

HOUSE BILL REPORT

HB 2144

As Reported by House Committee On:
Government Accountability & Oversight

Title: An act relating to the establishment of a dedicated local jurisdiction marijuana fund and the distribution of a specified percentage of marijuana excise tax revenues to local jurisdictions.

Brief Description: Concerning the establishment of a dedicated local jurisdiction marijuana fund and the distribution of a specified percentage of marijuana excise tax revenues to local jurisdictions.

Sponsors: Representatives Condotta, Manweller, Buys, Blake, Springer, Shea, Holy and Vick.

Brief History:

Committee Activity:

Government Accountability & Oversight: 1/30/14, 2/5/14 [DPS].

Brief Summary of Substitute Bill

- Creates a dedicated local jurisdiction marijuana fund, which receives 10 percent of the excise taxes collected by marijuana producers on sales to processors and 20 percent of the excise taxes collected by marijuana retailers on sales to consumers.
- Requires that excise taxes deposited in the dedicated local jurisdiction marijuana fund must be distributed to the local jurisdiction in which the retail sale occurred.
- Expressly preempts local regulations and ordinances pertaining to the legal marijuana market in Washington.

HOUSE COMMITTEE ON GOVERNMENT ACCOUNTABILITY & OVERSIGHT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Hurst, Chair; Wylie, Vice Chair; Condotta, Ranking Minority Member; Holy, Assistant Ranking Minority Member; Blake, Kirby, Moscoso, Shea and Vick.

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: David Rubenstein (786-7153).

Background:

Initiative Measure 502 Generally.

Initiative Measure 502 ("I-502" or "initiative") was a ballot measure approved by Washington voters in November 2012 that legalized the production, processing, possession, and personal use of marijuana and created a framework for a regulatory scheme that includes the following:

- licensing and regulating marijuana production, distribution, and retailing;
- designating the Liquor Control Board (LCB) as the regulatory entity responsible for the implementation of the initiative, including continuing oversight over the commercial practices and conduct of licensed marijuana producers, processors, and retailers;
- providing the LCB with very broad rule-making authority with respect to the development of the requisite regulatory scheme;
- implementing an excise tax system with respect to marijuana production, distribution, and retailing; and
- creating a dedicated marijuana fund for the collection and distribution of marijuana-related tax revenues.

Excise Taxes Under I-502.

Under the initiative, an excise tax of 25 percent of the sale price must be paid by each of the three categories of licensees at each step of the production, processing, and marketing process:

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

Under I-502, the LCB is required to regularly review the excise tax levels and make recommendations to the Legislature regarding any adjustments that might further the goals of discouraging use and undercutting the black market.

Dedicated Marijuana Fund.

All revenue collected from the 25 percent marijuana excise taxes described above will be deposited in the dedicated marijuana fund (General Marijuana Fund). Under I-502, money deposited into the General Marijuana Fund is earmarked in fixed amounts as follows:

- \$175,000 to the Department of Social and Health Services (DSHS) for use in healthy youth surveys and a cost-benefit analysis of the implementation of I-502;
- \$5,000 to the University of Washington's Alcohol and Drug Abuse Institute for web-based public education materials regarding marijuana use; and
- \$1,250,000 to the LCB for costs in administering I-502, as necessary.

Any money remaining in the General Marijuana Fund after those disbursements are made is earmarked as follows:

- 15 percent to the DSHS for programs aimed at prevention of various disorders related to substance use;
- 10 percent to the Department of Health for a marijuana education and public health program that incorporates referrals to drug treatment, grants to local community agencies, and media-based education campaigns targeted at youth and adults;
- 1 percent to the University of Washington and Washington State University for studies on the short- and long-term effects of marijuana use;
- 50 percent to the State Basic Health Plan Trust account;
- 5 percent to the Health Care Authority to expand access to health and dental care services, migrant health services, and maternity care;
- 0.3 percent to the Office of the Superintendent of Public Instruction for education purposes; and
- the remainder (18.7 percent) to the State General Fund.

Disbursement for these purposes must occur quarterly.

Summary of Substitute Bill:

A dedicated local jurisdiction marijuana fund (Local Jurisdiction Fund) is created. All of the excise taxes collected on sales from processor-to-retailer sales continue to be deposited in the General Marijuana Fund. However, 10 percent of the producer-to-processor excise taxes and 20 percent of the excise tax collected on retailer-to-consumer sales is deposited in the Local Jurisdiction Fund. The remainder of the funds from those two tiers of excise taxes are deposited into the General Marijuana Fund.

Taxes deposited in the Local Jurisdiction Fund from retailer-to-consumer sales must be disbursed to the local jurisdiction where the retail sale originated. Taxes from producer-to-processor sales must be disbursed to the jurisdiction in which the producer is located. Further, each local jurisdiction with retail sales must receive revenue distributions proportional to sales within its jurisdiction and proportional to the number of producers in each district. Disbursement to local jurisdictions must occur quarterly.

