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The Millionaire Who Wants to Control Washington's Weed

The future of Washington State's medical marijuana may depend on one rich man and the legislators who support him.

The state of Washington's legal marijuana market is at a major crossroads, with its fate to be determined by pending legislation that seeks to address a conflict in the system.

In the big picture, the choices to be made along the path ahead boil down to a struggle between business and patient interests. The pending legislation at the heart of the issue seeks to bring Washington's largely unregulated medical-marijuana market under the rubric of state oversight.

In November 2012, as part of a statewide referendum known as Initiative 502, voters in Washington, by a margin of 56 percent to 44 percent, approved the creation of a legal recreational-marijuana market served by growers, processors, and retail shops. However, the referendum was silent on the treatment of medical marijuana.

"We are for regulation of medical-marijuana businesses and for standards," said Kari Boiter, a Washington State-based spokesperson for Americans for Safe Access, a medical-

marijuana patient advocacy group. “But we represent the vulnerable patients’ voice in the process, and we want to make sure their rights are protected.”

Two bills have been introduced recently in the Washington State Senate that seek to reform the state’s medical-marijuana market. One of the bills is sponsored by a Democrat, Sen. Jeanne Kohl-Welles; the other by a Republican, Sen. Ann Rivers.

In the case of the Republican-sponsored legislation, a small group of legal pot entrepreneurs, with the backing of a major financial angel, arguably have had extraordinary influence on the bill-drafting process. More concerning to some in the medical-marijuana community is that the language in the Republican bill seems to create a competitive advantage for this special interest group that threatens patient access to affordable medical cannabis.

The moneyman behind that special-interest push is Martin Tobias, a former Microsoft executive and serial entrepreneur who himself has a major investment in Washington’s emerging legal cannabis market.

Tobias has provided the seed funding for launching the Washington CannaBusiness Association [WACA], which now has 38 members who operate businesses in the state’s legal pot arena—representing a small fraction of the 100s of producers, processors and retailers now licensed by the state.

The WACA also has a political action committee that counts a Tobias-controlled business venture, South Fork Business Park, as its primary funder. As of mid-January, the SFBP had provided some \$25,000 of the WACA PAC’s total \$34,000 in funding, state records show. The PAC has spread its money around to both Republican and Democratic candidates and committees, but its largest donation, \$5,000, is to a Republican soft-money PAC called the Leadership Council.

“Martin [Tobias] was a seed funder for the Washington CannaBusiness Association, but we will continue to grow and expand our funding base,” said Vicki Christophersen, executive director of WACA, which bills itself as a trade association for licensed marijuana businesses. “But he stepped up to get us started.”

Tobias also is “part of a licensed [marijuana] producer/processor,” Christophersen confirmed, but she declined to identify that business or discuss any other details related to the venture.

Christophersen added that the WACA worked closely with Sen. Rivers during the bill drafting process “and she took a lot of our suggestions.” A spokesperson for Sen. Rivers’ office confirmed that WACA is a “stakeholder” that assisted Sen. Rivers in gathering information and “crafting the legislation.”

Tobias declined to comment for this story. However, he claims on his LinkedIn page to have raised \$500 million in capital for various companies he’s led over the years.

“Not all bets pay off, but figuring out how to bet, with whom, and how it relates to the competition is the fun part for me,” Tobias’ LinkedIn page states. “Started a couple new programs at Microsoft, then started my first company, Loudeye Technologies. After being the very last IPO of the DotCom craze, I joined some Microsoft friends doing early stage investing over at [venture capital firm] Ignition Partners. After four years as a VC went back running a company but in a completely different business!”

One of Tobias latest business ventures is in commercial real estate. He is a key player in the development of the South Fork Business Park in Raymond, Wash., located about 125 miles southwest of Seattle. SFBP currently has about 12 legal cannabis businesses as tenants, including marijuana growers, processors and related interests. According to the business park’s website, it has a goal of controlling at least 15 percent of Washington’s legal cannabis production.

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Tobias serves as an executive officer with the related South Fork Business Park LLC, Securities and Exchange Commission records show. The company as of August 2014 had raised nearly \$3 million from investors with a goal of adding an additional \$12 million to that pot.

“We have met Martin [Tobias], and he said he is recruiting investors,” said Rebecca Chaffee, manager of the Port of Willapa Harbor, which owns the land where the South Fork Business Park is based. “Martin signed all the leases and then sublet the buildings to the businesses. ...His group also purchased 20 acres of land [from the Port] that they are developing into a turnkey 502 [legal marijuana] business park.”

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A medical-marijuana market has existed with some legal sanction in Washington since the late 1990s. It does so now through a system of collective gardens that grow marijuana on behalf of patients. Many of these collectives also operate retail front ends known as dispensaries. Under existing state law, patients who obtain a health-care provider’s authorization to use medical marijuana are provided with an affirmative defense in court, but they are not immune from arrest.

