

SENATE BILL REPORT

SB 5546

As Reported by Senate Committee On:
Labor & Commerce, February 14, 2023

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

Brief Description: Establishing a Washington State cannabis commission.

Sponsors: Senators Shewmake, Lovick, Keiser, King, Stanford, Conway and Wilson, C..

Brief History:

Committee Activity: Labor & Commerce: 2/09/23, 2/14/23 [DPS-WM, w/oRec].

Brief Summary of First Substitute Bill

- Provides that, upon receipt of a petition containing the signatures of five active cannabis producers or active cannabis producer/processors, the Director of the Washington State Department of Agriculture (WSDA) must conduct a referendum of active cannabis producers and active cannabis producer/processors within 60 days of receipt, and if the requisite assent has been given, establishes the Washington State Cannabis Commission (Commission).
- Establishes purposes of the Commission, and grants the Commission powers and duties.
- Includes certain oversight of the Commission by the Director of WSDA, and requires the Commission to reimburse agency costs.
- Sets an initial assessment rate to fund the Commission as a percentage of sales revenue conducted by cannabis producers and producer/processors, and requires assessment modifications to be approved by referendum.

SENATE COMMITTEE ON LABOR & COMMERCE

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.

Majority Report: That Substitute Senate Bill No. 5546 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña, Vice Chair; King, Ranking Member; Robinson, Schoesler and Stanford.

Minority Report: That it be referred without recommendation.

Signed by Senators Braun and MacEwen.

Staff: Matt Shepard-Koningsor (786-7627)

Background: Commodity Commissions. There are 21 agricultural commodity commissions related to specific commodities in Washington. Commissions are funded by assessments on producers of the commodities within Washington. Several of the commodity commissions are established in law, including the Washington Apple Commission, Dairy Products Commission, Wine Commission, Beer Commission, Grain Commission, and others. The Washington State Department of Agriculture (WSDA) established additional commodity commissions through the adoption of marketing orders. The director of WSDA or the director's authorized representative is a member of each commodity commission. Commodity commissions are engaged primarily in marketing, research, or both, related to a specific commodity.

Cannabis Producer and Cannabis Processor Licenses. The Liquor and Cannabis Board (LCB) issues cannabis licenses in Washington. Two of these licenses are the cannabis producer license and the cannabis processor license. Cannabis producers may also, but are not required to, be licensed as a cannabis processor.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (First Substitute): Referendum Process. Upon receipt of a petition containing the signatures of five active cannabis producers (active producers) or active cannabis producer/processors (active producer/processors), the Director of WSDA (Director) must conduct a referendum of active cannabis producers and active producer/processors within 60 days of receipt of the petition. WSDA must establish a list of active producers and active producer/processors eligible to vote in collaboration with LCB and the Department of Revenue (DOR).

A referendum is approved if at least 51 percent of the participants vote affirmatively, and 30 percent of the active producers and 30 percent of the active producer/processors were represented in the referendum. If the Director determines the requisite assent has not been given, they must take no further action to implement or enforce the act. WSDA must tally the results, provide results to participants, and create rules for an active producer or active producer/processor to dispute the results within 60 days of the announced results. The Director is not required to conduct a referendum more than once in any 12-month period.

To be considered an active producer or active producer/processor, the licensee must have paid any amount in business and occupation tax to DOR in the calendar year before the date of a referendum.

Commission Established. Within 60 days of the Director determining the requisite intent has been given in a referendum, the Director must establish the Washington State Cannabis Commission (Commission), to consist of 13 voting members including the Director and representatives of licensed cannabis producers and producer/processors located throughout the state.

