

PUBLIC ADMINISTRATION AND CANNABIS LEGALIZATION IN ILLINOIS, LEGITIMIZING SOCIAL EQUITY IN GOVERNMENT THROUGH LEGISLATIVE INTENT

JARED LEWIS, INAUGURAL CONGRESSMAN JOHN LEWIS SOCIAL JUSTICE FELLOW,
U.S. HOUSE OF REPRESENTATIVES

In June of 2019, the Illinois legislature passed HB 1438, the Cannabis Regulation and Tax Act (Public Act 101-0027). The law consists of a social equity program that is the most comprehensive in a state cannabis legalization bill. Cannabis legalization advocates agree that HB 1438 provides the most comprehensive social equity framework to a recreational cannabis bill created to date. In this paper, we analyze the social equity provisions in HB 1438 through the public administration framework of social equity. We find that broadly, the Act implements a new social equity approach, which we call the Illinois Doctrine. The approach institutes specific mechanisms for monitoring and measuring intentions, provides a mechanism to redress inequities in criminal justice enforcement, allows for a free market approach to cannabis provision, and provides for reparatory investments to offset the effects of the federal “war on drugs.”

INTRODUCTION

HB 1438, which became the Illinois Cannabis Regulation and Tax Act, has ignited nationwide interest in “social equity.” Social equity deals with broad concepts of fairness and justice in public policy and administration (Wooldridge and Bilharz, 2017). The Google Trends interest over time indicator, which assigns points from zero to 100 measuring interest in certain terms based on frequency of Boolean searches, reported a precipitous increase in the searched term “social equity” soon after HB 1438 passed the Illinois General Assembly. When the results are narrowed to just Illinois, the interest indicator shows the term ranked 0/100 during November 10-16, 2019. By the end of the week of December 8-14, 2019, the rating was 42/100, and by December 22-28, 2019, it was a full 100/100 (Google Trends, 2020).

HB 1438 presents the most comprehensive social equity provision in a state recreational cannabis bill to date. The Marijuana Policy Project noted that the bill's social equity provision "is the biggest step forward in social and criminal justice reform anywhere in the country, inside or outside the issue of cannabis reform" (Marijuana Policy Project, 2020). The Illinois approach centered social equity in the formation of the cannabis market (Pletz, 2019), and this approach is a fundamentally different state-sponsored process towards advancing social equity.

In the 11 states in which recreational cannabis is currently legal, sales are expected to reach \$30 billion in revenue by 2025, while the illegal market (including nonlicensed distribution and illegal distribution in states where recreational cannabis is not yet legal) will hold firm at almost \$60 billion over the same time period (Hudock, 2019). The potential for state and federal tax revenue coupled with shifting public opinion in favor of recreational cannabis (Jones, 2019) implies that the federal government will likely act to legalize recreational cannabis over the next few congressional sessions. (Congress has already demonstrated bipartisan support for H.R. 1595/S. 1200, The Secure and Fair Enforcement Banking Act of 2019, or SAFE Banking Act, which removes penalties to banks for engaging in depositor relationships with cannabis-producing companies.) Subsequently, nationwide state action and the Illinois social equity model is consequential to informing how the federal government will advance cannabis legislation.

Advocates and legislators continue to push for social equity in cannabis legislation because they view legalizing recreational cannabis without addressing the "war on drugs" as hypocritical (Quinton, 2018). Throughout the 1980s and '90s, federal and state governments disproportionately criminalized Black and Latino citizens by aggressively targeting, arresting, and prosecuting them for nonviolent cannabis-related drug offenses. From 1990-2002, cannabis-related offenses rose 82%, with 88% of arrests in 2002 for nonviolent possession of an illegal drug (King and Mauer, 2006). By 2014, one-third of Black men could be expected to be incarcerated for mostly nonviolent drug-related offenses despite the fact that White men are 45% more likely to sell illegal drugs (Rothwell, 2014). Cannabis legalization is progressing against the backdrop of thousands of people, particularly Black people, who are facing social and economic barriers that are a clear result of incarceration for offenses that are now inconsequential plus the associated social stigma and legal ramifications they bear as a result, such as losing the right to vote because of a felony conviction for something

that is no longer a felony. Cannabis social equity programs universally provide expungements for nonviolent drug-related offenses, but HB 1438 goes much further in addressing the systemic harms of the “war on drugs” with its approach to social equity.

SOCIAL EQUITY IN HB 1438

HB 1438 acknowledges the unequal treatment of Black and Latino citizens by establishing a clear and reparative intention of the social equity provision of the bill. Part (h) of Section 7-1, “Findings,” states: “In the interest of remedying the harms resulting from the disproportionate enforcement of cannabis-related laws, the General Assembly finds and declares that a social equity program should offer, among other things, financial assistance and license application benefits to individuals most directly and adversely impacted by the enforcement of cannabis-related laws who are interested in starting cannabis business establishments” (HB 1438, 2019, pp. 30).

