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GENERAL ASSEMBLY
HOUSE COMMITTEE ON COMMERCE
AND ECONOMIC DEVELOPMENT

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MEMORANDUM

To: Rep. Sarah Copeland-Hanzas, Chair, House Committee on Government Operations

From: Rep. Michael Marcotte, Chair, House Committee on Commerce and Economic Development

Date: April 19, 2019

Subject: Review of S.54 Provisions Relating to Commerce

On behalf of the Committee on Commerce and Economic Development, I sincerely thank you and the Committee on Government Operations for the opportunity to review the provisions of S.54 that fall under the policy jurisdiction of this Committee.

In response to your request, the Committee reviewed the bill and received testimony from witnesses concerning issues relevant to labor and employment, banking, insurance, and business organizations. Following this review and discussion, the Committee recommends that Government Operations adopt language in three areas.

First, the Committee recommends amending 7 V.S.A. § 881(a)(1) to require the Cannabis Control Board to address in its rulemaking the following issues:

- Ensuring that a licensed establishment provides necessary information in its operating plan concerning:
 - the organizational structure of the business, including the type of business organization; the identity of its owners and principals; and the identity of the owners and principals of its affiliates; and
 - the financial structure of the business, including the sources, amount, and nature of its capital, assets, and financing arrangements; the identity of the individuals or entities that are its financiers; and the identity of the owners and principals of its financiers.
- Ensuring that a licensed establishment files an amendment to its operating plan in the event of a significant change in organization, operation, or financing.

- Ensuring that the Board, the Department of Financial Regulation, and financial institutions have access to relevant information about licensed establishments to comply with regulatory requirements.
- Ensuring that licensed establishments comply with other regulatory requirements, including laws governing insurance, securities, workers' compensation, unemployment insurance, and occupational safety.
- Ensuring that a financier, and its owners and principals, meet minimum requirements to protect the public health, safety, and general welfare, which may include disclosure requirements, age requirements, background checks, compliance with applicable laws governing financial service providers, and any other requirements, conditions, or limitations on the type or amount of loans or capital investments made by a financier or its affiliates, that the Board, in consultation with the Department of Financial Regulation, determines is necessary.

The Committee recommends that these issues also be addressed in the same manner for dispensaries in 7 V.S.A. § 974(b).

Second, the Committee recommends that the language in Sec. 5(b)(2) be amended to clarify who is meant by “individuals who historically have been disproportionately impacted by cannabis production.” The Commerce Committee is not offering specific legislative language on this point because it does not fully understand the underlying intent of this subdivision.

Finally, the Committee recommends that 7 V.S.A. § 903 be modified so that, rather than creating a system of priorities for licensure, the section would create a system of priorities for business and technical assistance to applicants, which the Agency of Commerce and Community Development would provide in collaboration with the Agency of Agriculture, Food and Markets. The Committee recommends this change for two reasons. First, the bill establishes objective criteria that an applicant must meet to obtain a license, but section 903 adds that the Board would create a “system of priorities” that requires consideration of certain criteria for licensure. To give *priority* suggests a competition between applicants—essentially, that the Board would grant a license to one qualified applicant over another based on its evaluation of subjective criteria. However, there is no limit on the number of licenses the Board may grant to qualified applicants. Therefore, it is unclear what it means for the Board to “issue licenses...as determined according to a system of priorities.” Second, 903(a)(1) specifies that one criteria for consideration is the residence of the applicant, a majority of principals, and those holding majority control of the proposed business. This strongly suggests that the Board may grant or deny a license, in part, based on whether an applicant is a resident of Vermont. The Committee finds that this provision raises constitutional concerns under the Commerce Clause of the U.S. Constitution and could pose significant legal risk to the State.

The Committee includes draft language in Appendix A for your consideration.

Appendix A – Draft Language for S.54

§ 881. RULEMAKING; CANNABIS ESTABLISHMENTS

(a) The Board shall adopt rules to implement and administer this chapter in accordance with subdivisions (1)–(5) of this subsection.

(1) Rules concerning any cannabis establishment shall include:

(A) the form and content of license and renewal applications;

(B) qualifications for licensure that are directly and demonstrably related to the operation of a cannabis establishment, including:

(i) a requirement to submit an operating plan, which shall include information concerning:

(I) the type of business organization; the identity of its owners and principals; and the identity of the owners and principals of its affiliates; and

(ii) the sources, amount, and nature of its capital, assets, and financing; the identity of the individuals or entities that are its financiers; and the identity of the owners and principals of its financiers;

(ii) a requirement to file an amendment to its operating plan in the event of a significant change in organization, operation, or financing; and

(iii) the requirement for a fingerprint-based criminal history record check and regulatory record check pursuant to section 883 of this title;

(C) oversight requirements, including provisions to ensure that a licensed establishment complies with State and federal regulatory requirements governing insurance, securities, workers' compensation, unemployment insurance, and occupational health and safety;

(D) inspection requirements;

(E) records to be kept by licensees and the required availability of the records;

(F) employment and training requirements;

(G) security requirements, including lighting, physical security, video, and alarm requirements;

(H) restrictions on advertising, marketing, and signage;

(I) health and safety requirements;

(J) regulation of additives to cannabis, including those that are toxic or designed to make the product more addictive, more appealing to persons under the age of 21, or to mislead consumers;

