RURAL VERMONT TESTIMONY:
S.54 CANNABIS TAXATION & REGULATION
4/5/2019

In Rural Vermont's 34 year history we have always advocated for equitable access to markets for small-producers and scale-appropriate regulation of agriculture and our working lands economies. For this reason we want to highlight the various shortfalls of S.54, which we see in the sections regarding cultivator regulations, criminal justice reform, the rule-making process, and in the privileges for medical dispensaries.

Cultivator Regulations

As we promote the diversification of our agricultural landscape, our goal is to make cannabis production as equally accessible for Vermont farmers as it will be accessible for indoor cultivators; and to allow as many people and communities as possible to equitably share in the gains of the industry, in particular those who have been negatively affected by prohibition. Every farm is unique - in landform, in access to the public, in existing infrastructure, in available resources, in market channels, etc. It is important that our policy and regulation encourages agricultural practices which will maintain and grow healthy soils, and water quality; and will facilitate new and existing farms and cultivators diversifying into this crop and market.

We acknowledge that the history of cannabis prohibition affects a concern for how cannabis cultivators may be targeted by theft, and general concerns around under-age community members accessing the plant, resulting in language in S.54 calling for "**securing fields cultivated with cannabis outdoors**." However, S.54 remains unacceptably vague about what degree of physical measurements meet the requirement that the cultivation of cannabis shall only occur in an "enclosed, locked facility" from §904(b). While it may be feasible to secure indoor operations in "enclosed locked facilities" with "lighting, physical security, video and alarm requirements" (as suggested in §881(a)1(G) and §974(b)(7)), the circumstances are quite different for outdoor cultivators. For example, a sustainable outdoor operation may be imbedded within a crop rotation that leads to an annual change in location of the cultivated field; the physical limitations of the farm itself may make it extremely difficult to hide plants from public view, etc. **These preconditions for outdoor sustainable cultivation and the inherent uniqueness of each farm make requirements for heavy fencing, lighting and video or alarm installments overly burdensome, and problematic. It is our position that security technology, and access to public view, should be at the discretion of the cultivator. We propose that the current language in §861(15) and the suggestions from §§881(a)1(G) and 974 (b)(7) be removed from the bill with respect to outdoor cultivators (including those growing soil based nurseries**

outdoors, and plants in high tunnels or other season extension systems). We encourage the legislature to allow for security for outdoor cultivation locations to be at the discretion of the cultivator: e.g. secured with electric livestock fences and posted signs (such as "un-permitted access denied").

Another provision that raises economic concerns for the farm community is §881 2(A)(vi), which enables limitations to the number of visitors a cultivator may allow at any one time. This potential regulation by the Cannabis Control Board could restrict the economic growth potential of farms that include cannabis cultivation in their crop production by effectively limiting the number of attendees at educational workshops, tours and other public events promoting the crop, particular practices, and the farm. As farms struggle with viability, farm-based education and agritourism are methods of diversification which farms are adopting to benefit their own bottom lines; but also to increase the agricultural and economic literacy of the public, to grow the relationship between producers and consumers, and to exchange information and experience with other cultivators and stakeholders. **We believe in a Cannabis policy that welcomes the additional diversification of Vermont farms for both its economic, social, and environmental potential. We oppose the restriction in §881 2(A)(vi) which could lead to a limitation of the number of visitors to cannabis cultivation and limits the opportunity to promote this new legal market directly from producer to consumer.**

In order to facilitate the equitable development of this new legal market, and to encourage those in the underground market to join the legal market of cannabis production and sales, we further recommend:

- To allow cannabis tasting rooms on farms and other cannabis establishments. Currently, prohibitions on public consumption are present in the bill - but no designation of safe places to consume is provided. The many different cultivars of cannabis require a safe environment in which experiences can be had in order to make informed consumer choices. **We suggest including "tasting rooms" and broader discussion of designated consumption areas in the Cannabis Control Board's rulemaking process. Just as responsible tastings get hosted at breweries or vineyards, cannabis cultivators should have the option to ensure the quality of their product to their customers in tasting rooms under similar reasonable limitations on consumption and serving.**

