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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

H.B. 354
135th General Assembly

Fiscal Note & Local Impact Statement

[Click here for H.B. 354's Bill Analysis](#)

Version: As Introduced

Primary Sponsor: Rep. Callender

Local Impact Statement Procedure Required: No

LBO Staff

Highlights

Adult use cannabis

Excise tax revenue

- The bill imposes a new 10% excise tax on a licensed cultivator's adult use cannabis receipts. Annual tax revenue due to this change is estimated to be approximately \$107 million to \$125 million higher under the bill than under current law once the adult use cannabis market completely matures, likely no earlier than FY 2026.
- Current law was enacted by State Issue 2, which was approved by Ohio voters on November 7, 2023, and is effective December 7, 2023. Since current law has not yet been implemented, there is considerable uncertainty about the future adult use cannabis market, including quantity and pricing, which will determine actual revenues under both current law and the bill.
- The bill specifies the disposition of excise tax revenue from licensed adult use cannabis cultivator's receipts. See tables 1 and 2 below for details of the disposition under current law and additional revenue raised by the bill.

Department of Commerce

- The bill regulates adult use marijuana under the new Division of Marijuana Control in the Department of Commerce, instead of the Division of Cannabis Control as under current law. As under current law, the costs of overseeing adult use cannabis license holders would be covered by a 3% share of the marijuana adult use excise tax and licensing revenue to be established by rule.

Department of Development

- The bill modifies how the Department of Development is to oversee the Cannabis Social Equity and Jobs Program, including the business certification program and related financial and technical assistance, by requiring that the Department distribute funding for these purposes to counties. As a result, counties will incur new costs for operating these programs. Under current law unchanged by the bill, the program receives 36% of annual excise tax proceeds from the Adult Use Tax Fund.

Detailed Analysis

Adult use cannabis

Excise tax revenue on cultivator's receipts

The bill imposes a new 10% excise tax on a marijuana cultivator's adult use cannabis receipts.¹

The current 10% excise tax on the retail sale of adult use cannabis was included in State Issue 2, which was approved by Ohio voters on November 7, 2023, and is effective December 7, 2023. Prior to this date, the retail sale of adult use cannabis was not legal in Ohio. The timing of future revenue under both current law and the bill is uncertain, as it depends on completion of all implementation aspects. The annual estimates given in tables 1 and 2 assume the marketplace has matured. That is, the program has been fully implemented. This is not likely to occur until FY 2026 at the earliest. Only a small portion of the annual revenue estimates may be collected in FY 2025. Once the market has matured, the current law 10% excise tax on retail sales is estimated to provide annual revenue to the state of approximately \$175.9 million to \$205.8 million. LBO estimates the bill's 10% excise tax on cultivator receipts will yield between \$107 million and \$125 million each year once the market matures, which represents additional revenue as compared to current law.

Methodology

The estimates are based on data and research on adult use marijuana in other states, as well as various assumptions about the Ohio marketplace. The marijuana consumption of Ohio residents was calculated using the estimated number of Ohioans aged 21 and older who used marijuana in the past 12 months based on data from the National Survey of Drug Use and Health (NSDUH),² and the prevalence and frequency of use of marijuana. The NSDUH information suggests about 1.75 million users in Ohio, and their overall demand is derived from a

¹ The bill defines "adult use cannabis receipts" as the total amount received by an adult use cultivator, without deduction for the cost of goods sold, taxes paid, or other expenses incurred, from the sale or other disposition of adult use cannabis to any other person.

² The number of legal Ohio marijuana users in the past 12 months is estimated primarily based on the latest NSDUH data, [2021 National Survey on Drug Use and Health \(NSDUH\)](#). A downward adjustment was made using census information to reduce NSDUH data for the number of persons aged 18 through 20 who are not legally able to purchase marijuana under the bill.

methodology in a report prepared for the Colorado Department of Revenue.³ LBO staff further assumed nonresidents' marijuana consumption from Ohio retail dispensaries would be about 5% of total residents' consumption.

