



MEMORANDUM

TO: Deschutes County Board of Commissioners

FROM: Nick Lelack, AICP, Director
Peter Gutowsky, AICP, Planning Manager
Adam Smith, Assistant Legal Counsel

DATE: July 6, 2020

SUBJECT: House Bill 3295 / Marijuana Tax Revenue / Cannabis Advisory Panel

Staff is requesting direction from the Board of County Commissioners (Board) to appoint and convene a Cannabis Advisory Panel (CAP).

I. Background

Introduced by Representative Jason Kropf (D, Bend), sponsored by Representative Jack Zika (R, Redmond), and ultimately adopted by the Oregon Legislature on June 26, 2021, House Bill (HB) 3295 ensures that counties that participate in Oregon marijuana economy receive a share of marijuana revenue (Attachment).

Marijuana tax revenue has not been paid to Deschutes County by the Oregon Department of Revenue since 2019, when the Board passed Ordinance 2019-014, prohibiting the establishment of future (new) marijuana production and processing businesses in unincorporated Deschutes County (commonly referred to as an Opt Out). Ordinance No. 2019-015, adopted on October 16, 2019, further clarified that Ordinance No. 2019-014 has no impact on the County’s past marijuana production land use decisions and does not preclude those applicants from moving forward in the licensure process with the Oregon Liquor Control Commission (OLCC). On November 3, 2020, Ballot Measure 9-134 asked voters if they wanted to repeal the opt-out ordinances—a “yes” vote would once again allow new marijuana production and processing businesses in Deschutes County, and a “no” vote would continue to prohibit new marijuana production and processing businesses in Deschutes County. Ultimately, Deschutes County residents voted “no” to Measure 9-134, thereby upholding the opt-out and prohibiting future/new recreational marijuana production and processing businesses from being established in the unincorporated county.

II. HB 3295

To receive marijuana tax revenue, the Board must appoint a CAP that meets at least quarterly.¹ The CAP is required to provide at least three recommendations:

¹ HB 3295. Section 3a.

1. The use of moneys transferred to the county under ORS 475B.759;
2. Increases in public safety measures related to marijuana use and marijuana entitles in the county; and
3. Issues presented by the production, processing, wholesaling and distribution of marijuana in the unincorporated area subject to the jurisdiction of the county.²

Members of the CAP are appointed by the Board and must consist of the following:

- A person who holds a license issued under ORS 475B.070 for a premises located in the county (i.e. MJ production license);
- A person who holds a license issued under ORS 475B.105 for a premises located in the county (i.e. MJ retail license);
- A designee of the county sheriff;
- A designee of the county commission;
- A member of the public;
- A watermaster, as described in ORS 540.020, who is appointed for a water district in, partially in or near the county;" and
- A representative of the county who is knowledgeable about economic development in the county.³

The effective date of HB 3295 is confusing. HB 3295 takes effect on September 25, 2021, 91 days after the legislature adjourned. However, Section 5 of HB 3295 notes that the at-issue amendments proposed therein "become operative on January 1, 2022." Section 5 also notes that a county and the State may take "any action" before the operative date necessary to be ready to go as of the operative date. But the proceeding Section 4 notes that if a county opted out between January 1, 2018 and September 1, 2021, then that county is eligible to receive distributions "when the county appoints a county cannabis advisory panel." Despite the aforementioned language in Section 4, it seems the intent is that Deschutes County will only be eligible for distributions under HB 3295 beginning on January 1, 2022, so long as a CAP is established prior to that date.

If initiated, no later than July 1 of each year, Deschutes County will be required to certify with the Oregon Department of Administrative Services (DAS) that it complies with HB 3295 by convening a CAP. Failure to do so disqualifies Deschutes County from receiving marijuana tax revenue.⁴

III. Board Direction

Staff is requesting the following direction from the Board:

1. Does the Board want to convene a CAP?
2. If so,
 - a. What process should be used to identify potential candidates?
 - b. Are there other members beyond those listed in HB 3295 that warrant appointment?

² Ibid. Section 3, Sub 2.

³ Id. Sub 1 a-g. HB 3295 does not specify if the County can appoint additional members. It also does not specify that the licensee must be from the unincorporated county. This may be important because there are relatively few retail marijuana retail licenses in rural Deschutes County.

⁴ Id. Section 1, Sub 6 a-b.

- c. Are there other topics of discussion for the CAP to consider beyond the three listed in HB 3295?
- d. When should the CAP first convene on a quarterly basis?

