

## **Initiative 502**

### **Fiscal Impact through Fiscal Year 2017**

Initiative 502 would license and regulate marijuana production and distribution; tax marijuana sales; earmark marijuana-related revenues; and specifically prohibit driving under the influence of marijuana. The total fiscal impact on state and local government revenues, expenditures and costs is indeterminate due to the significant uncertainties related to federal enforcement of federal criminal laws related to marijuana. However, the initiative's provisions related to driving under the influence of marijuana, which are not affected by federal criminal law enforcement, are estimated to generate known state fee revenue of \$4,295,000 and known state agency costs of \$2,754,000 over five fiscal years.

### **General Assumptions**

- Federal laws classify marijuana as a controlled substance and provide criminal penalties for its manufacture, distribution, possession or use. These federal criminal laws are enforced by federal government agencies that act independently of state and local government law enforcement agencies. To the extent that the federal government continues to enforce its criminal laws related to marijuana, it would impede the activities permitted by this initiative.
- Estimates rely on published surveys and reports that acknowledge the difficulty in obtaining accurate and objective data due to the product's illegal nature. The inherent unreliability of existing data makes analysis extremely difficult.
- Portions of the initiative pertaining to driving under the influence of marijuana and the decriminalization of marijuana possession take effect Dec. 6, 2012. There is no date certain for implementation of the licensing and taxation portions of the initiative. Therefore, an implementation date of Dec. 1, 2013, is assumed for the purpose of developing estimates only.
- Practices authorized under Chapter 69.51A RCW for medical marijuana patients and designated providers are assumed unaffected by this initiative.
- Estimates are based on information provided by agencies for fiscal note 502 XIL created during the 2012 legislative session and subsequently updated and rounded to the nearest \$1,000. State agencies estimates are not adjusted to account for the effect of federal criminal law enforcement on conduct authorized by the initiative.
- Estimates are described using the state's fiscal year (FY) of July 1 through June 30.

### **State and Local Government Revenue Estimates – Assumptions**

The initiative creates a closed, highly regulated industry that does not presently exist anywhere. Unlike other agricultural commodities, production would be solely for in-state consumption. In addition, the licensure and regulation provisions of the initiative could ease federal criminal law enforcement activities by identifying marijuana producers, processors and retailers. These features may prevent the development of a functioning marijuana market. Consequently, the total amount of revenue generated to state and local government could be as low as zero. Assuming a fully functioning marijuana market and the assumptions following in this summary, estimated total revenue generated to the state could be as high as \$1,943,936,000 over five fiscal years. Because the range of impact is wide, the estimated impact on state and local government

revenues is indeterminate, but non-zero. See Table 1 and Table 2 for details on state and local revenue impacts assuming a fully functioning marijuana market.

### **Consumption Assumptions**

There is no way to determine with precision the consumption of marijuana in the state before or after the effective date of the initiative. Therefore, for purposes of this fiscal impact statement only, an estimate of marijuana users was created using the U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration's National Survey on Drug Use and Health, 2008–2009 data for Washington. The survey estimates the percentage of marijuana users to be 17.18 percent for persons 18 to 25 years of age and 5.57 percent for those 26 years of age or older. Assuming Washington's population of marijuana users is increasing at the same rate as the national use contained in the survey, the number of users in calendar year 2013 is estimated to be 18.4 percent for persons 18 to 25 years of age and 6.1 percent for those 26 years of age or older. Applying those percentages to the state's forecasted 2013 population, estimates assume 363,000 Washington marijuana users in calendar year 2013. Estimates also assume a 3 percent increase in sales beginning in 2015 to account for population growth and inflation.

Frequency of consumption is estimated using the pattern contained in the United Nations Office on Drug and Crime, 2006 Bulletin on Narcotics, Review of the World Cannabis Situation, page 48. The frequency of consumption by users ranged from a low of 18 percent consuming once a year to 3 percent consuming daily. Applying this consumption pattern to an estimated 363,000 Washington marijuana users, and assuming 2 grams of marijuana per use, the number of grams consumed annually is estimated at 85,100,000 grams.

Estimates assume all users will purchase through a Washington State Liquor Control Board ("LCB") licensee; no assumption is made that a portion of these users will purchase from the illegal market or from medical marijuana retailers. No assumption is made about current medical marijuana users migrating sales to LCB-licensed retailers. No assumption is made about migration of consumers from out of state to purchase usable marijuana in Washington. No assumption is made on the consumption of marijuana-infused products. No assumption is made concerning any change in pricing or volume of sales of liquor, beer or wine.

### **License Revenue Assumptions**

There is a \$250 application fee and a \$1,000 issuance/renewal fee for each marijuana licensee through LCB. All license fees are deposited into the Dedicated Marijuana Fund.

