

HOUSE BILL REPORT

E2SHB 2136

As Passed House:
April 29, 2015

Title: An act relating to comprehensive marijuana market reforms to ensure a well-regulated and taxed marijuana market in Washington state.

Brief Description: Concerning comprehensive marijuana market reforms to ensure a well-regulated and taxed marijuana market in Washington state.

Sponsors: House Committee on Appropriations (originally sponsored by Representative Carlyle).

Brief History:

Committee Activity:

Finance: 3/4/15, 3/6/15 [DPS];

Appropriations: 3/23/15, 3/31/15 [DP2S(w/o sub FIN)].

Floor Activity:

Passed House: 4/10/15, 67-28.

First Special Session

Floor Activity:

Passed House: 4/29/15, 70-25.

Brief Summary of Engrossed Second Substitute Bill

- Includes intent language and a tax preference performance statement for the sales and use tax exemption for qualifying patients and designated providers.
- Eliminates the 25 percent producer and processor taxes and increases the 25 percent retailer tax to 30 percent and specifies that the taxes are levied on the buyer.
- Provides a sales and use tax exemption to qualifying patients and designated providers.
- Renames the Liquor Control Board to be the Liquor and Cannabis Board (LCB).
- Provides marijuana tax revenues for local jurisdictions, distributed based on retail sales and population, at an annual cap of \$20 million and a sunset provision of January 1, 2022.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

- Changes the allowable uses of marijuana tax revenues for the Division of Behavioral Health and Recovery (DBHR) and the Department of Health (DOH).
- Specifies that the Dedicated Marijuana Account is subject to appropriation.
- Modifies the amounts specified for the LCB, DBHR, and DOH from the Dedicated Marijuana Account.
- Provides \$95,000 to the State Building Code Council in fiscal year 2016 for the development of fire and building code regulations for marijuana facilities.
- Modifies marijuana retailer signage requirements, allowing for one additional sign identifying the business or trade name.
- Revises the buffer distance provisions for the siting of a marijuana retail outlet and research licensees.
- Modifies the residency requirement to apply for a marijuana business license.
- Clarifies "public place" in provisions that prohibit the consumption of marijuana in a public place.
- Allows a marijuana business to use a common carrier to transport marijuana if the carrier is licensed by the LCB.
- Allows the LCB to receive private funding to be used for materials to improve public awareness of the health risks associated with the use of marijuana.
- Exempts cannabis health and beauty aids from all regulations in the Controlled Substances Act pertaining to marijuana; however, only for products that meet specific definitions.
- Includes signage requirements for a marijuana business to be placed outside the prospective business location notifying the public prior to the business becoming operational.
- Modifies the definition of marijuana concentrates.
- Creates a marijuana research license.
- Authorizes public universities to contract for marijuana research with federally recognized Indian tribes licensed to conduct marijuana research.
- Clarifies the tax treatment of bundled transactions at licensed marijuana retail stores.
- Prohibits conditional sales by any marijuana business.
- Provides the Governor authority to enter into agreements with federally recognized Indian tribes regarding any marijuana-related issue.
- Authorizes state licensed marijuana businesses to conduct business with Indian tribes as permitted by a tribal-state agreement.
- Requires a prohibition by a city, town or county, related to the siting of a marijuana business, be put to a public vote at a general election upon

submission of a petition or proposition submitted by a local legislative authority.

- Permits the legislative authority of a city, town or county to repeal a prohibition no less than two years after the effective date of the prohibition.
- Provides an additional \$12 million for cities and counties for distribution, based on retail sales, in the operating budget, subject to appropriation.
- Includes a contingency that Substitute Senate Bill 5052, which relates to medical marijuana, be enacted before Second Substitute House Bill 2136 takes effect.

HOUSE COMMITTEE ON FINANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Carlyle, Chair; Tharinger, Vice Chair; Nealey, Ranking Minority Member; Condotta, Fitzgibbon, Pollet, Robinson, Ryu, Springer, Stokesbary, Vick and Wylie.

Minority Report: Do not pass. Signed by 3 members: Representatives Orcutt, Assistant Ranking Minority Member; Manweller and Wilcox.

Minority Report: Without recommendation. Signed by 1 member: Representative Reykdal.

Staff: Dominique Meyers (786-7150).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Finance. Signed by 22 members: Representatives Hunter, Chair; Ormsby, Vice Chair; Carlyle, Cody, Condotta, Dunshee, Haler, Hansen, Hudgins, S. Hunt, Jinkins, Kagi, Lytton, Magendanz, Pettigrew, Sawyer, Schmick, Senn, Springer, Sullivan, Tharinger and Walkinshaw.

Minority Report: Do not pass. Signed by 8 members: Representatives Chandler, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Dent, Fagan, G. Hunt and Taylor.

Minority Report: Without recommendation. Signed by 3 members: Representatives MacEwen, Stokesbary and Van Werven.

Staff: Melissa Palmer (786-7388).

