

HOUSE BILL REPORT

E2SSB 5080

As Reported by House Committee On:
Regulated Substances & Gaming

Title: An act relating to expanding and improving the social equity in cannabis program.

Brief Description: Expanding and improving the social equity in cannabis program.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Saldaña, Conway, Frame, Hasegawa, Kuderer, Lovelett, Nguyen, Nobles and Stanford; by request of Liquor and Cannabis Board).

Brief History:

Committee Activity:

Regulated Substances & Gaming: 3/14/23, 3/20/23 [DPA].

**Brief Summary of Engrossed Second Substitute Bill
(As Amended By Committee)**

- Modifies the Cannabis Social Equity Program (Program) including: (1) extending the Program's expiration; (2) adding cannabis producer and processor licenses to the Program; (3) authorizing additional cannabis retail licenses to be issued through the Program; (4) requiring a third-party contractor to score applicants; (5) amending definitions; and (6) adding provisions on where licenses may initially be located.
- Waives annual license fees in the Program through July 1, 2032, and encourages all cannabis licensees to submit a social equity plan by providing a one-time license fee reimbursement opportunity.
- Adds provisions authorizing certain local government objections to the issuance of cannabis retail licenses, and requiring the consideration of input from local governments on retail outlet density in establishing the maximum number of retail outlets that may be licensed in each county.
- Requires a Joint Legislative Audit and Review Committee report by June 30, 2025, on whether current levels of cannabis production align with

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.

market demand and capacity.

HOUSE COMMITTEE ON REGULATED SUBSTANCES & GAMING

Majority Report: Do pass as amended. Signed by 8 members: Representatives Kloba, Co-Chair; Wylie, Co-Chair; Stearns, Vice Chair; Cheney, Morgan, Orwall, Reeves and Waters.

Minority Report: Without recommendation. Signed by 3 members: Representatives Chambers, Ranking Minority Member; Robertson, Assistant Ranking Minority Member; Walsh.

Staff: Peter Clodfelter (786-7127).

Background:

Cannabis Social Equity Program.

The Legislature established the Social Equity in Cannabis Task Force (SECTF) in 2020 (modified in 2021) to make recommendations to the Washington State Liquor and Cannabis Board (LCB) including on establishing a Cannabis Social Equity Program (Program) for the issuance and re-issuance of existing retail cannabis licenses that have been cancelled, revoked, or never issued, and to advise the Governor and the Legislature on policies to facilitate development of the Program.

The SECTF included legislators, agency representatives, community members, and cannabis industry licensee representatives. The SECTF issued recommendations to the LCB and the Legislature in January 2022, and in December 2022 submitted a final report and recommendations to the Governor, the LCB, and the Legislature.

In October 2022 the LCB finalized rules, effective November 2022, for the Program. The LCB opened the application process for the Program for a 30-day window beginning March 1, 2023. About 44 retail cannabis licenses that were forfeited, cancelled, revoked, or never issued are available in specific jurisdictions across Washington.

In determining the issuance of a license among applicants, the LCB may prioritize applicants based on the extent to which the application addresses the components of the social equity plan; and in the 2022 Supplemental Operating Budget, \$500,000 of the LCB's appropriation was provided for the LCB, in consultation with community organizations and the Office of Equity, to select a third-party contractor to prioritize applicants. The LCB may deny any application if the LCB determines that the application does not meet social equity goals, does not meet social equity plan requirements, or the application does not otherwise meet cannabis licensing requirements.

The Cannabis Social Equity Technical Assistance Grant Program was established in 2020 to award grants to social equity applicants, as well as to cannabis licensees holding a license issued after June 30, 2020, and before July 25, 2021, who meet social equity applicant criteria. The Department of Commerce must award grants primarily based on the strength of social equity plans, but may also consider additional criteria if deemed necessary or appropriate. The Department of Commerce must award grants for eligible technical assistance activities including navigating the cannabis licensure process, business plan development, regulatory compliance training, financial management training, and other activities.