The average wholesale price in Ohio was estimated to be \$140 per ounce, which suggests retailers would impose a mark-up of 65%. The wholesale price assumption is subject to considerable uncertainty because the bill specifies that the number of cultivators is to be determined by the Department of Commerce. If the supply is limited, it puts upward pressure on wholesaler prices. Conversely, a supply glut would exert downward pressure on wholesale prices. This analysis assumes the 10% excise tax paid by licensed cultivators would raise between \$107 million and \$125 million annually.

Revenue disposition

Excise tax revenue from retail sales

Current law allocates revenue from the excise tax into the Adult Use Tax Fund and provides for transfers into new funds as shown in Table 1.

Table 1. Estimated Annual Excise Tax Revenue from Retail Sales of Adult Use Cannabis in a Mature Marketplace Under Current Law		
Fund	Distribution %	Estimated Annual Revenue (in millions)
Cannabis Social Equity and Jobs Fund	36%	\$63.3-\$74.1
Host Community Cannabis Fund	36%	\$63.3-\$74.1
Substance Abuse and Addiction Fund	25%	\$44.0-\$51.4
Division of Cannabis Control and Tax Commissioner Fund	3%	\$5.3-\$6.2
Total		\$175.9-\$205.8

Under current law, the Department of Development is to use revenue deposited into the Cannabis Social Equity and Jobs Fund to establish and administer a business assistance and certification program. As the table above shows, LBO estimates that between \$63.3 million and \$74.1 million annually in distributions from the Adult Use Tax Fund would be available for these purposes under a mature adult use cannabis program. Revenue deposited into the Host Community Cannabis Fund, under current law, is to benefit municipalities and townships that have adult use dispensaries. Current law requires the Ohio Department of Mental Health and Addiction Services (OhioMHAS) to use the revenue in the Substance Abuse and Addiction Fund for efforts to alleviate substance and opiate abuse and for related research. Finally, current law

³ *Market Size and Demand for Marijuana in Colorado, 2014, Table 1.* The report is available at: <https://media.focusonthefamily.com/fotf/pdf/channels/social-issues/market-size-and-demand-study-july92014.pdf>.

requires revenue deposited into the Division of Cannabis Control and Tax Commissioner Fund to support the operations of the Division and costs of administering the tax.

The bill reallocates the 25% earmarked for OhioMHAS as follows:

1. 12.5% to support the efforts of OhioMHAS to oversee and administer the 9-8-8 suicide prevention and mental health crisis hotline system;
2. 10% to support the efforts of county sheriffs to provide mental health and addiction services in county jails;
3. 2.5% to support efforts of OhioMHAS to develop the state’s mental health workforce.

Excise tax revenue from cultivator’s receipts

The bill specifies that all collections from the 10% excise tax on adult use cannabis cultivator’s receipts must be deposited into the Adult Use Cannabis Receipts Fund. The bill allocates net proceeds (i.e., after issuing applicable tax refunds) through transfers made by the Office of Budget and Management (OBM) Director to the following funds as shown in Table 2.

Table 2. Estimated Additional Annual Excise Tax Revenue from Adult Use Cannabis Cultivator’s Receipts in a Mature Marketplace Under the Bill		
Fund	Distribution %	Estimated Annual Revenue (in millions)
Cannabis Local Jail Fund	36%	\$38.5-\$45.1
Adult Use Cannabis County Fund	36%	\$38.5-\$45.1
Adult Use Cannabis Law Enforcement Training Fund	23%	\$24.6-\$28.8
Adult Use Cannabis Crime Victim Fund	5%	\$5.4-\$6.3
	Total	\$107.1-\$125.3

State agency expenditures

State agencies will incur additional expenditures to administer the newly enacted marijuana provisions under both current law and the bill. The bill incurs a fiscal effect for state agency expenditures to the extent its requirements differ from current law. The notable provisions are discussed in the following sections.