Background:

[Overview of Initiative Measure No. 502.](#)

Initiative Measure No. 502 (I-502) was a ballot measure approved by Washington voters in November 2012 that: (1) legalized the production, processing, possession and personal use of marijuana; (2) created a framework for a regulatory scheme to be further developed by the Liquor Control Board (LCB) through its rule-making authority; and (3) revised provisions in criminal statute to accommodate such legalization in accordance with the requirements of the initiative.

The scope of I-502 was broad and contained statutory provisions that include the following:

- legalizing the personal use and possession of up to 1 ounce of marijuana, as well as specified products directly related to such marijuana use;
- licensing and regulating marijuana production, distribution, and retailing;
- designating the LCB as the regulatory entity responsible for the implementation of the initiative, including continuing oversight over the commercial practices and conduct of licensed marijuana producers, processors, and retailers;
- providing the LCB with broad rule-making authority with respect to the development of the requisite regulatory scheme;
- implementing excise taxes on marijuana production, processing, and retailing;
- creating a dedicated marijuana fund for the collection and distribution of marijuana-related tax revenues;
- deleting statutory provisions containing criminal and/or civil penalties for marijuana-related activities authorized by I-502; and
- amending driving under the influence laws to include specific provisions pertaining to driving under the influence of marijuana.

The statutory provisions of I-502 are codified in the state Controlled Substances Act (CSA), chapter 69.50 RCW.

Federal Response to Marijuana Legalization by the States.

Washington is one of at least 23 states that have passed legislation allowing the use of marijuana for medicinal purposes and one of four states that allow its recreational use. These activities, however, remain illegal under federal law.

In August of 2013, the United States Department of Justice issued a formal enforcement policy memorandum in response to the legalization of recreational marijuana in the states of Washington and Colorado. In this memorandum, federal prosecutors were instructed to focus investigative and prosecutorial resources related to marijuana on specific enforcement priorities to prevent:

- the distribution of marijuana to minors;
- marijuana sales revenue from being directed to criminal enterprises;
- marijuana from being diverted from states where it is legal to states in which it is illegal;
- state-authorized marijuana activity from being used as a cover for trafficking other illegal drugs or other illegal activity;
- violence and the use of firearms in the production and distribution of marijuana;
- drugged driving and other marijuana-related public health consequences;
- the growth of marijuana on public lands; and
- marijuana possession or use on federal property.

With respect to state laws that authorize marijuana production, distribution, and sales, the memorandum states that when these activities are conducted in compliance with strong and effective regulatory and enforcement systems there is a reduced threat to federal priorities. In such instances, the memorandum asserts that state and local law enforcement should be the primary means of regulation. The memorandum, however, affirms continuing federal authority to challenge state regulatory systems and to bring individual enforcement actions in cases in which state regulatory efforts are inadequate.

Licensing of Marijuana Producers, Processors, and Retailers.

The LCB is authorized to issue three categories of commercial marijuana licenses: (1) the marijuana producer's license entitles the holder to produce marijuana for sale at wholesale to licensed marijuana processors or other producers; (2) the marijuana processor's license entitles the holder to process, package, and label marijuana for sale at wholesale to marijuana retailers and other processors; and (3) the marijuana retailer's license entitles the holder to sell marijuana products at retail prices in retail outlets.

The three categories of marijuana licenses are subject to identical regulations regarding initial application fees and renewal fees. The initial application fee is \$250. The subsequent issuance and renewal fee, required annually, is \$1,000.

Excise Taxes Imposed on Marijuana Producers, Processors, and Retailers.

An excise tax of 25 percent of the sale price must be paid by each of the three categories of licensees at each step of the production, processing, and marketing process:

- producers pay a tax of 25 percent of the wholesale price of the marijuana sold to processors or to other producers;
- processors pay a tax of 25 percent of the wholesale price of the useable marijuana or marijuana-infused products sold to retailers or to other processors; and
- retailers pay a tax of 25 percent of the retail price of the useable marijuana or marijuana-infused products sold to the consumer.

There are no statutory provisions explicitly addressing the taxation of retail sales of medical cannabis by collective gardens or medical cannabis dispensaries.

Sales and Use Tax.

Retail sales taxes are imposed on retail sales of most articles of tangible personal property, digital products, and some services. A retail sale is a sale to the final consumer or end user of the property, digital product, or service. If retail sales taxes were not collected when the user acquired the property, digital products, or services, then use taxes apply to the value of property, digital product, or service, when used in this state. The state, most cities, and all counties levy retail sales and use taxes. The state sales and use tax rate is 6.5 percent; local sales and use tax rates vary from 0.5 percent to 3.1 percent, depending on the location.

Tribal-State Compacts.

Where authorized by statute, the Governor may enter into compacts and agreements with the Indian tribes of this state regarding matters of mutual interest and/or concern. Many such compacts have been implemented regarding gambling and various taxation issues, most notably those regarding cigarette taxes and gasoline taxes. In 2001 legislation was passed allowing the Governor to enter into contracts with the tribes concerning the sale of cigarettes.