Program Definitions.

The term "social equity applicant" is defined as:

- an applicant who has at least 51 percent ownership and control by one or more individuals who have resided 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 community members as determined by the LCB;
- an applicant who has at least 51 percent ownership and control by at least one individual who has been convicted of a cannabis offense, a drug offense, or is a family member of such an individual; or
- an applicant who meets criteria defined in rule by the LCB after consultation with the Commission on African American Affairs and other commissions, agencies, and community members as determined by the LCB.

The term "disproportionately impacted area" (DIA) means a census tract or comparable geographic area that satisfies the following criteria, which may be further defined in rule by the LCB after consultation with the Commission on African American Affairs and other agencies, commissions, and community members as determined by the LCB:

- the area has a high poverty rate;
- the area has a high rate of participation in income-based federal or state programs;
- the area has a high rate of unemployment; and
- the area has a high rate of arrest, conviction, or incarceration related to the sale, possession, use, cultivation, manufacture, or transport of cannabis.

The term "social equity plan" is defined as a plan that addresses at least some of the elements outlined below, along with any additional plan components or requirements approved by the LCB following consultation with the SECTF. The plan may include the following:

- a statement that the social equity applicant qualifies as a social equity applicant and intends to own at least 51 percent of the proposed cannabis retail business or applicants representing at least 51 percent of the ownership of the proposed business qualify as social equity applicants;
- a description of how issuing a cannabis retail license to the social equity applicant

- will meet social equity goals;
- the social equity applicant's personal or family history with the criminal justice system including any offenses involving cannabis;
- the composition of the workforce the social equity applicant intends to hire;
- neighborhood characteristics of the location where the social equity applicant intends to operate, focusing especially on disproportionately impacted areas; and
- business plans involving partnerships or assistance to organizations or residents with connection to populations with a history of high rates of enforcement of cannabis prohibition.

The term "social equity goals" is defined as increasing the number of cannabis retailer licenses held by social equity applicants from DIAs and reducing accumulated harm suffered by individuals, families, and local areas subject to severe impacts from the historical application and enforcement of cannabis prohibition laws.

Cannabis License Fees.

The annual license fee for issuance or renewal of a cannabis producer, processor, or retailer license is \$1,381. The same fee applies to a cannabis retailer license under the Program.

Cannabis Retail Licensing.

The LCB, in consultation with the Office of Financial Management, determines the maximum number of retail outlets that may be licensed in each county, taking into consideration: (1) population distribution; (2) security and safety issues; (3) the provision of adequate access to licensed sources of cannabis products to discourage purchases from the illegal market; and (4) the number of retail outlets holding medical cannabis endorsements necessary to meet the medical needs of qualifying patients.

The maximum number of retail outlets statewide is currently set by the LCB at 556. The LCB allocated retail licenses to specific counties or cities. In determining whether to grant or a deny a license or renewal of a license, the LCB must give substantial weight to objections from an incorporated city or town or county legislative authority based upon chronic illegal activity associated with the applicant's operations of the premises proposed to be licensed or the applicant's operation of any other licensed premises, or the conduct of the applicant's patrons inside or outside of the licensed premises.

Summary of Amended Bill:

Cannabis Social Equity Program.

The July 1, 2029, expiration date of the Cannabis Social Equity Program (Program) is extended to July 1, 2032. Issuing cannabis producer licenses and processor licenses is added to the Program. Until July 1, 2032, cannabis producer licenses and cannabis processor licenses that have been subject to forfeiture, revocation, or cancellation by the Washington State Liquor and Cannabis Board (LCB) may be issued or reissued to an

applicant who meets licensing requirements. Up to 100 cannabis processor licenses may be issued immediately under these provisions. Beginning January 1, 2025, up to 10 cannabis producer licenses may be issued under these provisions, which must be issued in conjunction with a cannabis processor license.