- **It is critical that direct sales on-farm are allowed, as well as through other direct marketing channels such as CSAs and farmers' markets.** Small farms cannot easily

compete in economies of scale with larger farms, and most rely on some form of direct marketing in order to remain economically viable (CSA deliveries, farmers markets, on-farm sales, etc.). Direct marketing is based on a unique relationship between the farmer and members of their community; it relies on - and grows - trust, agricultural and ecological literacy, community relationship, and farm viability. Our understanding is that §901(d)(3) sentence 2 seeks to prevents on-farm sales: "each license shall permit only one location of the establishment." Therefore, a cultivators' license could not be issued for the same place as a retail license. **If §901(d)(3) hinders cultivators from obtaining a retail license for direct on-farm sales, then we suggest to strike sentence 2 from the provision or provide an exemption for outdoor cultivators.** We also recommend waiving the requirement for the smallest tier of cultivators to obtain a retail license in order to engage in direct sales, and to consider a unique regulatory framework for this tier and scale. They are already subject to the same labeling and testing requirements as retailers in S.54.

- **It is important to Rural Vermont that the current decriminalization of cannabis and the allowance of "home grow" be preserved and expanded.** We appreciate the allowance for dispursements of up to 1 ounce at a time in §4230(b)(4); and recognize this threshhold between "homegrow" and the 1st Tier of regulated cultivation and sales as a very dynamic area in which people will be testing and determining how, and whether, to engage with the legal market. In this respect, we encourage the legislature and Cannabis Control Board to embody the principles of decriminalization, and the goal of reducing barriers for transition to the legal market from the underground by considering our recommendations for responses to those found to be in violation of the new law (see "criminal justice reform" in this document), and by considering an alternative regulatory frameworks for homegrowers who may want to try selling small quantities at a time (eg. less than 1 ounce) before fully entering the regulated marketplace.

- We see a conflict between existing State law 24 VSA Sec.4413 (d) - which exempts agricultural practices and related structures from municipal regulation - and the

regulatory framework suggested in S.54 providing municipalities with direct regulatory authority of cannabis cultivators (§863). **In order to comply with existing regulation and promote equitable access for all farmers to this promising new agricultural market, we believe cultivators should remain exempt from governance by municipalities as laid out in §863.** Given the present economic hardship of Vermont farms, the importance of encouraging more sustainable agriculture in the state, and in consideration of the aging farmer population and farm-land turnover, we feel it would be a poor precedent to allow municipalities the ability to regulate particular agricultural crops and products thereby competitively disadvantaging their local farmers. We seek the legislature's explicit acknowledgement that agricultural practices, related structures, and sales practices are exempt from the enumerated list of a municipalities' police powers in 24 V.S.A. §2291(9) and 4413 (d). We believe this exemption is paramount to a municipalities' police power to define what constitutes a public nuisance from 24 V.S.A. §2291(14). **We suggest to add after §863(a)(1) the sentence: "The provisions of this subdivision shall not apply to cultivators based on existing provisions in 24 V.S.A. § 4414(d) which limits the jurisdiction of municipal governments over agricultural practices and related structures** ." We are unclear on how year-round indoor growing facilities are considered in relationship to the Required Agricultural Practices and this exemption - and encourage the legislature and Cannabis Control Board, in collaboration with agricultural and community stakeholders, to consider how these types of cultivation may be best differentiated from one another in the regulatory environment at the municipal and State levels.

- **We question the practicality and equity of measuring cultivator tiers based on the "plant canopy size"** as suggested in §901(d)(2) and propose that the Cannabis Control Board be tasked with taking testimony from existing agricultural regulators, farmers, and advocates about the most appropriate means of defining cultivation tiers. The use of "plant canopy" dimensions to articulate tiers of production disproportionately affects different types of growing operations; in particular, year-round indoor vs. seasonal outdoor and high tunnel based production. We suggest including the consideration of orienting different tiers and fees based on sales volume in dollars or pounds of dry weight or flash frozen product.

- We encourage the legislature and Cannabis Control Board to deeply consider the different circumstances, impacts, and positionalities of indoor year-round cultivation and outdoor seasonal cultivation; and develop appropriate regulations in relationship to these considerations.
- **It remains unclear whether nurseries or processing and drying facilities are considered cultivators, or where they may fit in the regulatory framework.** We suggest they should be encompassed under the cultivation license as these practices are part of the production cycle of cannabis.

