

HOUSE BILL REPORT

HB 2336

As Reported by House Committee On:
Commerce & Gaming

Title: An act relating to permitting cities, towns, and counties to prohibit the production, processing, or sale of marijuana only by an ordinance enacted through a public vote.

Brief Description: Permitting cities, towns, and counties to prohibit the production, processing, or sale of marijuana only by an ordinance enacted through a public vote.

Sponsors: Representatives Sawyer, Condotta, Kloba and Appleton.

Brief History:

Committee Activity:

Commerce & Gaming: 1/8/18, 1/23/18 [DPS].

Brief Summary of Substitute Bill

- Establishes that Washington statutes preempt municipal ordinances or regulations pertaining to the regulation of the production, processing, and retail sale of marijuana.
- Prohibits a municipality from enacting an ordinance or regulation that has the effect of precluding the siting of licensed marijuana retailers, processors, or producers within its borders, subject to specified exceptions.
- Establishes two alternative electoral processes by which a municipality may avoid state preemption and thus enact an ordinance banning the operation of marijuana producers, processors, or retailers within its borders.
- Prohibits the Liquor and Cannabis Board from issuing or renewing any license for the production, processing, or retail sale of marijuana with respect to businesses that are either located or proposed to be located within an area subject to a municipal ordinance banning such businesses, provided the ordinance was enacted pursuant to an initiative or referendum meeting statutory requirements.

HOUSE COMMITTEE ON COMMERCE & GAMING

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.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Sawyer, Chair; Kloba, Vice Chair; Condotta, Ranking Minority Member; Vick, Assistant Ranking Minority Member; Blake, Kirby and Ryu.

Minority Report: Without recommendation. Signed by 2 members: Representatives Jenkin and Young.

Staff: Thamas Osborn (786-7129).

Background:

Licensing of Marijuana Producers, Processors, and Retailers.

The Liquor and Cannabis Board (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.

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 principal, Washington law has developed a strong presumption against finding that state law preempts local ordinances. As a general rule, therefore, local governments may enact ordinances regulating the same subject matter as state laws, provided they do not conflict. The text of Initiative 502 (I-502) does not address the issue of state preemption of local ordinances or regulations 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 either prohibit or impose a moratorium on 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, at present, a total of approximately 77 cities and three counties 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 or not 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 five acres or smaller.

Summary of Substitute Bill:

State Preemption Regarding the Regulation of Commerce in Marijuana.

As a general principle, Washington statutes preempt ordinances passed by cities, towns, and counties pertaining to the regulation of the production, processing, and retail sale of marijuana. Such preemption does not affect the current authority of cities, towns, and counties (to be collectively referred to as "municipality") to enact zoning requirements regulating the location of marijuana-related businesses. However, a municipality may not enact a zoning requirement that has the effect of altogether precluding or unreasonably restricting the siting of licensed marijuana retailers, processors, or producers within its borders, except under one or more of the following circumstances:

- Licensed marijuana producers may be banned if the municipality does not permit the commercial growing of plants anywhere in the jurisdiction.
- Licensed marijuana processors may be banned if the municipality does not permit the commercial processing of plants, plant-based material, or food products anywhere in the jurisdiction.
- Licensed marijuana retailers may be banned if the municipality does not permit retail uses anywhere in the jurisdiction.

Electoral Mechanisms Allowing Municipalities to be Exempt From state Preemption.

The act provides two alternative means for a municipality to avoid state preemption and enact an ordinance banning the operation of marijuana producers, processors, or retailers within its borders: (1) one method requires the completion of a citizen initiative process; and (2) the other requires the legislative authority of the municipality to submit a referendum to the voters.

To enact an ordinance through the citizen initiative process, a petition calling for a ban on the operation of a producer, processor, or retailer must be signed by at least 30 percent of the registered voters within the municipality and then submitted to the legislative authority of the municipality. Within 60 days of receiving the petition, the legislative authority must hold a public hearing on the proposed ordinance and then submit the proposed ordinance to the voters at a general election occurring in an even numbered year. The proposed ordinance becomes effective only upon approval by a majority of the voters participating in the election.

Under the second electoral method for banning the operation of marijuana businesses, the legislative authority of the municipality may initiate a referendum proposing the passage of an ordinance to prohibit the siting or operation of any business or facility to be used for the production, processing, or retail sale of marijuana products. As is the case with the citizen initiative process, the ordinance must be submitted to the voters in the form of a ballot proposition that is voted upon at a general election occurring in an even numbered year. The

proposed ordinance becomes effective only upon approval by the majority of the voters participating in the election.

Following the passage of an ordinance through either the citizen initiative or legislative referendum process, the LCB may not issue or renew any license for the production, processing, or retail sale of marijuana with respect to businesses that are either located or proposed to be located within an area subject to the ordinance.

Substitute Bill Compared to Original Bill:

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

- requires that the public vote on a proposed ordinance prohibiting the siting of marijuana businesses within a jurisdiction take place at a general election occurring in an even-numbered year.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect on July 1, 2018.

Staff Summary of Public Testimony:

(In support) The bill is modeled after the liquor statutes enacted once the prohibition era ended. Under the bill, local jurisdictions are not required to allow marijuana businesses within their communities provided the jurisdiction has a public vote in which the majority of voters choose to ban such businesses. Marijuana bans threaten public safety because they enable the illicit marijuana market to thrive. The passage of this bill will cripple the illicit market. Current law creates great uncertainty within the marijuana industry because it allows local jurisdictions to enact bans and moratoria without any constraints.

(Opposed) Local bans should be allowed if the citizens do not want marijuana businesses in their towns and neighborhoods. Many people are upset by the presence of marijuana businesses in their communities and it is unfair to force a person to live next to such businesses. Fifty-six percent of Benton County voters voted against I-502, yet the county is forced to accommodate marijuana businesses. West Richland has banned marijuana businesses, but the county has allowed a retailer to open immediately adjacent to the border of the city on a piece of county land that is surrounded by the town; this directly affects adjacent West Richland neighborhoods. Forcing marijuana businesses on communities where they are not wanted is unfair and undemocratic. Citizens should be allowed to exercise self-determination when it comes to things like marijuana.

(Other) Initiative 502 was intended to preempt local jurisdictions from enacting bans or moratoria. Such preemption is implicit in the regulatory scheme. Accordingly, this bill should not be necessary. Local jurisdictions already have the ability to eliminate marijuana retailers by refusing to patronize them. The LCB is not responsive to complaints by local

jurisdictions regarding marijuana businesses that violate statutory requirements. The bill provisions should be prospective and its passage should not undo the existing bans. Existing bans should be allowed to continue. The rights of small jurisdictions should be preserved and citizens should be allowed to say "no" to marijuana.

Persons Testifying: (In support) Representative Sawyer, prime sponsor; and Phillip Dawdy, Have A Heart.

(Opposed) Johnathan Wierschke; Patricia Dobson; Kathy Barney; Logan Bahr, Association of Washington Cities; Juliana Roe, Washington State Association of Counties; and John Worthington, American Alliance for Medical Cannabis.

(Other) Bailey Hirshburg, Washington National Organization for the Reform of Marijuana Laws; and Bill Berkman, Dallas Parr, and Kimberly Heath, Benton County Republican Party.

Persons Signed In To Testify But Not Testifying: None.