Beginning January 1, 2023, and continuing every three years until July 1, 2032, the LCB may, with the approval of the Legislature through the passage of a bill, increase the number of cannabis retailer licenses and cannabis producer licenses for the Program based on the most recent census data available as of January 1, 2023, and the annual population estimates published by the Office of Financial Management. Additionally, beginning January 1, 2024, and until July 1, 2032, the LCB may issue up to 52 cannabis retailer licenses for the Program in addition to the retailer licenses that were forfeited, revoked, cancelled, or were not previously issued but could have been issued.

At the time of licensure, all licenses issued through the Program may be located in any city, town, or county that allows cannabis retail, cannabis production, or cannabis processing business activity, as applicable, at the proposed location, regardless of whether a cannabis retailer license, cannabis producer license, or cannabis processor license was originally allocated to or issued in another city, town, or county and the maximum number of retail cannabis licenses established by the LCB for each county. After a social equity license has been issued for a specific location, the location of the licensed business may not be moved to a city, town, or county different from the city, town, or county in which it was initially licensed. The LCB must adopt rules establishing a threshold of the number of the licenses that can be located in each county.

In determining the priority for issuance of a license among applicants, the LCB must select a third-party contractor to identify and score social equity applicants, using a scoring rubric developed by the LCB. The LCB must rely on the score provided by the third-party contractor in issuing licenses. The LCB may deny an application for a license if the LCB determines that, upon advice of the third-party contractor, the application does not meet the social equity licensing requirements or if the LCB determines the application does not otherwise meet general cannabis licensing requirements. The requirement to submit a social equity plan is removed from the social equity licensing process, while submitting a social equity plan is retained as a requirement for the Cannabis Social Equity Technical Assistance Grant Program (Grant Program).

Dates in the Grant Program are changed to specify that cannabis licensees holding a license issued after April 1, 2023, and before July 1, 2024 (instead of after June 30, 2020, and before July 25, 2021), may be eligible for grants. Additionally, it is specified that the Department of Commerce must award grants primarily based on the strength of the social equity plans submitted by cannabis license applicants and cannabis licensees holding a license issued after April 1, 2023, and before July 1, 2024 (instead of after June 30, 2020, and before July 25, 2021).

Program Definitions.

The definition of "social equity applicant" is redefined as an applicant who has at least 51 percent ownership and control by one or more individuals who meet at least two of the following qualifications: (1) lived in a disproportionately impacted area in Washington for a minimum of five years between 1980 and 2010; (2) has been arrested or convicted of a cannabis offense or has a family member who has been arrested or convicted of a cannabis offense; (3) had a household income in the year prior to submitting an application that was less than the median household income within Washington as calculated by the United States Census Bureau; or (4) is both a socially and economically disadvantaged individual as defined by the Office of Minority and Women's Business Enterprises.

The definition of "disproportionately impacted area" (DIA) is redefined as a census tract or comparable geographic area within Washington where community members were more likely to be impacted by the war on drugs. These areas must be determined by the LCB, in consultation with the Office of Equity, using a standardized statistical equation to identify areas with demographic indicators consistent with populations most impacted by the war on drugs. These areas must be assessed to account for demographic changes in the composition of the population over time. The DIAs must include census tracts or comparable geographic areas in the top fifteenth percentile in at least two of the following demographic indicators of populations most impacted by the war on drugs: (1) the area has a high rate of people living under the federal poverty level; (2) the area has a high rate of people who did not graduate from high school; (3) the area has a high rate of unemployment; or (4) the area has a high rate of people receiving public assistance.

The definition of "social equity plan" is redefined to require a statement that indicates how the cannabis licensee will work to promote social equity goals in their community, to eliminate a requirement that a plan must include information on the social equity applicant's personal or family history with the criminal justice system, and to eliminate a requirement that a plan must include information on neighborhood characteristics of the location where the social equity applicant intends to operate.

The definition of "social equity goals" is modified so that increasing the number of cannabis producer and processor licenses held by social equity applicants from disproportionately impacted areas is also a social equity goal.

