

HOUSE BILL REPORT

HB 2151

As Reported by House Committee On:
Regulated Substances & Gaming
Appropriations

Title: An act relating to reassigning the accreditation of private cannabis testing laboratories from the department of ecology to the department of agriculture.

Brief Description: Reassigning the accreditation of private cannabis testing laboratories from the department of ecology to the department of agriculture.

Sponsors: Representatives Reeves, Chapman and Kloba; by request of Department of Agriculture.

Brief History:

Committee Activity:

Regulated Substances & Gaming: 1/15/24, 1/22/24 [DPS];
Appropriations: 2/1/24, 2/3/24 [DP2S(w/o sub RSG)].

Brief Summary of Second Substitute Bill

- Reassigns agency authority and responsibility for accreditation of cannabis testing laboratories to the Department of Agriculture (WSDA), effective July 1, 2024, and authorizes expedited rulemaking.
- Modifies authorization related to the fee that may be imposed for the administration of the cannabis product testing laboratory accreditation program, and modifies a provision requiring destruction of cannabis in the context of a sample failing a quality assurance test.

HOUSE COMMITTEE ON REGULATED SUBSTANCES & GAMING

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Kloba, Co-Chair; Wylie, Co-Chair; Stearns, Vice Chair; Chambers, Ranking Minority Member; Robertson, Assistant Ranking Minority

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Member; Calder, Cheney, Morgan, Orwall, Reeves and Waters.

Staff: Peter Clodfelter (786-7127).

Background:

Pursuant to a 2019 law, agency authority and responsibility for accrediting cannabis testing laboratories is scheduled to be reassigned from the Liquor and Cannabis Board (LCB) to the Department of Ecology (DOE), effective July 1, 2024. The DOE will be authorized to determine, assess, and collect annual fees sufficient to cover the direct and indirect costs of implementing a cannabis product testing laboratory accreditation program, except for the initial program development costs.

Effective July 1, 2024, the DOE will be required to develop a fee schedule, to be reviewed and updated biennially, allocating the costs of the accreditation program among accredited laboratories and may establish a payment schedule. The fee schedule must be established in amounts to fully cover, but not exceed, the administrative and oversight costs.

The costs of laboratory accreditation include the following costs incurred by the DOE: costs incurred in undertaking the evaluation of laboratory protocols and procedures, performing on-site audits, evaluating proficiency testing, determining a laboratory's capability to produce accurate and reliable test results, and other accreditation activities. Initial program development costs must be fully paid from the Dedicated Cannabis Account. All fees collected must be deposited in the Dedicated Cannabis Account.

On a schedule determined by the LCB, licensed cannabis producers and processors must submit representative samples of cannabis and cannabis products produced or processed by the licensee to an independent and accredited third-party testing laboratory. The purpose of testing is to certify compliance with quality assurance and product standards adopted by the LCB or the Department of Health. In conducting tests of cannabis product samples, testing laboratories must adhere to laboratory quality standards adopted by the Washington State Department of Agriculture (WSDA).

Washington law specifies that a sample must be destroyed if a representative sample of cannabis or a cannabis product inspected and tested by an independent, third-party testing laboratory does not meet the applicable quality assurance and product standards established by the LCB. Current LCB rules include possible ways for cannabis from which a failed sample has been taken to not be destroyed, such as allowing for remediation of cannabis failing quality assurance tests other than for pesticides, subject to additional quality assurance testing and other requirements.

Summary of Substitute Bill:

Effective July 1, 2024, the authority and responsibility for cannabis product testing laboratory accreditation requirements is reassigned to the WSDA, instead of being reassigned on that date from the LCB to the DOE.

The WSDA must, in consultation with the LCB, adopt rules by July 1, 2024, to implement the reassignment of authority and responsibility pertaining to cannabis laboratory accreditation. The WSDA may use expedited rulemaking to accomplish this task.

Several modifications are made to the authorizing language related to the annual fee that may be determined, assessed, and collected by the state to administer the cannabis product testing laboratory accreditation requirements. Authority to determine, assess, and collect the fee is transferred to the WSDA. It is provided that the annual fee is to "support," instead of to be "sufficient to cover," the direct and indirect costs of implementing a cannabis product testing laboratory accreditation program.

Supporting the direct and indirect costs of implementing the laboratory quality standards program is also added to the fee authorization. The requirements related to the fee are removed that: (1) the DOE must develop a fee schedule allocating the costs of the accreditation program among accredited laboratories; (2) the fee schedule be established in amounts to fully cover, but not exceed, the administrative and oversight costs; and (3) the initial program development costs of the cannabis product testing laboratory accreditation program be fully paid from the Dedicated Cannabis Account.

