

# HOUSE BILL REPORT

## HB 1650

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**As Reported by House Committee On:**  
Regulated Substances & Gaming

**Title:** An act relating to requiring voter approval for local government prohibitions on the operation and siting of cannabis retail businesses.

**Brief Description:** Requiring voter approval for local government prohibitions on cannabis businesses.

**Sponsors:** Representatives Wylie and Kloba.

**Brief History:**

**Committee Activity:**

Regulated Substances & Gaming: 1/31/23, 2/16/23 [DP].

**Brief Summary of Bill**

- Prevents local governments from prohibiting cannabis retail businesses in their jurisdiction after July 1, 2027, unless a majority of voters in the jurisdiction voting in a general election vote to approve an ordinance prohibiting cannabis retailers.
- Establishes state preemption of the regulation of cannabis retail businesses except for the authorization for voter-approved bans.
- Re-allocates certain cannabis excise tax revenues until July 1, 2032.

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### HOUSE COMMITTEE ON REGULATED SUBSTANCES & GAMING

**Majority Report:** Do pass. Signed by 6 members: Representatives Kloba, Co-Chair; Wylie, Co-Chair; Stearns, Vice Chair; Morgan, Orwall and Reeves.

**Minority Report:** Do not pass. Signed by 5 members: Representatives Chambers, Ranking Minority Member; Robertson, Assistant Ranking Minority Member; Cheney, Walsh and Waters.

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*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.*

**Staff:** Peter Clodfelter (786-7127).

**Background:**

Following enactment of Initiative 502 (2012) (I-502) legalizing adult-use cannabis and establishing a state licensing and regulatory structure, some cities, towns, and counties in Washington enacted bans, moratoria, or policies against authorizing or permitting cannabis business activity in their jurisdiction. A 2014 Washington State Attorney General opinion concluded that I-502 does not preempt local governments from banning licensed cannabis businesses from being sited or operating in their jurisdiction. A 2018 opinion of the Washington State Court of Appeals Division II reached the same conclusion. Currently, certain cities, towns, and counties throughout Washington have these types of policies enacted in ordinances prohibiting the siting or operation of licensed cannabis businesses within the jurisdiction. Generally, local governments have broad authority to legislate in furtherance of public health, safety, and welfare and are preempted from enacting local ordinances only if expressly or implicitly preempted by state law.

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**Summary of Bill:**

Beginning July 1, 2027, a city, town, or county may prohibit the siting or operation of any business or facility to be used for the retail sale of cannabis products only if: (1) the city, town, or county initiates an ordinance by submitting a ballot proposition at a general election prohibiting the siting or operation of any business or facility to be used for the retail sale of cannabis; (2) a majority of the voters of the county, city, or town voting in the election approve the prohibition; and (3) the election is held on a date after July 1, 2023.

A prohibition takes effect on the date specified in the ballot proposition. If no effective date is specified in the ballot proposition, the prohibition takes effect on a date specified by the legislative authority that must be at least 30 days and no later than 60 days after the election.

With respect to a county enacting an ordinance, the ordinance may apply only to unincorporated areas of the county. No voters within the boundaries of an incorporated city or town may participate in a county election.

It is established that the state has sole authority to regulate licensed cannabis retailers. Counties, cities, and towns are preempted from engaging in the regulation of cannabis retailers other than enacting voter-approved bans on cannabis retailers. However, cities, towns, and counties retain their existing zoning authority regarding the siting of cannabis retailers. It is also specified that nothing in the legislation may be construed to prevent a city, town, or county from applying ordinances of general application to cannabis businesses.

Except by voter approval, counties, cities, and towns may not enact any ordinance,

regulation, or land use plan that has the effect of precluding the siting or operation of cannabis retailers within their jurisdictional boundaries. However, a city, town, or county that prohibits the siting and operation of any retail business within its jurisdictional boundaries may enact an ordinance or regulation that precludes the siting and operation of state cannabis businesses.

