
Regulated Substances & Gaming Committee

ESSB 5546

Brief Description: Establishing a Washington state cannabis commission.

Sponsors: Senate Committee on Labor & Commerce (originally sponsored by Senators Shewmake, Lovick, Keiser, King, Stanford, Conway and Wilson, C.).

Brief Summary of Engrossed Substitute Bill

- Provides for the creation of the Washington State Cannabis Commission (Commission) if approved in a referendum by a majority of active cannabis producers and active cannabis producer/processors voting.
- Specifies that the Commission would consist of cannabis producers, producer/processors, and the Director of the Washington State Department of Agriculture (WSDA), and would be funded by agricultural commodity assessments on producers and producer/processors.
- Specifies purposes of the Commission including planning and conducting programs, funding research, advising government agencies, reviewing market metrics, informing and advising producers, advancing knowledge and practice, limiting youth access, and other purposes.
- Grants the Commission powers and duties related to internal governance, employment and contracting, cooperating with other entities and persons, acquiring and owning intellectual property rights, adopting rules, and other specified powers.
- Includes certain oversight of the Commission by the Director of the WSDA, including requiring submission and approval of the Commission's proposed budget, plans, and rules.

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.

Hearing Date: 3/20/23

Staff: Peter Clodfelter (786-7127).

Background:

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, the Washington Dairy Products Commission, the Washington Wine Commission, the Washington Beer Commission, the Washington Grain Commission, and others. The Washington State Department of Agriculture (WSDA) established additional agricultural commodity commissions through a process in the Washington Agricultural Enabling Act. The Director of the WSDA, or the Director's authorized representative, is a member of each commodity commission.

Summary of Bill:

Referendum of Active Cannabis Producers and Producer/Processors to Establish the Washington State Cannabis Commission.

Upon receipt of a petition containing the signatures of five active cannabis producers or active cannabis producer/processors, to implement the bill and to determine participation in the Washington State Cannabis Commission (Commission) and assessment, the Director of the Washington State Department of Agriculture (WSDA) (Director) must conduct a referendum of active cannabis producers and active cannabis producer/processors. The referendum must be conducted within 60 days of receipt of the petition.

The WSDA must establish a list of active cannabis producers and active cannabis producer/processors eligible to vote in the referendum in collaboration with the Washington State Liquor and Cannabis Board (LCB) and the Department of Revenue. Inadvertent failure to notify an active cannabis producer or active cannabis producer/processor does not invalidate a proceeding. A cannabis producer or producer/processor is considered active if the business reported gross income subject to the Business and Occupations Tax in the calendar year before the date of a referendum.

The requirements of assent or approval of a referendum are met if at least 51 percent by numbers of the participants in the referendum vote affirmatively, and at least 40 percent of the active cannabis producers and 40 percent of the active cannabis producer/processors have been represented in the referendum to determine assent or approval of participation and assessment.

If the Director determines that the requisite assent has not been given in the referendum, the Director must take no further action to implement or enforce the bill. Upon completion of the referendum, the WSDA must tally the results of the vote and provide the results to participants. The WSDA must create rules for an active cannabis producer or an active cannabis

producer/processor to dispute the results of a vote within 60 days from the announced results. The Director is not required to hold a referendum more than once in any 12-month period. The Director may conduct voting on a referendum by electronic means, paper ballots, or both.

Within 60 days of the Director determining that requisite assent has been given in a referendum, the Director must establish the Commission to:

- plan and conduct programs for cannabis-related matters;
- provide funding for conducting research in accordance with the Commission's rules;
- coordinate with and advise interested parties regarding cannabis-related matters;
- coordinate with interested parties to standardize methods by which to identify and determine the genetics, strains, cultivars, phenotypes, standards, and grades of cannabis, and advise on cannabis packaging and labeling requirements;
- conduct reviews, surveys, and inquiries regarding market metrics and analytics, including trends, revenues, profitability, projections, production, business practices, and other economic drivers of the cannabis industry;
- inform and advise cannabis producers and cannabis producer/processors on cannabis-related matters, including, without limitation, educational information on cannabis cultivation, usage, risks, and related technical and scientific developments;
- provide cannabis-related education and training to cannabis producers, cannabis producer/processors, cannabis researchers, and their employees, which may include education and training on cannabis health and safety information;
- provide information and services for meeting resource conservation objectives of cannabis producers and cannabis producer/processors;
- assist and cooperate with federal, state, and local government agencies in the investigation and control of pests, diseases, and other factors that could adversely affect the cultivation, quality, and safety of cannabis produced in Washington;
- advance the knowledge and practices of cannabis production in Washington through research and testing methods to improve pest management, worker protection, safety training, energy efficiency, and environmental protection;
- foster conditions favorable to investment in cannabis produced in Washington in accordance with state and federal laws;
- limit youth access and youth exposure to cannabis;
- enable cannabis producers and cannabis producer/processors, in cooperation with the Commission, to: (1) develop and engage in research, including, without limitation, discovering better and more efficient production, irrigation, odor mitigation, processing, transportation, handling, packaging, and use of cannabis and cannabis products; and (2) discover and develop new and improved cultivars to ensure reliable and economical cannabis production in Washington;
- establish uniform grading and proper preparation of cannabis products for market;
- protect the interest of consumers and Washington by advising on the overall production of cannabis to ensure a balanced and sufficient supply of cannabis and cannabis products of good quality during all seasons and at all times; and
- advance the knowledge and practices of processing cannabis in Washington.

