

HOUSE BILL REPORT

HB 1974

As Reported by House Committee On:
Commerce & Gaming
Appropriations

Title: An act relating to establishing a Washington state cannabis commission.

Brief Description: Establishing the Washington cannabis commission.

Sponsors: Representatives Shewmake, Blake, Peterson, Walsh, Chandler, Macri, Fitzgibbon, Appleton, Thai, Tharinger and Riccelli.

Brief History:

Committee Activity:

Commerce & Gaming: 2/19/19, 2/21/19 [DPS];

Appropriations: 2/8/20, 2/11/20 [DP2S(w/o sub COG)].

Brief Summary of Second Substitute Bill

- Establishes the Washington Cannabis Commission (Commission), an agricultural cannabis commodity commission comprised of cannabis producers and a Department of Agriculture (Department) representative, with assistance from an advisory council.
- Authorizes the Commission to assess and collect an annual assessment on propagation material and cannabis products.
- Requires the Commission to complete and submit to the Department Director an annual research, education, and training plan.

HOUSE COMMITTEE ON COMMERCE & GAMING

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Stanford, Chair; Reeves, Vice Chair; Chambers, Assistant Ranking Minority Member; Blake, Kirby, Kloba, Morgan and Young.

Minority Report: Do not pass. Signed by 2 members: Representatives Jenkin 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.

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

Staff: Kyle Raymond (786-7190).

Background:

Marijuana Licenses and Regulators.

The commercial marijuana licenses issued by the Washington State Liquor and Cannabis Board (Board) include the marijuana producer license, the marijuana processor license, and the marijuana retailer license. The marijuana producer license authorizes the licensee to produce marijuana for sale at wholesale to marijuana processors and other marijuana producers. Marijuana producers may also sell immature plants or clones and seeds to cooperatives, qualifying patients, and designated providers. Marijuana production may be indoors or outdoors.

Marijuana producers may also, but are not required to, be licensed as marijuana processors. Some businesses hold only the marijuana processor license. A marijuana processor license authorizes the licensee to process, package, and label marijuana concentrates, useable marijuana, and marijuana-infused products for sale at wholesale to marijuana processors and marijuana retailers. Neither a licensed marijuana producer or a licensed marijuana processor may hold a financial interest in a licensed marijuana retailer.

The Department of Agriculture (Department) operates a marijuana testing laboratory with the Board, and also regulates marijuana processors and their facilities. In addition to state agencies, local governments also regulate marijuana businesses through generally applicable business licensing and land use regulations. Local governments may also prohibit the siting and operation of marijuana businesses within their jurisdiction.

Commodity Commissions.

A commodity commission may be established for a particular agricultural commodity, and some commodity commissions are created directly by statute, including wine, apples, dairy products, and beef. A commodity commission also may be established according to the requirements of the Washington Agricultural Enabling Act (Act). Commodity commissions have been created through this Act for wheat, potato, fryers, barley, and other commodities.

The Department Director (Director) may provide, by rule, a method to fund staff support for all commodity boards and commissions if a position is not directly funded by the Legislature, and the staff support funded is limited to one-half full-time equivalent employee.

Public Records Act.

The Public Records Act (PRA) requires state and local agencies to disclose requested written records to the public for inspection and copying upon request, unless the information fits into one of the various specific exemptions under the PRA or as otherwise provided in law. For example, certain agricultural information is exempt from public inspection and copying. The stated policy of the PRA favors disclosure and requires narrow application of the listed exemptions.

Summary of Substitute Bill:

Commission Structure.

The Washington Cannabis Commission (Commission), an agricultural cannabis commodity commission, is established. The Commission's stated purpose is to benefit the people of the state and its economy.

The Commission consists of 13 voting members that include marijuana producers and a Department representative. The Commission's voting members are comprised of:

- eight cannabis producers that reside in, and are elected from, districts across the state;
- three cannabis producers that represent each cannabis production tier;
- a cannabis producer from any licensing tier or district; and
- the Director or the Director's designee.