- We lack sufficient data to estimate the number of marijuana producers and marijuana processors who will apply for a license. Therefore, for purposes of this estimate, 100 marijuana producers and 55 marijuana processors (half of marijuana producers processing their own product and five additional processors) are assumed. No assumption is made for the number of processors of edible marijuana products because this market is unknown.
- The number of retail outlets, and thus retail licenses, is determined by LCB in consultation with the Office of Financial Management, taking into account population, security and safety issues, and discouraging purchases from illegal markets. The initiative also caps retail licenses by county. Given the initiative's similarities with previous state

monopoly liquor laws, the number of retail outlets is estimated at 328 (the same number of state and contracted liquor stores that were in operation Dec. 31, 2011).

- Estimates assume that licensees will be charged fees for activities that are costs of doing business such as sampling, testing and labeling.

### **Tax Revenue Assumptions**

The initiative creates marijuana excise taxes equal to 25 percent of the selling price on each wholesale sale and retail sale of marijuana from a licensed producer, processor or retailer. All funds from marijuana excise taxes are deposited into the Dedicated Marijuana Fund.

General state and local sales and use taxes apply to retail sales of tangible personal property, which includes usable marijuana. State sales tax is deposited into the State General Fund.

- 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.
- Local government estimates use the statewide average local sales tax rate of 2.412 percent.

State business and occupation (B&O) taxes will apply to these activities. State B&O taxes are deposited into the State General Fund.

- The state B&O rate for retailers is 0.471 percent. The state B&O rate for processors and wholesalers is 0.484 percent.
- Estimates assume producers are exempt from state B&O tax under RCW 82.04.330 as these are sales of agricultural products.
- City B&O taxes may apply. Using data from the Washington State Department of Revenue's 2010 Tax Reference Manual, total local B&O tax is approximately 8.6 percent of total state B&O tax. Estimates assume this ratio for city B&O tax revenue impacts.

For all fiscal years, estimates assume a \$3 per gram producer price, a \$6 per gram processor price and a \$12 per gram average retail purchase price.

- Prices are based on a review of current medical marijuana dispensary prices in this state.
- Estimates assume 50 percent of marijuana is both produced and processed by the same seller. The remaining 50 percent is produced and then sold to a processor.
- Estimates do not assume that increased consumption or competition will reduce prices.

### **Federal Fund Assumptions**

State and local agencies are recipients of a variety of federal funds under mutual cooperation agreements with federal agencies to reduce drug trafficking and drug production in the United States. It is assumed that the state would no longer meet the requirements of a marijuana eradication grant between the Washington State Patrol and the U.S. Department of Justice, Drug Enforcement Administration, resulting in an estimated state revenue loss of \$368,000 in FY 2014 (the estimated amount remaining of a \$1.5 million grant on the effective date of the initiative). Other grants between the Washington State Patrol and the Office of National Drug Control Policy would also be at risk. Portions of these grants are passed through to local agencies.

However, an estimated \$202,000 of grant funds is not included as a state or local government revenue loss because it is not known what actions the Office of National Drug Control Policy will take under the terms of the grant. No revenue impact is estimated for local governments because it is assumed that grant funds will be fully spent by the effective date of the initiative.

### **Driver's License Administrative Actions Assumptions**

The initiative adds presumptive levels of intoxication for tetrahydrocannabinol (THC) concentration when a driver is arrested for suspicion of driving under the influence (0.0 for drivers under the age of 21; 5.00 nanograms per milliliter of blood for drivers age 21 or older). The initiative adds the requirement that the Department of Licensing ("DOL") administratively suspend or revoke the driver's license of a person who tests above the presumptive level of THC. Assuming an estimated increase of 4 percent in the DOL workload for administrative suspension/revocation hearings, increased fee revenue to the state is estimated at \$4,295,000 over five fiscal years.

### **State and Local Government Expenditure Estimates – Assumptions**

Disbursements from the Dedicated Marijuana Fund are made quarterly by LCB to state agencies to expend for specific programs and services. Disbursements are also made to specific accounts. Expenditures are dependent on the amount of revenue generated under the initiative. Because revenues could be as low as zero, estimated expenditures could be as low as zero. However, assuming the revenue generated from a fully functioning market, estimated state expenditures from the Dedicated Marijuana Fund could be as high as \$1,590,668,000 over five fiscal years. Because the range of impact is wide, the estimated impact on state and local government expenditures is indeterminate, but non-zero. See Table 3 for details on state distributions from the Dedicated Marijuana Fund assuming a fully functioning marijuana market.

The initiative generates an estimated range of zero to \$349,341,000 over five fiscal years from state sales tax and state B&O taxes. These taxes are deposited into the State General Fund, which may be used for any governmental purpose as appropriated by the Legislature.

