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Pending Rules and Competing Visions: Charting the Economic Development Potential of Ohio's Recreational Cannabis Tax Revenues

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AUTHORED ARTICLE | Spring 2024

This article was authored by [Eli Redfern](#) and originally appeared in the [Spring 2024](#) edition of *Development Incentives Quarterly*.

On November 7, 2023, Ohio voters approved Issue 2, a citizen-initiated statute to legalize recreational cannabis. Throughout the Issue 2 campaign, supporters of the new law highlighted the economic benefits that could come from new sales tax revenues from legal recreational cannabis sales. However, at this point, the administrative rules that will dictate how these revenues will be spent are still pending. As state officials are actively preparing the rules that will define how new recreational cannabis sales tax revenues will be spent,^[i] these officials can learn from how other states are taking advantage of this new revenue stream to advance the goals expressed in Issue 2.

Just like with any new revenue source, local government officials and economic development professionals should begin considering how recreational cannabis sales tax revenues can be leveraged to create new jobs and attract private investment in Ohio communities. Even though there are currently competing legislative proposals in the Statehouse to revise (or overhaul) how recreational cannabis tax dollars would be spent compared to the programs set out in Issue 2, there will, nonetheless, likely be new revenues flowing to local governments that can be used, directly or indirectly, to advance economic development.

Understanding the New Cannabis Tax Revenues

One of the central narratives of the Issue 2 campaign was that Ohio would stand to gain over \$400 million annually in new cannabis sales tax revenue.^[ii] In a television ad for the campaign, a pro-legalization group, the Coalition to Regulate Marijuana Like Alcohol, played into the Ohio and Michigan rivalry by highlighting all of the tax dollars that Ohio residents were paying to the “State Up North” when they crossed the border to purchase legal recreational marijuana.^[iii] This revenue-focused message helped Issue 2 pass with the support of around 57% of Ohio voters.^[iv]

So under the current law, how would the new tax work, and how would these dollars be spent? As the law is currently written, the mechanics of the new sales tax are straightforward: there will be a 10% sales tax on adult-use recreational cannabis sales from dispensaries, on top of any other preexisting sales tax.^[v]

How the new recreational cannabis sales tax revenue will be spent is a more complicated question that does not yet have an answer. So far, under the current version of the law, these new tax dollars will be allocated into four funds:

- 36% to the social equity and jobs (SEJ) fund for the SEJ program,
- 36% to the host community cannabis fund for cities, villages and townships that have recreational cannabis dispensaries, distributed based on the percentage of the total recreational cannabis sales tax attributable to each municipality or township,
- 25% for the substance abuse and addiction fund, and
- 3% for a fund to defray recreational-cannabis administrative costs of the Ohio Department of Commerce Division of Cannabis Control and for the Department of Taxation.^[vi]

Many of the specifics of how these funds will be spent are currently unclear. In particular, the SEJ program is a key part of the new law, especially for economic development purposes, though much of the program specifics will have to be spelled out in the administrative rulemaking process. Similarly to the SEJ program, the substance abuse and addiction fund's mechanics will have to be further determined in the administrative rulemaking process. The host community cannabis fund is more straightforward and could be a major new revenue source for local governments to use "for any approved purpose."^[vii] For economic development purposes, the SEJ fund and host community cannabis fund represent major opportunities for promoting job creation and private investment, especially since they represent a combined 72% of the total new cannabis sales tax revenue.