Additionally, a requirement is removed that the entire lot from which a sample was taken must be destroyed if a representative sample of cannabis or a cannabis product inspected and tested by an independent, third-party testing laboratory does not meet the applicable quality assurance and product standards established by the LCB.

Substitute Bill Compared to Original Bill:

The substitute bill removes the requirement that the entire lot from which a sample was taken must be destroyed if a representative sample of cannabis or a cannabis product inspected and tested by an independent, third-party testing laboratory does not meet the applicable quality assurance and product standards established by the LCB.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on January 22, 2024.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect immediately, except section 2, which takes effect July 1, 2024.

Staff Summary of Public Testimony:

(In support) The bill ensures and enhances consumer protections related to cannabis laboratory testing, streamlines government, and enables an efficient transition from the DOE to the WSDA. The DOE was recently directed to develop stronger accreditation requirements, and the DOE led the Cannabis Science Task Force in completing the recommendations. Cannabis and environmental science have different needs and support systems; the WSDA's expertise in plants and food products makes it best suited to implement the recommendations. Cannabis labs are costly businesses to operate and the industry has been in a state of attrition. A minor change in the bill makes the fee more workable. It is important that labs be viable businesses. Regarding questions about enforcement, while the WSDA would offer an accreditation recommendation to the LCB, there remain issues a lab could face, such as a criminal issue, that would be out of scope for the WSDA. The LCB will still have a role, and will receive an accreditation recommendation and certify the labs. This bill allows the WSDA to provide labs with continuous service. The WSDA has two chemists and a microbiologist who are already making important connections and building relationships. Much of the rule language infrastructure is already in place. However, the WSDA will reduce fees relative to previous estimates from the DOE. Although supporting the bill, labs are concerned that standard methods adopted by the WSDA will significantly add to the complexity of work labs must perform. Over the last decade, labs who are good actors have seen labs who are bad actors routinely bend and break rules to cut corners and costs in ways that put consumers at risk and honest businesses at a disadvantage. For possible finetuning, the bill reinforces a discrepancy between law and rule, where current law says if a sample does not meet quality assurance standards, then the entire lot from which the sample was taken must be destroyed. In contrast, there is a process in rule for remediation of cannabis following a failed test, and the law should be amended to account for this authorized practice. The bill does not explicitly contemplate the role of enforcement, and it will be important for the LCB and the WSDA to coordinate where appropriate. Funding for a full-time employee qualified in accreditation should be added to the bill. Quick action to meet looming deadlines is needed, and this individual could serve a valuable role. The bill represents a meaningful solution.

(Opposed) None.

Persons Testifying: Representative Kristine Reeves, prime sponsor; Dr. Annette Hoffmann, Department of Ecology; Lukas Hunter, Harmony Farms; Caitlein Ryan, The Cannabis Alliance; Trecia Ehrlich, Washington State Department of Agriculture; and Nick Mosely, Confidence Analytics.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Regulated

Substances & Gaming. Signed by 29 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Corry, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Connors, Assistant Ranking Minority Member; Couture, Assistant Ranking Minority Member; Berg, Callan, Chopp, Davis, Dye, Fitzgibbon, Harris, Lekanoff, Pollet, Riccelli, Rude, Ryu, Sandlin, Schmick, Senn, Simmons, Slatter, Springer, Stonier, Tharinger and Wilcox.

Staff: Dan Jones (786-7118).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Regulated Substances & Gaming:

The second substitute bill restores current law that provides that if a representative sample of cannabis inspected and tested does not meet applicable quality standards established by the Liquor and Cannabis Board (LCB), the entire lot from which the sample was taken must be destroyed. The second substitute bill also allows for exceptions to this mandatory destruction provision, as provided in LCB rules.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Second Substitute Bill: The bill contains an emergency clause and takes effect immediately, except section 2, which takes effect July 1, 2024.

Staff Summary of Public Testimony:

(In support) The Department of Agriculture already has a team of scientists working on cannabis lab standards. This bill would be an extension of the work the team is already doing. There are eight labs that do this kind of work, and so \$1 million in fees per biennium, as in current law, would be difficult for the labs to absorb.

(Opposed) None.

Persons Testifying: Kelly McLain, Department of Agriculture.

Persons Signed In To Testify But Not Testifying: None.