

VLCT TESTIMONY

89 Main Street, Montpelier, Vermont 05602

To: Members of the House Natural Resources Committee
From: Gwynn Zakov, Municipal Policy Advocate, gzakov@vlct.org www.vlct.org
Karen Horn, Director Public Policy and Advocacy, khorn@vlct.org
Date: January 15, 2020
Re: S.54

Thank you for the opportunity to testify. VLCT thanks the committee for the opportunity to address some of the concerns we have with S.54 as they relate to local regulation of commercial cannabis establishments. We have identified several of the those concerns below:

1. Clarification that cannabis operations are not farming under RAPs, 6 V.S.A. chapter 215. There is nothing explicit in S.54 addressing this.
2. Language to address regulation of hemp operations that switch from hemp to cannabis, or become a hybrid cannabis/hemp operation. Hemp operations are exempt from municipal zoning and are regulated by AAFM. A switch to a commercial cannabis operation may put an operation into the “accessory on-farm businesses” category under 24 V.S.A. §4412 (11). Accessory on-farm business must be allowed under zoning when farming operations meet the criteria on §4412 (11). We urge you to make clear that commercial cannabis cultivation operations are subject to local land use regulations.
3. Existing medical cannabis dispensaries that become commercial cannabis dispensaries may not trigger zoning review under preexisting permit and/or zoning bylaws. The law should make clear that dispensaries making that transition are not grandfathered with respect to local permits.
4. There would be significantly less oversight, review or input from local governments over commercial cannabis operations when compared to regulation of medical cannabis dispensaries by municipalities.

EXISTING LAW FOR MEDICAL CANNABIS:

“Nothing in this subchapter shall be construed to prevent a municipality from prohibiting the establishment of a dispensary within its boundaries or from regulating the time, place, and manner of dispensary operation through zoning or other local ordinances.” 18 V.S.A. § 4474I

PROPOSED LAW FOR COMMERCIAL CANNABIS:

- No new, additional authority to regulate by ordinance (time, place, manner) or by zoning. Commercial cannabis operations must comply to existing zoning bylaws and ordinances, and operations would be treated the same as all other uses/operations in a community.
- Local cannabis licenses are designed to be perfunctory under S.54 with local cannabis boards permitting operations through state rules and no additional local standards or criteria except for signage, nuisance or enumerated zoning bylaws only found within 24 V.S.A. §4414. To be clear these are not NEW powers. If this language were to be struck from S.54, municipalities could still regulate nuisances and signage of cannabis operations, and zoning provisions of 24 V.S.A. §4414 would apply. Therefore, this local

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permitting/licensing authority is of zero value to local governments and community members that want to uniquely zone cannabis establishments and/or regulate the time, place, manner of operations of these establishments.

- Without a stand-alone ordinance to regulate the time, place, manner operations of a cannabis establishment, municipalities with no zoning will have no ability to regulate beyond the rules furnished to them by the state’s Cannabis Control Board. We ask you to include authority to adopt a stand-alone ordinance.

VLCT proposes S.54 use similar language as is found in 18 V.S.A. 4474I (municipal regulation of medical cannabis) instead. The language could read as follows and be added to municipal ordinance authority powers in 24 V.S.A. § 2291: “Nothing [in this subchapter] shall be construed to prevent a municipality from regulating the time, place, and manner of cannabis establishment operation through zoning or other local ordinances.”

5. Municipalities may not prohibit “the operation of a cannabis establishment within the municipality through an ordinance adopted pursuant to 24 V.S.A. § 2291 [enumeration of regulatory powers] or a bylaw adopted pursuant to 24 V.S.A. § 4414.” VLCT understood this language was meant to prevent municipal zoning bylaws and ordinances from banning cannabis establishments after a community votes to allow them. Unfortunately, this language can also be read to mean that *all* communities that vote to allow a cannabis establishment must also *accommodate* cannabis establishments within zoning regulations, regardless of whether related operations – such as laboratories, manufacturers, industrial facilities, or retail operations – are permitted. Think about this through the lens of current alcohol laws: Towns and cities can vote to allow the sale of alcohol in their community, but that does not therefore mean they have to change zoning to accommodate bars, restaurants, or liquor stores. The current language can be used to challenge a town’s zoning that doesn’t accommodate the types of establishments authorized by an opt-in or opt-out vote of the voters. Clarification is needed to ensure cannabis establishments are treated the same as similarly situated uses and not given special accommodation within local land use regulations. *VLCT recommends this language be removed from S.54.*
6. The Cannabis Control Board does not have any municipal representation and VLCT finds this deeply troubling. Although the bill creates an advisory board to help the Cannabis Control Board with a host of discrete matters with one municipal official as a member, an advisory role is not a guarantee that municipal needs will be appropriately or adequately addressed in any Cannabis Control Board recommendations to the legislature or by rule. That board will be promulgating rules that significantly affect how – and if – local governments regulate cannabis establishments and corresponding cannabis matters. For example, the board’s executive director will report to the legislature on how local land use regulations should address cannabis, whether certain cannabis establishments should be regulated by the secretary of Agriculture as “farming,” what solid waste and water quality requirements should apply to establishments, and even whether the legislature should add cannabis licenses for delivery services and special events.
7. At its December meeting, the VLCT Board of Directors called for a local cannabis tax to be set at one-third of the state’s taxation amount, whatever that amount ends up being. If that local cannabis tax is established, the Board would support an opt-out provision for towns upon which the Chair of

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the Senate Government Operations Committee insists. The modified proposal would set a local cannabis tax at one-third of the state tax, regardless of what state tax rate the legislature eventually passes.

Thank you for the opportunity to testify.