

SENATE BILL REPORT

HB 2052

As Reported by Senate Committee On:
Labor & Commerce, March 28, 2019
Ways & Means, April 9, 2019

Title: An act relating to clarifying marijuana product testing by revising provisions concerning marijuana testing laboratory accreditation and establishing a cannabis science task force.

Brief Description: Clarifying marijuana product testing by revising provisions concerning marijuana testing laboratory accreditation and establishing a cannabis science task force.

Sponsors: Representatives Stanford, MacEwen, Kloba and Reeves.

Brief History: Passed House: 3/06/19, 95-2.

Committee Activity: Labor & Commerce: 3/19/19, 3/28/19 [DPA-WM, w/oRec].
Ways & Means: 4/05/19, 4/09/19 [DPA (LBRC), DNP].

Brief Summary of Amended Bill

- Transfers authority and responsibility for marijuana product testing laboratory accreditation requirements to the Department of Ecology (Ecology), from the Washington State Liquor and Cannabis Board, effective July 1, 2024.
- Requires Ecology to determine, assess, and collect an annual fee to cover the direct and indirect costs of implementing the marijuana product testing laboratory accreditation program, with the exception of the initial program development costs which must be paid from the dedicated marijuana account.
- Establishes the Cannabis Science Task Force (task force) to collaborate on the development of appropriate laboratory quality standards and to establish a work group on proficiency testing and another work group on laboratory quality standards.
- Requires the task force to submit a report to the Legislature by July 1, 2020, with findings and recommendations for laboratory quality standards for pesticides in plants and a subsequent report on laboratory quality standards, including heavy metals in and potency of marijuana products, by December 1, 2021.

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.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Keiser, Chair; Conway, Vice Chair; King, Ranking Member; Saldaña, Walsh and Wellman.

Minority Report: That it be referred without recommendation.

Signed by Senator Braun.

Staff: Richard Rodger (786-7461)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Operating, Capital Lead; Mullet, Capital Budget Cabinet; Braun, Ranking Member; Brown, Assistant Ranking Member, Operating; Bailey, Becker, Billig, Carlyle, Conway, Darneille, Hasegawa, Hunt, Keiser, Liias, Palumbo, Pedersen, Rivers, Schoesler, Van De Wege, Wagoner and Warnick.

Minority Report: Do not pass.

Signed by Senator Honeyford, Assistant Ranking Member, Capital.

Staff: Alia Kennedy (786-7405)

Background: Marijuana Product Testing. On a schedule determined by the Washington State Liquor and Cannabis Board (LCB), licensed marijuana producers and processors must submit representative samples of marijuana or marijuana products produced or processed by the licensee to an independent, third-party testing laboratory meeting accreditation requirements established by the LCB, for inspection and testing. Inspection and testing is to certify compliance with product standards adopted by the LCB, and various fields of testing are required.

Representative samples of marijuana are subject to testing for potency, moisture content, and foreign matter. Additionally, representative samples of marijuana must undergo microbiological and mycotoxin screenings, and certain marijuana products like marijuana concentrates, depending on the processing method, are subject to testing for residual solvents. For marijuana products to qualify for labeling and sale as medically compliant products under rules adopted by the Department of Health (DOH), generally representative samples must additionally be tested for pesticides and heavy metals. Any sample remaining after testing is destroyed by the lab or returned to the licensee. Marijuana licensees must submit the results of inspections and testing to the LCB. If a sample inspected and tested does not meet the standards developed by the LCB, the entire lot from which the sample was taken must be destroyed.

Accreditation of Marijuana Product Testing Laboratories. Initiative 502 (2012) directed the LCB to adopt rules, in consultation with DOH and the Department of Agriculture (AGR), establishing accreditation requirements for testing laboratories used by licensees to demonstrate compliance with product standards adopted by the LCB. The LCB has

developed a proficiency testing program to certify marijuana product testing laboratories that demonstrate an ability to perform accurate laboratory tests of marijuana products in a given field of testing. Pursuant to agency rules, the LCB may require a third-party validation and ongoing monitoring of a certified lab's basic proficiency to correctly execute the analytical methodologies employed by the lab. Certified labs are responsible for paying all vendor fees for validation and ongoing monitoring directly to the LCB's vendor.

In the 2018 supplemental operating budget, \$98,000 was provided to Ecology to begin conducting research into appropriate protocols and accreditation standards for marijuana product testing laboratories. Ecology was directed to submit a report to the Legislature with recommendations regarding laboratory accreditation standards for marijuana product testing laboratories. The recommendations included the creation of task force, establishing new laboratory quality standards, and designating Ecology as the accreditation provider for cannabis testing laboratories.

Summary of Amended Bill: Marijuana Product Testing and Laboratory Accreditation Requirements. Effective July 1, 2024, authority and responsibility for marijuana product testing laboratory accreditation requirements is transferred to Ecology, from the LCB. Ecology must determine, assess, and collect annual fees sufficient to cover the direct and indirect costs of implementing a marijuana product testing laboratory accreditation program, with the exception of the initial program development costs which must be fully paid from the dedicated marijuana account. Ecology must develop a fee schedule allocating the costs of the accreditation program among its accredited marijuana product testing laboratories.