Purpose. The Commission's purposes are as follows:

- plan and conduct programs for cannabis-related matters;
- provide funding for conducting research;
- coordinate with and advise interested parties on cannabis-related matters;
- advise on packaging and labeling requirements;
- conduct reviews, surveys, and inquiries regarding market metrics and trends;
- inform and advise producers and producer/processors;
- educate and train producers, producer/processors, researchers, and their employees;
- provide resource conservation-related information and services;
- assist and cooperate with government agencies in investigating and controlling pests, diseases, and other adverse factors;
- advance knowledge and practice of the production of cannabis in Washington;
- foster conditions favorable to investment in the production of Washington cannabis;
- limit youth access and exposure to cannabis;
- enable cannabis producers and producer/processors to develop and engage in research regarding several aspects of cannabis and cannabis products, including discovering and developing new and improved cultivars for the reliable and economical production of Washington cannabis;
- establish the uniform grading and proper preparation of cannabis products for market; and
- protect the interest of consumers and the state by advising on production to ensure a balanced, regular supply of Washington cannabis.

Powers and Duties. To accomplish its purposes, the Commission must:

- elect a chair and other officers by majority vote in accordance with Commission bylaws;
- adopt, rescind, and amend bylaws and other internal Commission rules;
- administer and enforce provisions relating to the Commission;
- designate a public records officer, rules coordinator, and other representatives required by law;
- comply with all other applicable laws;
- institute and maintain legal actions in the name of the Commission; and
- keep accurate records of receipts and disbursements, which must be available for inspection and audit by certain individuals.

The Commission may:

- employ and discharge managers, employees, and other specified individuals, and to fix compensation;
- acquire and transfer personal and real property, purchase and lease office space, incur expenses, enter into contracts and cooperative agreements, and create debt and liabilities;
- make necessary disbursements for routine operating expenses and expend funds;
- cooperate with other interested parties;
- serve as a liaison on behalf of the general cannabis producing and processing industries to LCB and other interested parties, but not on behalf of any individual licensee;
- enter into contracts, cooperative agreements, or interagency agreements in accordance with applicable laws;
- solicit, accept, and expend and retain any gifts, bequests, contributions, or grants;
- retain legal services, subject to approval of the Office of the Attorney General;
- engage in appropriate activities and events;
- participate in hearings, meetings, and other proceedings relating to cannabis production, irrigation, manufacture, regulation, and other subjects, which must be disclosed to the Public Disclosure Commission;
- obtain a list of cannabis licensee information from LCB;
- acquire, create, develop, and own intellectual property if made available to all producers and producer/processors for free in most cases;
- speak on behalf of the Washington State government regarding agricultural production of cannabis in the state, subject to oversight of both WSDA and LCB;
- possess cannabis products for the limited purposes authorized in the legislation;
- adopt rules with the assistance of WSDA; and
- exercise other powers and duties reasonably necessary to accomplish its purposes.

Commission Membership. Of the 13 voting members, eight must be producers or producer/processors from four specified districts in the state, and four must be elected statewide representing producers or producer/processors of different sizes. Initial members must be appointed by the Director for staggered terms of one, two, or three years. After the initial appointments, the Commission must adopt rules establishing the process by which commission members are elected and any vacancy appointments are made. Members must be reimbursed for expenses incurred in the performance of their duties in accordance with relevant laws.

Each Commission member, other than the Director, must be at least 21 years of age; a citizen and resident of Washington; directly hold or be named owner in whole or majority part of an entity holding the relevant license; must be engaged in and have derived a substantial portion of their income from Washington cannabis production for a period of three years; and continue to meet all membership qualifications throughout their term.

Washington State Department of Agriculture Oversight and Assistance. The Commission must submit and the Director must approve each fiscal year, the Commission's budget; and as necessary, any plans concerning governance issues and rulemaking. The Director must review the Commission's education program to ensure it complies with applicable state and federal laws.

Reimbursement of Agency Costs. The Commission must reimburse all costs incurred by WSDA and LCB related to Commission activities and support. The costs incurred must include initial estimates of work and line-item accounting of such costs.

Assessments. If a referendum results in the requisite assent, the Commission is funded through assessments on cannabis producers and cannabis producer/processors, which are levied by LCB. The initial assessment rate is as follows:

- on each producer licensee who is not assessed the producer/processor fee below, 0.29 percent of all sales revenues conducted by the producer; and
- on each producer/processor licensee, 0.145 percent of all sales revenues conducted by the processor.