An advisory council is established to assist the Commission. The advisory council includes four nonvoting members nominated by the Board and appointed by the Director, and the members include a representative from each of the following: (1) the Board; (2) a marijuana processor licensee; (3) a marijuana retailer licensee; and (4) an independent testing laboratory.

Each cannabis producer, cannabis processor, cannabis retailer, and testing laboratory representative must be: 21 years of age or older; a resident of Washington; and licensed by the Board for at least three years before becoming a member. The representatives must continue to meet all membership qualifications throughout the member's term.

Commission members serve three-year terms. Of the initial members, five must be appointed for a one-year term, five must be appointed for a two-year term, and the remainder must be appointed for a three-year term. If a position on the Commission becomes vacant, the Commission must notify the Director, who must immediately appoint another representative to the unexpired term.

Committee Requirements.

The Commission must elect a chair and officers. The officers must include a Treasurer who is responsible for all Commission receipts and disbursements. The Commission must adopt rules for its own governance, which must include an annual meeting for the election of officers, as well as the transaction of other business. The Commission is also required to do the following:

- employ and discharge employees and independent contractors;
- retain private legal counsel, subject to review by the Office of the Attorney General;
- participate in proceedings relating to the production, regulation, distribution, sale, or use of cannabis, including the required reporting of those activities to the Public Disclosure Commission;
- acquire and transfer property, establish offices, incur expenses, and enter into contracts;
- maintain accounts with one or more qualified public depositories;

- maintain accurate records of all receipts, disbursements, and other financial transactions, available for audit by the State Auditor;
- create and maintain a list of producers to solicit opinions regarding the Commission's duties;
- expend money to promote the general welfare of the state cannabis industry, particularly to assist in the sale and distribution of Washington cannabis;
- sue and be sued as a Commission, without individual liability; and
- receive such gifts, grants, and endowments from public or private sources for the use and benefit of the purposes of the Commission, and expend the same or any income therefrom according to the terms of the gifts, grants, or endowments.

All costs incurred by the Department, including the adoption of rules and other actions necessary, must be reimbursed by the Commission. The Commission must provide funds to the Department according to the rules adopted by the Director. The Director may also provide, by rule, a method to fund one-half full-time equivalent employee staff support for the Commission.

Referendum Process.

The Director must conduct a referendum to determine cannabis producer participation in the Commission, if the Department receives a petition containing five cannabis producer signatures. The referendum must be conducted within 60 days of receipt of the petition, and the referendum requirements are approved if: (1) at least 51 percent by numbers of cannabis producers participating vote affirmatively; and (2) 30 percent of the cannabis producers are represented. The Director is not required to hold a referendum more than once in any 12-month period.

The Department must tally the results of the vote and provide the results to the cannabis producers. Cannabis producers may dispute the vote through a written statement within 60 days of the vote. If the Director determines the referendum requirements are approved, the Director must: (1) appoint the members of the Commission within 60 days of when the referendum held; and (2) direct the Commission to put into force the assessment.

The Director must establish a list, and maintain the file, of cannabis producers from information provided by the Board. The Director must use the cannabis producer's: name, mailing address, and production by the cannabis producer in the preceding fiscal year. The list must be certified as a true representation of the referendum mailing list, and the information on each cannabis producer must be mailed to each cannabis producer on record with the Director for verification. All corrections must be filed with the Director within 20 days from the date of mailing.

The Director may require the petitioners to deposit money to defray the expenses of conducting the referendum. The estimated amount of cost incurred to conduct a referendum must be determined by the Director and provided to the petitioners before any service takes place. Petitioners must deposit funds with the Director to pay for expenses incurred by the Department, and the Commission must reimburse petitioners the amount paid to the Department when funds become available.

Annual Assessment.

The Commission must collect an annual levy assessed from cannabis producers for the cannabis and cannabis products that they produced. The Commission must adopt rules specifying the assessment collection time, place, and payment method for producers who ship both in-state and directly out-of-state. The Commission must develop a reporting system to document producers that are reporting quantities of cannabis produced and are paying the assessment. All expenditures and disbursements made from this account must be made without appropriation.