Cannabis License Fees.

The annual fee for issuance, reissuance, or renewal for a cannabis license issued through the Program is waived through July 1, 2032. After January 1, 2024, all cannabis licensees are encouraged but are not required to submit a social equity plan to the LCB. Upon confirmation by the LCB that a cannabis licensee who is not a social equity applicant, and who does not hold a social equity license, has submitted a social equity plan, the LCB must, within 30 days, reimburse the licensee an amount equal to the cost of the licensee's annual cannabis license renewal fee. However, the LCB may provide reimbursement one time only to a licensed entity and a licensed entity holding more than one cannabis license is

eligible for reimbursement of the license renewal fee on only one license.

Retail Cannabis Licensing.

The LCB may not issue a cannabis retail license for any premises not currently licensed if: (1) the LCB receives a written objection from an incorporated city or town, or county legislative authority, relating to the physical location of the proposed premises; (2) the objection to the location from the incorporated city or town, or county legislative authority, is received by the LCB within 20 days of the LCB notifying the incorporated city or town, or county legislative authority of the proposed cannabis retail location; and (3) the objection to the issuance of a cannabis retail license at the specified location is based on a preexisting local ordinance limiting outlet density in a specific geographic area. A preexisting local ordinance is an ordinance enacted and in effect before the date the applicant submits an application for a cannabis retail license to the LCB identifying the premises proposed to be licensed.

When determining in consultation with the Office of Financial Management the maximum number of retail outlets that may be licensed in each county taking into consideration specified factors, the LCB is also required to consider written input from an incorporated city or town, or county legislative authority when evaluating concerns related to outlet density. An incorporated city or town, or county legislative authority may enact an ordinance prescribing outlet density limitations. An ordinance may not affect licenses issued before the effective date of the ordinance prescribing outlet density limitations. The LCB is authorized to adopt rules to identify how local jurisdiction input will be evaluated.

Joint Legislative Audit and Review Committee Study.

The Joint Legislative Audit and Review Committee must review prior canopy studies completed by the LCB and examine whether current levels of cannabis production align with market demand and capacity, including the impact of any additional cannabis producer licenses granted under the bill. Results of the review must be reported to the Governor and the appropriate legislative committee by June 30, 2025.

Amended Bill Compared to Engrossed Second Substitute Bill:

The amended bill makes the following changes to the engrossed second substitute bill:

- requires the legislative authority of an incorporated city or town, or county legislative authority, to send any written objection relating to the physical location of a proposed new retail cannabis outlet seeking to be licensed, instead of allowing for an official representative or representatives of an incorporated city or town, or county legislative authority, to send the written objection;
- specifies that for purposes of the proposed authorization for local governments to submit written objections against, and prevent the issuance of, new cannabis retail licenses based on a preexisting local ordinance limiting outlet density, a preexisting local ordinance is an ordinance enacted and in effect before the date the applicant submits an application for a cannabis retail license to the Washington State Liquor

- and Cannabis Board (LCB) identifying the premises proposed to be licensed;
- restructures the proposed provision to authorize an incorporated city or town, or county legislative authority, to enact an ordinance prescribing outlet density limitations, while providing that an ordinance may not affect licenses issued before the effective date of the ordinance prescribing outlet density limitations;
- corrects a date range reference in the context of which cannabis licensees who meet social equity applicant criteria may be eligible for technical assistance grants, so both date range references would be to cannabis licensees holding a license issued after April 1, 2023, and before July 1, 2024;
- adds a reference to "cannabis production" to a provision where only cannabis retail and processing business activity are referenced, to specify that licenses issued through the Cannabis Social Equity Program may generally be located in any city, town, or county that allows cannabis retail, cannabis production, or cannabis processing business activities, as applicable, at the proposed location;
- amends the definition of "social equity goals" to also reference goals of increasing the number of cannabis producer and processor licenses (not only cannabis retailer licenses) held by social equity applicants from disproportionately impacted areas; and
- moves the amended definition of "social equity plan" to the definition section of the Uniform Controlled Substances Act and corrects related references.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill contains multiple effective dates. Please see the bill.