After the initial assessments are approved, the Commission may modify the assessment if submitted for approval by referendum and a majority of active producers and active producer/processors subject to an assessment approve the modification. Assessments must be disbursed quarterly to the Commission, which must deposit the assessments in a separate specified account. Until October 31, 2028, no assessments apply to a producer or producer/processor licensed under the Social Equity in Cannabis Program.

Information Sharing. Financial and commercial information and records submitted to either LCB or the Commission to administer the law establishing the Commission may be shared between LCB and the Commission, and may be used, if required, in any action or administrative hearing involving the Commission.

Liability. Obligations incurred by, and claims against, the Commission must be enforced against the assets of the Commission and, except to the extent of such assets, no liability for the debts or actions of the Commission exists against the state or against any member, employee, or agent of the Commission or the state in the person's individual capacity. Individual members and employees of the Commission may not be held responsible for errors, mistakes, or other acts or omissions, except for their individual acts of dishonesty or crimes.

Civil Service Law Exemption. Officers and employees of the Commission are exempt from the State Civil Service Law.

EFFECT OF CHANGES MADE BY LABOR & COMMERCE COMMITTEE (First Substitute):

- Provides that, upon receipt of a petition containing the signatures of five active producers or active producer/processors, the Director must conduct a referendum of active producers and producer/processors within 60 days of receipt of the petition.
- Requires WSDA to create a list of active producers and producer/processors eligible to vote in the referendum in collaboration with LCB and DOR.
- States that a referendum is approved if at least 51 percent of the participants vote affirmatively; and 30 percent of the active producers and 30 percent active producer/processors have been represented in the referendum.
- Provides that the Commission is not established, assessments are not collected, and the Director must not take further action to implement or enforce the chapter unless and until the requisite assent has been given in a referendum.
- Defines active producer and active producer/processor as such licensees having paid any amount in the business and occupation tax to DOR in the calendar year before the date of a referendum.
- Requires assessment modifications to be submitted for approval by referendum.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 14, 2023.

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 on Proposed Substitute: *The committee recommended a different version of the bill than what was heard.* PRO: The federal government does most of the agricultural research but not on cannabis because of its legal status. This is holding the industry back. Industry knows what research it needs and commissions allow for that. By design, marketing is not included. This should raise about \$500,000 per year. A farmer with one million in annual sales would pay around \$1,000 per year to fund this Commission. The potential return on investment is huge. Growers are having to use unauthorized pesticides and then destroy their crops, which costs more than an assessment. We need research before federal borders open. The social equity community supports this bill and it will help them in the future. Cannabis should be treated no differently than other agricultural commodities. The assessments are affordable. We should be able to assess ourselves to do research. We have been doing considerable outreach on this proposal for seven years. The Commission should be the regulator.

CON: There has not been a lot of stakeholder outreach on this. Until and unless more industry members support the creation of a Commission, we are opposed. The main benefit of this Commission will not be seen until interstate commerce is allowed. It should include marketing provisions. Commissions are valuable when they can advertise how great Washington products are. While small, the assessment could hurt the smallest producers. This could be added into the interstate commerce trigger bill. We need peer-reviewed,

academic research. This Commission would be the only one limited to the state of Washington. The industry is not in full support of this, and most of us did not even know this bill existed. The research is cost-prohibitive or already occurring.

OTHER: Cannabis growers continue to struggle to obtain research. A research-funded Commission is one way to address this similar to the Washington State Tree Fruit Association. It is a good idea to have a Commission, but there should be more worker voices on it.

Persons Testifying: PRO: Senator Sharon Shewmake, Prime Sponsor; Shawn Wagenseller, The Cannabis Alliance; Burl Bryson, The Cannabis Alliance; John Worthington, AAMC; Lara Kaminsky, The Cannabis Alliance.

CON: Vicki Christophersen, Washington CannaBusiness Association; Ezra Eickmeyer, Producers NW; Bethany Rondeaux; Brandon Park, Hygge Farms - Tier 1 producer processors.

OTHER: Kelly McLain, Washington State Department of Agriculture; Amirah Ziada, UFCW 3000.

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