

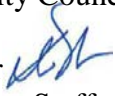
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**TO:** The Honorable Detroit City Council

**FROM:** David Whitaker, Director   
Legislative Policy Division Staff

**DATE:** November 13, 2020

**RE:** **Report on Legality of Allocation of Marihuana Revenue into Social Equity Grants**

The Legislative Policy Division (LPD) has been requested by Council President Brenda Jones to provide a report regarding the legality of the State of Michigan allocating 20% of marijuana revenue generated by the State to local municipalities for social equity grants. The social equity grants will be for the investment into social equity initiatives within social equity municipalities.

LPD's research has not identified any prohibition to the State creating social equity grants from marijuana revenue generated. However, it would require legislative action to reallocate revenue. The Act currently designates 15% of the marijuana revenue for local municipalities that have authorized marijuana facilities. Review of Michigan's Constitution as well as the Michigan Regulation and Taxation of Marijuana Act of 2018 (the Act) did not reveal any provisions that would prohibit the State from specifically establishing a social equity grant.

Pursuant to the Michigan Constitution, Article IV, Section 30, *Appropriations; Local or Private Persons*, the State may appropriate funds for local purposes:

Sec. 30.

The assent of two-thirds of the members elected to and serving in each house of the legislature shall be required for the appropriation of public money or property for local or private purposes.

Accordingly, the State has the authority to appropriate public money or property for local or private purposes which arguably would include a proposed social equity grant. However, the Act specifically allocates distribution of the revenues generated, per MCL 333.27964:

Sec. 14(1)

The marihuana regulation fund is created in the state treasury. The department of treasury shall deposit all money collected under section 13 of this act and the department shall deposit all fees collected in the fund. The state treasurer shall direct the investment of the fund and shall credit the fund interest and earnings from fund investments. The department shall administer the fund for auditing purposes. Money in the fund shall not lapse to the general fund.

In addition to all taxes, fee and fines being deposited into the Marijuana Regulation Fund established by the Act, the manner in which it is to be disbursed is **specifically detailed** under Section 14(3), leaving none of it to discretionary spending:

The department shall expend money in the fund first for the implementation, administration, and enforcement of this act, and second, until 2022 or for at least two years, to provide \$20 million annually to one or more clinical trials that are approved by the United States food and drug administration and sponsored by a non-profit organization or researcher within an academic institution researching the efficacy of marihuana in treating the medical conditions of United States armed services veterans and preventing veteran suicide. Upon appropriation, unexpended balances must be allocated as follows:

- (a) 15% to municipalities in which a marihuana retail store or a marihuana microbusiness is located, allocated in proportion to the number of marihuana retail stores and marihuana microbusinesses within the municipality;
- (b) 15% to counties in which a marihuana retail store or a marihuana microbusiness is located, allocated in proportion to the number of marihuana retail stores and marihuana microbusinesses within the county;
- (c) 35% to the school aid fund to be used for K-12 education; and
- (d) 35% to the Michigan transportation fund to be used for the repair and maintenance of roads and bridges.

Therefore, as provided under the Subsection (3)(a), the State must provide 15% of the unexpended balance of the Marijuana Regulation Fund to municipalities where a marihuana retail store or a marihuana microbusiness is located. Although the Legislature has the ability to reallocate the revenue by amendment of the Act, it is unclear whether the Legislature would provide an additional 20% to be designated solely for jurisdictions with social equity programs.

Additionally, an amendment to channel revenue to municipalities for social equity grants would have to be carefully crafted avoid the potentially fatal problem of being characterized as a lending of credit by a municipality. The funding, if achievable, must come from the State. Article 7, Sec. 26 of the Michigan Constitution of 1963 provides: “Except as otherwise provided in this constitution, **no city or village shall have the power to loan its credit for any private purpose** or, except as provided by law, for any public purpose.” This constitutional provision, the prohibition on the City’s lending of credit for a private purpose, arguably, creates a complete barrier to the **City’s creation** of equity grants for marihuana businesses. Even if a public purpose can be attributed to the proposed social equity grants, it is well settled that funding a privately managed businesses is prohibited. See, *Detroit Museum of Art v Engel*, 187 Mich 432 (1915), in which the Michigan Supreme Court ruled that Detroit could not pay the salary of the museum director, even though the City had title to the real estate on which the museum was located and had minority representation on its board of directors. The Court stated, “The object and purpose of relator is a public purpose in the sense that it is being conducted for the public benefit, but it is not a public purpose within the meaning of our taxing laws, **unless it is managed and controlled by the public.**” (Emphasis added.)

LPD concludes, therefore, that allocation of the **City’s** marihuana revenue, as currently provided by the State Act, to fund social equity grants is not permissible under law. If the desired goal can be achieved through State channeled funding, at this juncture, it would be advisable to await the new legislative term before urging amendment of the statute.

If the Council has further questions, LPD will respond.