

I-502 LEAD AGENCY ASSUMPTIONS

Summary

This initiative would license and regulate marijuana production, distribution, and possession for persons over twenty-one; remove state-law criminal and civil penalties for activities that it authorizes; tax marijuana sales; and earmark marijuana-related revenues

General Assumptions

The fiscal impact of this measure is subject to significant uncertainty for the following reasons:

- Federal laws classify marijuana as an illegal substance and provide criminal penalties for various activities relating to its use. To the extent that the federal government continues to enforce its prohibitions on marijuana, it would impede the activities permitted by this measure under state law. Likewise, some federal funds and grants are conditioned on compliance with federal drug laws. To the extent that the federal government enforces these provisions, state revenues could be adversely impacted.
- The initiative creates a closed highly regulated industry that does not exist anywhere.
- This estimate relies on published surveys and reports to develop a set of reasonable assumptions to assess the potential fiscal impacts to state and local governments. The literature on the production, market, and demand for marijuana acknowledges the difficulty in obtaining accurate and objective data due to the product's illegal nature. The inherent unreliability of existing data makes our analysis extremely difficult.

Therefore, impacts are indeterminate, but non-zero, for all agencies. However, each agency within the text of the fiscal note should show a range of potential impacts based on a baseline assumption of current consumption and a 10% increase from the baseline.

Effective Date

The initiative goes into effect on December 6, 2012 (30 days after general election). However, section 10 provides that the state liquor control board (LCB) must adopt rules by December 1, 2013, that establish the procedures and criteria necessary to implement the act. However, actual implementation may occur after rulemaking is completed. For purposes of the fiscal note, assume a legal marijuana market to be fully functioning with sales to the public on December 1, 2013. This means that most revenues, costs/savings and expenditures will not accrue until after December 1, 2013.

- Some agencies may incur costs prior to December 1, 2013 related to activities (rulemaking, licensure, establishing standards and classifications, creating forms and information, etc.) that are required as prerequisite to the creation of the legal marijuana market.
- The prohibitions on driving under the influence of marijuana take effect December 6, 2012.

Decriminalization/Criminalization

The initiative does not repeal RCW 69.50.4014, which provides that any person found guilty of possession of forty grams or less of marijuana is guilty of a misdemeanor.

However, sections 15 through 20 provide that the activities contained in the act are legal. Assume that licensed marijuana producers, processors, and retailers engaged in activities in compliance with LCB rules (quantity, packaging, labeling, purchasing/sales to other licensees, etc.) are not subject to criminal prosecution. Assume persons who are not LCB licensed marijuana producers, processors, and retailers continue to be subject to criminal prosecution under current law.

Beginning December 1, 2013 when a legal marijuana market is established, assume individuals twenty-one years of age or older are also legally authorized to possess and use:

- One ounce of useable marijuana from an LCB licensed retailer;
- Sixteen ounces of marijuana-infused product in solid form from an LCB licensed retailer; or
- Seventy-two ounces of marijuana-infused product in liquid form from an LCB licensed retailer.
- Marijuana-related drug paraphernalia

Assume individuals would continue to be subject to criminal prosecution (misdemeanor or felony) for:

- Possession in amounts greater than those noted above even if purchased from a LCB licensed retailer.
- Possession of marijuana or marijuana-infused product purchased from a producer, processor or seller who is not a LCB licensed retailer (including home grown).
- Possession of any quantity or kind of marijuana or marijuana-infused product by a person under twenty-one years of age.

Effective December 6, 2012, driving while under the influence laws are changed to add THC concentration of a driver's blood at 5.00 or more for persons twenty-one and older and zero for persons under the age of twenty-one.

Assume practices authorized under chapter 69.51A RCW for medical marijuana patients and designated providers are not addressed nor included in this initiative.

Consumption

There is no way to determine with precision consumption of marijuana before or after legalization. Using national and international data, the fiscal note presents a range of impacts using 1) a baseline of estimated consumption of marijuana as an illicit drug and 2) a 10%

increase in consumers and consumption. The fiscal note assumes that marijuana consumption will not decrease from the baseline after the legal marijuana market is established.

Using the United States Department of Health and Human Service, Substance Abuse & Mental Health Services Administration's National Survey on Drug Use and Health, 2008-2009 data for Washington, prevalence of use was 17.18% for persons eighteen to twenty-five years of age and 5.57% for twenty-six years of age and older. Assuming Washington's use of marijuana is increasing at the same rate as national use, estimated prevalence of use in CY 13 is 18.4% for persons eighteen to twenty-five years of age and 6.1% for twenty-six years of age and older. Applying those percentages to Washington's estimated population in CY 2013, our assumption is an estimated 363,000 Washington users.

We estimated the amount consumed using the pattern contained in United Nations Office on Drug and Crime, 2006 Bulletin on Narcotics, Review of the World Cannabis Situation, at page 48. The amount consumed by users ranged from a low of 18% consuming once a year to 3% consuming daily. Applying this consumption pattern to 363,000 users, assuming 2 grams per use, assume as a baseline number of grams consumed of 85,100,000 beginning CY 2013.

A 10% increase in consumers and consumption results in 399,000 users and 93,600,000 grams beginning CY 14.

No assumption is made about migration of consumers from out of state to purchase useable marijuana within Washington. No assumption is made about current medical marijuana users migrating sales to LCB licensed retailers.

The fiscal note does not assume an estimate of consumption of marijuana-infused products; there is very little literature on consumption of such products.

Price

Assume \$12 per gram. Medical marijuana dispensary prices on average range between \$10 and \$15 per gram with some premium products exceeding \$15 per gram. Based on average retail mark-up practices, producer price is \$3 per gram and processor price is \$6 per gram. No price elasticity is assumed.