Such contracts must be for renewable terms of eight years or less. Cigarettes sold on Indian lands during the contracts term are subject to a tribal cigarette tax and are exempt from state cigarette, sales and use taxes.

Location Limitations for Marijuana Production and Marketing Operations.

The LCB is prohibited from issuing a license to any prospective producer, processor, or retailer whose business premises are located within 1,000 feet of the perimeter of the grounds of any of the following facilities:

- elementary or secondary school;
- playground;
- recreation center or facility;
- child care center;
- public park;
- public transit center;
- library; and
- any game arcade, admission to which is not restricted to persons 21 years of age or older.

Federal law imposes additional penalties on the distribution of controlled substances within 1,000 feet of an elementary or secondary school, college, playground, or public housing facility. The same additional penalties are imposed for distribution within 100 feet of a youth center, swimming pool, or video arcade.

Residency Requirements for Applicants for Marijuana Producer, Processor, and Retailer Licenses.

Currently, a person is required to have established state residency of three months to apply for a marijuana producer, processor, or retailer license.

Public Use of Marijuana.

It is unlawful to consume or open a package containing marijuana or marijuana products in view of the general public.

Marijuana Product Advertising Limitations.

Marijuana retailers are subject to specified restrictions regarding the advertising of marijuana and marijuana-based products. Included in these regulations is a blanket prohibition barring any advertising under the following circumstances:

- within 1,000 feet of school grounds, playgrounds, recreation centers, child care centers, public parks, libraries, or specified types of game arcades;
- on or in a public transit vehicle or public transit shelter; or
- on publicly owned property.

A licensee who violates any of these advertising prohibitions is subject to a \$1,000 fine for each violation. The proceeds of such fines must be deposited in the dedicated marijuana fund established under I-502.

Transport and Delivery of Recreational Marijuana by Third-Party Carriers.

Transportation and/or delivery of marijuana and processed marijuana products may be done only by the employees of a producer, processor, or retailer. Other transportation or trucking services may not be used for this purpose.

Dedicated Marijuana Fund.

I-502 created a "dedicated marijuana fund," deposited with the State Treasurer that consists of moneys derived from marijuana excise taxes, license fees, penalties, forfeitures, and all other moneys, income, or revenue received by the LCB from marijuana-related activities.

Proceeds from the fund must be distributed every three months by the LCB to specified public entities and in amounts established in statute. Among the distributions is \$5 million annually for the LCB to administer the legal marijuana system.

Life Sciences Discovery Fund.

In 2005 the Life Sciences Discovery Fund (LSDF) was created to promote life science research in Washington. The LSDF was authorized to receive tobacco settlement strategic contribution payments and leverage these state contribution payments by providing grant opportunities to support life sciences research and development. The LSDF is managed by the LSDF Authority, governed by a board consisting of legislators and persons appointed by the Governor. The LSDF Authority solicits and reviews grant applications.

Local Prohibitions and State Preemption.

Many cities and counties throughout the state have enacted ordinances that have the effect of prohibiting the siting of licensed marijuana producers, processors, and retailers within their borders. Approximately 105 cities and 11 counties in Washington have enacted such a prohibition or moratorium. Other cities and counties have enacted special zoning ordinances limiting the location of recreational marijuana businesses to certain areas or have proposed special licensing requirements.

These actions by Washington cities and counties have given rise to litigation regarding whether or not local governments are preempted from enacting local ordinances that have the effect of preventing or interfering with the siting of state licensed marijuana businesses authorized under I-502. Courts in Clark County, the City of Fife, the City of Wenatchee, and elsewhere have ruled that state law does not preempt such actions by local governments. The Washington State Attorney General has published a formal opinion in January 2014 stating that state law does not preempt local ordinances that impose bans or moratoria regarding the siting of marijuana producers, processors, and retailers.

Summary of Engrossed Second Substitute Bill:

PART I:

Intent and Tax Preference Performance Statement.

The bill includes the legislative intent and a tax preference performance statement for the authorized sales and use tax exemption for qualified patients. The Department of Revenue (DOR) is required to provide a specific tax reporting line for marijuana retailers to include the amount of exempt sales on their tax return.

PART II:

Taxation of Marijuana Producers, Processors, and Retailers.

The two 25 percent marijuana excise taxes on marijuana producers and processors is eliminated. The third 25 percent marijuana excise tax on retailers is modified by specifically imposing the tax on the buyer of any marijuana product subject to the excise tax. The rate is changed to 30 percent and applies to the final retail price of marijuana products subject to the tax. This tax is in addition to state retail sales and use tax and must be separately itemized on the sales receipt provided to consumers. However, the displayed shelf price must illustrate the final price to the consumer, including the marijuana excise tax, but does not need to include the general retail sales tax.

A sales and use tax exemption for qualifying patients is allowed for patients with an authorization card. Designated providers of qualifying patients are also exempt from retail sales tax when purchasing for a qualifying patient.