Criminal Justice Reform

Rural Vermont sees S.54 as a policy further articulating and codifying cannabis legalization and decriminalization; and therefore necessarily encompassing criminal justice reform and reparations. **Rural Vermont suggests that all sentencing in §4230(b) be non-incarceration based and restorative in nature. Rural Vermont strongly recommends that the legislature meet with criminal justice reform and racial justice groups (such as Justice for All, the ACLU, and members of the greater Racial Justice Alliance) in order to determine how to justly embody these ideals in order to achieve reparations and just outcomes for disproportionately impacted individuals and communities. We are in favor of ideas such as expunging non-violent cannabis-related criminal records and immediate releases of anyone imprisoned from non-violent cannabis-related crimes. We support the legislature in perpetuity devoting a portion of the 16% excise tax (§7091(a)) on cannabis sales towards a body convened with the consent and leadership of impacted communities and those organizations which represent them in order to determine how they can be best spent towards just reparations and criminal justice reforms.**

We have concerns with respect to requiring **criminal background checks** in general and so broadly. We question the purpose behind §884(b)(1) and see it as a door opener for systemic bias against persons who have a criminal record related to cannabis, as well as a barrier for those individuals and groups who have been disproportionately historically targeted by the War on Drugs. Furthermore, this requirement of S.54 may discourage actors from the underground market from entering the sphere of legality; while the opposite has been the stated intention of the Cannabis Commission and legislature (ie. lessening barriers for access to the legal market). From an agricultural perspective, it will be very challenging for cultivators to license seasonal workers in a timely manner; especially given challenges in agricultural labor. At a bare minimum we suggest striking the word "employee" from §884(a) in order to gain consistency with §902(c).

We encourage the legislators to rethink the reasoning and consequences of background checks considering the goals of legalizing and decriminalizing cannabis, and reconciling the history of racism, discrimination, and incarceration associated with this plant and industry.

Rulemaking Process

Rural Vermont commends the legislature for assuring that agricultural and social justice interests and stakeholders will be represented directly as members of the Cannabis Control Board.

We have concerns with respect to there being limitations on the number of cultivation licenses available, and there being a limited time period for applications (30 days). We recognize concerns with respect to flooded markets and monied interests displacing community scale agriculture and small businesses in this market based on experiences in other States; and also the intent to make the legal market accessible and attractive to those in the underground market. We understand that flooded markets have not been the result of too many small scale producers - rather too many larger scale producers, and insufficient concerns and regulation with respect to equity in the industry. **In light of this, we recommend that the committee and CCB consider means of supply management and industry regulation which emphasize equity of access for the greatest number of individuals and businesses, and which consider the importance and unique positionality of small farms and businesses in our rural economy and communities.**

The suggested timeline for cultivator license applications in S.54 (on or before September 15, Sec. 8(a)(1)) and retail license applications (on or before April 1, Sec. 8 (C)(2)) gives competitive advantage to indoor growing operations that can begin growing in the Fall, and sell their product with the issuance of the retail license in spring. Outdoor growing operations would not have any product for sale until the Fall of 2021. Existing farmers are also in their busy season in this period of the Fall during which the current application period is. **We suggest the adoption of a timeline that provides equitable market access to outdoor growers if any timeline is to remain**. Lastly, please consider setting the expiration of licenses to a more appropriate month in relation to the farming season such as January or February.

Medical Dispensaries

Medical dispensaries are privileged competitive advantage over other cannabis establishments in this bill in a number of ways. These facilities were originally allowed and formed in order to be valuable partners with medical patients and caregivers in our communities; to responsibly meet their needs in a non-profit model. However, dispensaries are now allowed to be for-profit companies, and articles in local news outlets, as well as testimony before the Tax and

Regulate Commission and the legislature, has attested to the poor quality product coming from medical dispensaries (from the perspective of cultivators and patients), and other impacts of their relatively unregulated and monopolistic nature. **Medical Dispensaries are for-profit companies and it is importnat to require them to operate under a regulatory framework which positions them equitably with other for-profit ventures in this industry. Currently, privileges to medical dispensaries in S.54, Chapter 37, which we oppose and ask that you strike from the bill include: the ability to operate as both retail and medical establishments (§973), the ability to vertically integrate under one license (§971 (b)(1)), the ability to test themselves and not undergo 3rd party testing (§973(a)(1) and (2)).** There is ample evidence that the current regulatory framework for medical marijuana has not succeeded; and it is important that this bill recognizes that and brings them into a common regulatory framework with other for-profit businesses in this marketplace.