The initiative generates an estimated range of zero to \$40,000 over five fiscal years from background check fees that are deposited into the Fingerprint Identification Account. Funds from this account may be used only to conduct identification record checks by the Washington State Patrol.

The initiative generates an estimated range of zero to \$380,000 over five fiscal years from driving under the influence reissuance fees that are deposited into the Impaired Driver Safety Account. Funds from this account may be used only to fund projects to reduce impaired driving and provide funding to local governments for costs associated with enforcing laws relating to driving and boating while under the influence of intoxicating liquor or any drug.

The initiative generates an estimated range of zero to \$3,875,000 over five fiscal years from hearing fees and Ignition Interlock Driver's License application fees that are deposited into the Highway Safety Account. Funds from this account may be used only for carrying out the provisions of law relating to driver licensing, driver improvement programs and traffic safety programs.

The initiative generates an estimated range of zero to \$119,786,000 over five fiscal years in local sales tax and city B&O taxes. The use of these funds will be determined at the local level or as authorized by state law.

### **State and Local Government Cost Estimate – Assumptions**

Due to the uncertainty of enforcement of federal criminal laws related to marijuana, total state costs are indeterminate, but non-zero. However, assuming full implementation of the initiative and a fully functioning marijuana market, total state costs are estimated to increase to \$65,726,000 over five fiscal years. See Table 4 for details on state cost impacts assuming a fully functioning marijuana market.

### **State Agency Implementation Cost Assumptions**

State agency costs are estimated to be \$62,972,000 over five fiscal years to implement licensing, regulation and taxation of marijuana and to implement the programs and services supported by the Dedicated Marijuana Fund. Costs by agency are as follows:

- LCB will incur costs estimated at \$13,590,000 for rulemaking, licensure and enforcement of the initiative.
- The Department of Agriculture will incur a one-time cost of \$26,000 to assist LCB in developing testing laboratory accreditation standards.
- The Washington State Patrol will incur costs estimated at \$28,000 to conduct background checks for LCB license applicants.
- The Office of Administrative Hearings will incur costs estimated at \$40,000 for appeals of LCB licensing denial, suspension and revocation actions.
- The Office of the Attorney General will incur costs estimated at \$318,000 to provide legal services for advice to LCB.
- The Department of Revenue will incur costs estimated at \$90,000 to administer tax collection programs from those licensed under the initiative.
- The Health Care Authority will incur costs estimated at \$38,839,000, assuming that funds deposited into the Basic Health Plan Trust Account will be used to implement a program similar to the subsidized Basic Health Plan with increased eligibility to enroll.
- The Department of Social and Health Services and Department of Health will incur costs estimated at \$10,041,000 to implement the programs and services funded through the Dedicated Marijuana Fund.
- The University of Washington and Washington State University will have costs related to the public education and research grants from the Dedicated Marijuana Fund. Because the scope of these tasks cannot be fully determined, costs to the institutions are indeterminate, but non-zero.

To the extent the federal government chooses to pursue criminal charges against state employees for the permitting, regulation or revenue collection aspects of the initiative, the state may incur additional costs for the defense of the employee for acts performed within the scope of employment (See RCW 10.01.150). Because it is not known what actions the federal criminal law enforcement agencies may take, this cost is indeterminate.

### **State and Local Government Law Enforcement Cost Assumptions**

The state, counties and cities are anticipated to experience increased costs from additional driving while under the influence administrative actions, arrests, prosecutions and incarcerations. Data are not available to accurately predict the total amount of costs that will accrue to the state and local governments; however, some costs can be estimated. Known costs by state agency are estimated at \$2,754,000 over five fiscal years:

- The Washington State Patrol will incur costs estimated at \$2,118,000 for additional training to employees on marijuana impairment. County and city law enforcement agencies may also require additional training to employees on marijuana impairment, but the cost is indeterminate because the type of training and number of employees trained will be determined at the local level.
- The Washington State Patrol Toxicology Laboratory will incur costs estimated at \$125,000 for blood testing for driving under the influence cases.
- The Department of Licensing will incur costs estimated at \$423,000 to administratively suspend or revoke driver's licenses for driving under the influence.
- The Office of the Attorney General will incur costs estimated at \$85,000 for defending judicial appeals of DOL driving under the influence decisions.
- The Administrative Office of the Courts will incur a one-time cost of \$3,000 for information technology changes to the Judicial Information System.

The state, counties and cities are anticipated to experience decreased costs from fewer marijuana possession and use arrests, prosecutions and incarcerations. Data are not available to accurately predict the amount of savings that will accrue to the state and local governments. This estimate assumes that beginning Dec. 6, 2012, individuals 21 years of age or older are legally authorized to possess and use:

- One ounce of useable marijuana.
- Sixteen ounces of marijuana-infused product in solid form.
- Seventy-two ounces of marijuana-infused product in liquid form.
- Marijuana-related drug paraphernalia.