Attachment

HB 3295

Enrolled
House Bill 3295

Sponsored by Representatives KROPP, ZIKA

CHAPTER

AN ACT

Relating to marijuana revenue; creating new provisions; amending ORS 475B.759 and section 5, chapter 2, Oregon Laws 2021 (Ballot Measure 110 (2020)); and prescribing an effective date.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 475B.759, as amended by section 10, chapter 2, Oregon Laws 2021 (Ballot Measure 110 (2020)), is amended to read:

475B.759. (1) There is established the Oregon Marijuana Account, separate and distinct from the General Fund.

(2) The account shall consist of moneys transferred to the account under ORS 475B.760.

(3)(a) The Department of Revenue shall certify quarterly the amount of moneys available in the Oregon Marijuana Account.

(b) Before making other transfers of moneys required by this section, the department shall transfer quarterly to the Drug Treatment and Recovery Services Fund all moneys in the Oregon Marijuana Account in excess of \$11,250,000.

[(b)] (c) Subject to subsection (4) of this section, and after making the transfer of moneys required by *[subsection (7) of this section]* **paragraph (b) of this subsection**, the department shall transfer quarterly 20 percent of the moneys in the Oregon Marijuana Account as follows:

(A) Ten percent of the moneys in the account must be transferred to the cities of this state in the following shares:

(i) Seventy-five percent of the 10 percent must be transferred in shares that reflect the population of each city of this state that is not exempt from this paragraph pursuant to subsection (4)(a) of this section compared to the population of all cities of this state that are not exempt from this paragraph pursuant to subsection (4)(a) of this section, as determined by Portland State University under ORS 190.510 to 190.610, on the date immediately preceding the date of the transfer; and

(ii) Twenty-five percent of the 10 percent must be transferred in shares that reflect the number of licenses held pursuant to ORS 475B.070, 475B.090, 475B.100 and 475B.105 on the last business day of the calendar quarter preceding the date of the transfer for premises located in each city compared to the number of licenses held pursuant to ORS 475B.070, 475B.090, 475B.100 and 475B.105 on the last business day of that calendar quarter for all premises in this state located in cities; and

(B) Ten percent of the moneys in the account must be transferred to counties in the following shares:

(i) Fifty percent of the 10 percent must be transferred in shares that reflect the total commercially available area of all grow canopies associated with marijuana producer licenses held pursuant to ORS 475B.070 on the last business day of the calendar quarter preceding the date of the transfer for all premises located in each county compared to the total commercially available area of all

grow canopies associated with marijuana producer licenses held pursuant to ORS 475B.070 on the last business day of that calendar quarter for all premises located in this state; and

(ii) Fifty percent of the 10 percent must be transferred in shares that reflect the number of licenses held pursuant to ORS 475B.090, 475B.100 and 475B.105 on the last business day of the calendar quarter preceding the date of the transfer for premises located in each county compared to the number of licenses held pursuant to ORS 475B.090, 475B.100 and 475B.105 on the last business day of that calendar quarter for all premises in this state.

[(c)] **(d)** After making the transfer of moneys required by [subsection (7) of this section, eighty] **paragraph (b) of this subsection, 80** percent of the remaining moneys in the Oregon Marijuana Account must be used as follows:

(A) Forty percent of the moneys in the account must be used solely for purposes for which moneys in the State School Fund established under ORS 327.008 may be used;

(B) Twenty percent of the moneys in the account must be used solely for mental health treatment or for alcohol and drug abuse prevention, early intervention and treatment;

(C) Fifteen percent of the moneys in the account must be used solely for purposes for which moneys in the State Police Account established under ORS 181A.020 may be used; and

(D) Five percent of the moneys in the account must be used solely for purposes related to alcohol and drug abuse prevention, early intervention and treatment services.

(4)(a) A city that has an ordinance prohibiting the establishment of a premises for which issuance of a license under ORS 475B.070, 475B.090, 475B.100 or 475B.105 is required is not eligible to receive transfers of moneys under subsection [(3)(b)(A)] **(3)(c)(A)** of this section.

(b) A county that has an ordinance prohibiting the establishment of a premises for which issuance of a license under ORS 475B.070 is required is not eligible to receive transfers of moneys under subsection [(3)(b)(B)(i)] **(3)(c)(B)(i)** of this section.

(c) A county that has an ordinance prohibiting the establishment of a premises for which issuance of a license under ORS 475B.090, 475B.100 or 475B.105 is required is not eligible to receive transfers of moneys under subsection [(3)(b)(B)(ii)] **(3)(c)(B)(ii)** of this section.

