

HOUSE BILL REPORT

HB 1438

As Reported by House Committee On:
Commerce & Gaming

Title: An act relating to permitting cities, towns, and counties to prohibit the production, processing, and sale of marijuana under Initiative Measure No. 502 only by public vote.

Brief Description: Permitting cities, towns, and counties to prohibit the production, processing, and sale of marijuana under Initiative Measure No. 502 only by public vote.

Sponsors: Representatives Sawyer, Kirby and Appleton.

Brief History:

Committee Activity:

Commerce & Gaming: 1/12/16, 1/18/16 [DPS].

Brief Summary of Substitute Bill

- Establishes that Washington statutes preempt municipal ordinances or regulations pertaining to the 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 within its borders, subject to specified exceptions.
- Establishes two alternative electoral processes through which a municipality may avoid state preemption and enact an ordinance banning the operation of marijuana retailers within its borders.

HOUSE COMMITTEE ON COMMERCE & GAMING

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Hurst, Chair; Wylie, Vice Chair; Condotta, Ranking Minority Member; Kirby, Van De Wege and Vick.

Minority Report: Do not pass. Signed by 2 members: Representatives Blake and Scott.

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

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.

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 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.

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 eight 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 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 5 acres or smaller.

Summary of Substitute Bill:

General 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 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 retailers. However, a municipality may not enact a zoning requirement that has the effect of altogether precluding the siting of licensed marijuana retailers, unless the municipality does not permit retail uses anywhere in the jurisdiction.

Electoral Mechanisms Allowing Municipalities To Be Exempt From State Preemption.

The bill provides two alternative means for a municipality to avoid state preemption and enact an ordinance banning the operation of marijuana retailers within its borders. One method requires the completion of a citizen initiative process, and 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 marijuana retailers 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. 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 retailers, the legislative authority of the municipality must initiate the electoral process by approving the submission of the ordinance to the voters. 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. 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 local government referendum process, the LCB may not issue or renew any license for the 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:

- limits preemption provisions to licensed marijuana retailers only;

- deletes all preemption provisions referencing marijuana producers and processors; and
 - requires that voter approval of a municipal ordinance proposing a ban or moratorium on the operation of licensed marijuana retailers be obtained through a majority vote at a general election, and deletes all references to special elections.
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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) This bill is necessary because many local jurisdictions have enacted ordinances banning the operation of licensed marijuana producers, processors, and/or retailers. Such bans defeat the intent of I-502, which was intended to protect public health and safety by creating a tightly regulated, legal marijuana market that would supplant the illegal drug trade. Such bans are contrary to the will of the majority of voters who voted in favor of I-502 and have the effect of greatly reducing potential tax revenues. Such bans also go against good public policy because they enable the illegal black market to continue to thrive and will prevent medical marijuana patients from having reasonable access to their medications. The bans will become a very big problem for medical marijuana patients once the recreational and medical markets are integrated, since patients will then depend on local access to marijuana retailers. Due to the various local bans, legal marijuana is not readily available in many areas of the state, and these are the same areas where the black market is thriving. Local black markets will continue to thrive if local residents are forced to drive long distances in order to access a licensed retailer. Approximately 1.9 million citizens in this state do not have convenient, local access to a licensed marijuana retailer. If local bans are preempted by state law, this will result in at least \$25 million in additional marijuana-related revenue. Laws regulating commerce in marijuana should have uniform application throughout the state. This bill would establish that state law is controlling and that efforts by local governments to ban licensed marijuana businesses are subject to state preemption.

(Opposed) It is very important for cities and counties to be able to decide how they want to implement I-502. This preemption bill would serve to thwart the will of the people by preventing municipalities from deciding what is best for their communities. Local control is the essence of democracy and, thus far, local ordinances regulating the marijuana industry have worked well and have not presented any problems. Despite the bans imposed by many municipalities, marijuana-related tax revenues are very good and are consistent with projections. Forcing elections would be a very expensive proposition for many municipalities. Citizens have many legitimate concerns about the implementation of I-502 and the problems generated by commerce in marijuana, and it is the responsibility of local governments to be responsive to those concerns. In many areas, citizens do not want to be forced to live next door to a marijuana producer, processor, or retailer. Furthermore, 90

percent of Washington citizens live within 10 miles of a licensed retailer, so the bans and moratoria have not created any problems for those seeking access to legal marijuana.

Persons Testifying: (In support) Representative Sawyer, prime sponsor; Lew McMurrin and Logan Bowers, Cannabis Organization of Retail Establishments; Ezra Eickmeyer, E&A Strategic Consulting; Craig Engelking, Coalition for Cannabis Standards and Ethics; Lara Kaminsky, The Cannabis Alliance; John Novak, VIPER PAC; and Kirk Ludden, The Viper's Club.

(Opposed) Brian Enslow, Washington State Association of Counties; and Candice Bock, Association of Washington Cities.

Persons Signed In To Testify But Not Testifying: None.