

HOUSE BILL REPORT

ESHB 1443

As Amended by the Senate

Title: An act relating to social equity within the cannabis industry.

Brief Description: Concerning social equity within the cannabis industry.

Sponsors: House Committee on Commerce & Gaming (originally sponsored by Representatives Morgan, Wicks, Simmons, Berry, Johnson, J., Ramel, Kloba, Ryu, Peterson, Ormsby, Ortiz-Self, Harris-Talley and Macri).

Brief History:

Committee Activity:

Commerce & Gaming: 2/5/21, 2/12/21 [DPS];
Appropriations: 2/19/21, 2/22/21 [DPS(COG)].

Floor Activity:

Passed House: 3/2/21, 60-37.
Senate Amended.
Passed Senate: 4/6/21, 33-16.

Brief Summary of Engrossed Substitute Bill

- Expands the purpose of the Task Force on Social Equity in Cannabis (Task Force) to include providing recommendations to the Liquor and Cannabis Board on the issuance of existing cannabis producer and processor licenses.
- Modifies Task Force reporting requirements, including adding Task Force recommendation topics and extending the due date for the final Task Force recommendations to January 10, 2022.
- Expands eligible applicants under the Cannabis Social Equity Technical Assistance Grant Program to include all existing cannabis license holders and cannabis license applicants who meet social equity criteria.
- Requires the Department of Commerce to create a pilot program by

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

October 2, 2021, to provide technical assistance to current cannabis retailer licensees who meet the social equity applicant criteria.

HOUSE COMMITTEE ON COMMERCE & GAMING

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Kloba, Chair; Wicks, Vice Chair; Kirby, Morgan and Wylie.

Minority Report: Without recommendation. Signed by 4 members: Representatives MacEwen, Ranking Minority Member; Robertson, Assistant Ranking Minority Member; Chambers and Vick.

Staff: Kyle Raymond (786-7190).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Commerce & Gaming be substituted therefor and the substitute bill do pass. Signed by 19 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chopp, Cody, Dolan, Fitzgibbon, Frame, Hansen, Johnson, J., Lekanoff, Pollet, Ryu, Senn, Springer, Stonier, Sullivan and Tharinger.

Minority Report: Do not pass. Signed by 5 members: Representatives Corry, Assistant Ranking Minority Member; Boehnke, Dye, Hoff and Rude.

Minority Report: Without recommendation. Signed by 8 members: Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Caldier, Harris, Jacobsen, Schmick and Steele.

Staff: Jessica Van Horne (786-7288).

Background:

Marijuana Social Equity Program.

The Marijuana Social Equity Program (Social Equity Program) was established in 2020 and is administered by the Liquor and Cannabis Board (LCB). Under the Social Equity Program, marijuana retailer licenses that have been subject to forfeiture, revocation, or cancellation by the LCB may be issued or reissued to a social equity applicant who meets the requirements for the marijuana retailer license. In addition, marijuana retailer licenses that were not previously issued by the LCB, but could have been issued without exceeding the

statewide limit established before January 1, 2020, may be issued under the Social Equity Program.

To be considered for a retail license, an applicant must submit a Social Equity Plan (Plan) with other application materials. The Plan includes information regarding the applicant's qualifications as a social equity applicant, how the applicant will advance social equity goals, and other specified business information. The LCB may add additional Plan components or requirements following consultation with marijuana social equity stakeholders, including the Washington State Commission on African American Affairs (Commission on African American Affairs).

In determining the issuance of a license among eligible applicants, the LCB may give priority to a social equity applicant based on the extent to which the application addresses the components of the Plan. The LCB may deny applications that do not meet the social equity goals, Plan requirements, or other licensing requirements.

The Social Equity Program expires July 1, 2028.

Social Equity Program Terminology. Certain terms and definitions are specified that, in part, determine applicant eligibility and prioritization of applications under the Social Equity Program.

A "social equity applicant" is an applicant with majority ownership and control by at least one individual who: (1) has resided in a disproportionately impacted area for at least five of the preceding 10 years; or (2) has been convicted of a misdemeanor marijuana offense or is a family member of such an individual.

A "disproportionately impacted area" is a census tract or comparable geographic area with a high rate of: (1) poverty and unemployment; (2) participation in income-based or state programs; and (3) arrest, conviction, or incarceration related to the sale, possession, use, cultivation, manufacture, or transport of cannabis.

The LCB may further define criteria for what is considered a "disproportionately impacted area" after consultation with the Commission on African American Affairs and other stakeholders.

The "social equity goals" under the Social Equity Program include: (1) increasing the number of marijuana retailer licenses held by social equity applicants from disproportionately impacted areas; and (2) reducing accumulated harm suffered by individuals, families, and local communities subject to the severe impacts from marijuana prohibition enforcement.