Revenues

General Assumptions

- Estimates should not assume any change in sales of spirits, wine, or beer.
- Estimates should not assume any change in current medical marijuana market.
- Assume 50% of marijuana is both produced and processed by the same seller. The remaining 50% is produced and then sold to a processor.

Marijuana Taxes – Administered and Collected by the Liquor Control Board

The initiative creates three new excise taxes:

- There is levied and collected a marijuana excise tax equal to 25% of the selling price on each wholesale sale in this state of marijuana by a licensed marijuana producer to a licensed marijuana processor or another licensed marijuana producer. This tax is the obligation of the licensed marijuana producer.
- There is levied and collected a marijuana excise tax equal to 25% of the selling price on each wholesale sale in this state of useable marijuana or marijuana-infused product by a licensed marijuana processor to a licensed marijuana retailer. This tax is the obligation of the licensed marijuana processor.
- There is levied and collected a marijuana excise tax equal to twenty-five percent of the selling price on each retail sale in this state of useable marijuana and marijuana-infused products. This tax is the obligation of the licensed marijuana retailer.
- All funds from marijuana excise taxes are deposited into the Dedicated Marijuana Fund.

General Excise Taxes – Administered and Collected by Department of Revenue and Cities

- General state and local sales and use taxes that apply to retail sales of tangible personal property, which includes useable marijuana. Although some marijuana-infused products could be exempt from retail sales tax as a food product, no assumption is made to the consumption of these products. Therefore, the estimate assumes all marijuana consumed is subject to retail sales tax.
- In addition to the new marijuana excise taxes, state business and occupation taxes will apply to these activities. State B&O rate for retailers is 0.471%. State B&O rate for processors is 0.484%. Assumes producers are exempt from state B&O tax under RCW 82.04.330 as these are sales of agricultural products.
- State general excise taxes are deposited into the State General Fund.
- City B&O taxes may apply.

Marijuana Licenses

Producers and Processors

The initiative creates three new licenses to be administered by the LCB - 1) marijuana producers, 2) marijuana processors, and 3) marijuana retailers. For each license, there is a \$250 application fee and an issuance/renewal fee of \$1000. All license fees are deposited into the Dedicated Marijuana Fund.

- A license is required for each location in which marijuana is produced, processed or sold at retail.
- A licensed marijuana producer or processor may not have a direct or indirect financial interest in a licensed marijuana retailer.
- A license may not be issued to a person under 21 yrs of age.
- An applicant must have lawfully resided in state for at least 3 months

- An applicant in corporate form cannot be licensed unless all members are qualified to obtain license.
- LCB may require criminal background checks. (Assume that LCB will.)

We lack sufficient data to estimate the number of marijuana producers and marijuana processors that will apply for a license. Unlike other commodities, there would be no export market for useable marijuana or marijuana-infused products. Production would be solely for in-state consumption. In addition, the yield of useable marijuana per plant is unknown. The small amount of literature on this subject indicates it will vary significantly based on growing method and conditions, but 1 ounce of useable marijuana is the low end of estimates.

Annual consumption - 85,124,498 grams

No. of plants assuming 1oz (28.35 grams) useable marijuana per plant - 3,040,160 plants

No. of sq. ft. required (assuming 1.5 per sq. ft. of growing space per plant) – 4,560,240 sq. ft.

No. of acres (43,560 sq ft in acre) necessary to grow - 104 acres

Therefore, we are assuming 100 marijuana producers and 55 marijuana processors (half of marijuana producers processing own product and five additional processors). No assumption is made for the amount of processors of edible marijuana products because this market is unknown,

Retail Locations and Licenses

The number of retail outlets, and thus retail licenses is determined by LCB in consultation with OFM, taking into account population, security and safety issues, and discouraging purchases from illegal markets. The initiative also caps retail licenses by county. Similar to current law for liquor stores, local governments may object to an application for a retail license and outlets may not be located 1000 ft from school, child care centers, park, transit, library or game arcade. Given the similarities with prior liquor laws, assume 328 retail outlets based on current number and spread of state operated and contracted liquor stores.

Other License Revenue

The initiative provides that LCB can charge fees for anything done or permitted to be done under the rule adopted to implement and enforce the act. Assume that fees will be charged for activities, such as sampling, testing and labeling that are costs of doing business as a licensee.

Expenditures

Disbursements from the Dedicated Marijuana Fund are made by LCB quarterly:

Purpose	Section	Amount	Agency
DSHS for Healthy Youth Survey	28(1)	\$ 125,000	DSHS
DSHS to contract with WSIPP for cost-benefit analysis. This disbursement ends September 1, 2032.	28(2)	\$ 50,000	DSHS
UW Alcohol & Drug Abuse Institute for web-based public education materials	28(3)	\$ 5,000	DSHS/UW
LCB for administration of act	28(4)	Not to exceed \$ 1,250,000	LCB
Total Quarterly Off the Top Distributions		\$ 1,430,000	
Distributions of Remainder			
DSHS Behavioral Health and Recovery for prevention and reduction of substance abuse	28(5)(a)	15.0%	DSHS
DOH for marijuana education and public health programs	28(5)(b)	10.0%	DOH
UW for research on short and long term effects of marijuana use	28c	0.60%	UW
WSU for research on short and long term effects of marijuana use	28c	0.40%	WSU
Transfer into basic health plan trust account	28(d)	50.0%	HCA
HCA for health care contracts with community health centers to provide primary health and ental care, migrant health and maternity health care services.	28(e)	5.0%	HCA
Building bridges program	28(f)	0.30%	OSPI
State general fund	28(g)	Remainder	LCB

Costs

The fiscal impact statement does not estimate state costs or state savings due to social impacts from approval of the initiative.