Staff Summary of Public Testimony:

(In support) The work of the Social Equity in Cannabis Task Force was instrumental in developing social equity policy recommendations, and this legislation includes some of those recommendations. This is agency request legislation that has been developed with community members. In addition to being based on population, the 52 new retail licenses created by this bill recognizes the 52 years of the war on drugs and Washington's criminalization of cannabis and other possession offenses. The bill also allows the Liquor and Cannabis Board (LCB) to analyze population data and, with separate legislation by the Legislature, add additional rounds of licensing. There is more capacity currently for new processor licenses compared to producer licenses, which is why the bill allows for up to 10 producer licenses in 2025, and up to 100 processor licenses issued immediately. Density concerns and market saturation are accounted for in the bill, and local governments would have opportunities for their concerns to be addressed in the state cannabis licensing process. This legislation is intended to give real opportunities to people who have been harmed by the war on drugs and those who faced barriers to participation in the cannabis

market established by Initiative 502 (2012) (I-502). Restrictive state policies in cannabis licensing were based on concerns over possible federal intervention, and had unintended consequences.

There has been an inequity and imbalance of the cannabis market in Washington in the last 10 years. The work of the LCB is greatly appreciated on championing the social equity issue. There is widespread agreement that this legislation is the best proposal to bring real equity opportunities. The war on drugs negatively affected Black and Brown men and women for decades, causing harm to families still visible today. Prosecutions disproportionately fell on persons of color. Those affected could benefit under the bill to build generational wealth. The bill will create many jobs and alleviate financial stress. Make the lack of inclusion history and not the present. The current Cannabis Social Equity Program (Program) is limited in that licenses are tied to a specific local jurisdiction, some of which have a ban or other restrictions; this bill addresses that issue. When I-502 legalized cannabis, there was no recognition of harms caused to communities. This bill, and more, must be done to address past inequities. The bill should also be amended regarding local government zoning issues to cover producer and processor license density. The 20-day timeline for local government written objections may not work in practice. Changing the timeline to 30 or 45 days could be better, or saying a designee of the legislative body could submit the written objection could work. Other supporters think a majority vote of the county or city legislative authority should be required. There should be a report to the Legislature on the LCB's progress implementing the bill after one year. The bill gives the LCB the statutory authority needed to continue the important work on social equity in the cannabis industry.

(Opposed) None.

(Other) The work developing this bill to achieve the goals while responding to concerns with the original proposal is appreciated. This version ensures that the Legislature retains control over cannabis license allotment, that stores do not concentrate in one jurisdiction, and it accounts for local government input. A couple areas of the bill need continued work, including the proposed issuance of 52 new retail licenses. There is concern this may unfairly set up stores to fail, and add to an oversaturated market, when considered in context of the 44 retail licenses about to be issued under the existing Program. Until cannabis's legal status under federal law changes, Washington's cannabis market demand is not expanding. The bill should not require the LCB to establish concentration maximums and a standard maximum rate for all retail licensees would be better suited. The analysis required of the Joint Legislative Audit and Review Committee on producers and processors should also include retailers in the analysis.

Persons Testifying: (In support) Senator Rebecca Saldaña, prime sponsor; Paula Sardinias, Washington Build Back Black; Peter Manning and Mike Asai, Black Excellence In Cannabis; Ollie Garrett, Marc Webster, and Justin Nordhorn, Washington State Liquor and Cannabis Board; Burl Bryson, The Cannabis Alliance; Paul Jewell, Washington State

Association of Counties; and Arthur West.

(Other) Adán Espino Jr, Craft Cannabis Coalition; and Lindsey Hueer, Association of Washington Cities.

Persons Signed In To Testify But Not Testifying: None.