The passage of HB 1438 piques interest for at least three reasons. First, the Illinois bill originated in the legislature, while every other state’s action to legalize recreational cannabis to date has been via ballot measures. This is particularly notable because the analysis of governance behavior relative to social equity is overwhelmingly represented by public administration studies in the form of educating future public agency managers on how to administer the law more equitably and demonstrating the need to better equip them with social equity management frameworks. When social equity is discussed through a legislative lens, analysis is usually limited to the historical context of social equity as a “third pillar” of public administration (Gooden, 2015). For example, agencies failed to execute civil rights-era policy reforms ending segregation, which partly instigated the modern social equity movement. As a piece of legislation, however, HB 1438 is distinctly different from these approaches and is more like a post-modern policy model advancing social equity.

Second, HB 1438 explicitly articulates an intention to remedy past harms from the “war on drugs” and explains specifics by including a mention of investments, small-business assistance, and other programs. A unique element of HB 1438 is the social equity provision of the bill, which the Brookings Institute lauded in calling for a Cannabis Opportunity Agenda and proposed that federal policymakers look to the design of the social equity provision in HB 1438 in determining how tax revenue and economic benefit from federally legalized

cannabis sales and consumption should target the communities most affected by the “war on drugs” (Henry-Nickie and Hudak, 2020). And the language of the law references neither race, ethnicity, gender, sexual expression, socioeconomic status, nor physical ability and instead uses geographic and experiential markers: residence in a “disproportionately affected area” or a person who was incarcerated because of the “war on drugs.” This is unlike civil rights-era policies that explicitly name race, gender, class, and other demographic markers — referred to as a “protected class” — to end discrimination. The reparatory intent in HB 1438 in naming very specific outcomes, targeting communities, and appropriating dollars suggests it is clearly a reparations bill.

And third, HB 1438 creates a new market — by legitimizing a previously illegal market — and centers that market on the equality of participation by people who have been systematically disenfranchised. This is most like the best practices identified by The National Academy of Public Administration Committee on Social Equity, which outlined four equity indicators: (1) access and distributional equity concerned with distribution of a public service; (2) quality and process equity concerned with the grade and consistency of a public service; (3) procedural fairness concerned with rights, treatment, and eligibility of groups; and, (4) outcomes concerned with resulting disparities for population groups (Hug, 2011). Outcome indicators is a leading issue in the study of social equity. Without a clear scientific method through which a causal relationship can be drawn to empirical observations (such as what exactly causes a lower life expectancy rate among Black Americans), research and recommended remedy is often rejected in favor of more research and study (Gooden, 2015).

If this new market and accompanying regulations prove successful in both remedying identified harms and generating equitable value, then it may demonstrate a model for leveraging new industries to address systemic inequality. Other industries, such as banking, health care, and housing, which have long had issues with propagating racism and discrimination, have materially affected social and life outcomes for thousands of people. When the government legitimizes new technologies and services in these industries, HB 1438 may provide a model for leveraging new markets (e.g., digital currency, virtual health care, and modular housing) to remedy the past harms of these industries. In this way, HB 1438 is experimenting with a new corporate citizenship and social responsibility model.

Academically, social equity is most frequently interpreted as a governance management best practice framework within the public administration space. However, the burgeoning cannabis industry in Illinois presents many opportunities in social equity program modeling and demonstrates the undeniable role that legislators (and therefore politics) must play in advancing actionable social equity frameworks that result in measurable change in society.

ORIGIN AND MEANING OF SOCIAL EQUITY

Modern-day social equity was born in the 1960s because of the civil rights movement and scholarship in the field of public administration recognizing that administrators were not neutral in administering the law (Gooden, 2015). This became most evident as civil rights advocates were making progress in federal-level reforms, yet state and municipal leadership were reluctant or refusing to implement mandated change. In *Brown v. Board of Education I* (1954), the U.S. Supreme Court struck down the separate but equal doctrine and ordered schools to desegregate. By the next year, however, the Court was forced to revisit the case because school districts were not progressing in achieving desegregation. In the original case, the Court vested decision-making to local school administrators, but local laws, culture, and leadership complicated the actual implementation of desegregation. In *Brown v. Board of Education II*, Chief Justice Earl Warren urged localities to act on the new principles promptly and to move toward full compliance with them “with all deliberate speed.” Federal enforcement of desegregation expanded and, in 1957, President Dwight Eisenhower deployed federal marshalls to ensure the Little Rock Nine could attend school in Arkansas without incident. In 1964, Congress continued these desegregation enforcement efforts with Title VI of the 1964 Civil Rights Act, withdrawing funds from schools and other governmental entities receiving federal funds if they discriminated (Library of Congress, 2020).