Additional provisions are included to provide the LCB with the proper authority to collect and administer the marijuana excise tax. This includes the opportunity for persons who have been issued a notice of unpaid marijuana excise taxes, which are trust fund taxes. Trust fund taxes are defined as those taxes collected from the buyer and held in trust by the seller until remitted to the state agency that administers the tax; this includes the 30 percent marijuana excise tax.

Bundled Transactions and Conditional Sales.

Marijuana producers and processors are prohibited from requiring the purchase of non-marijuana products or other services as a condition to purchase marijuana products.

Licensed marijuana retailers must collect the marijuana excise tax on the entire sales price of bundled transactions, unless the retailer maintains records that can be used to determine the true value of the marijuana product sold in the bundled transaction.

Distribution of Marijuana Excise Tax Revenue.

A portion of marijuana excise tax revenues deposited into the State General Fund are shared with counties and cities. Distributions to local jurisdictions will not occur until \$25 million of marijuana tax revenues have been deposited into the State General Fund, at which point 30 percent of the previous fiscal year's General Fund revenues will be distributed to eligible counties and cities in four installments. Thirty percent of the local distribution is disbursed to counties, cities and towns allocated as a portion of state marijuana revenue based on the amount of marijuana excise tax revenues attributable to any licensed retail store within the county, city or town. The remaining 70 percent is disbursed based on population with counties receiving 60 percent of this allocation and cities and towns will share the remaining 40 percent. Local jurisdiction distributions may not exceed \$20 million per fiscal year. The distribution to local jurisdiction expires January 1, 2022.

Allowable Uses for the Division of Behavioral Health and Recovery (DBHR).

The substitute bill changes the types of programs that the DBHR is permitted to support using the revenue distributed to them under I-502 to include development and evaluation of programs and practices aimed at prevention or reduction of maladaptive substance use among

middle and high school students. Also allows the DBHR to use their marijuana tax funds for evidence-based or research-based programs and requires these programs to be deemed cost-beneficial by September 1, 2020.

Marijuana Retailer Signage Requirements.

Marijuana retailers may only display two signs for purposes of identifying their business or trade name. Signs must be no larger than 1,600 square inches and cannot be posted within 1,000 feet of an elementary or secondary school or a playground. Marijuana retailers are no longer required to ensure that product in the store is not visible from a public right-of-way.

PART III:

Revising Buffer Distances Between Marijuana Businesses and Specified Facilities.

The legislative authority of a county, city, or town is permitted to reduce the buffer requirements for licensed marijuana businesses from 1,000 feet to 100 feet from recreation centers, child care centers, public parks, public transit centers, libraries, and certain game arcades. However, the 1,000-foot buffer requirement for schools and playgrounds is maintained. In order to reduce the buffer requirement, a county, city, or town must pass an ordinance declaring that the reduction will not negatively impact the jurisdiction's law enforcement efforts, public safety, or public health. The LCB may license businesses located in compliance with such an ordinance.

Residency Requirements for Applicants for Marijuana Producer, Processor, and Retailer Licenses.

State residency requirements for those applying for a marijuana producer, processor, or retailer license are increased from three months to six months.

PART IV:

Consuming Marijuana in Public Places.

Consuming or opening a package containing marijuana or marijuana products in a public place is prohibited. "Public place" has the same definition as in liquor control statutes, except that consumption in state parks and on brewery and winery grounds is not permitted. A violation is a class 3 civil infraction, punishable by a fine of \$50, plus applicable local fines.

PART V:

Transportation and Delivery Services for Licensed Marijuana Business.

A licensed marijuana producer, processor, or retailer may use the services of a common carrier to physically transport or deliver marijuana, useable marijuana, marijuana concentrates, and marijuana-infused products within the state. The common carrier must be licensed by the LCB. Employees of a licensed common carrier who are involved in the transportation of marijuana or marijuana products must be at least 21 years of age.

An employee of a common carrier engaged in marijuana-related transportation or delivery services is prohibited from carrying or using a firearm during the course of providing such services, unless:

- the LCB explicitly authorizes the carrying or use of firearms by the employee;
- the employee has a private security guard license; and
- the employee is otherwise in full compliance with LCB regulations.

The LCB must establish rules creating an annual licensing procedure for a common carrier who seeks to transport or deliver marijuana, useable marijuana, marijuana concentrates, and marijuana-infused products. Such rules must:

- establish criteria for the approval or denial of a license application;
- provide minimum qualifications for any employee authorized to drive or operate the transportation or delivery vehicle;
- address the safety of the employees transporting or delivering the products, including issues relating to the carrying of firearms by such employees;
- address the security of the products being transported, including a system of electronically tracking all products at both the point of pickup and the point of delivery; and
- set reasonable fees for the application and licensing process.

PART VI:

Allowing the LCB to Accept Donations for Funding Informational Material.

The LCB is authorized to accept donations or grants from any source for the purpose of improving public awareness of the health risks associated with the use of marijuana by both youth and adults.

PART VII:

Cannabis-Based Beauty Aids.