The Social Equity and Jobs Program

The SEJ program will be a "business assistance program" established by the Ohio Department of Development (Development), with several different focuses, including the following examples: creating a process to qualify individuals from disadvantaged backgrounds for cannabis cultivator and dispensary license preference status; providing financial assistance to SEJ program participants in the new Ohio recreational cannabis industry; encouraging the hiring of minorities, women, veterans and persons with disabilities in the cannabis industry; and funding direct investment in communities disproportionately impacted by "harms of enforcement of marijuana related law," including through enhancing education, entrepreneurship, legal aid, youth development, violence prevention and the arts.^[viii]

Certain parts of the SEJ program stand out for their economic development potential: loans and grants could be made to new cannabis businesses; wage reimbursement or training grants could be used to advance the new law's hiring goals around hiring "minorities, women, veterans, and persons with disabilities;" and funding direct investment in entrepreneurship in Ohio communities disproportionately impacted by past marijuana law enforcement. Generally speaking, many of these program focuses relate to economic development in two different ways: support for businesses in the new Ohio recreational cannabis industry and targeted investment in certain Ohio communities. In both cases, however, how the

new SEJ fund dollars will actually be spent is largely in the hands of Development through the administrative rulemaking process. [ix]

Here, other states with legalized recreational cannabis provide useful examples for Development to consider, in order to both assist recreational cannabis businesses in particular and generally promote economic development.

For cannabis business assistance, Michigan's Social Equity Grant Program allows qualified participants to apply for funds for employee education or training, and for business needs such as offsetting regulatory compliance costs.[x] Illinois supports qualifying recreational cannabis businesses through the Cannabis Social Equity Loan Program, by providing low-interest and forgivable loans to qualifying cannabis businesses.[xi] For Ohio's new recreational cannabis businesses in particular, Development, through the SEJ administrative rules, could make a variety of grants and loans available for qualifying cannabis businesses, while also keeping Issue 2's program goals in place as eligibility criteria.

Other states also offer examples of how to use cannabis tax dollars to promote economic development in a targeted way. Illinois uses cannabis revenues to fund the Restore, Reinvest, and Renew program, which allows nonprofit organizations and local governments in qualifying parts of the state to apply for grants to fund economic development, legal aid, violence prevention and other programs on the local level.[xii] The Illinois program's economic development component focuses primarily on job training and workforce development.[xiii] The City of Portland, Oregon, is a local government example of general investments in economic development efforts with cannabis sales tax revenue, through its Social Equity & Educational Development (SEED) initiative.[xiv] Portland's SEED initiative's economic development component provides grants and business incubation and acceleration services to for-profit and nonprofit entities of any size, with a focus on historically disadvantaged communities.[xv] For Ohio's SEJ program, Development could learn from these examples by making a location-based economic development program to support new projects located in areas that meet the new cannabis statute's goal of enhancing entrepreneurship in communities disproportionately affected by the past enforcement of cannabis-related laws.[xvi] The success of Development's transformational mixed use development tax credit program for example,[xvii] shows how the State can help incentivize impactful projects in communities that might otherwise miss out on major job creation and private investment opportunities.

Local Government Funding

The 36% of cannabis sales tax revenues that would return to cities, villages and townships with recreational cannabis dispensaries is another major opportunity for local governments to invest in economic development. Unlike the SEJ program, which currently lacks specific operational details, local governments throughout Ohio are already making creative and impactful investments that have helped create jobs and attract private investment. A new stream of revenue, however, could give local governments more options in terms of which economic development tools they might choose to deploy. On one hand, these investments could be for public infrastructure: fixing roads and bridges; investing in public transit; upgrading water, wastewater and electricity infrastructure; and helping prepare suitable sites for major new projects. On the other hand, a new revenue source could give local governments flexibility with economic development incentives, such as additional tax exemptions, small business loans and grants. Under the current law, however, it is again important to note that any new sales tax revenues

from recreational cannabis would be based on a city, municipality or village opting to allow recreational marijuana dispensaries to operate within their jurisdictions.

The Statehouse Debate: Competing Visions

Even though many parts of Issue 2 have not yet gone into effect, Ohio lawmakers are actively looking at ways to revise recreational cannabis law in the State. Beyond the ORC provisions that were enacted with Issue 2, there are at least four other proposals in the Ohio General Assembly. These bills, listed in the order of their progress through the legislative process, are Ohio House Bill (HB) 86, HB 354, HB 341 and HB 168.