By 1968, Dwight Waldo was a leading political scientist who authored the seminal public administration text *The Administrative State*. This shifted the academic discussion about the role of the bureaucracy by contextualizing the origins of the modern bureaucracy and challenging the growing assumption that the exclusive purpose of public agency is efficient execution of the law. Increasingly, scholarship held that bureaucracy should mimic business organizations’ processes and execute policies of political leadership in the most efficient way possible. As a result, academic institutions started to

ground curriculum more in the logistics of agency management. Conversely, Waldo argued that public administrators had the duty to protect democratic principles and are, therefore, an element of the American political process (Hill, 2019). This inconvenient reality meant that students of administration needed political, policy, and an administrative education. On the backdrop of this tension, Waldo became frustrated with the discourse (or lack thereof) of civil rights in public administration. In 1968, Waldo convened the first Minnowbrook Conference, where the foundations of the modern social equity movement were formed (Woolridge and Bilharz, 2017). George Frederickson, a public administration scholar and contemporary of Waldo who is, in many ways, a co-founder of social equity, organized the conference. It was originally attended by many of Waldo's and Frederickson's contemporaries, and the conference has continued, reconvening every 10 years. By the 1990s, social equity was widely considered the "third pillar of public administration" in academia (Frederickson, 2010, pp. 52). By 2005, the National Academy of Public Administration, the congressionally chartered association focused on improving governance and advancing the field of public administration, had adopted social equity as the "fourth pillar," accompanying efficiency, economy, and effectiveness (Gooden, 2015).

The treatment and definition of social equity has continued to evolve since the foundation of the movement. This analysis will rely on the functional definition of social equity provided by Svava and Brunet in their 2005 article, *Social Equity is a Pillar of Public Administration*, "the fair, just and equitable management of all institutions serving the public directly or by contract, and the fair, just and equitable distribution of public services, and implementation of public policy, and the commitment to promote fairness, justice, and equity in the formation of public policy."

TREATMENT OF SOCIAL EQUITY IN GOVERNANCE, ACADEMIA, AND RESEARCH

Given the origins of modern social equity, it is reasonable that current academic discourse focuses on methods to expand the social equity framework and advocate for its legitimacy. Frederickson introduced the concept of "new public administration" in a series of essays reflecting on the 1968 Minnowbrook Conference. He argues that new public administration is part of the neobureaucratic model of governance in juxtaposition to the classical bureaucratic model. He notes that the classical model emphasizes "structure,

control, and the principles of administration,” while the neobureaucratic one emphasizes the “process of decision making being ... decisions are made to achieve as much of a given goal as possible” (Frederickson, 2010, pp. 32). This is the context in which research and academic literature expands on the functional understanding of social equity frameworks within governance and has been the principle influence of social equity education for the past 50 years. *Introducing Public Administration*, one of just a few foundational textbooks in public administration studies, defines Frederickson’s *New Public Administration* as “an academic advocacy movement for social equity in the performance and delivery of public services” (Shafritz and Russell, 2017, pp. 501). Subsequently, much of the contemporary discourse on social equity is driven by the need to educate and introduce social equity in the public administration profession (and to advocate for it).

The most recent Minnowbrook Conference, its 50th anniversary, took place in 2018, and leading conference scholars authored a social equity manifesto titled *Social Equity in Public Administration: A Call to Action*. The manifesto features six principles to “assist scholars and practitioners to move beyond rhetorical acknowledgement” of social equity (Blessett, *et al.*, 2019, pp. 296). The first principle is an affirmative statement that “social equity is a foundational anchor, not just a (separate) pillar, of public administration.” The remaining five principles are similarly aspirational professional standards with which the authors intend to “integrate social equity in research, teaching, and practice in public administration. [These principles] make clear that what is hanging in the balance is the identity of the field and the actual lives of those whom public administration is meant to serve” (pp. 296). Because of the origins of the scholarship, social equity research and analysis most consistently emphasizes academic advocacy of social equity within a strictly defined context of public administration.

SOCIAL EQUITY BEYOND PUBLIC ADMINISTRATION — THE ILLINOIS DOCTRINE

The uniqueness of HB 1438 has already been described, so the remainder of this paper will explore the design of HB 1438 and highlight areas of consideration for both public administration and public policy scholars.

OVERSIGHT AND ADMINISTRATION

HB 1438 is 610 pages of text and seeks to design a recreational cannabis market by setting out a highly controlled supply chain that includes substantive provisions around monitoring the total cannabis in the market and requiring dispensaries to account for all cannabis that is purchased and sold.

