

HOUSE BILL REPORT

HB 2000

As Passed Legislature

Title: An act relating to authorizing the governor to enter into agreements with federally recognized Indian tribes in the state of Washington concerning marijuana.

Brief Description: Authorizing the governor to enter into agreements with federally recognized Indian tribes in the state of Washington concerning marijuana.

Sponsors: Representatives Hurst, Condotta and Tarleton.

Brief History:

Committee Activity:

Commerce & Gaming: 2/10/15, 2/12/15 [DP];

Finance: 2/23/15, 2/24/15 [DP].

Floor Activity:

Passed House: 3/5/15, 80-18.

Senate Amended.

Passed Senate: 4/15/15, 36-13.

House Refused to Concur.

Senate Receded.

Senate Amended.

Passed Senate: 4/24/15, 46-0.

House Concurred.

Passed House: 4/24/15, 79-17.

Passed Legislature.

Brief Summary of Bill

- Authorizes the Governor to enter into agreements with federally recognized Indian tribes regarding any marijuana-related issue that involves both state and tribal interests or otherwise has an impact on tribal-state relations.
- Requires that any tribal-state marijuana agreement include a requirement that the tribe impose a tribal marijuana tax in an amount that is at least 100 percent of all applicable state and local taxes on sales of marijuana, but with the following exception; tribal marijuana sales to tribal members and tribal entities are exempt from this taxation requirement to the extent such sales are exempted under state and federal law.

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.

- Authorizes licensed marijuana retailers to purchase and receive marijuana and processed marijuana products from a federally recognized Indian tribe as permitted by a tribal-state agreement.
- Authorizes state licensed marijuana producers and processors to sell and distribute marijuana and processed marijuana products to a federally recognized Indian tribe as permitted by a tribal-state agreement.

HOUSE COMMITTEE ON COMMERCE & GAMING

Majority Report: Do pass. Signed by 9 members: Representatives Hurst, Chair; Wylie, Vice Chair; Condotta, Ranking Minority Member; Holy, Assistant Ranking Minority Member; Blake, Kirby, Moscoso, Scott and Vick.

Staff: Thamas Osborn (786-7129).

HOUSE COMMITTEE ON FINANCE

Majority Report: Do pass. Signed by 16 members: Representatives Carlyle, Chair; Tharinger, Vice Chair; Nealey, Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Condotta, Fitzgibbon, Manweller, Pollet, Reykdal, Robinson, Ryu, Springer, Stokesbary, Vick, Wilcox and Wylie.

Staff: Dominique Meyers (786-7150).

Background:

Tribal-State Compacts.

Where authorized by statute, the Governor may enter into compacts and agreements with the Indian tribes of this state regarding matters of mutual interest and/or concern. Many such compacts have been implemented regarding gambling and various taxation issues, most notably those regarding cigarette taxes and gasoline taxes. In 2001 legislation was passed allowing the Governor to enter into contracts with the tribes concerning the sale of cigarettes. Such contracts must be for renewable terms of eight years or less. Cigarettes sold on Indian lands during the contracts term are subject to a tribal cigarette tax and are exempt from state cigarette, sales and use taxes.

Regulation of Marijuana Commerce under the State Controlled Substances Act.

Initiative Measure No. 502 (I-502) was a ballot measure approved by Washington voters in November of 2012 that: (1) legalized the production, processing, possession, and personal use of marijuana; (2) created a framework for a regulatory scheme to be further developed by the Liquor Control Board (LCB) through its rule-making authority; and (3) revised provisions in criminal statute to accommodate such legalization in accordance with the requirements of I-502. The statutory provisions of I-502 are codified in the state Controlled Substances Act (CSA), chapter 69.50 RCW.

Under the CSA, the LCB is authorized to issue 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.

Federal Response to State Marijuana Legalization.

In recent years, the United States Department of Justice (DOJ) has issued several policy statements regarding state regulation of legalized marijuana. In August of 2013, Deputy Attorney General James Cole issued a memorandum (Cole Memorandum) in response to the legalization of marijuana in Washington and Colorado. This memorandum is widely interpreted to implicitly allow the states to proceed with legalization efforts, provided public health and safety are protected by strong and effective regulatory and enforcement systems. In an effort to establish criteria for the evaluation of the adequacy of state regulatory systems, the Cole Memorandum identifies eight enforcement priorities that the federal government will consider:

1. preventing the distribution of marijuana to minors;
2. preventing marijuana sales revenue from being directed to criminal enterprises;
3. preventing marijuana from being diverted from states where it is legal to states in which it is illegal;
4. preventing state-authorized marijuana activity from being used as a cover for trafficking other illegal drugs or other illegal activity;
5. preventing violence and the use of firearms in the production and distribution of marijuana;
6. preventing drugged driving and other marijuana-related public health consequences;
7. preventing the growth of marijuana on public lands; and
8. preventing marijuana possession or use on federal property.

However, the Cole Memorandum strongly affirms the continuing authority of the federal government to challenge state regulatory systems and to take enforcement actions where state enforcement efforts are inadequate.

Marijuana Commerce in Indian Country.