Cannabis health and beauty aids are exempted from all regulations in the CSA pertaining to marijuana, marijuana concentrates, or marijuana-infused products. "Cannabis health and beauty aid" is defined to mean a product containing parts of the cannabis plant and which:

- is intended for use only as a topical application to enhance appearance;
- contains a tetrahydrocannabinol (THC) concentration of no more than 0.3 percent;
- does not cross the blood-brain barrier; and
- is not intended for consumption by humans or animals.

PART VIII:

Signage Requirements for Prospective Licensees.

Applicants for a marijuana producer's, marijuana processor's, marijuana researcher's, or marijuana retailer's license under this chapter must conspicuously display a sign on the outside of the premises to be licensed, notifying the public that the premises are subject to an application for such license. The LCB must promulgate such rules as are necessary for the implementation of this section, including rules pertaining to the size of the sign and the text thereon, the textual content of the sign, and any other requirements necessary to ensure that the sign provides adequate notice to the public. The LCB is required to provide the sign to the applicant but may charge a fee.

PART IX:

Changes to Marijuana-Related Definitions in the CSA.

The term "marijuana concentrates" in the CSA is redefined to include all such concentrates having a THC concentration greater than 10 percent.

The definition of "marijuana-infused products" in the CSA is revised to reduce the maximum allowable THC concentration in such products from 60 percent to 10 percent.

PART X:

Marijuana Research Licenses.

A marijuana research license is created, allowing holders to produce, process, possess, and deliver marijuana for the purposes of:

- testing chemical potency and composition;
- conducting clinical investigations of marijuana-derived drug products;
- conducting research on the efficacy and safety of marijuana use as medical treatment;
- and
- conducting genomic and agricultural research.

The license application fee is \$250, and the issuance and annual renewal fee is \$1,000. Half of all fees collected from a research license must be deposited in the LSDF.

An applicant for a marijuana research license must submit to the LSDF Authority a description of the research it intends to conduct, and the LSDF Authority must review the proposal for compliance with the license requirements. The application must be denied if the LSDF Authority determines that the proposed research does not comply with the allowable areas of research or license requirements. The LSDF Authority must also review any research reports generated by licensees under LCB rules and determine the licensee's continued compliance with license requirements. Such reports are exempt from public disclosure if they contain proprietary information.

A marijuana research licensee may sell marijuana to other research licensees but not to any other person or entity. Research activities conducted under a valid research license do not constitute a violation of Washington state law.

Research licensees may contract with the University of Washington (UW) and Washington State University (WSU) to collaborate in marijuana research projects, which must be approved by the LSDF Authority. Both the UW and WSU are given authority to contract with licensees to conduct research.

The LCB has authority to make rules regarding application and renewal requirements, conditions, security, quantity of marijuana and marijuana products, reporting, and other matters relating to the research license.

PART XI:

Dedicated Marijuana Account.

The dedicated marijuana account is created in the State Treasury. Monies in the account must be appropriated before the distributions under Part II can be made.

PART XII:

The Governor is authorized to enter into agreements with federally recognized Indian tribes concerning marijuana. Such agreements may address any marijuana-related issue that involves both state and tribal interests or otherwise has an impact on tribal-state relations. Such agreements may include the following subject matter:

- criminal and civil law enforcement;
- regulatory issues related to the commercial production, processing, sale, and possession of marijuana and processed marijuana products;
- medical and pharmaceutical research involving marijuana;
- taxation; and
- dispute resolution, including the use of mediation or other nonjudicial process.

Any marijuana agreement relating to the production, processing, and sale of marijuana in Indian country, whether for recreational or medical purposes, must address the following issues:

- preservation of public health and safety;
- ensuring the security of production, processing, retail, and research facilities; and
- cross-border commerce in marijuana.

The Governor may delegate the power to negotiate marijuana agreements to the LCB. In conducting such negotiations, the LCB must, when necessary, consult with the Governor and/or the Department of Revenue.

State sales, excise, and use taxes do not apply with respect to tribal commercial activities involving marijuana and which are covered by an agreement with the state.

State licensed marijuana retailers are authorized to purchase and receive marijuana and processed marijuana products from a federally recognized Indian tribe as permitted by a tribal-state agreement.

State licensed marijuana producers and processors are authorized to sell and distribute marijuana and processed marijuana products to a federally recognized Indian tribe as permitted by a tribal-state agreement.

PART XIII:

Repeals a mandatory 24-hour sentence and \$250 fine for misdemeanor convictions where it is the offender's first violation of the CSA. Repeals additional penalties for subsequent misdemeanor convictions and alternative community restitution sentence.

PART XIV:

Prohibition by Public Vote.

A city, town, or county may prohibit the production, processing, and sale of marijuana under I-502 by passing an ordinance, or by submission of a petition signed by 30 percent of the registered voters, and then submitting the ordinance for approval of a majority of voters at a general. Local legislative authorities are not permitted to repeal a prohibition within two years after the effective date of the prohibition, voted on in a general election.

Effective Date.