The law creates six different types of cannabis businesses that are permitted to touch cannabis in the regulated market through licensures: (1) a cultivation center license issued by the Illinois Department of Agriculture that permits a person to act as a cultivation center; (2) a craft grower license for a facility operated by an organization or business that is licensed to cultivate, dry, cure, and package cannabis and perform other necessary activities to make cannabis available for sale; (3) a processing organization license for a facility operated by an organization or business that is licensed by the Department of Agriculture to either extract constituent chemicals or compounds to produce cannabis concentrate or incorporate cannabis or cannabis concentrate into a product formulation to produce a cannabis product; (4) a dispensing organization license that permits a person to act as a dispensing organization under the Act and any subsequent administrative rules; (5) a transportation organization license for an organization or business that is licensed by the Department of Agriculture to transport cannabis on behalf of a cannabis business or a community college licensed under the Community College Cannabis Vocational Training Pilot Program; and, (6) an infuser organization license for facilities operated by an organization or business to directly incorporate cannabis or cannabis concentrate into a product.

In total, HB 1438 taps 15 different state departments and governmental functions and puts them in distinct oversight and administrative roles, and each falls into one of four categories: licensing, monitoring, or reporting, enforcement, or programming. (Table 1) The license types are reflective of the core function of the department that is instructed to permit the license under the law. For example, the Illinois Department of Agriculture is charged with administering adult-use cultivation center licenses for organizations interested in growing cannabis. The law monitors and reports by calling for extensive data collection requirements; 14 out of 15 entities with additional administrative responsibilities listed in HB 1438 have at least some data collection requirements. According to the legislation, the data is intended to monitor a few specific things: (1) the effect of cannabis on social and health outcomes in the state, (2) the total supply of legal cannabis available in the state as informed by both

the legitimate and illicit economy, and (3) the degree of equitable industry ownership and distribution of taxes created by the state’s legal cannabis market. The purpose of all this is to optimize the administration of the law and its social equity programs. For example, an Adult-Use Cannabis Health Advisory Committee was formed and charged with monitoring changes in drug use data and comparing it with emerging science about the health effects of cannabis use and then making formal recommendations to the Illinois Department of Human Services to better manage public health awareness campaigns.

TABLE 1
ILLINOIS STATE DEPARTMENTS AND THEIR RESPECTIVE RESPONSIBILITIES AS
ASSIGNED IN HB 1438

#	DEPARTMENT	LICENSING	MONITORING/ REPORTING	ENFORCEMENT	PROGRAMMING
1	Agriculture	X	X	X	
2	Financial and Professional Regulation	X			
3	Commerce and Economic Opportunity	X	X		
4	U.S. Census Bureau		X		
5	State Board of Education		X		
6	Employment Security		X		
7	Illinois State Police		X	X	X
8	U.S. Federal Bureau of Investigation		X		
9	Public Health		X	X	
10	Human Services		X		X
11	Illinois Community College Board		X		X
12	Secretary of State		X	X	
13	Illinois Criminal Justice Information Authority		X		
14	Legislative Audit Commission		X		
15	Revenue		X	X	

Multiple state agencies are also tasked with enforcement or programming of some provision of the law, such as administrative action or imposing fees against businesses for violations. For example, the Illinois Department of Financial and Professional Regulation may “revoke, suspend, place on probation, reprimand ... a Cannabis business establishment or Cannabis business establishment agent.” And agencies tasked with programming are responsible for providing education, support, or supplementary instruction. For example, the Illinois State Police may “include the costs for tuition at training schools [and] the salaries of trainees while in schools.”

DISCRIMINATION AND REPARATORY INVESTMENTS

The position of the Illinois Cannabis Regulation Oversight Officer was created within the Department of Financial and Professional Regulation to identify discrimination in the cannabis industry and evaluate the impact of such discrimination. The intention, according to wording in the law, is for the Officer to recommend reduction or elimination to “any identified barriers to entry in the Cannabis market.”