The assessment levied by the Commission constitutes a personal debt of every person who owes the assessment, which is due when the Commission calls for payment. If a producer fails to pay the Commission the full assessment amount by the date due, the Commission may add an additional penalty to defray the cost of enforcing its collection, and the penalty cannot exceed 10 percent of the assessment. If the person fails to pay an assessment, the Commission may bring a civil action for collection against the party, which must be tried and judged like any other debt due and payable cause of action.

The Commission must deposit assessment money collected in a separate Commission account in any bank that is a state depository. The Commission is exempt from the State Treasury daily remittance requirement for any money the Commission receives, collects, or expends.

Research and Educational Campaign.

The Commission may create, provide for, and conduct a comprehensive and extensive research and educational campaign that reflect the needs of cannabis producers. The Commission must adopt research and educational campaign goals that serve the needs of cannabis producers. The goals may include efforts to:

- advance knowledge and practice of the production of cannabis in this state through the research and testing of methods to improve pest management, worker protection and safety training, and environmental protection;
- promote state cannabis-related agriculture production;
- foster favorable investment conditions for state cannabis production;
- limit youth access and youth exposure to cannabis; and
- encourage favorable legislative and regulatory treatment of legal state cannabis markets.

The Commission must prepare and submit its research plan, its commodity-related education and training plan, and its annual budget before the beginning of its fiscal year. The Commission must submit these materials to the Director for approval, and the Director must review and make a determination of all submissions in a timely manner.

Public Records Disclosure.

Certain Commission and producer agricultural records are exempt from public disclosure, including financial and commercial referendum records, as well as cannabis production and sales records.

However, financial and commercial information and records related to the work of the Commission may be shared between the Department and the Commission. Records may also be used in any suit or administrative hearing relating to the Commission's work. In addition,

general statements based upon cannabis producer reports may be issued, as long as the statements do not identify a specific cannabis producer or licensee. The Director or the Commission may also publish the name of a cannabis producer that violates a Commission statute or rule, as well as a statement describing the cannabis producer violation.

Liability.

The Commission's financial obligations, as well as liabilities or claims against the Commission, must only be enforced against the assets of the Commission. Liability for the debts or actions of the Commission does not exist against the State of Washington, or any individual member, employee, or agent of the Commission or the State of Washington. The Commission's members, and its employees, may not be held individually responsible for errors in judgment, mistakes, or other acts, except for their own individual acts of dishonesty or crime. No person or employee may be held individually responsible for any act or omission of any other commission members.

Substitute Bill Compared to Original Bill:

The substitute bill adds two additional goals that the Commission may engage in as a part of their research and education campaign. The added goals include efforts to: (1) advance knowledge and practice of the production of cannabis in this state through the research and testing of methods to improve pest management, worker protection and safety training, and environmental protection; and (2) limit youth access and youth exposure to cannabis.

Appropriation: None.

Fiscal Note: Requested on February 7, 2019.

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) Washington produces over 500 crops that are worth billions of dollars. These commodity products are supported by research that: helps farmers be more productive, sustainable, and environmentally friendly; and improves the safety and quality of consumer products. Due to the status of cannabis at the federal level, entities such as the United States Department of Agriculture, the Environmental Protection Agency, and higher education institutions are not able to support cannabis production in the state through providing research. Cannabis producers are currently relying on private research and trial and error, and there is a great need for more research to benefit businesses and public safety. This bill will allow important research and improve cannabis farmer safety.

The Commission would self-impose a tax on cannabis producers. The cost of the Commission to cannabis producers would be approximately \$2 per \$1000 of value, which is very low compared to other commissions. The Commission would support typical industry growth, help with market stability, and allow the industry to establish best practices, which

would reduce the risk of cannabis producers closing. The research and business support the Commission would provide should be the industry's responsibilities, not the state.

