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Senate Bills 179 and 180 (as introduced 3-15-23)
Sponsor: Senator Jeff Irwin (S.B. 179)
Senator Roger Hauck (S.B. 180)
Committee: Regulatory Affairs

Date Completed: 4-19-23

INTRODUCTION

Taken together, the bills would allow Indian Tribes to enter into an agreement with the Cannabis Regulatory Agency (CRA) regarding marijuana related business. Under the bills, the sale of marijuana by a qualified tribal business would be exempt from the 10% excise tax. Additionally, if a marijuana retailer or microbusiness was located in Indian lands certain portions of the Marihuana Regulation Fund that would have been allocated to counties and municipalities would be allocated to the Indian tribe in whose Indian lands the retailer or microbusiness was located. The bills are tie-barred.

PREVIOUS LEGISLATION

(Please note: The information in this summary provides a cursory overview of previous legislation and its progress. It does not provide a comprehensive account of all previous legislative efforts on the relevant subject matter.)

Senate Bills 179 and 180 are reintroductions of House Bills 6060 and 5706, respectively, of the 2021-2022 Legislative Session. The House Bills passed the House but received no further action in the Senate.

FISCAL IMPACT

Senate Bill 179 would have a significant negative fiscal impact on the Department or State agencies associated with it. The municipalities and counties, each of which currently receive 15% of the unexpended fund balances, would experience a negative fiscal impact because the aggregate 30% of the unexpended funds would no longer be allocated to municipalities or counties and instead be directed toward the Indian tribes whose lands house marijuana retailers or marihuana microbusinesses. Additionally, the Department of Licensing and Regulatory Affairs (LARA) will be required to expend \$20.0 million annually for the next two years for further development and research projects.

Senate Bill 180 would have an indeterminate, but negative fiscal impact on the State and LARA. The State will lose tax revenue by exempting some marijuana businesses from a sales tax. The Department will incur any costs associated with administering and performing regulatory duties required by this bill, including reimbursement for the Department of State Police (MSP) for any costs incurred as a result of enforcing this bill. The bill would have no fiscal impact on the MSP, as the bill simply reflects current practice. The State currently receives funding for its regulatory duties concerning marijuana from marijuana tax and licensing revenue. The Governor has recommended \$7.8 million from the Marijuana Regulatory Fund and \$2.6 million from the Marihuana Regulation Fund for this purpose.

MCL 333.27964 (S.B. 179)

333.27953 et al. (S.B. 180)

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CONTENT

Senate Bill 180 would amend the Michigan Regulation and Taxation of Marihuana Act to do the following:

- Allow the CRA to enter into an agreement with an Indian tribe relating to marijuana related business if the agreement and the Indian tribe met certain conditions.**
- Prohibit the CRA from employing any individual with pecuniary interests in tribal marijuana.**
- Allow the MSP to recover cooperation costs for assisting the CRA with certain activities.**
- Specify that sales of marijuana by a tribal marijuana business on Indian lands would be exempt from the State's 10% excise tax on marijuana.**

Senate Bill 179 would amend the Michigan Regulation and Taxation of Marihuana Act to do the following:

- Require the Department of Treasury to deposit money into the Marihuana Regulation Fund that was collected under an Indian Tribe Agreement as provided by Senate Bill 180.**
- Allocate certain percentages of the unexpended balance of the Fund to an Indian tribe that met certain conditions.**

Senate Bill 179

The Department of Treasury is required to deposit into the Marihuana Regulation Fund money collected through an excise tax on each marijuana retailer and on each marijuana microbusiness at the rate of 10% of the sales price for marijuana sold or otherwise transferred to anyone other than a marijuana establishment. Under the bill, in addition to the 10% excise tax, the Department would have to deposit money into the Fund that was collected under an Indian Tribe Agreement as provided by Senate Bill 180.

The Act requires unexpended balances in the Fund to be allocated in specified percentages and proportions to municipalities and counties in which a marijuana retailer or microbusiness is located. The bill would specify that if a marijuana retailer or marijuana microbusiness was located in Indian lands, the portions of the unexpended balances attributable to the marijuana retailer or marijuana microbusiness that would have otherwise been allocated to a municipality and a county would have to instead be allocated to the Indian tribe in whose Indian lands the marijuana retailer or marijuana microbusiness was located.

(Under the Act, municipalities and counties each receive 15% of the Fund, allocated in proportion to the number of marijuana retail stores and marijuana microbusinesses within each municipality or county.)