Both the Republican and Democratic bills pending in the Washington Senate seek to reconcile the state’s emerging recreational cannabis market with the now largely unregulated medical-marijuana market, though the Republican bill, SB 5502, does so in a

way far less friendly to existing players in the medical-marijuana market.

Boiter of Americans for Safe Access is concerned that Sen. Rivers bill will foster market conditions that impede access to affordable medical-marijuana for patients, who she claims have few resources to affect the outcome of the legislative process. Currently, in Washington, patients suffering from terminal or debilitating medical conditions, such as cancer, epilepsy or intractable pain, can obtain authorization from a health care provider to make use of medical marijuana to help alleviate symptoms.

“We have to assure the patient still has the access they do now and are concerned that the patients will suffer,” Boiter said.

The stakes are high on another front as well, since the now-pending medical-marijuana reform legislation would shutter hundreds of medical-marijuana collective gardens and dispensaries statewide now operating in what is known as a grey market. That outcome could result in many of those operations moving into the illegal market.

“If current medical market producers and retailers are not provided pathways toward white market participation, and are outlawed instead, it’s pretty clear that will reinvigorate the black market,” said Dr. Dominic Corva, Ph.D., executive director of the nonprofit Center for the Study of Cannabis and Social Policy. “This is not in anyone’s best interests, certainly not the state’s.”

The nature of the existing medical-marijuana dispensaries in Washington is a mixed bag, with many not even bothering to obtain business licenses, to pay taxes or to assure they are serving medical patients exclusively. A number of other dispensaries, though, do their best to operate within the existing rules and are focused only on patient needs while also paying their fair share of taxes.

Washington Department of Revenue figures show medical-marijuana operations statewide paid a total of \$14 million in taxes in fiscal 2014.

The total number of medical-marijuana dispensaries in the state is not known, however, a side effect of the market’s unregulated status. Estimates by lawmakers and others put the number of these outlets at as high as 300 in the City of Seattle alone, with more continuing to come online.

By comparison, the number of licensed recreational retail cannabis outlets in Seattle currently stands at about eight, with only 21 licenses authorized overall for Seattle by the state regulatory authority, the Liquor Control Board.

The current plight of medical marijuana in Washington is largely due to a history of state inaction or vetoes of key parts of legislation, leaving behind the few rules now in place – such as the affirmative defense and collective garden provisions. The dispensaries that

sell medical marijuana are the result of creative applications of the existing rules and have been allowed to operate without major interference by state regulators and the courts for years, until now.

With the passage of I-502 legalizing recreational marijuana, an entirely new market was launched, one that is heavily regulated and taxed. The medical-marijuana reform legislation now pending in the Washington State Legislature seeks to harmonize the unregulated medical and heavily regulated recreational markets. The goal is to assure a level playing field for all participating businesses while also setting up standards for cannabis production and processing to assure patient safety. Those standards, such requiring testing marijuana products for impurities, are not currently mandated in the medical market.

“We are in a situation right now where patients have no idea what they’re getting if they are purchasing from dispensaries,” said Sen. Rivers during a Senate Committee hearing on her bill held on Jan. 22.

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The language in Sen. Rivers bill, and also what is not in the bill, is raising some eyebrows in the medical-marijuana community, however. The legislation calls for eliminating all collective gardens and replacing them with licensed medical-marijuana retails shops. But there is no mention in the bill of how many of these new retail shops will be authorized or on what basis.

Although the bill authorizes the creation of medical marijuana-growing cooperatives involving up to four individuals, the rules are so restrictive that very few such cooperatives would likely ever open their doors. For example, a cooperative would not be allowed to operate within 25 miles of a medical-marijuana retail establishment. In the case of Seattle, even if only a handful of such licenses were issued, it would be a near certainty that very few, if any, cooperatives could set up shop in the city, which encompasses only 84 square miles.

Sen. Rivers bill also calls for the creation of a statewide database registry for medical-marijuana patients that would be administered by an outside contractor. The Democratic bill avoids that path and the associated privacy concerns it creates.

With respect to Sen. Rivers bill, WACA’s Christophersen said decisions about who would be issued the new medical-marijuana licenses, and on what basis, would be left up to the state’s Liquor Control Board, which now oversees the recreational market. A spokesperson for Sen. Rivers confirmed that her bill is silent on that issue and the details have yet to be worked out.