Washington law expressly preempts local laws and ordinances pertaining to licensing, marketing, taxation, production, processing, and retail sale of marijuana. Any laws and ordinances interfering with the development, implementation, or maintenance of a state regulated market regarding the production, processing, possession, or use of legal marijuana are preempted and unenforceable. Generally, state law fully preempts the field of the regulation of controlled substances under the Controlled Substances Act.

Substitute Bill Compared to Original Bill:

The substitute bill reduces the portion of excise tax revenue deposited into the Local Jurisdiction Fund from retailer-to-consumer marijuana sales from 30 percent to 20 percent. It also requires that 10 percent of excise tax revenue from producer-to-processor sales be deposited into the Local Jurisdiction Fund to be disbursed to the local jurisdiction in which the producer sits.

Additionally, the substitute bill adds a provision expressly preempting local laws and ordinances that pertain to regulation of legal marijuana or otherwise interfere with the legal marijuana market.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect July 1, 2014.

Staff Summary of Public Testimony:

(In support) This bill fixes an oversight in I-502 that failed to share revenues with local jurisdictions. Sharing revenue will incentivize participation and increase state revenues, which is a win-win situation. If the bill does not include this, cities may reasonably object and refuse to participate. The choice is not between marijuana and no marijuana, it is between a legal or black market. Failure to pass this bill will result in the same black market I-502 sought to defeat.

The 30 percent from retail sales figure was reached by drawing 10 percent from each tier of excise tax, but concentrating it in the retail sales tier because retailers are spread across the state. However, other proposals are welcome. Colorado and other states considering this law all include some form of local revenue sharing.

Ensuring that local law enforcement has the money to do its job is essential. The United States Department of Justice conditioned its noninvolvement with state marijuana laws on preventing distribution to minors and gangs and preventing the market from becoming a cover for trafficking. In order to achieve this, resources need to be in place before the market opens. Funding for local law enforcement is needed for the next two years, not just sometime in the future. If cities enact moratoria, then the problem will be pushed into counties, which have more diffuse law enforcement and could result in more officer fatalities. Cities, counties, and states must work together to share responsibility for the uncertainties they face.

Enforcement burdens will vary by jurisdiction, and availability of revenue will vary by jurisdiction. There are small communities that will have no retailers, but may have lots of producers and processors. Those communities should be provided for as well. Additionally, some communities would be most benefited by a distribution on a per-capita basis. For example, small jurisdictions with no retailers adjacent to large jurisdictions with several will bear many impacts, but receive no revenue. Further, counties have their own burdens, such as courts, mental health, zoning, and planning.

Burdens borne by communities will not be just law enforcement. There will also be permitting and regulating, dealing with nuisances, land use, and education on the ground. Some would like to see money directed at prevention among youth, who can suffer

unintended consequences such as greater access and diminished perception of harm. Revenue for these purposes would replace funding for substance abuse that was eliminated recently. Finally, other impacts such as increased traffic impacts, fires, and accidental ingestion of marijuana require that funding be directed to fire districts and other local entities. Local governments have been struggling for years and need this revenue even in the absence of I-502.

Some communities would like to see a 50/50 split of revenue with the state. By some calculations, more than two-thirds of the revenue from excise taxes is available for distribution, with 18 percent going to the General Fund and 50 percent going to the state Basic Health Plan, which was rendered obsolete by the Medicare expansion.

A mixed carrot-and-stick approach incorporating both revenue sharing and preemption may be the best approach, as local jurisdictions will have difficulty justifying legislation to accommodate I-502 without any additional funding.

(Opposed) The initiative does not need to be fixed. The idea is not to give law enforcement more money; this would gut the intent of I-502. When cities and counties say there will be significant impact, they ignore the determination of non-significance in the State Environmental Policy Act review, which considered environmental and social impacts of I-502. The LCB should have been more thorough in its review. Money being redirected to local law enforcement as opposed to the basic health plan amounts to a bribe harkening back to Al Capone in prohibition.

This is a *Leary v. United States* problem, because marijuana is still a schedule I narcotic under the federal Controlled Substances Act. The initiative requires the LCB to consider how best to discourage use and undercut the black market. This bill will contradict that purpose and does not solve the problem of taxation inflating prices. This bill results from secret meetings between cities and counties and the LCB regarding I-502 and medical marijuana.

Persons Testifying: (In support) Representative Condotta, prime sponsor; Mayor Suzette Cook, City of Kent; Paul Roberts, Everett City Council; Dave Asher, City of Kirkland; Candice Bock, Association of Washington Cities; Chris Kealy and Christine Masse, Washington Emerald Green Alliance; Dan Heid, City of Auburn; Seth Dawson, Washington Association for Substance Abuse and Violence Prevention; Ryan Agnew, Organized Public Affairs; Mario Martinez, City of Mabton; Michael White, Washington State Council of Firefighters; Brian Enslow, Washington Association of Counties; Nancy Tosta, Burien City Council; James McMahan, Washington Association of County Officials; Stacia Jenkins, City of Normandy Park.

(Opposed) Arthur West; Jerry Dierker.

Persons Signed In To Testify But Not Testifying: