

Vermont CCB Subcommittee for Market Structure, Licensing, Taxes, and Fees

Meeting Minutes – September 23, 2021

Dan Smith called meeting to order at 1:00pm.

Subcommittee members in attendance:

Chris Walsh, Advisory Committee
Stephanie Smith, Advisory Committee
Dan Smith, VS Strategies
Jen Flanagan, Vicente/Sederberg
Andrew Livingston, VS Strategies
Gina Kranwinkel, NACB
Tom Nolasco, NACB (joined late)
Mark Gorman, NACB
Geoffrey Gallegos, NACB

Members of Vermont Cannabis Control Board in attendance

James Pepper, Chair

Did not catch who else was in the room

Minutes recorded by Geoffrey Gallegos. Previous meeting minutes were approved by motion of Chris Walsh. Stephanie Smith seconded.

Dan Smith initiated the conversation around a culmination of license types and fees, and the decision to submit two sets of fee recommendations. The first proposal aims to meet the statutory requirement of covering CCB overhead costs with higher fees collected, and the second proposal aims to create market access with lower upfront fees, and costs being met from additional sources. These proposals did not factor in the social equity program's requirement to reduce or eliminate fees for certain applicants, or other subgroups working on market access issues. These findings will eventually be merged into the overall proposal to the CCB.

He noted that comments from the Subcommittee, as well as comment from the public, have emphasized a desire for overall lower fees, and a focus on market access for smaller growers and smaller businesses. He also asked the Subcommittee to recognize the number of variables and unknowns that may affect the accuracy of the projections, and that best efforts have been made to adapt.

{Referred to figures notated on an in-committee Powerpoint presentation}. The overall CCB budget for the next ten years is still unclear, but there is a statutory requirement to cover the cost of those ten years. Using existing budget data, a 3% cost increase was factored in to estimate a potential median point for what the budget could look like in the future. The future deficit is also unknown, and it will cost more at startup than in subsequent years. The Fiscal Note estimates a \$1.8M deficit by FY24, so that figure was used to estimate what needs to be repaid over the next seven years. Numbers represented in the slide deck indicate income needed to cover estimated costs, and income needed to both cover costs and pay down the deficit. These are estimates, and could vary in reality.

Ideally, these figures would be met by FY25 for two reasons: (1) In the early years, businesses will likely drain the market, and some will not be paying full annual license fees

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until FY25; and (2) There are other potential license types (i.e. delivery, co-ops, etc.) that are not included in the model yet, but will likely generate revenue. Overall goal is that by 2025 fee revenue would be equal to cost, or cost plus payback of deficit.

Another major variable is estimating what the overall demand will be when market opens up. To account for this variable, the Subcommittee was presented with three different dynamics based on how many different businesses will enter the market. The first dynamic contemplates a robust interest in participating in the market, where there should be no difficulty meeting the fiscal goals of fees and canopy requirements. The second dynamic contemplates a more reasonable (and probably more accurate) scenario. There are fewer participants, but still generating enough fee revenue to meet the required CCB costs. The third dynamic (the “not great” scenario) where there is a low degree of interest in market participation. In this case, the CCB would need to find a way to attract more people into the licensed market using lower fees or other incentives.

LICENSE TYPES/FEES

He then reviewed the license types previously discussed to this point. The goal is to create a market that is heavy on smaller cultivators as opposed to a couple of large companies dominating the entire market. For cultivation, the proposal includes a tiered structure for both outdoor and indoor cultivation. Both tracks (A & B) would open the smaller licenses first, and then allow for larger sized cultivators to join the market after the smaller cultivators were settled.

Outdoor Cultivation Licenses

For outdoor, there would be three immediate tiers, and a fourth that would be delayed. Tier 1: Under 1,000 square feet (\$500.00 fee for both A & B). Tier 2: Under 3,000 square feet (A-\$2,000.00; B-\$1,000.00). Tier 3: Under 6,000 square feet (A-\$4,000.00; B-\$3,000.00). Tier 4 (delayed): Under 10,000 square feet (A-\$8,000.00; B-\$5,000.00).

This proposal starts with smaller cultivators to begin with, but provides CCB an opportunity to expand into larger tiers for a couple of reasons. If a small business is thriving, it should have the opportunity to grow into higher tiers. If there is not enough interest in small cultivation licenses, or the market demand is exceeding supply, there is a safety valve that provides a way for a large business to come in and meet that demand.

Stephanie Smith asked how this proposal compares to the hemp program. She is concerned that it would be cheaper to grow 3,000 square feet of cannabis than it would be to grow 3,000 square feet of hemp. She will look at the statute and report back.

Indoor Cultivation Licenses

Dan Smith moved to indoor cultivation tiers, which are as follows: There would be five immediate tiers, and a sixth that would be delayed. Tier 1: Under 1,000 square feet (A-\$2,000.00; B-\$1,000.00). Tier 2: Under 2,500 square feet (A-\$8,000.00; B-\$2,500.00). Tier 3: Under 5,000 square feet (A-\$12,000.00; B-\$5,000.00). Tier 4: Under 10,000 square feet (A-\$20,000.00; B-\$15,000.00). Tier 5 (delayed only in proposal B): Under 25,000 square

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feet (A-\$50,000.00; B- \$30,000.00). Tier 6 (delayed in both proposals): Under 50,000 square feet (A-\$75,000.00; B- \$50,000.00).

He mentioned that there could be room for smaller license types under 1,000 feet that are not factored in, but didn't want to create too many of them, and wanted to keep the fee low for all small cultivators up to 1,000 square feet.

Andrew Livingston added that it would make the most sense from a producer's point of view to have the cultivation square footage be measured in total cannabis grow (veg and flowering space). A flowering canopy will account for 50% of space. The grow will not be wall-to-wall plants. To arrive at 400,000 – 450,000 square feet of flowering canopy, the total square footage required would be 900,000 square feet. He noted that the overall estimate has increased up from what the group has discussed in previous meetings to 400,000- 450,000 square feet of flowering canopy.

Dan Smith added that the cultivation figure does not account for existing businesses or what will be the integrated licenses.

Andrew Livingston asked if CCB had information on the exact amount of cannabis currently produced in Vermont. There is not enough data available, and an accurate survey of the current landscape will be important to know how to best predict the market transition.

Stephanie Smith reported that the hemp indoor cultivation fees are aligned with this proposal. She raised the issue of cannabis products that contain both THC and hemp-based CBD. Would the cannabis licenses be able to include canopy for plants that would meet the definition of hemp? Under USDA Domestic Hemp Production Program, it will be difficult for a cannabis cultivator to also grow hemp on the same location. Because inspectors in the hemp program require full access to all cannabis sativa plants growing or stored on the property, it could limit the ability for cultivating them together.

Dan Smith envisioned a separate cultivation setup for cannabis or hemp. But the regulations could possibly allow for hemp cultivation as an input ingredient with a variable cultivation limit. If a company wanted to do both, they would probably need separate facilities. Andrew Livingston suggested a subdivided property. Stephanie Smith wants to see a streamlined process, and saw the need for time to think it through. Dan Smith thought that because it is the same plant, the Vermont cannabis license would probably allow for hemp cultivation (but a hemp license would not allow for cannabis cultivation). Will probably depend on how the canopy is divided.

Chris Walsh noted that this would probably only involve outdoor licenses, because a grower is not going to use kilowatts to grow hemp indoors. Dan Smith thought of how to set up a co-location arrangement, where the square footage allotment of cannabis would not be counted where hemp is growing.

Dan Smith noted that the tiers are lower than in other states. Because the market will be smaller in Vermont, the lower tiers will create room for a larger number of small

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cultivators to join. Additionally, there is probably not a need for multiple 100,000 square foot facilities. The process of the “provisional license/intent to apply” phase will provide some information to the CCB about the early estimate of interest in cultivation. It also provides the CCB with a way to adapt if the small cultivator interest is much lower than anticipated. It could create a pathway for a larger cultivator to join the market to meet the demand if there aren’t enough small cultivators to meet demand.