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

**TABLE 1 – State Revenue Impact**

<b>State Revenue Impact</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>
Dedicated Marijuana Fund	\$0	\$248,639,000	\$434,201,000	\$447,213,000	\$460,615,000
Total State General Fund	\$0	\$47,418,000	\$97,682,000	\$100,611,000	\$103,630,000
Fingerprint Identification Account	\$8,000	\$8,000	\$8,000	\$8,000	\$8,000
Impaired Driver Safety Account	\$48,000	\$82,000	\$83,000	\$83,000	\$84,000
Highway Safety Account	\$505,000	\$832,000	\$839,000	\$846,000	\$853,000
Federal Grants	\$0	- \$368,000	\$0	\$0	\$0
<b>STATE TOTAL</b>	<b>\$561,000</b>	<b>\$296,611,000</b>	<b>\$532,813,000</b>	<b>\$548,761,000</b>	<b>\$565,190,000</b>

**TABLE 2 – Local Revenue Impact**

<b>Local Revenue Impact</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>
Total Local Sales Tax Revenue	\$15,856,000	\$32,664,000	\$33,644,000	\$34,653,000
Total Local B&O Tax Revenue	\$403,000	\$830,000	\$855,000	\$881,000
<b>LOCAL TOTAL</b>	<b>\$16,259,000</b>	<b>\$33,494,000</b>	<b>\$34,499,000</b>	<b>\$35,534,000</b>

**TABLE 3 – State Expenditure/Distribution of Dedicated Marijuana Fund**

<b>State Expenditure/Distribution of Dedicated Marijuana Fund</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>
Washington State Dept. of Social and Health Services for the Healthy Youth Survey	\$375,000	\$500,000	\$500,000	\$500,000
Washington State Institute for Public Policy cost-benefit analysis of initiative. Disbursements end Sept. 1, 2032.	\$150,000	\$200,000	\$200,000	\$200,000
University of Washington Alcohol & Drug Abuse Institute for web-based public education materials	\$15,000	\$20,000	\$20,000	\$20,000
Washington State Liquor Control Board for administration	\$3,750,000	\$5,000,000	\$5,000,000	\$5,000,000
Washington State Dept. of Social and Health Services Behavioral Health and Recovery for prevention and reduction of substance abuse	\$36,652,000	\$64,272,000	\$66,224,000	\$68,234,000

Washington State Dept. of Health for marijuana education and public health programs	\$24,435,000	\$42,848,000	\$44,149,000	\$45,489,000
University of Washington for research on short- and long-term effects of marijuana use	\$1,466,000	\$2,571,000	\$2,649,000	\$2,729,000
Washington State University for research on short- and long-term effects of marijuana use	\$977,000	\$1,714,000	\$1,766,000	\$1,820,000
Deposit into Basic Health Plan Trust Account	\$122,174,000	\$214,241,000	\$220,746,000	\$227,447,000
Washington State Health Care Authority for health care contracts with community health centers to provide primary health and dental care, migrant health, maternity health care services	\$12,217,000	\$21,424,000	\$22,075,000	\$22,745,000
Building Bridges program	\$733,000	\$1,285,000	\$1,324,000	\$1,365,000
Deposit into State General Fund	\$45,693,000	\$80,126,000	\$82,559,000	\$85,065,000
<b>STATE TOTAL</b>	<b>\$248,637,000</b>	<b>\$434,201,000</b>	<b>\$447,212,000</b>	<b>\$460,614,000</b>

**TABLE 4 – State Costs**

<b>State Costs</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>
Liquor Control Board	\$684,000	\$5,151,000	\$2,585,000	\$2,585,000	\$2,585,000
Dept. of Agriculture	\$26,000	\$0	\$0	\$0	\$0
Washington State Patrol	\$2,143,000	\$32,000	\$32,000	\$32,000	\$32,000
Office of Administrative Hearings	\$0	\$10,000	\$10,000	\$10,000	\$10,000
Office of Attorney General	\$111,000	\$73,000	\$73,000	\$73,000	\$73,000
Dept. of Revenue	\$8,000	\$61,000	\$7,000	\$7,000	\$7,000
Health Care Authority	\$0	\$6,048,000	\$10,605,000	\$10,927,000	\$11,259,000
Dept. of Social and Health Services	\$0	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000
Dept. of Health	\$0	\$1,232,000	\$1,603,000	\$1,603,000	\$1,603,000
Dept. of Licensing	\$187,000	\$59,000	\$59,000	\$59,000	\$59,000
Administrative Office of the Courts	\$3,000	\$0	\$0	\$0	\$0
<b>STATE TOTAL</b>	<b>\$3,162,000</b>	<b>\$13,666,000</b>	<b>\$15,974,000</b>	<b>\$16,296,000</b>	<b>\$16,628,000</b>