

## Committee releases final marijuana law rewrite, with quick passage expected

By David Lakeman (MMA)

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Yesterday afternoon, the conference committee charged with hashing out differences between recreational marijuana bills that had been passed by the House and Senate released a final bill that is expected to be passed by both chambers.

The committee had initially set a deadline of June 30 to finish its work.

The language of the final bill (H. 3818) and the delay in finishing it reflected the deep divisions between the House and the Senate on how best to regulate the new industry, which was legalized through passage of a ballot question in last November's statewide election.

### **Local control**

The new bill sets up an unusual two-tiered system for opting out – banning businesses that either sell, grow, manufacture or test recreational marijuana products – based on how a community voted on the ballot question in November.

Communities where voters rejected Question 4 may ban recreational marijuana businesses through their standard ordinance or bylaw process until Dec. 31, 2019. This process will apply to the 91 communities where Question 4 did not pass – about one-quarter of the municipalities in the Commonwealth.

In communities where Question 4 passed, the municipal government must prepare an ordinance or bylaw, which must then be reviewed and summarized by municipal counsel. Following this review, the question – by a vote of the board of selectmen or by the city or town council with the approval of the mayor – must be placed on the ballot at a regular or special municipal election.

The new law does provide language for the ballot question, as suggested by the MMA. (The language and procedure set forth in the new law can be found in Section 27 of H. 3818.)

After Dec. 31, 2019, this ballot requirement will apply to every city and town.

The House bill would have allowed cities and towns to opt out by a vote of the local legislative body, a process that was strongly supported by the MMA. The MMA argued that the process in the House bill was consistent with the full and open process used at the local level for all major decisions.

“Unfortunately, we believe that the conference committee’s compromise version will be very challenging for a large number of communities because the local referendum process is out of sync with the timing of local elections and zoning bylaws,” said MMA Executive Director Geoff Beckwith in a statement. “And while it is good that 91 cities and towns will have a workable process, it is unfortunate and disappointing that the remaining 260 communities will face ongoing problems that will make it very hard to implement the law smoothly.”

The MMA’s analysis shows that about 30 cities and towns have voted to ban recreational marijuana businesses, with the majority being cities and towns where voters rejected Question 4.

About 80 cities and towns have adopted a local moratorium in order to have time to take the pulse of residents on zoning and siting issues and come back later with recommendations. Moratoriums were also intended to give cities and towns adequate time to review the expected changes to the law and the regulations that will follow.

## **Tax rate**

The new law also makes changes to the tax rates found in the original ballot question.

The law approved in November set the state tax rate at 10 percent (a 3.75 percent marijuana excise tax plus the state sales tax of 6.25 percent), plus a local option tax of up to 2 percent, for a maximum of 12 percent.

The new law increases the marijuana excise to 10.75 percent and increases the local option tax cap to 3 percent, for a new total rate of up to 20 percent.

The new law also creates a more confining structure for communities entering into host community agreements, requiring that they be renegotiated every five years and limiting community impact fees paid to the municipality by the licensee to 3 percent of the establishment's gross sales.

## **Regulatory structure**

The new law maintains broad elements of changes made by both the House and Senate to the ballot law's Cannabis Control Commission and Cannabis Advisory Board.

The CCC, charged with direct oversight over the new industry, will expand from three members to five. The governor, attorney general and treasurer will each appoint one commissioner, and the other two will be chosen by a majority vote of the three state officials.

The law also expands the CAB to 25 members, with a seat added for the MMA as well as social justice and patient groups. The CAB, which will make recommendations on regulating cannabis, will need to be appointed by Aug. 1.

Governance of both recreational and medical marijuana will be consolidated under the same regulatory authority.

The CCC is charged with "promulgating regulations, guidelines and protocols necessary for the issuance of licenses" no later than March 15, 2018, and to begin accepting license applications by April 1, 2018.

The conference committee included some criminal justice reforms in the rewritten law. Several possessory offenses that remained criminal under the original ballot measure are reclassified as civil. And individuals with prior convictions for possession can have those records sealed.

The law also raises the noncriminal threshold for personal possession outside the home from one ounce to two.

The compromise bill also strengthens penalties for underage possession and use of marijuana, and places limits on advertising.

H. 3818 was scheduled for concurrent votes this week in the House and Senate. With both House and Senate leadership having signed off on the compromise measure, and with no amendments allowed, passage is virtually assured.