Except for Parts V and X, which take effect October 1, 2015, the proposed substitute bill would take effect on July 1, 2015, provided Senate Bill 5052, as amended, is enacted into law by July 1, 2015.

Local Funding.

Funding of at least \$12 million, in addition to the amounts required by the proposed substitute, is provided in the budget for distribution to local governments for marijuana enforcement under a distribution formula based on retail sales within local jurisdictions. The \$12 million is required to be appropriated, at least \$6 million in each fiscal year of the upcoming biennium. If the \$12 million is not appropriated in the operating budget this section is null and void and locals will not receive the additional funding.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on April 27, 2015.

Effective Date: The bill contains an emergency clause and takes effect on July 1, 2015, except for parts V and X, which take effect October 1, 2015. However, the bill is contingent upon the enactment of Senate Bill 5052 by July 1, 2015.

Staff Summary of Public Testimony (Finance):

(In support) Marijuana excise tax reform is a top priority of legal marijuana business owners in Washington. The current marijuana excise tax structure negatively impacts legal marijuana businesses because the direct competition, the illicit market, is not subject to the high tax rates and confusing application. The current tax structure harms the profitability of small businesses and should be restructured to allow legal businesses to compete with the illicit market. Without tax reform, legal marijuana producers, processors and retailers will go out of business. No other product in Washington is taxed as heavily as marijuana. The tax rate should be lower and 30 percent is an appropriate tax rate. The legal marijuana retailers provide a larger selection and higher quality product than the illicit market can offer. The recreational market will succeed if they are allowed to charge a competitive price. As the number of legal marijuana businesses increase, the number of union wage jobs in Washington will increase as well. The allowance for legal marijuana businesses to transport and deliver products is also appreciated. This will allow legal marijuana businesses to better compete with the illicit market.

Local jurisdictions support the provision that allows a portion of marijuana excise tax revenue to be distributed to cities and counties. Cities and counties are partners with the state in the newly legalized marijuana market to ensure safety around marijuana producer, processor, and retail facilities. As marijuana use increases, the demands on local emergency

services will increase as well. Paying for these additional services can be aided with the additional funds. The revision of buffer distances between marijuana businesses and specified facilities, including recreation centers and child care centers, will enable additional communities to support legal marijuana retailers and equalize access to legal marijuana across the state.

The marijuana research licenses will allow Washington to become leaders regarding marijuana studies, research and innovation.

The allowance for the Liquor Control Board to accept donation for information materials is appreciated. The informational materials are essential to continue educating the public about health risks to both adults and children. Continue to limit marijuana access to underage individuals.

The medical marijuana tax exemption is appreciated.

(In support with amendment(s)) Counties do not have a stable, robust general fund and access to the numerous tax revenue streams like cities and the state. Support is required to provide the services the state has required counties to provide. The proposed legislation would share less than 6 percent of the current marijuana revenue with local jurisdictions. Direct the revenue distributions currently directed to defunct programs to the State General Fund and make more revenue available to local governments. With additional support from local jurisdictions, the state will see more business and excise tax revenue. Because marijuana is so easily brought across jurisdictional boundaries, the local jurisdiction revenue distribution should not be limited to jurisdictions that have active recreational marijuana businesses. The revenue should be distributed to all local jurisdictions that allow recreational marijuana businesses and not limited to those that currently have an active recreational marijuana business. A broader array of marijuana offenses should be misdemeanors rather than felonies, which will make enforcement more comparable to alcohol enforcement and will allow cities to enforce lower-level marijuana offenses.

The Liquor Control Board is only allotted \$1.2 million in the bill to reduce the illicit market. However, the LCB has identified the need for \$5 million to achieve this objective and does not want to divert funds from other important work to fully fund this program.

The bill should also require local jurisdictions to receive voter approval before imposing a ban on recreational marijuana businesses. These changes to voting requirements would align the requirements for the marijuana industry and the liquor industry in Washington. The residency requirement should not be changed from three months to six months.

Insert the word "health" back into the phrase "health and beauty products" in section 7 of this bill. The products are both therapeutic and aesthetically enhancing.

Vaping lounges and night clubs serve underage individuals and should be regulated. Initiative 502 does not address this problem.

(With concerns) The proposed 30 percent marijuana excise tax rate is too high. Currently, marijuana excise tax revenue collected by legal marijuana businesses is not allowed to be

deducted as business expense at the federal level for tax purposes. This needs to be remedied. Out-of-state marijuana businesses should also be allowed to do business in Washington.

While local jurisdictions appreciate the marijuana excise tax revenue distribution in this bill, the distribution of \$20 million to all jurisdictions is arbitrarily low. Additionally, the revenue distribution should not end in 2022. If the state is asking local jurisdictions to combat the illicit market, the state should provide continued financial support for these efforts.

(Opposed) This legislation will close over 1,000 medical marijuana businesses in Washington. The benefit of this is unclear. Requiring medical marijuana patients to obtain their medicine from recreational stores is burdensome for patients. The bill will lead to the incarceration of medical marijuana consumers. Medical marijuana is legal at the federal level and recreational marijuana is illegal. The recreational market will need vertical integration in order to be successful and compete against the illicit market. Farmers must not be prohibited to sell their products or they will go bankrupt. Disbanding the medical market and illicit market were not objectives of Initiative 502.

Staff Summary of Public Testimony (Appropriations):

(In support) This legislation reflects efforts to create a strong regulatory structure for the marijuana market. The goal is to create a structured system to allow people to legally access marijuana. These policy changes take steps to make the I-502 market viable. This legislation is needed to create a functional framework. The legal marijuana system hangs in the balance. The licensed, regulated marijuana businesses operate next to businesses that do not have to abide by any laws. Most other types of businesses compete with peers on an equal playing field, but that is not how the marijuana market is currently structured. The current I-502 system is hamstrung and will remain so without the fixes included in this bill. The current system depresses the legal market and, as a result, the legal market is unable to compete with the illicit market. The marijuana market has the potential to provide a lot of tax revenue to the state, but the right regulatory system needs to be in place for that to happen. By helping the regulated industry, the illicit market will be eliminated. The simplification to the tax structure is strongly supported and will allow for the legal market to be more competitive. If more people end up in the black market, there will need to be more funding provided to the criminal justice system. Sick people should not be put into a sick system; to address this, Washington needs a dynamic and robust system. The changes to the 1,000 foot buffer are particularly helpful with siting licensed marijuana businesses. The black market is roaring in areas where licensed stores are currently unable to be sited. The siting is essential to opening up larger areas to legal access. Allowing transportation of marijuana products through a common carrier is necessary. It is almost unbelievable that the current system requires novices to transport goods worth thousands of dollars. Local jurisdictions have been tasked with protecting legal businesses due to the continuing illicit market. It is clear there needs to be legislation to address zoning issues and revenue sharing with local jurisdictions. There should be a public vote required before a jurisdiction is able to prohibit the sale of marijuana, similar to the requirement that applies to the banning of liquor sales. Keeping licensed stores out of an area will not keep marijuana out of an area. The bans have done nothing but create a green light for the black market. If a public vote were required, it would force conversations about the issues. It is important to have a structure that allows for research.

The core business of the LSDF Authority is to review applications for research. The LSDF Authority is well-known and trusted and positioned to serve a role in the licensing of research related to marijuana. The Liquor Control Board suggests changes to the statute to address the issues related to the bundling products at licensed stores.

(In support with concerns) This is a foundation to begin to ensure a highly regulated market. There are cities that do not currently have retail stores and therefore will not benefit from the revenue sharing set forth in this legislation. These cities have limited resources and have seen an increase in crime related to the illicit marijuana market. The sharing of revenues with local governments is necessary for a strong partnership between local governments and the state. The state needs the local governments' assistance and local governments need resources to provide that assistance. The revenue sharing provisions are too restrictive. Only about 5.6 percent of the excise taxes will be shared with local governments, which is not sufficient. The sunset of the local government revenue sharing in 2022 is harmful. There should not be a \$20 million cap on the revenue sharing with local government, but instead the amount local governments receive should grow. Both the state and local governments should benefit from the regulation changes.

(With concerns) While the cities of Renton and Redmond are appreciative of the idea of revenue sharing, the way the revenue sharing is structured is disappointing. Additionally, the sunset of the revenue sharing and the caps are problematic. The state needs local government to ensure the regulated market is successful. There is no revenue sharing associated with producers or processors within the city limits. The 1,000 foot buffer change will be helpful to local government to accommodate retail establishments. However, there are currently retail establishments right outside of the city limits. Under this revenue sharing proposal, the city would not share in any revenue associated with these establishments, yet these establishments require city resources.

(Opposed) The sickest and poorest will not be able to afford their medicine. The 30 percent excise tax that will be assessed is 30 percent higher than medical patients currently pay. Thirteen of the 19 states that have a medical cannabis system do not have an excise tax assessed on it. Some states charge sales tax on medical cannabis sales and other do not. The changes in this legislation will cause Washington to have the highest taxes on medical cannabis in the country. This will create an over-priced and over-regulated system that does not meet the medical patients' needs. The state is criminalizing patients and providing resources to local governments to do so. This legislation will reduce access to medication by 80 percent. A person who feels there is a good excuse to cut medication for sick and dying patients should not be in office. Currently, the LCB has only located one-third of the stores and it is unclear when the remaining stores will open. The current medical access will be closed off under this proposal. There are children with a list of medical conditions that show improvements from cannabis. It is not an option to use pharmaceuticals in place of cannabis because pharmaceuticals do not work. For instance, cannabis has reduced the occurrence of seizures in children where pharmaceuticals have not. If the taxes are increased, people with limited income will not be able to afford their medicine. The only affordable place to access cannabis is through dispensaries. Under this proposal, the cost of medication would increase and be four times higher than it is currently. It is also highly unlikely the needed medication would be available on the black market. There is a large cost differential between the current system and the one proposed under this legislation for medical cannabis patients. Many