The first effort, which has already passed the Ohio Senate, is Ohio House Bill 86. This law would completely overhaul how the new cannabis revenues would be allocated – eliminating the 36% SEJ program fund and 36% local government allocation completely, and shifting the new sales tax dollars towards county jail construction, law enforcement training and a variety of other programs.^[xviii] Relative to the ORC provisions that resulted from Issue 2, which explicitly had an economic development focus,^[xix] revenue allocation funding from HB 86 is much more oriented towards law enforcement, public health and access to justice initiatives.^[xx] Still, HB 86 will allow counties to levy up to an additional 3% sales tax on recreational cannabis sales, so that some additional revenue could flow to local governments under this proposal.^[xxi] However, this county sales tax revenue would be for “one or more of the purposes of funding cultural, artistic, and entertainment opportunities in the county and paying for [related administrative expenses],^[xxii] so the economic development potential of this revenue would be much more limited than under current law.

The second bill, which has had multiple committee hearings, is HB 354.^[xxiii] This proposal would keep Issue 2’s SEJ and local government allocations intact, but with some important revisions.^[xxiv] First, much of the SEJ program would be administered at the county level.^[xxv] Second, counties would be given SEJ funding to be used for “community engagement, economic development, or social programming.”^[xxvi] In this way H.B. 354 still responds to Issue 2’s focus on economic development, but takes it one step further by giving counties a greater role in advancing job creation and private investment in their communities.

The two remaining legislative proposals, which have not yet had any committee hearings, also represent diverging perspectives on the new cannabis tax revenues. HB 341 would primarily tweak the revenue percentages that were enacted from Issue 2: 19.4% for the SEJ fund, 19.4% for the host community cannabis fund, 19.4% for a substance abuse research and education fund, 19.4% for a substance abuse addiction and recovery fund, 19.4% for a law enforcement cannabis training fund and 3% for program administration.^[xxvii] HB 168, a distinct recreational cannabis legalization framework that pre-dated the passage of Issue 2, would divide the new sales tax revenue into six distinct funds: 25% into the State General Revenue Fund, 25% into a dedicated education fund, 12.5% for municipalities with retail cannabis stores, 12.5% for counties with retail cannabis stores, 12.5% into a drug enforcement fund and 12.5% into a chemical dependency rehabilitation fund.^[xxviii]

With Statehouse legislative sessions scheduled for April, May and June,^[xxix] it is possible that Ohio legislators will take some action on recreational cannabis in the next quarter, but it will be difficult to predict which vision for the new cannabis sales tax revenues will win out.

Economic Development in Focus

Without legislative action by the Ohio General Assembly, the earliest that recreational cannabis can legally be sold at Ohio dispensaries is early September, 2024.^[xxx] Until then, it will be important for local government officials and economic development professionals to closely follow Development's rulemaking process for the SEJ program funding rules to gauge the potential economic development possibilities of the new revenue source. Cities, villages and townships in particular will also have to determine how (and whether) to open up their jurisdictions for recreational cannabis dispensaries, which, under the current law, would determine whether those local governments have access to host community cannabis fund revenues. Regardless of the specifics of any final regulatory or statutory program, Ohio voters have made it clear that they want legal recreational marijuana. It will be up to Ohio's state and local officials to ultimately decide how to best leverage this new industry to promote job creation and new investment in Ohio communities.