(d)(A) Paragraphs (b) and (c) of this subsection do not apply to a county ordinance adopted on or after January 1, 2018, that prohibits the establishment of a premises for which a license under ORS 475B.070, 475B.090, 475B.100 or 475B.105 is required but allows in the unincorporated area of the county the continued operation of an existing premises for which a license under ORS 475B.070, 475B.090, 475B.100 or 475B.105 is required.

(B) A county that adopts an ordinance described in subparagraph (A) of this paragraph shall certify the adoption of the ordinance under subsection (6) of this section.

(5)(a) A city or county that is ineligible under subsection (4) of this section to receive a transfer of moneys from the Oregon Marijuana Account during a given quarter but has received a transfer of moneys for that quarter shall return the amount transferred to the Department of Revenue, with interest as described under paragraph (f) of this subsection. An ineligible city or county may voluntarily transfer the moneys to the Department of Revenue immediately upon receipt of the ineligible transfer.

(b) If the Director of the Oregon Department of Administrative Services determines that a city or county received a transfer of moneys under subsection [(3)(b)] **(3)(c)** of this section but was ineligible to receive that transfer under subsection (4) of this section, the director shall provide notice to the ineligible city or county and order the city or county to return the amount received to the Department of Revenue, with interest as described under paragraph (f) of this subsection. A city or county may appeal the order within 30 days of the date of the order under the procedures for a contested case under ORS chapter 183.

(c) As soon as the order under paragraph (b) of this subsection becomes final, the director shall notify the Department of Revenue and the ineligible city or county. Upon notification, the Department of Revenue immediately shall proceed to collect the amount stated in the notice.

(d) The Department of Revenue shall have the benefit of all laws of the state pertaining to the collection of income and excise taxes and may proceed to collect the amounts described in the no-

tice under paragraph (c) of this subsection. An assessment of tax is not necessary and the collection described in this subsection is not precluded by any statute of limitations.

(e) If a city or county is subject to an order to return moneys from an ineligible transfer, the city or county shall be denied any further relief in connection with the ineligible transfer on or after the date that the order becomes final.

(f) Interest under this section shall accrue at the rate established in ORS 305.220 beginning on the date the ineligible transfer was made.

(g) Both the moneys and the interest collected from or returned by an ineligible city or county shall be redistributed to the cities or counties that were eligible to receive a transfer under subsection [(3)(b)] **(3)(c)** of this section on the date the ineligible transfer was made.

(6)(a) Not later than July 1 of each year, each city and county in this state shall certify with the Oregon Department of Administrative Services whether the city or county has an ordinance prohibiting the establishment of a premises for which issuance of a license under ORS 475B.070, 475B.090, 475B.100 or 475B.105 is required **and whether the county has an ordinance described in subsection (4)(d) of this section**. The certification shall be made concurrently with the certifications under ORS 221.770, in a form and manner prescribed by the Oregon Department of Administrative Services.

(b) If a city fails to comply with this subsection, the city is not eligible to receive transfers of moneys under subsection [(3)(b)(A)] **(3)(c)(A)** of this section. If a county fails to comply with this subsection, the county is not eligible to receive transfers of moneys under subsection [(3)(b)(B)] **(3)(c)(B)** of this section.

(c) A city or county that repeals an ordinance as provided in ORS 475B.496 shall file an updated certification with the Oregon Department of Administrative Services in a form and manner prescribed by the department, noting the effective date of the change. A city or county that repeals an ordinance as provided in ORS 475B.496 is eligible to receive quarterly transfers of moneys under this section for quarters where the repeal is effective for the entire quarter and the updated certification was filed at least 30 days before the date of transfer.

[(7) *Before making the transfer of moneys required by subsection (3) of this section, the department shall transfer quarterly to the Drug Treatment and Recovery Services Fund all moneys in the Oregon Marijuana Account in excess of \$11,250,000.*]

SECTION 2. Section 5, chapter 2, Oregon Laws 2021 (Ballot Measure 110 (2020)), is amended to read:

Sec. 5. (1) The Drug Treatment and Recovery Services Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the **Drug Treatment and Recovery Services** Fund shall be credited to the fund.

(2) The Drug Treatment and Recovery Services Fund shall consist of:

(a) Moneys deposited into the fund pursuant to section 6, **chapter 2, Oregon Laws 2021 (Ballot Measure 110 (2020))**;

(b) Moneys appropriated or otherwise transferred to the fund by the Legislative Assembly;

(c) Moneys allocated from the Oregon Marijuana Account, pursuant to ORS 475B.759 [(7)] **(3)(b)**; and[,]

(d) All other moneys deposited [*in*] **into** the fund from any source.