The Commission is required to:

- elect a chair and other officers by a majority vote of the Commission or in accordance with bylaws adopted by the Commission;
- adopt, rescind, and amend bylaws and other internal rules necessary for the administration and operation of the Commission and for carrying out its duties;
- administer and enforce the provisions of the bill;
- designate a public records officer, rules coordinator, and other representatives required under laws governing state agencies and commissions;
- comply with all other laws applicable to state agencies and commissions;
- institute and maintain in its own name any legal actions, including actions by injunction, mandatory injunction, civil recovery, or proceedings before administrative tribunals or other governmental authorities necessary to carry out the bill, and to sue and be sued as a commission, without individual liability for acts of the Commission within the scope of the powers conferred by the bill; and
- keep accurate records of all receipts and disbursements, which must be open to inspection and audit by the State Auditor or its designee at least every five years and at any time by a duly appointed internal auditor by majority vote of the Commission.

The Commission is authorized to:

- employ and discharge, in its discretion, managers, secretaries, agents, attorneys, and employees, and engage the services of independent contractors as the Commission deems necessary to fulfill duties, and to fix compensation (however, until assessment collections equal at least \$1,000,000, the Commission must contract for staff support);
- acquire and transfer personal and real property, establish offices, incur expenses, enter into contracts and cooperative agreements, and create such debt and other liabilities as may be reasonable to fulfill its duties;
- make necessary disbursements for routine operating expenses and expend funds for all authorized activities;
- cooperate with interested parties to fulfill its duties;
- serve as a liaison on behalf of the general cannabis producing and processing industries to the LCB and other interested parties, and not on behalf of any individual cannabis producer or cannabis producer/processor;
- solicit, accept, retain, and expend any gifts, bequests, contributions, or grants from private persons or public agencies to carry out the law;
- retain the services of private legal counsel, which is subject to the appointment and approval by the Office of the State Attorney General;
- engage in appropriate activities and events to support authorized Commission activities;
- participate in meetings, hearings, and other proceedings regarding cannabis;
- obtain from the LCB, a list of the names and addresses of cannabis producers, cannabis processors, cannabis producer/processors, and cannabis retailers, and other available data from the state as requested by the Commission;
- acquire, create, develop, and own intellectual property rights, licenses, and patents, and to collect royalties resulting from the sale or licensing of commission-funded research; (however, results and recommendations from research conducted or funded by the

Commission must be available to all cannabis producers and cannabis producer/processors without charge, except for reasonable costs as the Commission may determine);

- speak on behalf of the Washington State government regarding agricultural production of cannabis in this state, subject to oversight of both the Director of the WSDA and the Director of the LCB;
- possess cannabis products for the limited purposes of the bill;
- adopt rules to implement the bill (but rules are subject to approval by the Director); and
- exercise other powers and duties reasonably necessary to carry out the bill.

Membership of the Commission.

The Commission is composed of the following 13 voting members:

- eight cannabis producer or cannabis producer/processor members, two each from district 1, district 2, district 3, and district 4;
- one statewide at-large cannabis producer or cannabis producer/processor member from any district;
- one statewide tier one cannabis producer or cannabis producer/processor member from any district;
- one statewide tier two cannabis producer or cannabis producer/processor member from any district;
- one statewide tier three cannabis producer or cannabis producer/processor member from any district; and
- the Director.

The four districts are defined as geographical areas that each include specific counties. Each member of the Commission other than the Director must be 21 years of age or older, be a citizen and resident of Washington, directly hold or be named an owner in whole or majority part of an entity holding the relevant business license issued by the LCB. The license must not be suspended at the time of nomination, election, or appointment and must not be suspended at any time during the member's term.

