal impacts cannot be fully evaluated.</p> <p>What can be determined to some degree is the impact of section 4 which contains a clause requiring "records" to be expunged and sealed. Further, section 4 provides a "right to sue" clause for failure to properly expunge records. These records must be expunged within 30 days of the passage of this measure. Because "records" is not specifically limited to official court records, it is possible State's Attorney records would also have to be expunged and the files sealed pursuant to court order. The quick turn around on this provision may necessitate the payment of overtime to staff members to identify the qualified cases and create and file motions to seal. Based on the court data over the last four years it appears an average of 3600 cases statewide would be impacted a year. County data shows the average hourly staff salary is \$17. It is estimated it would take conservatively 1 hour of staff time per case to ensure the records are expunged to avoid liability.</p>	

<p>Therefore, it is the estimate of NDACo that County State's Attorneys Offices may encounter a cost of \$61,200 a year to properly expunge records. (\$17 x 3600) Additionally, Measure #3 does not place a limit on the retroactivity of the records expungement. However, most counties have a records retention policy for misdemeanors consistent with the North Dakota Supreme Court's record retention schedule which is 10 years. That would drive the total potential annual costs to the counties for expungement to \$612,000.</p>																					
<p>Supreme Court</p>	\$565,000																				
<p>Case records that include the term "marijuana" in the description of an offense per year is as follow:</p> <table border="1" data-bbox="151 394 1263 558"> <thead> <tr> <th>Year</th> <th>District Court</th> <th>Municipal Court</th> <th>Total</th> </tr> </thead> <tbody> <tr> <td>2014</td> <td>3,262</td> <td>954</td> <td>4,216</td> </tr> <tr> <td>2015</td> <td>3,608</td> <td>1,606</td> <td>5,214</td> </tr> <tr> <td>2016</td> <td>3,499</td> <td>2,263</td> <td>5,762</td> </tr> <tr> <td>2017</td> <td>4,043</td> <td>2,536</td> <td>6,579</td> </tr> </tbody> </table> <p>Identifying all offenses that involve marijuana or drug paraphernalia can be very difficult. Quite often "marijuana" is not a part of the case description and, in fact, the word may not even exist anywhere in the entire case. This will make the process to expunge all cases retroactively very difficult and time consuming. The North Dakota Court System will need at a minimum to contract for two individuals to review all files to determine if they meet criteria for and to expunge all applicable district court cases. It is assumed that the North Dakota Court System would not be responsible for the cost to expunge municipal court cases. The cost for the contract positions is estimated to be \$200,000 for a two year period. There would also be additional postage costs incurred to mail a certified notice of expungement to each defendant. Although it is impossible to determine an exact estimate, the additional mailing costs could very reasonably exceed \$365,000.</p> <p>There are potentially numerous additional costs relating to this measure that may be incurred by the North Dakota Court System but can't be reasonable estimated. For example, there would be costs incurred for failure to expunge or failure to expunge within timeframes. This may include attorney fees to defend against a claim, attorney fees and costs for an appellant in the event the appellant prevails and increased demands on court for jury trials or court trials to adjudicate claims brought against non-court entities for failure to expunge. The identified fiscal impact to the North Dakota Court System is \$565,000, however the actual fiscal impact could be significantly greater.</p>	Year	District Court	Municipal Court	Total	2014	3,262	954	4,216	2015	3,608	1,606	5,214	2016	3,499	2,263	5,762	2017	4,043	2,536	6,579	
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<p>Tax Department</p>	Unknown																				
<p>If the measure is enacted by the voters, marijuana products and paraphernalia legally sold in North Dakota will be considered tangible personal property. As such, these items will be subject to the state's 5 percent sales and use tax, as well as any corresponding local sales and use taxes.</p> <p>There are no provisions in the measure for any other drug tax. Administrative costs associated with implementing this measure would be within the normal scope of business for the Tax Commissioner's office.</p> <p>The only tax-related fiscal impact expected from the sale of marijuana products is the increase in sales and use tax collections. However, this impact cannot be accurately estimated because product cost and the level of sales is unknown.</p>																					
<p>Workforce Safety and Insurance</p>	\$0																				
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<b>Total Known Cost:</b>	<b>\$6,641,462</b>																				