The LCB has a spotty record to date in overseeing the rollout of the recreational

marijuana market, having issued less than one-third of the allotted 334 recreational pot retail licenses statewide, some two years after the passage of I-502, LCB records show. In addition, as part of an effort to secure a cut of the legal marijuana-industry tax stream, which now flows entirely to state coffers, some 40 percent of Washington’s cities have instituted bans or moratoriums on marijuana businesses—a course of action that LCB rules now support.

Consequently, if all of the state’s hundreds of medical marijuana dispensaries, the good and bad among them, are shut down via Sen. Rivers bill, and few new medical-marijuana retail licenses are issued, or are not issued fast enough, it could prove to be an economic boon for existing recreational shops—in addition to the black market.

“Recreational marijuana retailers can and do sell medical marijuana now,” Christophersen said. “So under Sen. Rivers bill, a patient could choose to go to a recreational retailer that sells medical marijuana or to a medical marijuana-only store.”

Sen. Rivers legislation also envisions production of most, if not all, medical marijuana being handled by increasing growing limits for already licensed recreational marijuana producers that agree to grow medical cannabis. The legal marijuana growers at the South Fork Business Park would benefit from that approach, and by extension Tobias’ legal pot investments.

“There is a fiscal argument to be made that the businesses who made significant investment to follow the rules and the whole regulatory mandate should not be forced to compete with those who chose not to do that,” Christophersen said. “It’s a fairness argument.”

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The alternative medical-marijuana bill awaiting action in the Washington State Senate, SB 5519, sponsored by Democratic Sen. Kohl-Wells, though not perfect, according to medical-cannabis advocates, still offers a far more amicable approach to harmonizing the medical and recreational markets.

Her bill would allow anyone in Washington 21 years and older to grow up to six marijuana plants and to share with other adults, so long as money isn’t exchanged, up to an ounce of marijuana. That approach, Kohl-Welles said in an interview, would help to alleviate some of the concerns about a flare up in the black market due to the closing of the collective gardens and dispensaries, which her bill also would accomplish.

“That kind of thing [home-grown pot] is happening all over anyway, and it would be regulated in my bill,” she said. “It’s already the law in other states like Oregon, Colorado and Alaska.”

On the licensing front, Kohl-Welles bill also seeks to assure that an authentic pathway to the legal market is in place for existing law-abiding medical-marijuana operations. In addition, it would require that all cities seeking to ban marijuana businesses do so through a citizen referendum vote — as opposed to leaving it to elected city leaders and zoning officials alone to decide, as is now the case.

Sen. Kohl-Welles bill calls for the creation of a medical marijuana endorsement for existing and new retail shops and requires that the Washington State Liquor Control Board expand the number of licenses issued for retail shops to accommodate the increased demand for medical cannabis. The award of a new retail license also must be based on merit, with a past history of operating a tax-paying medical-marijuana collective garden being considered a positive factor in the approval process. Her bill also opens the door for more marijuana growers to be licensed, if demand dictates, creating a merit-based path for legitimate grey-market medical-cannabis producers to get licensed and stay in business.

“My bill gives the dispensaries that have business licenses and are paying taxes until Aug. 1, 2016, one and a half years, to phase out or become licensed by the state,” Kohl-Welles said.

As of this week, both Sen. Rivers and Sen. Kohl Welles bills are sitting in Senate committees, but Republicans now control the Washington State Senate. As a result, Sen. Kohl Welles said its almost assured that it will be Sen. Rivers bill, or some version of it, that will eventually find its way to the Senate floor for a vote.

In the most recent action on Sen. Rivers bill, the Senate Committee on Health Care voted on Jan. 29 to refer her bill to the Senate Committee on Ways and Means for fiscal analysis. As part of that action, several amendments to Sen. Rivers bill were adopted that are more in line with Sen. Kohl-Welles legislation, including requiring that the Washington State Liquor Control Board develop “a merit-based license system that takes into account experience of people running dispensaries and allow credit for those businesses that have business licenses and pay sales taxes.” Other amendments adopted call for the creation of a medical marijuana endorsement for retail shops and for allowing the new medical marijuana cooperatives to locate within 15 miles, as opposed to 25 miles, of a medical marijuana-endorsed retail outlet.

“Sen. Rivers is determined that her bill will pass,” Kohl-Welles said. “And I expect her bill will be the one that makes it through the process. I just hope some of the policies contained in my legislation will also prevail in that final bill.”

Should she not succeed in that quest for compromise, it’s likely Tobias and WACA’s political savvy could pay off and Washington will end up with a medical-marijuana landscape that works to the profit advantage of a special interest group with a heavy

investment in the emerging legal cannabis market. In the view of some, though, that would not be in the best interest of medical marijuana patients.

“It’s clear we have a Republican verses Democrat dichotomy, but that shouldn’t be driving a public health debate,” Boiter of Americans for Safe Access said. “If the whole fight ends up being over money, then all is lost.”

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