Following the passage of a local ordinance by voter approval at a general election, the Washington State Liquor and Cannabis Board may not issue a cannabis retail license with respect to a business that is either located or proposed to be located within an area subject to the ordinance.

Until July 1, 2032, an amount equivalent to the total cannabis excise taxes generated by retail outlets in cities, towns, and counties that, on the effective date of the act, have a ban or moratorium on the operation or siting of cannabis retailers and have no cannabis retailers operating in their jurisdiction, and that, after the effective date of the act, authorize cannabis retail activity, must be disbursed annually as follows: (1) 50 percent of funds must be used to support substance abuse disorder prevention treatment services including development of best practices for programs and services; and (2) 50 percent of funds must be used for cannabis research including research conducted by the University of Washington and Washington State University.

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**Appropriation:** None.

**Fiscal Note:** Preliminary 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:**

(In support) After Initiative 502 (2012) (I-502) was enacted, there was discussion by cities and counties regarding zoning and planning for cannabis businesses. Cities and counties could choose whether they wanted their jurisdiction to participate by allowing the siting and operation of cannabis businesses in the jurisdiction. Ten years into legalization, it is time to re-evaluate the policy. Now is the time to consider approaching the issue of local bans and prohibitions similar to how they are approached with alcohol regulation, which is by allowing for a public vote. The bill includes a four-year timeline to allow communities to evaluate their policies, conduct public education and outreach to determine how the community feels, and to decide whether to add the question on a ballot at a general election. The topic of local prohibitions and preemption is a long-discussed topic in the cannabis industry, and bringing the bill forward is appreciated. This bill is a reasonable approach with a long phase-in period. It will give everyday citizens the ability to weigh in on whether they want cannabis businesses in their area. There is significant illicit market

activity in areas of Washington with bans and moratoria. This bill helps combat those illicit sales. A study suggests up to 25 percent of cannabis purchased is purchased on the illicit market, which is related to a lack of access to retail stores. If voters decide they do not want cannabis sales in their jurisdiction that is okay, but there should be an opportunity for citizens to decide the issue. The only suggested improvement to the bill is to reduce the timeline to less than four years, to enable voters to weigh in sooner. After voters legalized cannabis in Washington, it was an error to enable local governments to opt out of the system and deprive their citizens of the right to access legal cannabis. Fears that were expressed about the possible negative consequences of cannabis legalization have failed to materialize after 10 years. It is time to start treating cannabis more like alcohol. The bill also impacts medical cannabis patients who currently struggle to access their medicine. Currently, some patients must drive long distances to access cannabis and this bill could help improve access for medical patients.

(Opposed) Local governments have significant concerns with this bill. The issue of local governments' ability to decide to prohibit cannabis sales in their jurisdiction is fairly well settled in communities throughout Washington. A handful of jurisdictions have decided to enact bans through their local elected officials. Citizens have had opportunities over the last 10 years to provide input to their local elected officials. There is not a need for the state to mandate a vote on this issue. Local elected representatives have been responsive to their citizens. There is an example of a jurisdiction where the community has held two advisory votes and both times voters supported the local ban. This bill would force a third vote in that community and the election would have a cost. There are concerns from local jurisdictions that permit retail activity but do not wish to permit retail cannabis activity. There are also concerns with revenue sharing implications for how the tax revenues from communities would be shared under the cannabis excise tax distribution framework. Cities and counties split about \$45 million of tax revenue in jurisdictions allowing retail sales and there are questions about the impact of this legislation on revenue sharing.

**Persons Testifying:** (In support) Representative Sharon Wylie, prime sponsor; Lukas Hunter, Harmony Farms; Burl Bryson, The Cannabis Alliance; and Micah Sherman, Washington Sun and Craft Growers Association.

(Opposed) Candice Bock, Association of Washington Cities.

**Persons Signed In To Testify But Not Testifying:** None.