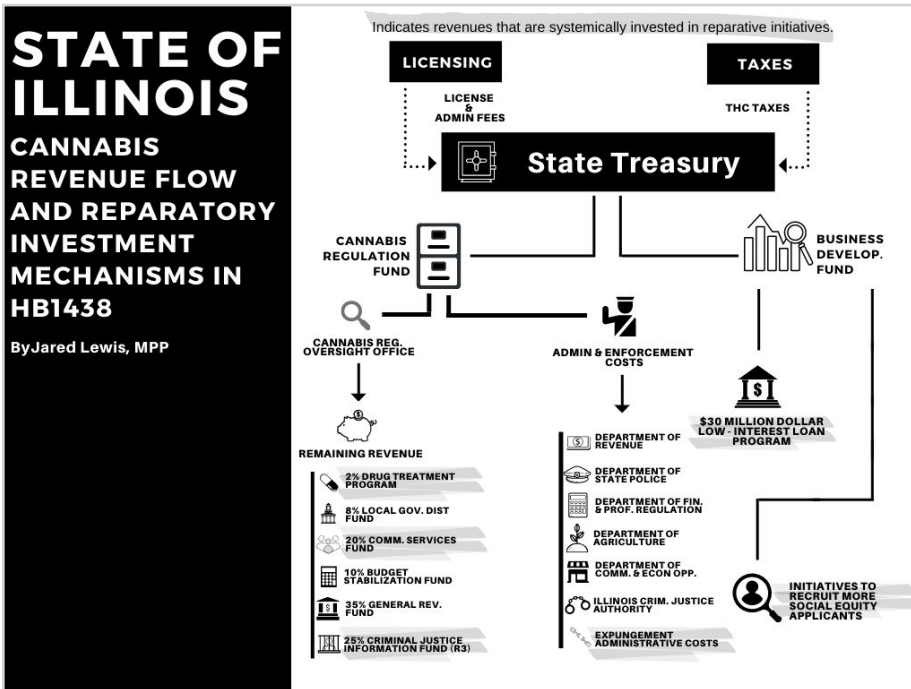
Along with this, HB 1438 institutes several newly codified roles and expands the responsibilities of state officials in the interest of reducing the effect of discrimination throughout the State of Illinois in the cannabis marketplace. At least three different types of programs are created to address such discrimination: advisory, investment, and research. The Adult-Use Cannabis Health Advisory Committee is an example of an advisory program. Composed of state officials, business owners, medical professionals, and cannabis rights advocates, it is charged with monitoring changes in drug use data and making recommendations to the Department of Human Services to better address the harms of addiction. Substantively, this committee is tasked with data-based harm reduction. Harm reduction is a vital tool in equitable public health addiction services because it “recognizes that the realities of poverty, class, racism, social isolation, past trauma, sex-based discrimination and other social inequalities affect both people’s vulnerability to and capacity for effectively dealing with drug-related harm” (National Harm Reduction Coalition, 2020).

The Restore, Reinvest and Renew (R3) Board is an investment program chaired by the Illinois Lieutenant Governor, with seats allocated to the Illinois Attorney General and other state officials. Under this program, 25% of tax revenue from cannabis will fund violence prevention, post-incarceration community reentry,

and health services throughout the State of Illinois (Figure 1). The board is responsible for designating R3 area boundaries, meaning that the Illinois Lieutenant Governor and Illinois Attorney General designate the areas of the state that will receive program funding. Geographic-based investment is a vital function in creating safer neighborhoods because studies show that violence is geographically concentrated: “Around half of all crime complaints or incidents of gun violence concentrated at about 5% of street segments or blocks in a given city” (Lurie, 2019).

FIGURE 1

FLOWCHART OF REPARATORY INVESTMENT MECHANISMS IN HB 1438



The Illinois DUI Cannabis Task Force is a research program appointed to “study the issue of driving under the influence of Cannabis.” HB 1438 grants responsibility for this program to the director of the Illinois State Police, the Illinois Secretary of State, and the president of the Illinois State’s Attorneys Association. An important feature of this task force is the open-ended nature of the question it is studying — namely, what influence does cannabis use have on

motor skills and impairment? Studies about cannabis impairment and motor skills have been inconsistent. A publication by the Centers for Disease Control and Prevention (CDC) suggests that cannabis use while driving is analogous to drinking while driving (CDC, 2017). Yet, a study by Dr. Ethan Russo, director of research at the International Cannabis and Cannabinoids Institute published that “studies have failed to demonstrate that drivers with cannabinoids in the blood are significantly more likely than drug-free drivers to be culpable in road crashes” (Russo, 2008).

Answering the question of cannabis impairment is important given the varied experiences of different demographics in traffic stops by police. The Stanford Open Policing Project investigates the disparities between Black, Latino, and White drivers when it comes to traffic stops and searches. While the study is not conclusive in determining that Black and Latino drivers are the subject of more traffic stops, it is conclusive in determining that minority drivers are searched at a higher rate after being stopped (The Stanford Open Policing Project, 2020). Finding greater clarity regarding the relationship between cannabis use and impairment (particularly while driving) could aid the state in ensuring a more consistent experience at traffic stops across all demographic groups. For example, should this research determine that cannabis intoxication and driving pose no substantive danger to society, it follows that the state would be likely to remove penalties for driving while under the influence of cannabis. This would have a direct impact on the standards by which police would have the authority to search the vehicle of someone suspected of cannabis intoxication after being stopped. Although this effect may be marginal, given the disproportional rate of drug-related searches during traffic stops experienced by minorities, this study by the Illinois DUI Cannabis Task Force may ultimately result in a reduction in the amount of minorities who enter the carceral state as a result of drug related detainment after a traffic stop.