Retail Licenses

He then moved to the retail license types. The Retail Storefront type (traditional dispensary) where customers show ID, enter, and the sales are recorded in the seed-to-sale tracking system. Fees would be (A-\$5,000.00; B-\$2,500.00). The Retail Seeds and Clones type, which does not allow for sale of any finished product (flower, etc.), fees would be (A-\$2,000.00; B-\$1,000.00). These are the only two factored into this spreadsheet.

There are two other license types that could be viable. (1) Limited Retail, which is part of an existing non-cannabis business that would secure one area of a store for cannabis sales. This could be good for Vermont culture overall, and places that are too small to support a full dispensary, but have a demand for limited sales. The fee would be \$1,000.00 for both A & B. (2) Farmer Retail, where a grower could sell a limited amount directly to the consumer from the farm itself, or sell directly from farmers’ markets. The fee would be \$500.00 for both A & B. Security requirements are an issue for both of these types. These types are not yet factored into the overall model yet.

In addition, there are other license types that have not yet been explored by this Subcommittee (Delivery, Special Events, On-site Consumption, and Cooperatives).

Chris Walsh asked why the Seed and Clone license exclusive from Retail. Why couldn’t the retailer bolt on the extra license and sell seeds and clones? Did not understand the logic of keeping finished flower separate from clones.

Dan Smith reminded that the types are not defined in the statute or regulations yet, and it is up to the CCB to determine what activities a retail license could have. Still could allow a retailer to sell seeds and clones.

Chris Walsh recommended this course. Because of existing limitations, he does not think that there is a profit margin when the most a single customer could purchase for home grow use is seven clones. Does not see a sustainable brick and mortar model for exclusive sales of seeds and clones. He thought that an upsell option for a dispensary is better.

Andrew Livingston offered that the Seed & Clone license option would be directed to a retail storefront that wasn’t a dispensary, such as a traditional garden store, flower shop, nursery, or grow store. There is also the option for a municipality to opt out of a dispensary in their town, but still allow for sales of seeds and clones for home grow. There is a lower security cost when not selling finished cannabis products. He agreed that a stand-alone seed and clone store would probably not be sustainable.

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Chris Walsh raised the need for cultivators to have access to seeds and clones to prepare for market launch. He saw two groups of customers for seeds and clones, first is the home grower who needs up to seven clones, and the licensed cultivator who may need a thousand clones. He wants to see a way that the cultivator could buy clones.

Andrew Livingston suggested that this idea could require a statutory amendment to allow for a cultivation-to-cultivation transfer of that many clones. In Colorado, a cultivation facility cannot go to a retail facility and buy clones to grow and populate their inventory. They need to go to another cultivation facility and do a formal inventory transfer.

Dan Smith felt that it could be addressed through regulations. He agreed with Chris's point, and saw the need to allow for a way to differentiate a licensee and a home grower. Possibly two different purchase limits that would allow a licensee to buy more.

Chris Walsh raised the importance of figuring out the nursery option before year one. Since nobody will be set up, except for vertically integrated licensees, the demand won't be met. After the first round of licenses goes out, and everyone is setting up, the cultivators will want access to plants, so they don't have to pop seeds from scratch. There will be a big demand for startup plants and they need to come from somewhere, unless people are growing illegally. Need to know where the plants are coming from.

Andrew Livingston thought that this is more of a conceptual problem, but not a market implementation problem. Dan Smith said that it normally works itself out without too many questions being asked. But Chris brings up a good point, and we should find a way to bring the whole process above board, and create an early supply of clones to provide inventory for the startup planting process.

Chris Walsh recommended that this type as well as the lab testing type goes out early to avoid bottleneck. Labs and large-scale seed-and-clone/nursery licenses should go out first.

Andrew Livingston offered that large-scale seed-and-clone types are not prevalent in other states. Some states allow existing medical cannabis patients to transition clones, but it may require statutory change. Some other states have made it work for the intervening period.

Dan Smith agreed with the concept of large-scale, and will raise it in future conversations.