There are currently no other existing cannabis commissions, so this bill would make Washington a national leader. The bill would allow cannabis growers to finance and develop programs for research, financial, and technical support. This bill is limited compared to other commissions and does not allow cannabis marketing or advertising. The bill also authorizes the Commission to do education and outreach to legislators, which provides agricultural producers a seat at the table to encourage best practices and inform legislators on how actions will affect producers.

The idea of a commodity commission is not novel. There are 21 existing commissions in the state, including commissions for beer, wine, raspberries, milk, potato, cherries, pears, apples, hops, mint, and turf grass. Commissions can add significant value, and there is no crop more in need of a commission than cannabis.

The state of pest management in the Washington cannabis industry is in disarray. Many cannabis growers are not traditional farmers and have not received formal training. Cannabis as an agricultural product is similar to hops, and the two commodities experience many of the same pest issues. Cannabis is grown indoors, which makes pest problems more significant for cannabis, compared to other crops. In addition, the Food and Drug Administration will not allow pesticides to be registered for use on cannabis. As a result, cannabis growers only have access to a small subset of the pest control products available. Funding for cannabis pest management research is greatly needed and would protect workers.

The bill could be improved by changing the three-year licensing requirement for testing laboratories to qualify for membership, using the traceability system for data instead of creating an additional reporting requirement, and narrowing the public disclosure exemption to ensure cannabis production is not excluded.

(Opposed) The Washington Association for Substance Abuse Prevention (Association) is concerned with the agricultural model because cannabis is different than other products. Cannabis is a drug and can be harmful to children. The Association is concerned with the Commission's ability to seek a favorable regulatory environment, which would increase marijuana access and lead to the further normalization of cannabis use. The industry does not need the Commission to do this. Also, language could be added to limit youth access and exposure to cannabis.

The Association does not object to the Commission providing research and safety for cannabis products.

(Other) The Department oversees 21 existing commodity commissions in the state, 13 of which were established under marketing orders, and eight of which are established by statute. Commissions are funded through producer assessments and can vary in size and activity. The Commission will not exist until the referendum occurs.

Cannabis producers are particularly disadvantaged in gaining access to research and information about ways to safely produce their commodity. Due to its federal status,

cannabis production is not researched by major land grant universities like other commodities. Few options exist for cannabis producers to conducting and access research on pest management, safe growing practices, and proper pesticide use techniques. A cannabis commission could fund research projects of this nature.

Persons Testifying: (In support) Representative Shewmake, prime sponsor; Shawn DeNae, Washington Bud Company; Caitlein Ryan, The Cannabis Alliance; Alan Schreiber; James MacRae, Straight Line Analytics; Jedidiah Haney, Laboratory Guild; and Jeff Merryman.

(Opposed) Seth Dawson, Washington Association for Substance Abuse Prevention.

(Other) Hannah Street, Washington State Department of Agriculture.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Commerce & Gaming. Signed by 18 members: Representatives Ormsby, Chair; Robinson, 1st Vice Chair; Chopp, Cody, Dolan, Fitzgibbon, Hansen, Hudgins, Kilduff, Macri, Pettigrew, Pollet, Ryu, Senn, Springer, Sullivan, Tarleton and Tharinger.

Minority Report: Do not pass. Signed by 13 members: Representatives Stokesbary, Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier, Chandler, Corry, Dye, Hoff, Kraft, Mosbrucker, Schmick, Steele, Sutherland and Ybarra.

Minority Report: Without recommendation. Signed by 1 member: Representative Bergquist, 2nd Vice Chair.