(K) procedures for seed-to-sale traceability of cannabis, including any requirements for tracking software;

(L) regulation of the storage and transportation of cannabis;

(M) sanitary requirements;

(N) procedures for the renewal of a license, which shall allow renewal applications to be submitted up to 90 days prior to the expiration of the cannabis establishment's license;

(O) procedures for suspension and revocation of a license;

(P) requirements for banking and financial transactions, including provisions to ensure that the Board, the Department of Financial Regulation, and financial institutions have access to relevant information concerning licensed establishments to comply with State and federal regulatory requirements;

(Q) disclosure or eligibility requirements for a financier, its owners and principals, and its affiliates, which may include:

(i) requirements to disclose information to a licensed establishment, the Board, or the Department of Financial Regulation;

(ii) a minimum age requirement and a requirement to conduct a background check for natural persons;

(iii) requirements to ensure that a financier complies with applicable State and federal laws governing financial institutions, licensed lenders, and other financial service providers; and

(iv) any other requirements, conditions, or limitations on the type or amount of loans or capital investments made by a financier or its affiliates, which the Board, in consultation with the Department of Financial Regulation, determines is necessary to protect the public health, safety, and general welfare;

(R) policies and procedures for conducting outreach and promoting participation in the regulated cannabis market by diverse groups of individuals, including those who have been disproportionately harmed by cannabis prohibition.

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§ 903. BUSINESS AND TECHNICAL ASSISTANCE; PRIORITIES

(a) The Board shall issue licenses pursuant to this chapter as determined provide business and technical assistance to applicants for a license according to a system of priorities adopted by rule by the Board. The system of priorities shall require consideration of criteria based on including:

The Agency of Commerce and Community Development, in collaboration with the Agency of Agriculture, Food and Markets, shall provide business and technical assistance to license applicants, with priority for services based on criteria adopted by the Board by rule, including:

(1) whether the applicants, a majority of principals, and those holding majority control of the proposed business are residents of Vermont;

(2) whether the applicants have an existing medical cannabis dispensary license in good standing;

(3) whether the applicants would foster social justice and equity in the cannabis industry by being a minority or women-owned business;

(4) whether the applicants propose specific plans to recruit, hire, and implement a development ladder for minorities, women, or individuals who have historically been disproportionately impacted by cannabis prohibition;

(5) whether applicants propose specific plans to pay employees a living wage and offer benefits;

(6) whether the project incorporates principles of environmental resiliency or sustainability, including energy efficiency; and

(7) the geographic distribution of cannabis establishments based on population and market needs.

(b) In an annual license renewal application, a cannabis establishment that was granted a priority license based on this section shall include information demonstrating that it continues to satisfy such criteria.

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§ 974. RULEMAKING

(a) The Board shall adopt rules to implement and administer this chapter. In adoption of rules, the Board shall strive for consistency with rules adopted for cannabis establishments pursuant to chapter 33 of this title where appropriate. No rule shall be more restrictive than any rule adopted by the Department of Public Safety pursuant to 18 V.S.A. chapter 86.

(b) Rules shall include:

(1) the form and content of license and renewal applications;

(2) qualifications for licensure that are directly and demonstrably related to the operation of a dispensary, including:

(A) a requirement to submit an operating plan, which shall include information concerning:

(i) the type of business organization; the identity of its owners and principals; and the identity of the owners and principals of its affiliates; and

(ii) the sources, amount, and nature of its capital, assets, and financing; the identity of the individuals or entities that are its financiers; and the identity of the owners and principals of its financiers;

(B) a requirement to file an amendment to its operating plan in the event of a significant change in organization, operation, or financing; and

(C) a requirement to file an amendment to its operating plan in the event of a significant change in organization, operation, or financing; and

(D) the requirement for a fingerprint-based criminal history record check and regulatory record check pursuant to section 975 of this title;

(3) oversight requirements; including provisions to ensure that a dispensary complies with State and federal regulatory requirements governing insurance, securities, workers' compensation, unemployment insurance, and occupational health and safety;

(4) inspection requirements;

(5) records to be kept by licensees and the required availability of the records;

(6) employment and training requirements, including requiring that each employee have an identification badge;

(7) security requirements, including lighting, physical security, video, and alarm requirements;

(8) guidelines on advertising, marketing, and signage;

(9) health and safety requirements;

(10) procedures for suspension and revocation of a license;

(11) requirements for banking and financial transactions, including:

(A) provisions to ensure that the Board, the Department of Financial Regulation, and financial institutions have access to relevant information concerning dispensaries to comply with State and federal regulatory requirements; and

(B) disclosure or eligibility requirements for a financier, its owners and principals, and its affiliates, which may include:

(i) requirements to disclose information to a dispensary, the Board, or the Department of Financial Regulation;

(ii) a minimum age requirement and a requirement to conduct a background check for natural persons;

(iii) requirements to ensure that a financier complies with applicable State and federal laws governing financial institutions, licensed lenders, and other financial service providers; and

(iv) any other requirements, conditions, or limitations on the type or amount of loans or capital investments made by a financier or its affiliates, which the Board, in consultation with the Department of Financial Regulation, determines is necessary to protect the public health, safety, and general welfare;

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