



Board Caucus Meeting

Tuesday, February 15, 2022, 10:00am

This meeting was held via web conference

Meeting Minutes

CAUCUS ATTENDEES

Chair David Postman
Member Ollie Garrett
Member Russ Hauge
Dustin Dickson, Executive Assistant

GUESTS

Penny Allen, Senior Counsel
Jonathan Pitel, Assistant Attorney General
Becky Smith, Licensing and Regulation Director
Nicola Reid, Compliance and Adjudications Manager
Chris Thompson, Director of Legislative Relations
Rick Garza, Executive Director

EXECUTIVE SESSION

At 10:01am Chair Postman announced the Board would move into Executive Session. He anticipated the session would conclude at 10:30am.

At 10:29am Dustin Dickson, Executive Assistant to the Board, announced on behalf of the Board that the Executive Session would be extended by five minutes, and anticipated the session would conclude at 10:35am.

At 10:35am Chair Postman announced that the Executive Session had concluded.

APPROVAL OF MEETING MINUTES

MOTION: Member Garrett moved to approve the February 1, 2022, Board caucus minutes

SECOND: Chair Postman seconded.

ACTION: Chair Postman approved the motion.

LEGISLATIVE UPDATES – CHRIS

Chair Postman: We'll move now to a legislative update – It looks like we do have Legislative Director Chris Thompson on, who's been super busy, and Rick Garza too. Gentlemen, I'm not sure who wants to start but if you can just give us an update of where things stand with, what do we have, about five or six hours until House of Origin cutoff?

Chris Thompson: Almost down to six hours, yes.

So, on our lab bill joint request with Department of Agriculture, that has passed the House and is already scheduled for Executive Action in Senate Committee on Thursday. They are skipping the public hearing and going straight to bringing it up for passage, so that's good.

A couple of bills we've been following pretty closely – the social equity legislation appears to be dead. It doesn't sound like there is any viable path to resurrecting the bill. It's still in Rules and it looks like it is dead. It looks like the cannabis commission is dead. It looks like the craft cannabis endorsement bill, which would have allowed a lot of producers to retail on location is dead.

There are several bills that are moving, I'll tick down about a half a dozen of those. The Governor's community reinvestment legislation has passed the House. This has been a really interesting bill in terms of the votes. It was a very bipartisan vote in the Appropriations Committee – it was a straight party-line vote on the floor of the House. That bill has now gone over to the Senate.

The bill providing for the restructuring of cannabis revenues has also passed the Senate. That was not a Governor's request. Senator Saldaña has that bill. That passed pretty easily, 41-7, and it does provide both some clarity restructuring as well as some substantive – moving around a little bit of the money at least – it doesn't actually do it because the budget is what actually determines the spending authority, but the statutory – the statute that addresses this question is essentially a declaration of legislative intent, ongoing.

I should have mentioned that the social equity efforts – the current grant program and the roster of mentors – they would get funding. With the demise of the social equity bill, there's a little bit of a question mark there as to how many funds are available and for what. If there isn't a loan program, for instance, that's a bit of a complication.

But, not to get too much into the weeds, I'll move on to a couple of other bills that are moving. The cannabis retail store security measure has passed the Senate and is scheduled for a hearing in the House on Friday.

Chair Postman: What does that bill do, in brief, Chris?

Mr. Thompson: It create a potential for sentencing enhancement for robbery if it is done in concert with another person. So, if it's in conjunction with another person – I don't know if that's legally something like a conspiracy – but it's a sentencing enhancement that would put robbing a cannabis store on par with robbing a pharmacy. It would also direct that reports be given to LCB by the retail stores when they are subject to a robbery. And then it has our Enforcement Division leadership sitting down regularly with the State Patrol (WSP) to see, "here's what information we have, what do we make of it and do we see patterns", that kind of thing. So that dialogue between LCB and WSP is the other part of the bill.

Chair Postman: Thank you.

Mr. Thompson: Next, a couple of liquor bills have passed. One reduces the liquor license fee by half for a period of time for selected liquor licensees. I won't go through the list, but it's: spirits/beer/wine restaurants, night clubs, caterers, and a few other categories. It's far from comprehensive, but, it would reduce the fee by half from May of this year through December of next year.

There's also a liquor bill, 5940, that has passed the Senate that would enable industry members to contract for bottling and packaging services, for instances. If they are a liquor licensee now, they can't do that under current law. Only non-liquor licensed businesses can do this as a service if contracted from a

distiller or brewer, et cetera. This would open that up a little bit to allow, for instance, distillers with machinery and capacity to do packaging and bottling to hire out that service to other industry members.

We've been following, really closely, another Senate Bill 5951, that deals with hemp and was billed as a consumer protection and truth in labeling measure. That was amended significantly at our request. It is still sitting in rules and I would doubt that there is any plan for moving that bill forward.

And then, our big request bill. I saved the best for last.

Chair Postman: I was wondering, I thought maybe I missed something.

