

**Written Testimony of Rob Bovett, AOC Legal Counsel,
before the House Revenue Committee
in support of House Bills 2203 and 2204 with Amendments**

Tuesday, February 21, 2017

Chair Barnhart, Vice-Chairs Bentz and Smith Warner, and Members of the Committee,

Thank you for the opportunity to share a few thoughts with you regarding House Bills 2203 and 2204. The Association of Oregon Counties (AOC) is in support of both bills, with amendments.

House Bill 2203

[House Bill 2203](#) would amend the [Ballot Measure 91](#) formula for distribution of net state marijuana sales taxes. That formula has many problems, including, but not limited to:

1. The failure to direct tax revenues to areas of greatest need, based on the actual impacts of marijuana legalization.
2. The narrow restriction on city and county use of their distributions for only enforcement of Measure 91. By way of example, that narrow restriction arguably prevents counties from using those revenues to pay for direct impacts of legalization, such as public health, prevention, addiction treatment, or increased incidence of drug recognition expert (DRE) driving while under the influence of intoxicants (DUI) cases.
3. The formula for distribution to cities does not work, mathematically.

You might ask why this formula was not fixed in the 2015 or 2016 legislative sessions. The answer is that the Joint Marijuana Committee had its plate completely full during those sessions, and there was projected to be no distribution under the formula until after the 2017 legislative session anyway, due to the large amount of money that the Oregon Liquor Control Commission (OLCC) has had to borrow from the Liquor Fund, which must be paid back before any net tax distribution can occur. So, in short, we all punted this issue to the 2017 legislative session. Hence House Bill 2203.

A quick word about the current contents of HB 2203: I crafted it in the Fall of 2016 for Representative Wilson, prior to the November election, and prior to the realization of the current \$1.8 billion budget shortfall to meet state current service level (CSL). One of the things I did in crafting the bill was to remove the 40 percent distribution to the Common School Fund, and redistribute that equally between counties and cities. Hence, I knew from the moment the bill was printed that it would likely be amended to satisfy various stakeholders, considering the current budget environment.

So what are we talking about in terms of real dollars? Last year, the state collected [\\$60 million](#) in marijuana sales taxes, which was substantially more than the [\\$43 million](#) that had been projected by the Legislative Revenue Office (LRO). Many are projecting that retail marijuana sales in Oregon will continue to increase. However, the tax last year during the “early start” phase was 25 percent, and now it’s 17 percent. Hence, I suspect that \$60 million per year is still roughly a good number for your purposes. In short, there are real dollars to distribute, just not on the magnitude or scale that some had believed when Measure 91 was on the ballot in 2014.

For my part, I am more than willing to meet with stakeholders to hammer out amendments to House Bill 2203, taking into account the problems with the formula that I have already mentioned. It is vital that HB 2203 pass this session, in whatever form gets worked out.

House Bill 2204

[Measure 91](#) did not impose a tax on retail sales of marijuana. Instead, it imposed an excise tax on the three types of marijuana products that a licensed retail producer could sell into the regulated system. In 2015, it seemed that nobody liked that tax, so it was replaced by a much more simple retail sales tax. But the tax distribution formula was not changed, as described above.

Oregon law currently allows for cities and counties to impose a local option marijuana sales tax of up to 3 percent, with local voter approval. In November of last year there were 111 local ballot measures for local option marijuana sales taxes. All 111 passed, by substantial margins. Those taxes went into effect last month. Thus, in jurisdictions with a local option tax, the overall composite marijuana sales tax is 20 percent (17 percent state tax, plus 3 percent local tax).

Unlike Washington and Colorado, Oregon set its marijuana sales tax low to ensure that retail marijuana sold in licensed shops was not priced substantially above the black market. Our actual experience, as well as actual retail marijuana sales as described above, show that we accomplished that goal, even when the tax was 25 percent during the “early start” phase.

[House Bill 2204](#) would increase the local option tax authority from 3 to 8 percent, thus returning the total composite tax rate in those jurisdictions to 25 percent.

House Bill 2204 will help local jurisdictions better address the significant fiscal impacts of marijuana legalization. However, because the Measure 91 tax was changed from an excise tax to a retail sales tax, very little of those tax dollars trickle down to counties, since most retail shops are, quite logically, located within cities. Thus, funding to help offset fiscal impacts on counties for things like public health, prevention, and addiction treatment are not occurring at anywhere close to the level that would have occurred under Measure 91 as approved by the voters.

The Association of Oregon Counties (AOC) therefore supports House Bill 2204, but only if the expansion (5 percent) is equally split between the city in which a retail shop is located, and the county in which that retail shop is located. In other words, 2.5 percent to each. Cities would keep the entirety of the existing 3 percent.

Thank you again for the opportunity to share my thoughts on these two important bills.