Each member of the Commission, other than the Director, must also be an officer or employee of a corporation, firm, partnership, association, or cooperative that has been engaged in the active production of cannabis within Washington for a period of three years and have, during that period, derived a substantial portion of their income from cannabis production. Members must continue to meet membership qualifications throughout their term.

Seven voting members constitute a quorum of the Commission. The Commission members may be reimbursed for expenses incurred in the performance of their duties in accordance with laws governing mileage, subsistence, lodging and refreshment, and per diem allowances for members of commissions.

The Director must select initial members to appoint to the Commission from a pool of self-nominated cannabis producers or cannabis producer/processors from district 1, district 2, district 3, and district 4. The Director has discretion in determining which members are appointed to the

term limits but, within 90 days after the effective date of the bill, must appoint the initial Commission members in accordance with the following:

- four members must be appointed for a one-year term;
- four members must be appointed for a two-year term; and
- four members must be appointed for a three-year term.

The Commission must establish by rule the process by which the Commission members are elected and any vacancy appointments are made. When making initial and replacement appointments, the Director must give priority to persons representing the diverse communities of the state to maintain a balanced representation of members where practicable.

Oversight by the Director of the Washington State Department of Agriculture.

The WSDA serves as the Commission's rules coordinator and rules adopted by the Commission must be approved by the Director. Additionally, on a fiscal year basis and before each fiscal year begins, the Commission must develop and submit to the Director a budget, any plans concerning, without limitation the establishment, issuance, effectuation, or administration of internal governance issues and the initiation or establishment of any rule making. The Director must timely review and approve or deny each submission. Additionally, the Director must review the Commission's education program to ensure its consistency with applicable state and federal laws.

Deposits and Expenditures.

The Commission must deposit moneys collected in a separate account in the name of the Commission in any bank that is a state depository. All expenditures and disbursements made from the account may be made without the necessity of a specific legislative appropriation.

Use of Financial and Commercial Information.

Financial and commercial information and records submitted to the LCB or the Commission to administer the bill may be shared between the LCB and the Commission. The information or records may also be used, if required, in any action or administrative hearing relative to the Commission. The issuance of general statements based upon the reports of a cannabis producer or cannabis producer/processor is permissible if the statements do not identify a specific licensee. The publication by the Director or the Commission of the name of a cannabis producer or cannabis producer/processor violating a law related to the Commission and a statement of the violation is also permissible.

Liability.

Obligations incurred by the Commission and any other liabilities or claims against the Commission must be enforced only 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 either the State of Washington or any subdivision or instrumentality or against any member, employee, or agent of the Commission or the State of Washington in their individual capacity. Except as otherwise provided in law, neither the Commission members, nor Commission employees, may be held individually responsible for errors in judgment, mistakes, or other acts, either of

commission or omission, as principal, agent, person, or employee, 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. The liability of the members is considered several and not joint, and no member is liable for the default of any other member. The Commission members are state officers or volunteers and are entitled to the defenses, indemnifications, limitations of liability, and other protections and benefits of laws governing actions and claims against the state.

Reimbursement of Agency Costs.

All costs incurred by the LCB and the WSDA, including staff support and the adoption of rules or other necessary actions must be reimbursed by the Commission. The costs incurred must include initial estimates of work and line-item accounting of the costs incurred.

Agricultural Commodity Assessments to Fund the Commission.

Pursuant to referendum conducted under the bill, to provide for permanent funding of the Commission, the LCB must impose and collect an assessment from all cannabis producers and cannabis producer/processors. The initial rate of assessment is:

- 0.29 percent of all sales revenue conducted by a cannabis producer who is not a cannabis producer/processor subject to the assessment below; and
- 0.145 percent of all sales revenue conducted by a cannabis producer/processor.

After the initial assessment is approved, the Commission may modify the assessment if submitted for approval by referendum. The requirements of assent or approval of a referendum are met if:

- at least 60 percent by numbers of the participants in the referendum vote affirmatively to approve the modification; and
- at least 40 percent of the active cannabis producers and 40 percent of the active cannabis producer/processors have been represented in the referendum to determine assent or approval of the modification.

Assessments collected must be disbursed at least quarterly to the Commission for use in carrying out the law. Until October 31, 2028, the assessments do not apply to a cannabis producer or cannabis producer/processor licensed under Cannabis Social Equity Program.

State Civil Service Law Exemption.

The State Civil Service Law does not apply to officers and employees of the Commission.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.