



To: RCRC Executive Committee
From: Paul A. Smith, Vice President Governmental Affairs
Date: July 3, 2018
Re: Assembly Bill 924 (Bonta): Commercial Cannabis Activities – **ACTION**

Summary

This memo discusses Assembly Bill 924, authored by Assembly Member Rob Bonta (D - Oakland), which attempts to address the ability of the Governor to enter into agreements concerning cannabis activities on lands of federally-recognized sovereign Indian tribes. RCRC staff is recommending RCRC adopt a “Support if Amended” position for AB 924.

Background

Under current law, the State and local governments have limited ability to regulate most activities undertaken by Indian tribes on tribal land - as long as those activities stay on tribal land. For those tribes engaging in cannabis activities off tribal land, they may only sell cannabis to (or purchase cannabis from) a California regulated cannabis business if the tribe obtains a state license. Under current law, this would require a broad waiver of tribal sovereign immunity. As currently applied by the state regulatory agencies, this also requires that the tribe’s activities, like those of any other licensee, not violate city or county ordinances.

Issue

AB 924 is currently a vehicle to, ultimately, authorize the Governor to enter into agreements with federally-recognized sovereign Indian tribes to establish an alternative framework for allowing cannabis operators on tribal land to interact with California’s regulated cannabis market.

As initially proposed, RCRC strongly opposed AB 924. This stemmed from our concerns to allow Native American tribes access to California’s cannabis market without utilizing the carefully crafted regulatory scheme. A key component of California’s regulatory scheme is the requirement that all state licensees comply with local ordinances. The first several versions of AB 924 provided no local government involvement in the agreement process, tribal governments would be responsible for establishing their own cannabis licensing and regulatory scheme applicable on tribal land.

RCRC and the California Native American Cannabis Association (CNACA) spent the last ten months discussing potential amendments to address some level of local involvement as well as other aspects of tribal interaction into the California regulated cannabis market. In mid-June, RCRC reached a compromise agreement that provides for a mandatory role and mitigations for local governments affected by tribal cannabis activities. This compromise establishes a local memorandum of understanding (MOU) requirement similar to the current tribal gaming compacts, and would also establish a notice process ensuring local government input at critical junctures.

Specifically, the compromise would require tribes to notify the local government upon commencing agreement negotiations with the Governor, and afterward, would be required to provide additional detailed notification 45 days prior to commencing commercial cannabis activities. Four months after commencing cannabis activities, the tribe would be required to open negotiations with the local government to develop and execute an MOU to mitigate any impacts of the cannabis activities, reimburse the local government for any resulting costs, and address public safety and other issues arising from these activities. However, if no agreement is reached in 90 days, the tribe and a local government would go to binding arbitration, under which each party would submit a final offer and the arbitrator would select the most reasonable one of the two. This selection would then become the operating MOU between the tribe and the local government. The local government and the tribe could mutually agree to alter this process - providing longer or shorter timelines - or could avoid it entirely by reaching an MOU on their own terms at any time.

Assuming this compromise agreement is a part of the bill, RCRC would remove its opposition. However, both the sponsors of AB 924 and its author has requested RCRC formally adopt a “Support” position on the bill.

It should be noted that recent amendments gutted the bill and replaced the provisions with intent language. It is expected that AB 924 will be written over the next several weeks prior to the August 31st adjournment. During the upcoming drafting discussions, RCRC will be advocating for the inclusion of the compromise agreement that was reached between RCRC and CNACA.

Staff Recommendation

RCRC staff recommends adopting a “Support if Amended” position. While binding arbitration and having “product in the ground before” an MOU is executed is challenging for many RCRC member counties, RCRC staff believes the recently-agreed to compromise is the best agreement that can be reached in the interest of rural counties. RCRC staff’s analysis of the landscape suggests that any subsequent effort in 2019 will not contain much of the protections and guarantees found in AB 924, assuming the MOU is included into the final bill.

Attachments

- Copy of AB 924 (As Suggested to be Amended)
- RCRC/CNACA AB 924 (Bonta) Compromise Proposal Chart
- RCRC/CNACA Compromise Agreement Language