

SENATE BILL REPORT

SB 5848

As Reported by Senate Committee On:
Commerce & Labor, February 18, 2015

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: Senators Rivers and Kohl-Welles.

Brief History:

Committee Activity: Commerce & Labor: 2/18/15 [DP, w/oRec].

SENATE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass.

Signed by Senators Baumgartner, Chair; Hasegawa, Ranking Minority Member; Conway, Keiser, King and Warnick.

Minority Report: That it be referred without recommendation.

Signed by Senator Braun, Vice Chair.

Staff: Richard Rodger (786-7461)

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 and sales and use taxes.

Regulation of Marijuana Commerce under the State Controlled Substances Act. Initiative 502 (I-502) was a ballot measure approved by Washington voters in November 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

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Board (LCB) through its rulemaking authority; and (3) revised provisions in criminal statute to accommodate such legalization in accordance with the requirements of the initiative. The statutory provisions of I-502 are codified in the state Controlled Substances Act (CSA), chapter 69.50 RCW.

Under the CSA, 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 2013, the DOJ 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:

- preventing the distribution of marijuana to minors;
- preventing marijuana sales revenue from being directed to criminal enterprises;
- preventing marijuana from being diverted from states where it is legal to states in which it is illegal;
- preventing state-authorized marijuana activity from being used as a cover for trafficking other illegal drugs or other illegal activity;
- preventing violence and the use of firearms in the production and distribution of marijuana;
- preventing drugged driving and other marijuana-related public health consequences;
- preventing the growth of marijuana on public lands; and
- 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 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 another 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 LCB. In conducting such negotiations, LCB must, when necessary, consult with the Governor and/or the Department of Revenue.

State sales, excise, and use taxes do not apply with respect to tribal commercial activities involving marijuana and which are covered by an agreement with the state.

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.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: The federals recently issued the Wilkerson Memorandum that authorizes Indian tribes to grow and sell marijuana under the same enforcement priorities as identified by the federal government in the Cole Memorandum regarding recreational marijuana. It is in the state's best interest to integrate the tribes in a strong regulatory system using this collaborative approach. Tribes do not need this legislation to move forward but we believe it is in everyone's best interests to negotiate these agreements.

CON: I have concerns about the executive privilege contained in this bill. The Governor will be able to enter into these agreements with no public input. The bill raises concerns about the dormant commerce clause and restrictions on trade. This bill has a neoconservative agenda that sets up an improper, untaxed monopoly that will be influenced by large corporations.

Persons Testifying: PRO: Chris Kealy, Emerald Green Alliance; Chris Masse, Miller Nash Graham & Dunn; James Paribello, LCB.

CON: John Worthington, Assn. of American Medical Colleges, Community Action Council; Arthur West, citizen.