Ecology may establish a payment schedule requiring periodic installments of the annual fee, which is deposited in the Dedicated Marijuana Account. The fee schedule must be established in amounts to fully cover, but not exceed, administrative and oversight costs. Ecology must review and update its fee schedule biennially. The costs of marijuana product testing laboratory accreditation are those incurred by Ecology in administering and enforcing the accreditation program. The costs may include, but are not limited to, the costs incurred in undertaking the following accreditation functions: (1) evaluating the protocols and procedures used by a laboratory; (2) performing on-site audits; (3) evaluating participation and successful completion of proficiency testing; (4) determining the capability of a laboratory to produce accurate and reliable test results; and (5) such other accreditation activities as Ecology deems appropriate.

By July 1, 2024, Ecology must, in consultation with the LCB, adopt rules to implement Ecology's duties pertaining to the marijuana product testing laboratory accreditation program. Effective July 1, 2024, the directive to the LCB to establish, by rule, accreditation requirements for marijuana product testing laboratories, is repealed. Until July 1, 2024, the LCB is granted additional rulemaking authority to adopt rules necessary to implement the marijuana product testing laboratory accreditation program and to adopt quality assurance and product standards.

Cannabis Science Task Force. A task force is established. Membership includes the director, or the director's appointee, from Ecology, AGR, DOH, and LCB. A majority of the agency members must select additional task force members who must include: (1) representatives with expertise in chemistry, microbiology, toxicology, public health, and/or food and

agricultural testing methods from state and local agencies and tribal governments; and (2) nongovernmental cannabis industry scientists.

The representative from Ecology must serve as chair of the task force. The task force must collaborate on the development of appropriate laboratory quality standards for cannabis testing laboratories and must establish two work groups: (1) a proficiency testing program work group led by Ecology; and (2) a laboratory quality standards work group to be led by AGR that will address appropriate approved testing methods, method validation protocols, and method performance criteria. The task force may reorganize the work groups or create additional advisory work groups as necessary. Ecology must provide staff support and pay task force expenses.

The task force must submit a report to the relevant committees of the Legislature by December 1, 2020, that includes the findings and recommendations for laboratory quality standards for pesticides in plants for the marijuana product testing laboratories. The report must specifically include recommendations relating to the following: (1) appropriate approved testing methods; (2) method validation protocols; (3) method performance criteria; (4) sampling and homogenization protocols; (5) proficiency testing, and (6) regulatory updates.

The task force must also develop findings and recommendations for additional laboratory quality standards, including heavy metals in and potency of marijuana products and submit this report to the Legislature by December 1, 2021. The task force must hold its first meeting by September 1, 2019.

LCB may conduct rule making to address the recommendations in the task force reports.

EFFECT OF LABOR & COMMERCE COMMITTEE AMENDMENT(S):

- Requires that the state marijuana product testing laboratory accreditation program initial development costs must be fully paid from the dedicated marijuana account.
- Changes the date of the transfer of the accreditation program to the Department of Ecology to July 1, 2024.
- Limits the initial scope of the task force to pesticides in plants for laboratory quality standards for the July 1, 2020 report to legislature, including regulatory changes each agency should make to implement the pesticide lab quality standards.
- Directs the task force to submit a report to the legislature by December 1, 2021, that includes recommendations for laboratory quality standards for heavy metals in and potency of marijuana products.
- Allows the LCB to initiate rule making to address the findings and recommendations in the task force reports, as the Department of Ecology does not take over accreditation until 2024.

Appropriation: The bill contains a null and void clause requiring specific funding be provided in an omnibus appropriation act.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony on House Bill (Labor & Commerce): *The committee recommended a different version of the bill than what was heard.* PRO: Ecology has the expertise in setting these standards and currently regulate over 500 agricultural and environmental testing labs. We believe the bill will help Ecology take over the accreditation program. The stakeholder advisory committee will help implement this program. This is a rational approach to revamping the laboratory program and strikes a balance between expediency and thoroughness and thoughtfulness. We are supportive of a robust program, but want to note that there are only 13 accredited labs in the state. As the timeline extends, we are concerned that the fiscal note will get larger too and the fees will land directly on the labs and producers and processors. The faster we can get this taken care of, the faster honest businesses will survive and thrive. We do not want Ecology to cut corners either and want to work to try and accelerate the process. We might need some help with the implementation costs.

OTHER: We support the transitioning of the laboratory accreditation program to Ecology, but have concerns with the timeline. There are existing gaps in the current system and it is going to take more time to address those gaps than is provided in the bill. The health and safety of consumer will be at risk if we cut corners to meet the specified timelines. We have worked with the LCB and the prime sponsor to develop an extended implementation plan for the legislation.

Persons Testifying (Labor & Commerce): PRO: Al Ralston, The Cannabis Alliance; Nick Mosely, Confidence Analytics; Kyle Capizzi, The Cannabis Alliance; Seth Dawson, Washington State Association for Substance Abuse Prevention; Chris Thompson, LCB; Jedidiah Haney, Executive Director, Laboratory Guild; Jeff Doughty, President, Laboratory Guild.

OTHER: Carol Smith, Department of Ecology.

Persons Signed In To Testify But Not Testifying (Labor & Commerce): No one.

Staff Summary of Public Testimony on Bill as Amended by Labor & Commerce (Ways & Means): None.

Persons Testifying (Ways & Means): No one.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.