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## Commerce & Gaming Committee

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### HB 1438

**Brief Description:** Permitting cities, towns, and counties to prohibit the production, processing, and sale of marijuana under Initiative Measure No. 502 only by public vote.

**Sponsors:** Representatives Sawyer, Kirby and Appleton.

#### Brief Summary of Bill

- Establishes that Washington statutes preempt municipal ordinances or regulations pertaining to the regulation of the production, processing, and retail sale of marijuana.
- Prohibits a municipality from enacting an ordinance or regulation that has the effect of precluding the siting of licensed marijuana retailers, processors, or producers within its borders, subject to specified exceptions.
- Establishes two alternative electoral processes through which a municipality may avoid state preemption and enact an ordinance banning the operation of marijuana producers, processors, or retailers within its borders.

**Hearing Date:** 1/12/16

**Staff:** Thamas Osborn (786-7129).

#### **Background:**

##### Overview of Initiative 502.

Initiative 502 (I-502) was a ballot measure approved by Washington voters in November 2012 that: (1) legalized the production, processing, possession, and personal use of marijuana and marijuana-derived products; (2) created a framework for a regulatory scheme to be further developed by the Liquor and Cannabis Board (LCB) through its rule-making authority; and (3) implemented a taxation system for commercial marijuana enterprises.

##### Licensing of Marijuana Producers, Processors, and Retailers.

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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 a part of the legislation nor does it constitute a statement of legislative intent.*

The LCB issues three categories of commercial marijuana licenses: (1) the marijuana producer's license entitles the holder to produce marijuana for sale at wholesale to licensed marijuana processors or other producers; (2) the marijuana processor's license entitles the holder to process, package, and label marijuana for sale at wholesale to marijuana retailers and other processors; and (3) the marijuana retailer's license entitles the holder to sell marijuana products at retail prices in retail outlets.

#### State Preemption and Regulation of Marijuana Businesses by Local Governments.

Under the Washington State Constitution, local governments are empowered to adopt "all such local, police, sanitary, and other regulations as are not in conflict with the general laws" (Article XI, section 11). As the result of this constitutional principal, Washington law has developed a strong presumption against finding that state law preempts local ordinances. Accordingly, as a general rule, local governments may enact ordinances regulating the same subject matter as state laws, provided they do not conflict. The text of I-502 does not address the issue of state preemption of local ordinances or regulations pertaining to the regulation of marijuana-related commerce.

Because I-502 is silent regarding the preemption issue, many cities and counties throughout the state have enacted ordinances that prohibit the siting of licensed marijuana producers, processors, and retailers within their borders. The most recent statistics compiled by the Municipal Research and Service Center indicate that, to date, approximately 88 cities and eight counties in Washington have enacted such a prohibition or moratorium. Many other cities and counties have enacted special zoning ordinances limiting the location of recreational marijuana businesses to certain areas or have proposed special licensing requirements.

These actions by Washington cities and counties have given rise to litigation in Washington courts regarding whether or not local governments are preempted from enacting local ordinances that have the effect of preventing or restricting the siting of state-licensed marijuana businesses authorized under I-502. Courts in Clark County, the City of Fife, the City of Wenatchee, and elsewhere have ruled that state law does not preempt such actions by local governments. In January 2014, the Washington State Attorney General published a formal opinion stating that state law does not preempt local ordinances that impose bans or moratoria regarding the siting of marijuana producers, processors, and retailers.

#### Authorization of Zoning Ordinances Pertaining to Marijuana Producers and Processors.

Pursuant to statute, cities, counties, and towns are authorized to enact ordinances prohibiting marijuana production and/or processing in areas zoned primarily for residential or rural use with a minimum lot size of 5 acres or smaller.

#### **Summary of Bill:**

##### General State Preemption Regarding the Regulation of Commerce in Marijuana.

As a general principle, Washington statutes preempt ordinances passed by cities, towns, and counties pertaining to the regulation of the production, processing, and retail sale of marijuana.

Such preemption does not affect the current authority of cities, towns, and counties (to be collectively referred to as "municipality") to enact zoning requirements regulating the location of marijuana-related businesses. However, a municipality may not enact a zoning requirement that

has the effect of altogether precluding the siting of licensed marijuana retailers, processors, or producers within its borders, except under one or more of the following circumstances:

- Licensed marijuana producers may be banned if the municipality does not permit the commercial growing of plants anywhere in the jurisdiction.
- Licensed marijuana processors may be banned if the municipality does not permit the commercial processing of plants, plant-based material, or food products anywhere in the jurisdiction.
- Licensed marijuana retailers may be banned if the municipality does not permit retail uses anywhere in the jurisdiction.

#### Electoral Mechanisms Allowing Municipalities To Be Exempt From State Preemption.

The bill provides two alternative means for a municipality to avoid state preemption and enact an ordinance banning the operation of marijuana producers, processors, or retailers within its borders. One method requires the completion of a citizen initiative process, and the other requires the legislative authority of the municipality to submit a referendum to the voters.

To enact an ordinance through the citizen initiative process, a petition calling for a ban on the operation of a producer, processor, or retailer must be signed by at least 30 percent of the registered voters within the municipality and then submitted to the legislative authority of the municipality. Within 60 days of receiving the petition, the legislative authority must hold a public hearing on the proposed ordinance and then submit the proposed ordinance to the voters at a special or general election. The proposed ordinance becomes effective only upon approval by a majority of the voters participating in the election.

Under the second electoral method for banning the operation of marijuana producers, processors, or retailers, the legislative authority of the municipality must initiate the electoral process by approving the submission of the ordinance to the voters. As is the case with the citizen initiative process, the ordinance must be submitted to the voters in the form of a ballot proposition that is voted upon at a special or general election. The proposed ordinance becomes effective only upon approval by the majority of the voters participating in the election.

Following the passage of an ordinance through either the citizen initiative or legislative referendum process, the LCB may not issue or renew any license for the production, processing, or retail sale of marijuana with respect to businesses that are either located or proposed to be located within an area subject to the ordinance.

**Appropriation:** None.

**Fiscal Note:** Requested on January 8, 2016

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