

SENATE BILL REPORT

SB 5282

As of January 29, 2017

Title: An act relating to authorizing local governments to prohibit the operation of licensed marijuana retail businesses within alcohol impact areas.

Brief Description: Authorizing local governments to prohibit the operation of licensed marijuana retail businesses within alcohol impact areas.

Sponsors: Senator Baumgartner.

Brief History:

Committee Activity: Commerce, Labor & Sports: 1/25/17.

Brief Summary of Bill

- Authorizes that a local jurisdiction may adopt an ordinance prohibiting marijuana retail businesses within the boundaries of an alcohol impact area (AIA).

SENATE COMMITTEE ON COMMERCE, LABOR & SPORTS

Staff: Richard Rodger (786-7461)

Background: State Marijuana Regulatory Authority. In 2012, the Washington voters approved a ballot measure that legalized the production, processing, possession, and personal use of marijuana. The Liquor and Cannabis Board (LCB) is the state agency tasked with regulatory oversight of the marijuana industry.

Statutory Buffer Zones. The LCB is prohibited from licensing a marijuana business that would be located within a statutory buffer zone. Unless the zone is reduced by a local government, a licensed marijuana business cannot be located within 1000 feet of any elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center, library, or any game arcade that admits anybody under the age of 21.

Local Government Zoning Authority. The Washington Constitution grants local governments the authority to make and enforce laws within their jurisdictions, so long as the provisions are

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not in conflict with state laws. The constitution specifies that the scope of the local government's power includes enacting laws in areas such as local police, sanitary, and other regulations.

Many cities and counties throughout the state have enacted ordinances that have the effect of prohibiting the siting of licensed marijuana producers, processors, and retailers within their borders. 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.

Courts in several jurisdictions have ruled that state law does not preempt local governments from regulating or banning state-licensed marijuana businesses. Several of these cases have been consolidated and are pending in the appellate courts. The Washington State Attorney General published a formal opinion in January 2014 stating that state law does not preempt local ordinances that impose bans or moratoria regarding the siting of marijuana producers, processors, and retailers.

State laws specifically authorize local governments to adopt zoning regulations that restrict marijuana businesses within areas zoned residential or areas zoned for rural use with a minimum lot size of five acres or smaller. Local governments are also specifically authorized to reduce the state-established 1000 foot buffer zones, to not less than 100 feet, if the reduction will not negatively impact the jurisdiction's civil regulatory enforcement, criminal law enforcement interests, public safety, or public health. The 1000 foot buffer zones may not be reduced near schools and playgrounds.

Alcohol Impact Areas. An AIA is a geographic area, designated by a local government and recognized by resolution of the LCB, that is adversely affected by chronic public inebriation or illegal activity associated with alcohol sales or consumption.

The LCB has an established process for recognizing AIAs and placing restrictions on liquor licensees located within an AIA. The LCB may place restrictions on liquor businesses relating to the hours of operation, sales of certain products, and availability of larger-sized containers of liquor products. A city, town, or county may submit a proposed list of specific products to be banned within the AIA. If approved by the LCB, these products may not be sold within the AIA for the purposes of off-premises consumption.

The LCB has recognized AIAs in the cities of Olympia, Seattle, Tacoma, and Spokane. The cities of Spokane and Vancouver also have voluntary areas where licensed liquor businesses are encouraged to restrict the sales of certain products containing a high concentration of alcohol.

The LCB may also prohibit beer and wine sampling at a farmers market or at grocery stores that are located within the boundaries of an AIA. The LCB may only restrict the sampling if it finds that the sampling activities have an adverse effect on the reduction of chronic public inebriation within the AIA.

Summary of Bill: A city, town, or county may adopt an ordinance prohibiting a marijuana retail business from operating or locating a business within the boundaries of an AIA that has been recognized by the LCB through the passage of a resolution.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill adds one more tool for cities and counties to use in dealing with issues occurring in their alcohol impact areas.

CON: While we appreciate the bill, we believe it undermines our current authority that allows us to make these zoning changes. We are concerned that the courts may interpret this bill and other similar provisions as indicating we do not already have this authority. An alternative approach would be to authorize the LCB to add marijuana products to the list of items they currently prohibit in these areas. The marijuana businesses are already in a highly regulated industry, we don't sell to minors, and we have not heard of any significant issues with businesses located within the current AIA's. There is inadequate information to support this bill.

OTHER: This sounds like a reasonable proposition to us.

Persons Testifying: PRO: Senator Michael Baumgartner, Prime Sponsor.

CON: Candice Bock, Association of Washington Cities; Ryan Sevigny, The Cannabis Alliance; M. Bailey Hirschburg, Washington NORML PAC/Legislative Associate.

OTHER: James Paribello, WSLCB; Becky Smith, WSLCB.

Persons Signed In To Testify But Not Testifying: No one.