medical patients are poor and have limited mobility. There will be financial suffering. While counties empathize with budget constraints, counties are struggling too. The provisions in this legislation only offer limited revenue sharing to county governments. Counties do not have a stable revenue source. Revenues have been flat for many counties since 2008. This legislation is one of the last opportunities during the 2015 legislative session to provide revenues to counties for vital services. Instead, the legislation caps the revenue sharing and has a sunset, in which the revenue sharing would cease in the future. In the future, the state will collect \$350 million in marijuana excise tax but will not share any of the collections with local governments. The current excise tax structure helps small producers compete with larger producers. Without this structure, larger producers will simply buy space in retail stores and push out the smaller producers. The legislation does not address the medical needs of the sick and dying.

(Other) The provisions that change the buffer zones and the regulation of beauty aids are appreciated. The excise tax of 30 percent on the medical products for cannabis patients will price patients out of the legal market. There are many low-income individuals who need access to affordable medicine. The excise tax of 30 percent on qualifying patient's purchases needs to be addressed. There should be a public vote required before a local government is able to ban the sale of marijuana. The changes impacting the Department of Social and Health services will better enable the delivery of substance abuse prevention and treatment programs.

Persons Testifying (Finance): (In support) Representative Carlyle, prime sponsor; Hayden Woodard and Suzy Wilson W.O.W Weed; Christian Carter and Trenton Ricker Kai Dro; Vicki Christopherson, Washington CannaBusiness Association; Jim Mullen, The Herbarry; Dan Devlin, DB3; Rob Hendriz, Cannabis Central; Justin Wildhaber, Greenfreedom LLC; Seth Dawson, Washington Association for Substance Abuse Prevention; Jeremy Larson; Ezra Eickmeyer, P&E Consulting; Chris Kealy, Spinning Heads Incorporated; Andy Ryder, City of Lacey; Dusty Pierpoint, Lacey Police Department; Danielle Rosellison, Washington Federation of Marijuana Businesses; David Mendoza, City of Seattle; John Schochet, City of Seattle Attorney's Office; John Murphy; Chris Cody, Coalition for Cannabis Standards and Ethics; Jeff Gilmore, JP LLC; Rich Garza, Washington State Liquor Control Board; Elissa Goss, Washington State Labor Council; Shelly Kloba, City of Kirkland; Jedidiah Haney, Cause-M; Boris Gorodnitsky, Coalition for Cannabis Standards and Ethics; Mark Childs; Alex Cooley; National Producers, Processors and Retailers; and James Vanhoute, Celesteva LLC.

(In support with amendment(s)) Candice Bock, Association of Washington Cities.

(With concerns) David Sauter, Klickitat County; Helen Price-Johnson; Brian Enslow, Washington State Association of Counties; Ah Warner, Internation Cannabis Health and Beauty Aids Producers Alliance; Ron Harding, City of Yelm; Jen Estroff, Americans for Safe Access; Jessica Becket, United Food and Commercial Workers 367; Arthur West, National Freedom Alliance; and CJ Russo, Green Lady Marijuana.

(Opposed) Jamie Moser; Steve Sarich, Cannabis Action Coalition; Briahna Taylor, City of Spokane Valley; Steve Mohr, Olympia Alternative Medicine; Dana Greetham, The Human

Solution; Attila Soos, Verdavanti; Patricia Martinez; Micha Anderson, Association of Safe Access; and Dave Vineberg.

Persons Testifying (Appropriations): (In support) Representative Carlyle, prime sponsor; John Kingsbury; Ezra Eickmeyer, P & E Consulting; Philip Dawdy, Cascadia Growers Association; Boris Gorodnitsky, Coalition for Cannabis Standards and Ethics and New Leaf Enterprises; Vicki Christophersen, Washington CannaBusiness Association; Jim Mullen, The Herbarry; Lori Lizotte, Polygenix; Dan Devlin, Db3, Incorporated; David Mendoza and John Schochet, City of Seattle; Jeremy Kaufman, Coalition for Cannabis Standards and Ethics; Jedidiah Haney, Cause-M; John Des Rosier, Life Sciences Discovery Fund; and James Parabello, Liquor Control Board.

(In support with concerns) Ron Harding, City of Yelm; Majken Ryherd, City of Kirkland; and Candice Bock, Association of Washington Cities.

(With concerns) Doug Levy, Cities of Renton and Redmond.

(Opposed) Erin Palmer; Shanna Blevins; Steve Sarich, Cannabis Action Coalition; Steve Lindstrom, Olympia Alternative Medicine; Eric Johnson, Washington State Association of Counties; and Jeff Gilmore.

(Other) Jen Estroff, Americans for Safe Access; and Michael Langer, Department of Social and Health Services.

Persons Signed In To Testify But Not Testifying (Finance): Anders Taylor, Sweet Leaf LLC.

Persons Signed In To Testify But Not Testifying (Appropriations): None.