

HOUSE BILL REPORT

HB 1099

As Reported by House Committee On: Commerce & Gaming

Title: An act relating to local governments' unofficial moratoria on state-licensed marijuana retail outlets.

Brief Description: Addressing local governments' unofficial moratoria on state-licensed marijuana retail outlets.

Sponsors: Representatives Sawyer, Condotta and Kirby.

Brief History:

Committee Activity:

Commerce & Gaming: 1/17/17, 1/19/17 [DPS].

Brief Summary of Substitute Bill

- Establishes that effective January 1, 2018, a municipality that refuses to allow the siting or operation of retail marijuana businesses absent the formal adoption of an ordinance or resolution explicitly prohibiting the operation of such businesses within its jurisdictional boundaries forfeits the following: (1) 70 percent of the municipality's share of the monies in the Liquor Revolving Fund and (2) all of its share of state marijuana excise tax revenues to which it might otherwise be entitled.
- Makes a city, town, or county subject to the revenue forfeiture provisions of the act if it has an ordinance or regulation that authorizes a specific number of state-licensed marijuana retail outlets that is less than the number of such outlets allotted or approved for operation within that jurisdiction by the Liquor and Cannabis Board.

HOUSE COMMITTEE ON COMMERCE & GAMING

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Sawyer, Chair; Kloba, Vice Chair; Condotta, Ranking Minority Member; Barkis, Blake, Farrell, Kirby, Ryu and Young.

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.

Minority Report: Without recommendation. Signed by 1 member: Representative Vick, Assistant Ranking Minority Member.

Staff: Thamas Osborn (786-7129).

Background:

Resistance by Local Governments to the Siting and Operation of State-Licensed Marijuana Businesses.

Many cities and counties throughout the state have enacted ordinances that explicitly prohibit the siting of licensed marijuana producers, processors, and retailers within their jurisdictional boundaries. Some cities and counties have enacted special zoning ordinances limiting the location of recreational marijuana businesses to certain areas or have special licensing requirements for such businesses. Other municipalities have simply refused to issue the permits or business licenses necessary for the siting or operation of a marijuana business, but without the enactment of any ordinance or resolution explicitly prohibiting the operation of such businesses within their jurisdictional boundaries.

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 Initiative 502. Washington courts have ruled that state law does not preempt such actions by local governments. Also, in 2014, the Washington State Attorney General published a formal opinion stating that Initiative 502 does not preempt local governments from implementing ordinances that impose bans or moratoria regarding the siting of marijuana producers, processors, and retailers.

Distribution of State Marijuana Excise Tax Revenues to Local Governments Beginning in 2018.

Beginning in fiscal year 2018, a portion of marijuana excise tax revenues deposited into the State General Fund will be shared with counties and cities. However, the funds derived from marijuana tax revenues may only be distributed to jurisdictions that do not prohibit the siting of state-licensed marijuana producers, processors, and retailers.

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 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 sharing the remaining 40 percent. Jurisdictions that prohibit the siting of state-licensed marijuana producers, processors, and retailers are not eligible for a share of state marijuana tax revenue.

Distribution of Liquor Revolving Fund Revenues to Local Governments.

The State Treasurer maintains and administers a "Liquor Revolving Fund" that consists of all license fees, permit fees, penalties, and all other monies, income, or revenue received by the Liquor & Cannabis Board (LCB). Monies in the fund derived from commercial and regulatory activities involving liquor are subject to quarterly distribution by the LCB in accordance with specified requirements. A portion of the monies in the fund are distributed to cities, towns, and counties in accordance with statutory requirements.

Summary of Substitute Bill:

Effective January 1, 2018, a municipality that refuses to allow the siting or operation of retail marijuana businesses absent the formal adoption of an ordinance or resolution explicitly prohibiting the operation of such businesses within its jurisdictional boundaries forfeits the following: (1) 70 percent of the municipality's share of the monies in the Liquor Revolving Fund; and (2) all of its share of state marijuana excise tax revenues to which it might otherwise be entitled. Also, a city, town, or county is subject to the revenue forfeiture provisions of the act if it has an ordinance or regulation that authorizes a specific number of state-licensed marijuana retail outlets that is less than the number of such outlets allotted or approved for operation within that jurisdiction by the LCB.

A municipality that would otherwise be subject to such forfeiture can avoid the sanction through either one of two means, as follows:

- the formal adoption of an ordinance or resolution expressly prohibiting the siting and operation of state-licensed marijuana businesses within its jurisdictional boundaries; or
- affirmatively authorizing the siting and operation of state-licensed marijuana businesses through the issuance of the local permits, licenses, or other authorization necessary for such businesses to become operational.

Substitute Bill Compared to Original Bill:

The substitute bill makes the following changes to the original bill:

- Makes a city, town, or county subject to the revenue forfeiture provisions of the act if it has an ordinance or regulation that authorizes a specific number of state-licensed marijuana retail outlets that is less than the number of such outlets allotted or approved for operation within that jurisdiction by the LCB.
-

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) Rather than enacting an ordinance explicitly banning retail marijuana businesses from locating within their jurisdictional boundaries, many municipalities have effectively prohibited the operation of such businesses without expressly banning them through an ordinance. This is done by one of two "passive" methods: (1) by simply refusing to issue the local permits or business licenses necessary for a marijuana retailer to become operational or (2) through the enactment of an ordinance that authorizes a small number of state-licensed marijuana retail outlets that is less than the number of such outlets allotted or approved for operation within that jurisdiction by the LCB. Both methods operate as de facto prohibitions, yet the municipalities that adopt these methods are still entitled to a portion of marijuana excise tax revenues. This bill would remedy this incongruity by subjecting such municipalities to sanctions through the forfeiture of specified liquor and marijuana tax revenues. The municipalities that impose bans, whether explicit or passive, are making it difficult for citizens to access legal marijuana products in many areas and thus enable the illicit market to continue to flourish. Denying liquor and marijuana tax revenues to these municipalities would discourage them from implementing such prohibitions, thus increasing the accessibility of legal marijuana and discouraging illegal activities. This bill represents an essential step in honoring the will of the people as expressed by the passage of Initiative 502. Bans and moratoria, whether explicit or passive, need to be put to an end and this bill is a step in the right direction.

(Opposed) This bill represents bad public policy and should not be passed. Cities should be allowed to decide for themselves whether or not they want to allow the presence of retail marijuana outlets. Local control is an important democratic principle and this bill is another attempt to thwart that principle. Communities want to control zoning and land use through local regulations and they should have a method under law to communicate with the LCB regarding the approach they want to take with respect to marijuana businesses. Many cities have ordinances and resolutions that mandate following all laws, including federal laws, and this should be respected. Furthermore, it is bad public policy to tie local receipt of liquor revenues to marijuana-related issues, which is exactly what this bill does. Finally, the portion of marijuana tax revenues being offered to cities is paltry and provides little incentive for communities to welcome marijuana businesses. A much more generous share of marijuana tax revenues would go a long way towards encouraging cities to lift bans and moratoria.

(Other) The municipalities that prevent the location of marijuana businesses within their jurisdictional boundaries are acting contrary to the will of the voters and Washington law. The law should explicitly preempt local governments from imposing bans or moratoria.

Persons Testifying: (In support) Representative Sawyer, prime sponsor; Ezra Eickmeyer; Philip Dawdy, Have A Heart; John Kingsbury, The National Organization for the Reform of Marijuana Laws, Thurston; and Patrick Moberg.

(Opposed) Candice Bock, Association of Washington Cities.

(Other) Kirk Ludden, VIPER Political Action Committee.

Persons Signed In To Testify But Not Testifying: None.