In October of 2014, another federal memorandum (Wilkinson Memorandum) was issued regarding the legalization of marijuana by Indian tribes. Its substantive provisions are almost identical to the Cole Memorandum, insofar as it implicitly authorizes the tribes to implement legalization policies subject to the same eight regulatory priorities and oversight role of the federal government. The Wilkinson Memorandum also acknowledges that the tribes are sovereign nations and thus directs the DOJ to consult with affected tribes on a government-to-government basis on matters relating to the regulation of legalized marijuana.

Summary of Bill:

The Governor is authorized to enter into agreements with federally recognized Indian tribes concerning marijuana. Such agreements may address any marijuana-related issue that involves both state and tribal interests or otherwise has an impact on tribal-state relations. Such agreements may include the following subject matter:

- criminal and civil law enforcement;
- regulatory issues related to the commercial production, processing, sale, and possession of marijuana and processed marijuana products;
- medical and pharmaceutical research involving marijuana;
- taxation; and
- dispute resolution, including the use of mediation or other nonjudicial process.

Any marijuana agreement relating to the production, processing, and sale of marijuana in Indian country, whether for recreational or medical purposes, must address the following issues:

- preservation of public health and safety;
- ensuring the security of production, processing, retail, and research facilities; and
- cross-border commerce in marijuana.

The Governor may delegate the power to negotiate marijuana agreements to the LCB. In conducting such negotiations, the LCB must, when necessary, consult with the Governor and/or the Department of Revenue.

Any tribal-state marijuana agreement must include a requirement that the tribe impose a tribal marijuana tax in an amount that is at least 100 percent of state and local excise, sales, and use taxes on sales of marijuana. However, tribal marijuana sales to the tribe, tribal entities, or tribal members are exempt from this taxation requirement to the extent such sales are exempt from such taxation under state and federal law.

State licensed marijuana retailers are authorized to purchase and receive marijuana and processed marijuana products from a federally recognized Indian tribe as permitted by a tribal-state agreement.

State licensed marijuana producers and processors are authorized to sell and distribute marijuana and processed marijuana products to a federally recognized Indian tribe as permitted by a tribal-state agreement.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony (Commerce & Gaming):

(In support) Recent developments regarding the legalization of marijuana make it necessary for the state and Indian tribes to develop a legal framework for implementing agreements regarding the production, processing, and sale of marijuana. This bill creates a structured process that gives the Governor broad authority to enter into tribal-state compacts regarding marijuana-related issues. Now that the DOJ has issued legal memoranda implicitly permitting both the state and the tribes to legalize marijuana, it is vitally important that there be a legal mechanism by which the tribes and the state can deal with emerging issues of

mutual concern. The bill provides this mechanism. The Suquamish Tribe supports the bill because tribes considering the legalization of marijuana will need a way to negotiate with the state about the many issues that are certain to arise. The tribes are not subject to state's regulatory scheme regarding marijuana and will have to develop their own regulatory approach, consistent with federal guidelines.

The bill is of mutual benefit to the state and the tribes, because the compacting process it creates will encourage a collaborative relationship. It is important that there be statewide consistency in how the legal marijuana market develops, and the compacting process will facilitate this. The various memoranda from the DOJ put the tribes on an equal legal footing with the state regarding marijuana issues, and, therefore, a negotiation process such as the one in the bill is necessary. Agreements reached through the compacting process could benefit state-regulated marijuana businesses by opening up a new market with the tribes. The tax provisions in the bill need examination, insofar as it is unclear whether they take effect absent an explicit agreement with the Governor through the compacting process.

(Opposed) Tribal-state compacts could be unlawful insofar as they may violate anti-trust laws. Such compacts could allow the state and the tribes to completely control the marijuana market. Most tribes do not have the resources necessary for adequate enforcement and oversight.

Staff Summary of Public Testimony (Finance):

(In support) This is the necessary first step to ensure the state has a completely safe system regarding marijuana commerce, including marijuana commerce in Indian country. This will facilitate the talks needed to build a seamless system for the state, in and out of Indian country. The bill provides an interesting and unique opportunity for the state; the Department of Justice provided tribes the same opportunity as the state with respect to tribal commerce in marijuana so long as the eight regulatory and safety requirements in the original Cole memorandum are met. The state has no jurisdiction in the area of marijuana commerce with respect to Indian country. This bill could provide the state the ability to enter into agreements with tribes without litigation for the first time in the state's history.

(Opposed) None.

Persons Testifying (Commerce & Gaming): (In support) Representative Hurst, prime sponsor; Rion Ramirez, Suquamish Tribe; Christine Masse, Miller Nash LLP; John Kingsbury; James Paribello, Liquor Control Board; and Chris Kealy, Spinning Heads, Inc.

(Opposed) John Worthington, Cannabis Action Coalition and American Alliance for Medical Cannabis.

Persons Testifying (Finance): James Paribello, Liquor Control Board; and Chris Masse, Miller & Nash.

Persons Signed In To Testify But Not Testifying (Commerce & Gaming): None.

Persons Signed In To Testify But Not Testifying (Finance): None.