Department of Taxation

The bill requires each adult use cannabis cultivator to register with the Tax Commissioner no later than 30 days after first receiving adult use cannabis receipts. The bill specifies that if an adult use cultivator does not do so within the specified timeframe an additional fee is to be imposed in the amount of \$100 per month, but not to exceed \$1,000. The Commissioner may abate the additional fee for a good cause. The bill specifies that all proceeds from the fees must be credited to the Adult Use Cannabis Receipts Fund. The bill requires a registered adult use cannabis cultivator to provide a notice to the Commissioner when certain events occur, such as when its license expires or is revoked.

The bill requires every taxpayer, no later than the tenth day of the second month after the end of each calendar quarter, to file a return with the Commissioner for the preceding calendar quarter showing any information the Commissioner finds necessary for the proper administration of the bill together with remittance of the tax due. The bill specifies a penalty, in an amount not exceeding the greater of \$50 or 10% of the tax required to be paid for the tax period, for a taxpayer that fails to file such tax return or remit the tax. The bill also specifies other penalties and interest under certain circumstances. The bill allows the Commissioner to collect any penalty or interest imposed by the bill. The bill also specifies requirements and procedures related to assessments, refunds, and administration of the tax. The bill allows the Commissioner to adopt necessary rules to implement certain bill provisions.

Department of Commerce

The Division of Marijuana Control, in place of the Division of Cannabis Control as under current law, will assume responsibility and incur the costs for regulation and oversight of adult use marijuana under the bill. Under current law unchanged by the bill, the Division of Cannabis Control is funded by a portion of a 3% distribution from the adult use tax (see above), as well as fees to be set by rule. Note that current law requires application and license fees for individuals certified under the Department of Development's Cannabis Social Equity and Jobs Program, discussed in the next section, to be reduced by at least 50%.

Under the [Tax Yield and Public Expenditure Analysis that OBM and the Department of Taxation prepared for State Issue 2 \(PDF\)](#), available on the Secretary of State's website: ohiosos.gov, OBM estimated that costs for oversight of the adult use marijuana program would grow as the industry matures, from \$2.4 million in FY 2024 to \$11.3 million by FY 2027. This assumed that the Division of Cannabis Control would need to hire 133 full-time employees within four years, with a total payroll amounting to approximately \$9.0 million by FY 2027. OBM's analysis also estimated costs of \$350,000 annually for additional office space, start-up costs for a new regulatory database and \$200,000 annually to operate and maintain it, and approximately \$258,000 for equipment, software licenses, and other operating costs. OBM also anticipated expenditures of \$1.5 million annually in legal and litigation costs.

Department of Development

The bill changes how the Cannabis Social Equity and Jobs Program is to be implemented by shifting certain responsibilities under current law from the Department of Development (DEV) to counties. The major change under the bill is requiring counties, instead of DEV as under current law, to operate a business certification program open to individuals in the cannabis field who are either socially and economically disadvantaged or impacted by certain cannabis-related offenses. Under these certification programs, counties would provide financial assistance, loans, grants, and technical assistance to qualifying participants. The bill also expands the use of grants that counties may provide to include any other purpose that involves community engagement, economic development, or social programming. As a result of these changes, counties will incur new costs for establishing certification programs and distributing financial assistance. DEV would continue to incur administrative costs for establishing the parameters of the Cannabis Social Equity and Jobs Program and provide state oversight.

Overall, under current law unchanged by the bill, 36% of the annual receipts from the Adult Use Tax Fund would be used to support the Cannabis Social Equity and Jobs Program. LBO estimates that between \$63.3 million and \$74.1 million would be available for this purpose in a

mature, state-regulated adult use cannabis marketplace. Under the bill, DEV would allocate this funding to counties from the Cannabis Social Equity and Jobs Fund.