(3) Moneys in the fund shall be continuously appropriated to the Oregon Health Authority for the purposes set forth in section 2, **chapter 2, Oregon Laws 2021 (Ballot Measure 110 (2020))**.

[(4) *Unexpended moneys in the fund may not lapse and shall be carried forward and may be used without regard to fiscal year or biennium.*]

[(5)(a)] **(4)(a)** Pursuant to subsection (2)(b) of this section, the Legislative Assembly shall appropriate or transfer to the fund an amount sufficient to fully fund the grants program required by section 2, **chapter 2, Oregon Laws 2021 (Ballot Measure 110 (2020))**.

(b) The total amount deposited and transferred into the fund shall not be less than \$57 million for the first year [*this Act*] **chapter 2, Oregon Laws 2021 (Ballot Measure 110 (2020))**, is in effect.

(c) In each subsequent year, *[that]* **the minimum transfer** amount set forth in **paragraph (b) of this subsection [(5)(b) of this section]** shall be increased by not less than **the sum of:**

[(i)] **(A) \$57 million multiplied by** the percentage *[(if any)]*, **if any**, by which the monthly averaged U.S. City Average Consumer Price Index for the 12 consecutive months ending *[December]* **August 31** of the prior calendar year exceeds the monthly index for the fourth quarter of the calendar year 2020; and¹

[(ii)] **(B) [An amount not less than the increase]** **The annual increase, if any**, in moneys distributed pursuant to ORS 475B.759 *[(7)]* **(3)(b)**.

SECTION 3. (1) Prior to adopting an ordinance described in ORS 475B.759 (4)(d), a county shall convene a cannabis advisory panel to provide recommendations to the county commission regarding the county's regulation of marijuana and use of moneys transferred to the county under ORS 475B.759 (4). The county commission shall appoint the following members to the county cannabis advisory panel:

(a) A person who holds a license issued under ORS 475B.070 for a premises located in the county;

(b) A person who holds a license issued under ORS 475B.105 for a premises located in the county;

(c) A designee of the county sheriff;

(d) A designee of the county commission;

(e) A member of the public;

(f) A watermaster, as described in ORS 540.020, who is appointed for a water district in, partially in or near the county; and

(g) A representative of the county who is knowledgeable about economic development in the county.

(2) A county cannabis advisory panel shall provide recommendations to the county commission on at least the following:

(a) The use of moneys transferred to the county under ORS 475B.759;

(b) Increases in public safety measures related to marijuana use and marijuana entities in the county; and

(c) Issues presented by the production, processing, wholesaling and distribution of marijuana in the unincorporated area subject to the jurisdiction of the county.

(3)(a) A county cannabis advisory panel shall meet at least quarterly during the time in which the county receives transfers of moneys under ORS 475B.759, beginning not later than the date on which an ordinance described under ORS 475B.759 (4)(d) is proposed by the county.

(b) A county that adopts an ordinance described in ORS 475B.759 (4)(d) and that does not appoint a county cannabis advisory panel under this section is not eligible to receive transfers of moneys under ORS 475B.759.

SECTION 4. Notwithstanding section 3 (3) of this 2021 Act, a county that adopts an ordinance described in ORS 475B.759 (4)(d) between January 1, 2018, and September 1, 2021, is eligible to receive transfers of moneys under ORS 475B.759 when the county appoints a county cannabis advisory panel, as described in section 3 of this 2021 Act.

SECTION 5. (1) Sections 3 and 4 of this 2021 Act and the amendments to ORS 475B.759 and section 5, chapter 2, Oregon Laws 2021 (Ballot Measure 110 (2020)), by sections 1 and 2 of this 2021 Act become operative on January 1, 2022.

(2) The Department of Revenue and a county may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the department and the county to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the department and the county by sections 3 and 4 of this 2021 Act and the amendments to ORS 475B.759 and section 5, chapter 2, Oregon Laws 2021 (Ballot Measure 110 (2020)), by sections 1 and 2 of this 2021 Act.

SECTION 6. This 2021 Act takes effect on the 91st day after the date on which the 2021 regular session of the Eighty-first Legislative Assembly adjourns sine die.

Passed by House June 15, 2021

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate June 25, 2021

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2021

Approved:

.....M,....., 2021

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2021

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Shemia Fagan, Secretary of State