Senate Bill 180

CRA and Indian Tribe Agreement

Generally, the CRA is responsible for implementing the Act and has the powers and duties necessary to control the commercial distribution of marijuana. Among other things, the CRA may enter into an agreement with an advisor or consultant as necessary to adequately perform its duties under the Act.

Under the bill, the CRA also could do either of the following:

- Enter into an agreement with an advisor or consultant as necessary to adequately perform its duties under the Act.
- Enter into an agreement with an Indian tribe regarding marijuana related regulatory issues that involved the interest of the State and the Indian tribe, including issues related to the commercial growing, processing, sale, testing, transportation, and possession of marijuana.

"Indian tribe" would mean any Indian tribe, band, nation, or other organized group or community of Indians which is recognized as eligible by the United States (US) Secretary of the Interior for the special programs and services provided by the US to Indians because of their status as Indians and is recognized as possessing powers of self-government.

"Qualifying Indian tribe" would mean an Indian tribe that meets the following conditions:

- The Indian tribe has entered into an agreement with the CRA that is in effect.
- The Indian tribe has entered into an agreement with the Department of Treasury that is in effect and meets the requirements described below.
- The Indian tribe imposes a tax or fee on each sale or transfer of marijuana from a tribal marijuana business located in the Indian tribe's land to a person other than a tribal marijuana business or marijuana establishment; this would not prohibit a qualifying Indian tribe from imposing a tax or fee on the sales or transfers of marijuana that are not specified and the tax or fee would have to be based on the sales price of the marijuana and the rate of the tax or fee would have to be equal to or greater than the rate of 10%.

An agreement between an Indian tribe and the Department of Treasury would have to do the following:

- State that revenue collected from the tax or fee described above was not State money and would be retained by and used as determined by only the Indian tribe if the marijuana subject to the tax or fee were grown and processed only on the Indian tribe's Indian land.
- State whether the revenue collected from the tax or fee described above on marijuana not grown and processed only on the Indian tribe's Indian land would be subject to revenue sharing between the Indian tribe and the State, and if so, the details of the revenue sharing arrangement.

"Tribal marihuana business" would mean a business that meets the following conditions:

- The business engages in the type of activities licensed under the Act.
- The business is not a marijuana establishment.
- The business is wholly owned by a qualifying Indian tribe, the enrolled members of a qualifying Indian tribe, or a combination of a qualifying Indian tribe and the members of that qualifying Indian tribe.
- The business is in the State and in the Indian lands of the qualifying Indian tribe described above.
- The business is subject to a tax or fee on each sale or transfer of marijuana from a tribal marijuana business located in the Indian tribe's tribal land to a person other than a tribal marijuana business or marijuana establishment.

"Indian lands" would mean any of the following:

- All lands within the limits of an Indian Reservation.
- Any land title to which is either held in trust by the US for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the US against alienation and over which an Indian tribe exercises governmental power.

CRA Employment

The CRA is prohibited from employing any person who is pecuniarily interested, directly, or indirectly, in any marijuana establishment, including advisors, consultants involved in the implementation, administration, of the Act. An employee, advisor, or consultant of the CRA may not be personally liable for any action performed or done in the performance of their duties in the administration, or enforcement of the Act.

Under the bill, these employment provisions would also apply to tribal marijuana business.

The act specifies that the MSP must cooperate and assist the CRA in conducting background investigations of applicants. Under the bill, MSP could recover its cost of cooperation and assistance from the CRA.

Transfer of Marijuana to a Tribal Marijuana Business

The Act specifies that it is not unlawful for marijuana growers, processors, secure transporters, safety compliance facilities, and retailers, or agents acting on behalf of these entities, to transfer or transport marijuana to or from a marijuana establishment. Under the bill, it would not be unlawful for these entities to transfer or transport marijuana to or from a tribal marijuana business.

Additionally, for a tribal marijuana business or an agent acting on behalf of a tribal marijuana business who was 21 years of age or older, it would not be unlawful to engage in an activity applicable to the tribal marijuana business under an applicable agreement with the CRA that was in effect.

The bill would specify that it would be public policy of the State that contracts related to the operation of tribal marijuana business be enforceable.

Excise Tax; Exemption

The Act requires, in addition to all other taxes, an excise tax on each marijuana retailer and on each marijuana microbusiness at the rate of 10% of the sales price for marijuana sold or otherwise transferred to anyone other than a marijuana establishment.

Under the bill, the 10% excise tax would not apply to the following:

- Marijuana sold or otherwise transferred from a tribal marijuana business.
- Marijuana sold or otherwise transferred under the Michigan Medical Marijuana Act.
- Marijuana sold or otherwise transferred under the Medical Marijuana Facilities Licensing Act.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.