Technical Assistance Competitive Grant Program.

In 2020 the Marijuana Social Equity Technical Assistance Competitive Grant Program

(Technical Assistance Grant Program) was established to award grants on a competitive basis to marijuana retail license applicants who are social equity applicants submitting a Plan under the Social Equity Program. The Department of Commerce (Department) administers the Technical Assistance Grant Program.

The Department must award grants primarily based on the strength of the Plan submitted by applicants, but they may also consider additional criteria as deemed necessary or appropriate. Eligible technical assistance activities under the Technical Assistance Grant Program include:

- assistance navigating the marijuana retailer licensure process;
- marijuana business-specific education and business plan development;
- regulatory compliance training;
- financial management training and assistance in seeking financing; and
- connecting social equity applicants with established industry members, tribal marijuana enterprises, programs for mentoring, and other forms of support approved by the LCB.

The Technical Assistance Grant Program is funded with a \$1.1 million annual appropriation from the Dedicated Marijuana Account.

Social Equity Task Force.

The Marijuana Social Equity Task Force (Task Force) was established in 2020 to make recommendations to the LCB on, among other topics, establishing a program for the issuance and reissuance of existing marijuana retail licenses. The Task Force must also advise the Governor and the Legislature on policies that will facilitate the development of the Social Equity Program.

The Task Force members are jointly appointed by the President of the Senate and the Speaker of the House of Representatives, which include:

- a member from the Commission on African American Affairs, Washington State Commission on Hispanic Affairs, and the Governor's Office of Indian Affairs;
- a member from an organization representing the African American community and from an organization representing the Latinx community;
- a labor organization involved in the marijuana industry;
- a member from the LCB, the Department, and the Office of the Attorney General;
- a member of the Association of Washington Cities;
- two members that hold a marijuana retail license; and
- two members that hold a producer or processor license, or both.

The Task Force must submit a report, or multiple reports, on recommended policies that will facilitate the development of the Social Equity Program in Washington. The recommendations from the Task Force must include:

- factors the LCB must consider in distributing available marijuana retailer licenses that have been subject to forfeiture, revocation, or cancellation by the LCB, or marijuana

- retailer licenses that were not previously issued by the LCB but could have been issued without exceeding the limit on the statewide number of marijuana retailer licenses; and
- whether any additional marijuana licenses should be issued beyond the existing total amount of marijuana licenses.

The Task Force is encouraged to submit individual recommendations as soon as possible to facilitate the LCB's early work to implement the recommendations. The final recommendations must be submitted to the Governor, the LCB, and the Legislature by December 1, 2020.

The LCB may adopt rules to implement the recommendations of the Task Force. However, a Task Force recommendation to increase the number of retail outlets above the statewide limit must be approved by the Legislature.

Staff support for the Task Force must be provided by the Health Equity Council of the Governor's Interagency Council on Health Disparities, until the Office of Equity requests to take over Task Force staffing responsibility.

The Task Force expires June 30, 2022.

Summary of Engrossed Substitute Bill:

Technical Assistance Competitive Grant Program Modifications.

Eligible applicants under the Technical Assistance Grant Program include all existing cannabis license holders and cannabis license applicants who meet social equity applicant criteria.

The Department must create a pilot program by October 2, 2021, to provide technical assistance to current cannabis retailer licensees who meet the social equity applicant criteria. The Department must allocate a minimum of \$150,000 for the pilot program. Grants may be awarded to provide technical assistance for infrastructure projects, technology upgrades, incubator and mentorship programs, and supplies.

Grant recipients under the Technical Assistance Grant Program and the pilot program must demonstrate the project has been completed within 12 months of receiving a grant, unless a grant recipient requests, and the Department approves, additional time to complete the project.

Social Equity Program Modifications.

The Social Equity Program expires July 1, 2029.

Modifications to Social Equity Program Terminology. A conviction of a drug offense of an applicant, or family member of an applicant, is a qualifying factor to be considered a social

equity applicant, subject to other conditions.

An individual must have lived in a disproportionately impacted area for a period of time defined in rule by the LCB, after consultation with the Commission on African American Affairs and other commissions, agencies, and interested parties as determined by the LCB, to be considered a social equity applicant.

An applicant who meets criteria defined in rule by the LCB is considered a social equity applicant. Any LCB rule adopted to define additional social equity applicant criteria must be done after consultation with the Commission on African American Affairs and other commissions, agencies, and interested parties as determined by the LCB.

The entities the LCB must consult while further defining disproportionately impacted area criteria include commissions and interested parties.

Social Equity Task Force Modifications.

The purpose of the Task Force includes providing recommendations to the LCB on the issuance of existing cannabis processor and producer licenses.