Manufacturing, and Other Licenses

He moved to two types of manufacturing licenses. They are: Tier 1, where there are no restrictions. Fee is (A-\$10,000.00; B-\$5,000.00). And Tier 2, where no solvent-based extraction is permitted, but infusion is ok. Fee is (A-\$2,500.00; B-\$1,000.00)

The remaining license types are (1) Integrated License (fee is \$50,000.00 for both A & B); (2) Wholesaler License (fee is \$1,000.00 for both A & B); and (3) Testing Laboratory License (fee is \$1,000.00 for both A & B). The testing lab fees are low to allow for increased testing capacity.

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Stephanie Smith informed the group that the hemp program has a lab certification program that costs \$1,500.00 annually. This is a cannabis quality control program, which includes set standards for contaminants in cannabis in addition to hemp. Is this an additional license? Dan Smith felt that if those labs are qualified and approved to test cannabis, it doesn't make sense to add additional fees. If the accreditation needed for hemp could transfer to cannabis, they wouldn't need to pay double fees.

Andrew Livingston asked how many existing testing labs are in Vermont right now. Stephanie Smith answered that there are two labs that can do testing for potency, and one for metals and other contaminants. She anticipates two more applications for lab testing facilities, and potentially up to eight more based on a survey.

Andrew Livingston has serious concerns about Vermont's market being large enough to sustain a lab testing market with a consistent throughput. Would like to know if existing labs can service both hemp and cannabis. It may require labs to open arms to all cannabis sativa plants regardless of THC content.

Stephanie Smith said it's possible that one of the labs may be interested. She reminded the group that the lab needs to be DEA-certified as well. In Oregon, the health department certifies the labs, and they test both hemp and cannabis. Could be an issue with DEA, but they may be willing to work with the labs.

Chris Walsh cautioned about having too many labs and not enough business. To generate business, labs should be available to anyone for use, not just cultivators. There is likely an interest in homegrowers and other consumers that want to know about yeast, mold, solvents, heavy metals, potency, etc. People would probably like to know what they're inhaling. He suggested a nursery taking a sample at a kiosk, or something like that.

He asked if the Tier 2 Manufacturing License allows for making bubble hash and rosin. Andrew Livingston answered yes, depending on regulations. Tier 1 is just for essentially a higher risk process. Thought that bubble hash could be a processing step, like pre-rolls. CO₂ is still potentially dangerous because of high pressure. Tier 2 can make topicals, or use a crock pot. Chris Walsh simplified it to "manufacture without a safe room," and Andrew Livingston agreed. Dan Smith clarified that "danger" is the line between tiers.

Stephanie Smith offered that manufacturing in the hemp program is based on who is concentrating something, regardless of process. It is not related to danger.

PUBLIC COMMENT (summarized)

Ibbo(?) from Grafton(?)

Comment is about retail licenses. As someone who is planning to do a retail store in Burlington, is concerned about general store licenses and farmers' market as far as compliance goes. Wants to see these license types held to the same standard as far as distance from schools, or day care facilities. His family owns a general store, and the stores have different zoning requirements. There are a lot of kids frequenting the store. Need to

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have a blacked-out section, like a pornography “adults only” section. He sees it being a compliance nightmare, and asked the board to hold the limited retail license to the same standard as everyone else. He also supports selling seeds and clones in a dispensary. He also advocated for a way to do hydrocarbon extract.

PUBLIC COMMENT (summarized)

Ben Mervis

Formerly Vermont Department of Health employee, looking to join the market. Will be submitting a comment to the Social Equity Subcommittee.. He asked this Subcommittee to consider potential future licenses of delivery and social consumption, because of direct ties to community and direct ties to marginalized communities. Wants to see safe spaces for consumption. Wants to see reduction of arrests and summonses by providing public consumption licenses. Home delivery encourages home consumption rather than buying at a store and then walking five feet away and smoking on the sidewalk.

Chris Walsh moved to adjourn. Stephanie Smith seconded.
Meeting adjourned at 1:58pm.