Attorney General

Collections enforcement. Under continuing law, the Attorney General (AGO) Collections Enforcement Section is responsible for collecting all delinquent debt owed to close to 600 state agencies, institutions, universities, and other government entities for taxes, fines, penalties, service fees, loans, and any other debt due. The Attorney General may retain up to 11% of all amounts collected which is credited to the Claims Fund (Fund 4190). Because the bill imposes a new excise tax on cultivators, the revenue to AGO could increase above current law assumptions.

Law enforcement training. The bill requires the Attorney General to use the Adult Use Cannabis Law Enforcement Fund to pay reimbursements for continuing professional training programs for peace officers and troopers and allows for each appointing authority to apply to the Ohio Peace Officer Training Commission for quarterly reimbursement of continuing professional training costs. This reimbursement funding program exists in current law, but is currently funded by the General Revenue Fund for fiscal years 2023 and 2024. The bill authorized the transfer of any unexpended balance remaining for appropriation item 055509, Law Enforcement Training to the Adult Use Cannabis Law Enforcement Fund. The Attorney General will need to draft and enact rules for the program, as required under the bill.

Department of Public Safety (OIU investigative costs)

The Ohio Investigative Unit (OIU), which is housed within the Department of Public Safety, enforces Ohio's alcohol, tobacco, and food stamp fraud laws. OIU agents are responsible for investigating violations relating to the liquor control act as well as criminal activity in or around liquor permit locations (bars, restaurants, carryouts, etc.) and illegal establishments. Under the bill, OIU will have investigative authority related to adult use and medical marijuana in conjunction with the Department of Commerce's Division of Marijuana Control. Current staffing levels within OIU appear insufficient to carry out these new duties.

Department of Rehabilitation and Correction (DRC)

The bill requires DRC to provide grants for local jail construction and renovation pursuant to a funding formula that ranks counties higher the lower their property and sales tax revenues are relative to other counties. Applications are requested from a number of the highest ranking counties, with a needs assessment then conducted for the applicants, and selected projects are awarded a grant for at least 25% of the total project cost. This program is similar to one temporarily enacted in H.B. 33 of the 135th General Assembly that is scheduled to sunset at the end of FY 2024. Continuation funding will be supported by the new Adult Use Cannabis Local Jail Fund.

Unemployment benefits

Currently, if a person is discharged from employment for using cannabis, the person will be considered to have been discharged for just cause, if the use of cannabis violates the employer's cannabis regulating policies, zero-tolerance policy, or other formal program or policy regulating the use of cannabis. The bill states that such a person will not be eligible to serve a waiting period or to receive unemployment benefits.

The Ohio Department of Job and Family Services administers the state's Unemployment Compensation system. Ohio employers fund benefits by paying contributions to Ohio's Unemployment Compensation Fund (most private sector employers) or reimbursing that fund for benefits paid (public sector and certain nonprofit employers).

Department of Mental Health and Addiction Services

The bill establishes a 9-8-8 Administrator within OhioMHAS to oversee the administration of the 9-8-8 suicide prevention and mental health crisis hotline system statewide. The Administrator is required to submit an annual report regarding the operation of the 9-8-8 National Suicide Prevention and Mental Health Crisis Hotline in Ohio. The bill specifies certain information that the report is to address. The report is to be submitted to the Governor and the General Assembly. OhioMHAS has already established a 9-8-8 Administrator. However, there could be minimal administrative costs to submit the required report if OhioMHAS is not currently reporting all of this data. The bill also establishes the 9-8-8 Fund in the treasury and states that the fund is to consist of appropriations made by the General Assembly; donations, gifts, or bequests; specified revenue from the adult use tax; and interest and other earnings on the fund.

The bill exempts, except in the case of willful or wanton misconduct, a telephone company, other installer, maintainer, or provider of customer premises equipment, or service used for, or with, the 9-8-8 hotline, and certain other affiliated persons or entities from civil liability for injuries, death or loss to persons or property incurred by any person resulting from an entity's participation in or acts of omissions in connection with participating in, developing, maintaining, or operating the 9-8-8 hotline. This could result in savings for civil courts if fewer actions are brought forward.