THE CANNABIS MARKET AND LEGITIMIZATION OVERVIEW

HB 1438 legalizes possession and consumption of adult-use recreational cannabis for adults 21 years of age or older. In doing so, the law authorizes a highly regulated supply chain that permits a limited number of producers under each license type to produce or distribute cannabis and cannabis-derived products within the parameters of the law and their license. As part of the state’s multilayered monitoring and control efforts, the Department of Agriculture is tasked with providing a means through which all producers in

the supply chain are required to report the movement of cannabis. The effect of this is that at any given time, the state is able to identify the total amount of cannabis in the legitimate market, the age of cannabis in the market, and any other data analysis that speaks to the movement, sale, or resale of cannabis throughout the state. The supply chain is insulated by limiting purchasing, selling, and transportation of cannabis to interactions between licensed organizations and other licensed organizations. For example, a designated dispensing organization can purchase products from a cultivation center or another dispensing organization. However, a cultivation center is not permitted to sell to an individual buyer. The only licensed organizations that can sell to an individual buyer are dispensaries. Similarly, dispensaries cannot purchase products from any organization that is not licensed by the state. In turn, the state manages the total amount of licenses based on an assessment of demand and total supply available. In granting additional infuser licenses, the Department of Agriculture is instructed to consider (1) the percentage of cannabis sales occurring in the illegitimate market, (2) whether there is an adequate supply of cannabis for medical users, (3) where there is an adequate supply of cannabis to serve purchasers, and (4) whether there is an oversupply of cannabis.

The Department of Agriculture is also tasked with assessing the total amount of cannabis in the legitimate market for the five other license types. The state uses this data to control supply. If the state determines there to be an oversupply of cannabis, the Department of Agriculture is permitted to decrease cannabis in the cultivation stage by up to 3,000 square feet “by rule,” based on market need. HB 1438 also allows the state to penalize retailers in the unregulated market: “Any person who knowingly acts as a retailer of Cannabis in this State without first having obtained a certificate ... shall be guilty of a Class 4 felony.”

HB 1438 SOCIAL EQUITY AND CORPORATE CITIZENSHIP

The state seeks to increase the participation of minorities and disenfranchised communities in the supply chain through the social equity application process. A “social equity applicant” is defined as an applicant that (1) has resided in an area disproportionately impacted by the “war on drugs,” (2) is majority-owned by an individual who was arrested as a result of the “war on drugs,” or (3) has at least 10 full-time employees, with a majority of them either living in an area disproportionately affected by the “war on drugs” for at least five years or having been incarcerated as a result of the “war on drugs.”

The law reads such that neither race nor ethnic demographic is referenced. Instead, the law uses geographic and experiential markers, such as residence of a “disproportionately affected area” or someone who has been incarcerated as a result of the “war on drugs.” This is distinctly different than civil rights-era laws intended to prohibit discrimination, which explicitly name race, gender, class, or other demographic information referred to as a “protected class.” In HB 1438, social equity applicants, as defined by their geographic or experiential marker, receive 50 points in support of their application for a license out of a total point system that includes 250 points. All dispensary license applicants are scored based on the criteria listed in Table 2.

TABLE 2
LICENSE APPLICATION SCORING SYSTEM BY CATEGORY

APPLICATION CATEGORY	TOTAL POSSIBLE POINTS PER CATEGORY
Social Equity Applicant	50
Security/Record Keeping	65
Business Plan, Financials, Floor Plan	65
Knowledge and Experience	30
Employee Training	15
Labor and Employment	5
Environmental Plan	5
Illinois Ownership	5
Veteran Status	5
Diversity Plan	5
<i>Community Engagement Bonus Points</i>	2

An analogous criterion and scoring system that incorporates social equity status is included across all applications for license types accompanied by other social equity initiatives. In addition to social equity application scoring, the Cannabis Business Development Fund includes the creation of a \$30 million low-interest loan program to support social equity business applicants with startup costs, as well as initiatives to recruit more social equity applicants. Simultaneously, revenue from the law continues to be invested through the state’s R3 program. After covering administrative costs, 25% of the remaining revenue is invested

in communities disproportionately affected by the “war on drugs” by way of grants towards gun violence reduction programs, post-incarceration community reentry, and programs that support social determinants of health.

