
Commerce & Gaming Committee

HB 2998

Brief Description: Facilitating the orderly development of the legal marijuana market and eliminating the illicit marijuana market.

Sponsors: Representatives Hurst, Condotta and Sawyer.

Brief Summary of Bill

- Reduces the excise tax on the retail sale of marijuana products from 37 percent to 25 percent.
- Establishes the general principle that Washington statutes preempt municipal ordinances or regulations pertaining to the lawful production, processing, and retail sale of commercial marijuana products, subject to specified exceptions.
- Authorizes municipalities to prohibit the siting and operation of marijuana producers and processors within their jurisdictional boundaries.
- Prohibits a municipality from enacting an ordinance or regulation that has the effect of precluding the operation of licensed marijuana retailers, unless the municipality does not permit any retail activities or uses within its jurisdictional boundaries.
- Establishes that cities, towns, and counties retain their existing zoning authority regarding the siting of licensed marijuana retailers.

Hearing Date: 3/2/16

Staff: Thamas Osborn (786-7129).

Background:

Overview of Initiative 502.

Initiative 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 and marijuana-derived products; (2) created a framework for a regulatory scheme to be further

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developed by the Liquor and Cannabis Board (LCB) through its rule-making authority; and (3) implemented a taxation system for commercial marijuana enterprises.

Licensing of Marijuana Producers, Processors, and Retailers.

The LCB issues 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.

History of the Excise Tax on the Retail Sale of Recreational Marijuana.

Under the taxation scheme for marijuana products originally established in I-502, an excise tax of 25 percent of the sale price was imposed upon each of the three categories of licensees for sales occurring at each step of the production, processing, and marketing process:

- Producers were subject to a tax of 25 percent of the wholesale price of the marijuana sold to processors or to other producers.
- Processors were subject to a tax of 25 percent of the wholesale price of marijuana products sold to retailers or to other processors.
- Retailers were subject to a tax of 25 percent of the retail price of the useable marijuana or marijuana-infused products sold to the consumer.

During the 2015 session, legislation was passed that fundamentally revised the original I-502 taxation scheme applicable to the sale of useable marijuana, marijuana-infused products, and marijuana concentrates. Under the new taxation scheme, there is a single excise tax imposed on licensed marijuana retailers based on the retail sales price, and producers and processors are no longer subject to marijuana-related excise taxes. Accordingly, the retail sale of marijuana products is now subject to a single excise tax of 37 percent of the retail price. This tax is in addition to state retail sales and use tax and must be separately itemized on the sales receipt provided to consumers.

State Preemption and Regulation of Marijuana Businesses by Local Governments.

Under the Washington Constitution, local governments are empowered to adopt "all such local, police, sanitary, and other regulations as are not in conflict with the general laws" (Article XI, section 11). As the result of this constitutional principle, Washington law has developed a strong presumption against finding that state law preempts local ordinances. Accordingly, as a general rule, local governments may enact ordinances regulating the same subject matter as state laws provided they do not conflict. The text of I-502 does not address the issue of state preemption of local ordinances pertaining to the regulation of marijuana-related commerce.

Because I-502 is silent regarding the preemption issue, many cities and counties throughout the state have enacted ordinances that prohibit the siting of licensed marijuana producers, processors, and retailers within their borders. The most recent statistics compiled by the Municipal Research and Service Center indicate that, to date, approximately 88 cities and nine counties in Washington have enacted such a prohibition or moratorium. Many 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 in Washington courts regarding whether local governments are preempted from enacting local ordinances that have the effect of preventing or restricting 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. In January 2014, the Washington State Attorney General published a formal opinion stating that state law does not preempt local ordinances that impose bans or moratoria regarding the siting of marijuana producers, processors, and retailers.

Authorization of Zoning Ordinances Pertaining to Marijuana Producers and Processors.

Pursuant to statute, cities, counties, and towns are authorized to enact ordinances prohibiting marijuana production and/or processing in areas zoned primarily for residential or rural use with a minimum lot size of 5 acres or smaller.

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. Starting no earlier than fiscal year 2018, 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, cities, and towns 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 \$15 million per fiscal year for the 2017-19 biennium and \$20 million per fiscal year thereafter.

Summary of Bill:

Reduction of Marijuana Excise Tax.

The excise tax on the retail sale of useable marijuana, marijuana-infused products, and marijuana concentrates is reduced from 37 percent to 25 percent.

State Preemption Regarding the Regulation of Commerce in Marijuana.

The act establishes the general principle that Washington statutes preempt municipal ordinances or regulations pertaining to the lawful production, processing, and retail sale of commercial marijuana products. However, such state preemption is subject to the following exceptions:

- Municipalities are authorized to prohibit the siting and operation of marijuana producers and processors within their jurisdictional boundaries.
- If a municipality has enacted ordinances or regulations that preclude all retail activities or uses within its jurisdictional boundaries, then it may prohibit the siting and operation of licensed marijuana retailers as well.
- Cities, towns, and counties retain their existing zoning authority regarding the siting of licensed marijuana retailers.

Appropriation: None.

Fiscal Note: Requested on February 26, 2016.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.