The Task Force members include two processor and two producer licensee holders.

The Task Force must provide recommendations on the following topics:

- the social equity impact of altering residential cannabis agriculture regulations;
- the social equity impact of shifting primary regulation of cannabis production from the board to the Washington State Department of Agriculture (WSDA), including potential impacts to the employment rights of workers;
- the social equity impact of removing nonviolent cannabis-related felonies and misdemeanors from obtaining a cannabis license;
- whether to create workforce training opportunities for underserved communities to increase employment opportunities in the cannabis industry;
- the social equity impact of reducing or ending the funding directed to the Washington State Patrol Drug Enforcement Task Force and redirecting an equivalent amount to the Social Equity Program; and
- the social equity impact of creating new cannabis license types.

The due date of the final Task Force recommendations is January 10, 2022.

The Task Force expires June 30, 2023.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment makes the following changes to the underlying engrossed substitute House bill:

- removes the specification that the Cannabis Social Equity Technical Assistance Grant

- Program (Grant Program) is a competitive grant program;
- provides that cannabis licensees holding a license issued after June 30, 2020, and before June 11, 2020, are eligible for the Grant Program, rather than cannabis licensees holding a license on June 11, 2020;
 - adds strengthening a social equity plan to the specified technical assistance activities eligible for funding under the Grant Program;
 - removes the requirement for the Department of Commerce (Department) to create a pilot program to provide technical assistance grants to current cannabis retailer licensees who meet social equity applicant criteria;
 - authorizes the Department to contract to establish a roster of mentors for the purpose of supporting and advising social equity applicants and current licensees who meet social equity applicant criteria;
 - requires contractors on Department's roster of mentors to: (1) have demonstrated knowledge and experience effectively advising eligible applicants and licensees in navigating the state's licensing and regulatory framework or on producing and processing cannabis; (2) be a business that is at least 51 percent minority or woman-owned; and (3) meet Department reporting and invoicing requirements;
 - requires the Liquor and Cannabis Board to consult with community members, rather than interested parties, in adopting rules to establish certain criteria to be considered a social equity applicant and to further define the criteria of a disproportionately impacted area;
 - extends the due date of the final Task Force on Social Equity in Cannabis (Task Force) recommendations from January 10, 2022, to December 9, 2022;
 - requires the Task Force to provide a recommendation on the social equity impact of removing nonviolent cannabis-related felonies and misdemeanors from the existing point system used to determine qualification for a cannabis license, rather than a recommendation on social equity the impact of removing nonviolent felonies and misdemeanors from obtaining a cannabis license;
 - removes a required Task Force recommendation regarding the social equity impact of reducing or ending the funding directed to the Washington State Patrol Drug Enforcement Task Force and redirecting an equivalent amount to a Cannabis Social Equity Program; and
 - requires the Task Force to provide Grant Program recommendations.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony (Commerce & Gaming):

(In support) The work of the Task Force was delayed due to the impacts from the pandemic,

which made the original reporting deadline unattainable. After meeting, the Task Force identified the limitations of the Task Force's authorizing legislation. The Task Force concluded that to provide a true, comprehensive social equity plan, expanding the scope of the Task Force work will be necessary.

The bill will address issues like gentrification and drug offenses of Social Equity Program applicants. The bill will also allow the Task Force to make additional recommendations for the LCB to enact without requiring further legislation. Practicing equity in the cannabis industry is important for inclusion in the state.

The bill is the culmination of the Commission on African American Affairs's work conducting more than 300 interviews across the state with people who were left out of Initiative Measure No. 502. The bill also reflects the discussions that came out of the LCB listening sessions and Task Force meetings. From this work, it is clear that diversity, equity, and inclusion is needed in the cannabis industry.

This bill represents some of the best social equity cannabis policy across the country. This bill not only takes into consideration the unfair, predatory war on drugs that was predicated on the African American community, but it also takes into consideration that there are insufficient existing resources in the African American community to be competitive.

This bill is a healing process for the black community.

(Opposed) None.

(Other) The WSDA is supportive of this effort. Regulatory transfers between the WSDA and the LCB were not previously included in the work of the Task Force. The WSDA would like to be included in the conversation about a potential transfer of regulatory power to the WSDA when the Task Force reaches this topic.

Staff Summary of Public Testimony (Appropriations):

(In support) None.

(Opposed) None.

Persons Testifying (Commerce & Gaming): (In support) Representative Morgan, prime sponsor; and Paula Sardinas, Washington Commission on African American Affairs.

(Other) Kelly McLain, Washington State Department of Agriculture.

Persons Testifying (Appropriations): None.

Persons Signed In To Testify But Not Testifying (Commerce & Gaming): None.

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