Vorys attorneys and Vorys Advisors government affairs professionals are actively monitoring the regulatory and legislative changes around recreational cannabis in Ohio. If you have questions about current state and local economic development programs in Ohio, or how to prepare for the rollout of new recreational cannabis regulations in Ohio, please feel free to contact one of the following Vorys professionals: Elizabeth Smith, 614.464.5443, etsmith@vorys.com; Michael Oliverio, 412.904.7698, mpoliverio@vorys.com; Tom Whaling, 614.464.6220, tjwhaling@vorys.com; Matt Walker, 614.464.6489, mkwalker@vorys.com; Mike Griffaton, 614.464.8374, mcgriffaton@vorys.com; Eli Redfern, 614.464.3011, efredfern@vorys.com; Scott Ziance, 614.464.8287, sjziance@vorys.com

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[i] See Proposed Division of Cannabis Control Rules, Ohio Department of Commerce, <https://com.ohio.gov/divisions-and-programs/cannabis-control/about-dcc/proposed-dcc-rules/proposed-dcc-rules>.

[ii] About, Coalition to Regulate Marijuana Like Alcohol, <https://justlikealcohol.com/about/>.

[iii] Greetings, Just Like Alcohol, Youtube (Oct. 25, 2023) <https://www.youtube.com/watch?v=Az6NAQTnErw>.

[iv] 2023 General Election Statewide Issue History, Ohio Secretary of State, <https://www.ohiosos.gov/elections/election-results-and-data/historical-election-comparisons/statewide-issue-history/>.

[v] ORC §3780.22.

[vi] ORC §3780.23.

[vii] *Id.*

[viii] ORC §3780.19.

[ix] ORC §3780.19.

[x] Michigan Cannabis Regulatory Agency, Social Equity Grant Program, <https://www.michigan.gov/cra/grants/social-equity-grant-program>.

[xi] Cannabis Social Equity Loan Program, Illinois Department of Commerce & Economic Opportunity, <https://dceo.illinois.gov/cannabisequity/loaninfo.html>.

[xii] R3 Restore, Reinvest, Renew, State of Illinois, <https://r3.illinois.gov/>.

[xiii] Notice of Funding Opportunity 2025 Restore, Reinvest, and Renew (R3) Program Service Grant Instructions, Illinois Criminal Justice Information Authority, page 10, <https://icjia.illinois.gov/grants/funding/r3-nofo-service-delivery-nofo-2378-030124/>.

[xiv] About the Cannabis Program, City of Portland Development Services, <https://www.portland.gov/bds/cannabis/about-cannabis>.

[xv] SEED Initiatives, City of Portland Development Services, <https://www.portland.gov/bds/cannabis/seed#toc-seed-initiatives-fact-sheet>.

[xvi] See ORC §3780.18; see *also* ORC §3780.19.

[xvii] Transformational Mixed-Use Development Program, Ohio Department of Development, <https://development.ohio.gov/business/state-incentives/transformational-mixed-use-development-program>.

[xviii] Ohio Am. Sub. H.B. 86, 135th General Assembly, as passed by the Ohio Senate.

[xix] See ORC §3780.22(A).

[xx] Ohio Am. Sub. H.B. 86, 135th General Assembly, as passed by the Ohio Senate, at §5730.27(B).

[xxi] *Id.* at §5739.272.

[xxii] *Id.*

[xxiii] House Bill 54 Committee Activity, 135th General Assembly, The Ohio Legislature <https://legislature.ohio.gov/legislation/135/hb354/committee>.

[xxiv] Ohio H.B. 354, 135th General Assembly, as introduced.

[xxv] *Id.* at §3780.19.

[xxvi] *Id.*

[xxvii] Ohio H.B. 341, 135th General Assembly, as introduced, at §3780.23.

[xxviii] Ohio H.B. 168, 135th General Assembly, as introduced, at §5739.214.

[xxix] The Ohio Legislature, Session Schedule, <https://legislature.ohio.gov/schedules/session-schedule>.

[xxx] See What Will Adult-Use Marijuana Legalization Mean for Ohio?, Moritz College of Law Drug Enforcement and Policy Center (Nov. 8, 2023) <https://moritzlaw.osu.edu/faculty-and-research/drug-enforcement-and-policy-center/research-and-grants/policy-and-data-analyses/cannabis-crossroads>.