Staff: Dan Jones (786-7118).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Commerce & Gaming:

The second substitute bill makes the following changes:

- expands the specified purpose of the Washington Cannabis Commission (Commission) to include: (1) establishing plans and programs for cannabis-related matters; (2) working with and advising local and federal government agencies; (3) working to standardize certain research methods with other interested parties; (4) conducting market research and analytics; (5) informing and advising producers on all cannabis matters; (6) providing education and training to marijuana licensees; and (7) aiding producers in adopting more efficient marketing practices;
- provides that marijuana producers may, with the aid of the state, conduct certain activities related to the promotion, development, and advancement of cannabis commodities;

- modifies the appointment process for certain advisory council members by providing that the Commission, rather than the Liquor and Cannabis Board (LCB), will nominate members;
- clarifies that Commission members, other than the Director of the Department of Agriculture (Director), must directly hold or be named owner of an entity holding a relevant LCB business license that may not be suspended;
- provides that the Commission members, other than the Director, must be engaged in, and derive a substantial portion of their income from, cannabis production for three years prior to becoming a Commission member;
- modifies the initial term date and the amount of initial appointments for Commission members;
- provides that vacant positions will be nominated by the Commission and appointed by the Director, rather than the Director appointing vacant positions without recommendation;
- establishes four districts from which to elect Commission producer members, organized by county;
- removes the requirement that the Director hold an initial referendum of cannabis producers 60 days after receipt of a petition with signatures from five cannabis producers;
- provides that the Director must appoint the initial Commission members and direct initiation of the assessment within 60 days of the effective date, rather than after the initial referendum;
- modifies provisions related to the collection and verification of licensee data obtained from the LCB, including obtaining certain marijuana processor and retailer licensee data;
- authorizes the Commission to obtain and audit the records and production canopy of producers with written notice to determine whether appropriate assessments have been paid;
- authorizes the Commission to acquire and own intellectual property rights, licenses, and patents, and to collect royalties resulting from the sale or licensing of Commission-funded research, provided that all results and recommendations from research conducted or funded by the Commission must be available to all producers without charge, except for reasonable out-of-pocket costs as the Commission may determine;
- authorizes the Commission to speak on behalf of Washington with regard to cannabis producers and producer processors, subject to oversight from the Director;
- provides that the officers and employees of the Commission, the Washington State Wine Commission, and Washington Beer Commission are exempt from state civil service requirements under chapter 41.06 RCW;
- requires the Commission to develop and submit any plans, programs, and projects concerning the advertising, promotion, research, and education of affected commodities in keeping with state and federal laws to the Director for approval;
- specifies a methodology for calculating the assessment rate paid by producers, rather than directing the Commission to establish the assessment methodology by rule;
- allows the Commission to request, by majority vote, to modify the assessment based on the approved projects and activities of the Commission;

- provides that assessment rates are set as a percentage surcharge of the business and occupation tax and are based upon the net unit price paid for the product at the time of first sale;
- modifies the products subject to the assessment, including adding propagation materials;
- establishes certain conditions the assessment is subject to, including limiting the total amount of the annual assessments paid by all producers to 3 percent of the total market value of all units sold, processed, stored, or delivered by all producers annually;
- provides that producers must self-assess and are solely liable for the payment of the assessment to the Department of Revenue on a monthly basis;
- authorizes the Commission to refund or carry over surplus funds from the assessment collected; and
- requires the Commission to reconcile payments from each producer to determine whether the producer has overpaid or underpaid.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Second 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) Washington's agricultural commodities receive a variety of technical and research support, such as pesticide application training, except for cannabis. Worker safety and training programs would be an important focus of the Commission. Cannabis growers bear the burden of financing such programs for themselves. Forming the Commission would allow the cannabis industry to pool its resources to conduct research on growing and processing, rather than relying on urban legend. Research conducted through the Commission might include safer vaping products or pest mitigation. There is a proposed substitute bill being developed with input from multiple agencies that brings the Commission even more in line with other agricultural commissions. The Commission would be funded by a self-assessment and costs to the Department of Agriculture are minimal. The safety of cannabis products would be improved. The Commission could fund projects that would help small farmers, such as a tissue culture lab, or help small farmers with logistical issues. There is no agricultural commodity in Washington that needs a commission more than cannabis.

(Opposed) None.

Persons Testifying: Caitlein Ryan and Lara Kaminsky, The Cannabis Alliance; Shawn Wagenseller, The Craft Cannabis Commission; Mark Ambler, Breeze Trees, LLC; and Erik Johansen.

Persons Signed In To Testify But Not Testifying: None.