HB 1438 also includes innovative provisions requiring businesses operating in the cannabis market to comply with social impact initiatives. Additionally, large marketplace operators that had been permitted to operate under medical cannabis laws since 2013 must also adopt a social equity inclusion plan that permits the business to choose between one of four types of social impact programs in which to invest up to 5% of sales revenue. These programs range from industry specific training and education to small business incubation.

THE ILLINOIS DOCTRINE — OBSERVATIONS FOR PUBLIC ADMINISTRATION DISCUSSION

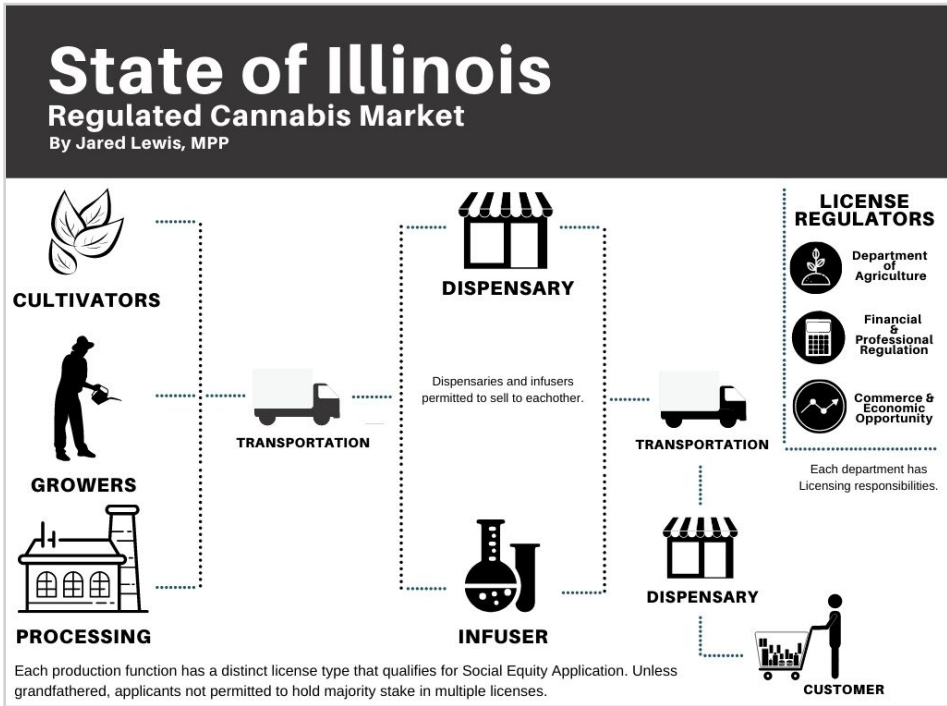
HB 1438 establishes a highly regulated cannabis market in the State of Illinois. Regulations are focused on the supply side of the market. (Figure 2) The law establishes six interdependent functions within the market supply chain from growth to consumption of cannabis products. The state limits the total number of licenses available at any one time based on regular assessment of consumer need for cannabis product (this is determined by collecting and analyzing cannabis consumption data). Similarly, the state also monitors and controls the total amount of cannabis to be produced by licensed organizations based on an assessment of data about the amount of product in the market, both regulated and unregulated. HB 1438 calls for a massive amount of data to be collected, analyzed, and incorporated into administrative decisions regulating the market. Data includes health data, criminal background data, tourism data, data on regulations in other states, and any other data “necessary for the administration of [the Bill].”

With this large scope of HB 1438, there are at least 15 policy observations that may be of interest to public administrators:

1. **It accepts the central role of politics.** HB 1438 evolved out of the “agenda-setting” process in the state legislature. Upon introduction of the bill, the legislative sponsor, Representative Jehan Gordon-Booth (D-92), explained to the Illinois House of Representatives that the discussion around legalizing recreational cannabis began two years prior and that the original intent was to address barriers to minority participation evident in other states (Fox 32 Chicago, 2019).

FIGURE 2

THE REGULATED CANNABIS MARKET IN ILLINOIS



2. **It lists intentions clearly and creates measurement mechanisms that monitor intentions.** HB 1438 provides a “preamble” to the social equity provision in the interest of “remedying the harms resulting from the disproportionate enforcement of Cannabis-related laws.” This “preamble” clearly articulates the intention of the HB 1438 social equity provision and creates data collection and monitoring protocols to achieve these intentions.
3. **It accepts the reality that resolving inequality may be a moving target.** HB 1438 establishes bureaucratic objectives that accept the “causality of empirical inequality” problem. In creating advisory, investment, and research programming, the bill recognizes a broad range of contributions that result in the larger problem of inequality. By charging the oversight officer with providing recommendations to address “any identified barriers

to entry in the Cannabis market,” the legislature empowers the role by statute to simply figure it out and tell the government what is needed to get it done.

4. **It merges classical bureaucratic and neobureaucratic principles.** Expansion of the bureaucracy includes expansion of processes within the bureaucracy. Therefore, HB 1438 is a recommitment to some classical bureaucratic principles that emphasize “structure, control, and the principles of administration” (Frederickson, 2010, pp. 32). Simultaneously, the law empowers administrators to figure things out — a reflection of neobureaucratic principles that emphasize the “process of decision making being ... decisions are made to achieve as much of a given goal as possible” (Frederickson, 2010, pp. 32).
5. **It creates interagency collaboration to address intentions.** HB 1438 relies on the expertise of multiple agency leadership, thereby mobilizing elements of many agencies to resolve the identified problems.
6. **It establishes formal opportunities for localized and citizen participation.** Most of the commissions and committees also make positions available for community activists and civic leaders who represent hyper-local issues and the communities the social equity provision seeks to serve. For example, the R3 Board must also include in its membership “one male who has previously been incarcerated and is over the age of 24 at time of appointment.”
7. **It relies on existing government data and supplements.** The bill requires data collection by almost all of the agencies mentioned in it, as well as using existing data — such as factors to determine “disproportionately impacted areas” in providing R3 capital to communities throughout the state — to make decisions going forward.
8. **It changes the charter of agencies to advance social equity.** In creating a new position and division within the Department of Commerce and Economic Opportunity, the bill effectively changes the charter of the agency. A key objective of the newly created oversight officer (colloquially, the “pot czar”) is to identify discrimination and inequality in the market and address it with administrative action or advisement to the legislature.
9. **It ties reparatory investments to the proportion of revenue by statute.** The bill sets aside 25% of revenue to go towards investment programs by

statute (Figure 1). To reduce the amount of money available for social equity programs, the legislature would have to amend the law.

- 10. It asks open-ended questions or makes a hypothesis about the cause and solution of an instance of empirical inequality.** HB 1438 creates the Illinois DUI Cannabis Task Force to obtain researched answers and report back to the legislature for things like the effects of cannabis consumption and driving and directs the Department of Human Services to monitor any changes in addiction related to cannabis. These findings will de-politicize their underlying questions (i.e., is cannabis addictive?).
- 11. It relies on free market principles and centers social equity.** At its heart, HB 1438 is a commerce and economic development bill. Its revenue, reparatory investment scheme, and enforcement and licensing is constructed around the creation of a new marketplace.
- 12. It disrupts inequality one issue at a time and attempts to resolve one issue at a time.** While issues of discrimination and empirical inequality exist throughout the state and across many industries, HB 1438 starts with the cannabis industry.
- 13. It leads with the expectation that corporations must do more.** HB 1438 implements community investment requirements for larger cannabis operators. It calls on bigger market players to help develop smaller market players and ties this support to a percentage of overall revenue of the business (up to a cap).
- 14. It uses experiential markers for social equity eligibility rather than a “protected class.”** Unlike civil rights legislation, which is arguably the most consequential social equity legislation on the federal level, HB 1438 does not create protected classes but instead leverages government fiat to acknowledge errors of the government’s past and sets out to resolve them.
- 15. It meets and expands social equity beyond public administration.** The functional definition of social equity provided by Svava and Brunet consists of three parts: (1) the “equitable management of institutions,” (2) just and equitable distribution of public services, and (3) “to promote fairness, justice, and equity in the formation of public policy” (2005). These elements are concerned with the process of governance and reflect a desire for government institutions to be fair in their approach to what they do and how they do it. HB 1438 interprets social equity as specific reparative

actions. While this may be broadly defined as a form of justice, HB 1438 uses a social equity frame that is inherent in its specifically defined reparatory action to measurably advance an equality of outcomes as opposed to just an equality of process.

CONCLUSION

The State of Illinois' implementation of HB 1438, the Cannabis Regulation and Tax Act, may prove to be one of the most consequential pieces of legislation in some time. The bill includes a social equity provision that has been lauded and which may become the baseline on which the federal government will legalize recreational cannabis. Additionally, the bill provides an opportunity for the field of public administration, and the associated academic movement, to move past a focus on legitimatization of social equity and start thinking critically about the future of the profession by supporting specific agency policies and public policy frameworks. Plus, HB 1438 leverages the creation of a new market to solve for policy failures of the past. In this sense, HB 1438 is — among other things — a post-modern social equity and reparations bill.

Jared Lewis is a Congressman John Lewis Social Justice Fellow for Science and Technology. In this role, he is working for leadership of the Congressional Black Caucus to author a national Tech Equity Agenda. He is a graduate of the University of Chicago, Harris School of Public Policy and is interested in social equity modeling in the tech sector, economic development, public policy, and social enterprise modeling.

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