Mr. Thompson: It's sitting on the House floor. It's been sitting on the floor calendar, it's number 42 on the list. It has 15 amendments on it. It looks like there are 30, but there are two versions – there's a first and a second substitute version – so each of the amendments are drawn to both version of the bill. So there are 15 amendments to the bill. A couple of them, potentially, frame the amendments that we've said we could agree to. Most of them, not. Most of them are hostile amendments that present any number of problems. I won't go through them, if there are questions of course I'll see what I can do to answer them. We're in the process now of trying to determine is if there is a will – essentially that's what it comes down to – for House leadership to move a substantive bill in the face of these amendments and try and get it out of the House by 5:00pm today. Or, they've got a rule – whatever the last is, they take up one last bill just before 5:00pm, and they can finish in however long it takes. So, we've got one they can devote to, sort of, extending the timeline. But apart from that, my sense is there's some pretty hard feelings in the House about what the minority did to stall and filibuster legislation last night. I gave up at 3:00am, but they were still on the floor, still working through – actually not that many amendments – maybe a dozen or maybe 15 amendments on that bill, but they were talked to death. So, I stopped counting after about six or seven hours of floor time on that bill. So that's going to color how they think of any bill that might burn a lot of floor time today, as to whether or not to take it up.

Chair Postman: First of all, thank you for all the time you've been putting in on this, Chris. It really is minute-by-minute as things change. We're in as good of shape as we are in large part because you've stayed on it. I think we have the absolute right to sponsor that bill, and Representative Kloba who is a real champion for public health and public safety aspects of this. That's the one thing – I know that the floor schedule impacts a lot of things, and that's why you don't want your items to wait until the last day. And when it loads up with these amendments which don't come from people trying to perfect the bill, but they oppose the bill, it's problematic. I know that's hard. But even setting aside the LCB dispute part of this – law enforcement supports this bill, public health supports this bill, huge chunks of the industry that we regulate support this bill. Is that not going to help get this over the hump? Can they set aside the smaller fight that is off to the side? Because, what's at stake? And you and I have talked about this, but what's at stake, really, is our ability to stop the infiltration of these derivatives from outside the regulated 502 market. This is something that we've heard from every corner of the industry that needs to be stopped, and we need this bill to that.

We've been talking about this, really, since the day I got here in March of last year. We started talking about delta-8. We heard from local governments, we heard from public health people and we heard from licensed cannabis operators that this was really going to hurt the market. This is the bill we need to regulate that. I try and separate myself from this, and the emotion I obviously have about it and my support for this industry, how can that die?

Member Garrett: And, is there anything we can do right now?

Mr. Thompson: That's the big question, Board Member Garrett. We are looking into whether there is an affirmative answer to that question. Whether we can do anything. What we can do, if anything, is quite limited. And I will come back to what I said before about a question of will. This bill could be passed if House leadership wanted to make sure that it passed. That would of course mean other bills die.

Chair Postman: That's right, and we don't want to have to pick those, right? Somebody else is just as anxious as we are at this point.

Mr. Thompson: Yes. There's a whole bunch of other people sitting on the floor calendar, biting their nails, right alongside of us.

Chair Postman: But what do we do – there's been a relentless misinformation campaign that's been going on. I know that just yesterday, legislature was getting emails from certain parts of the industry talking about a drop in cannabis revenues in Washington state, and how that proves that, essentially that our market is broken and that the regulators aren't doing their job, and all these things. Those numbers just aren't right. They take a small snapshot. In some cases it's just wrong, in some cases it's exaggerated. And, just to be clear, and you should know this in case you get asked these questions, but the small dip in revenues that we are seeing are only compared to last year. Which, as you know, was an extraordinary spike brought on by both the pandemic and people being at home and having extra spending money – an incredible spike. So it is down from that incredible spike. It's not down from what the pattern has been throughout the maturation of this market. We're 25% above where we were two years ago. If there was no pandemic, we would be ahead today of where we were forecasted.

Member Garrett: So, have we responded to that email with that information to the same people?

Chair Postman: We have. For some, Chris was able to forward on some information to the Chair in hopes that it would be shared. I've just been digging into it more this morning. I was just talking to our CFO before this – and if you look at the numbers – what they are being told is just not true. The numbers don't show what is really happening, and then the underlying analysis of that, that somehow that shows a broken system, is false.

What we're seeing is an economic trend outside of what this body – the LCB – does. The State Forecast Council predicted a dip in revenues after last year. They understood what was happening. And you know what? We're ahead of that forecast. So, a dip was forecast, we're doing better in revenue. This is based on actual tax collections that our CFO tracks very carefully. That's the best indicator of what these sales are. In January, sales were 1.4% less than last year. But last year, they were up 20% over the year before. So, we're doing – the trend is what you would expect in a maturing market.

They used California as an example. California has a brand new market. Our first year we were up 100 – you go from nothing to huge. And that's what we're seeing in California. We're in a good place. The market is being managed as voters directed in Initiative-502, and that the legislature confirmed, and they're enacting legislation similar to what we've been regulating all along.

The market is good. One of the things that some in the industry complain about is that statistics show that we have a more diverse set of products available to consumers in Washington state than in some of these other states. They talk about "brand concentration". So they see that as a bad thing that we have these many choices, because, for the bigger businesses, they want to dominate. And if you are looking ahead to what is a national competitive marketplace, it'd be better to have just a couple of huge Coca-Cola type products. But that's not where we are today.

Again, the voters set this system up. The legislature implemented it. The Governor signed the bill. The LCB has been implementing it all along and managing it. I don't think it's – I'm not at all embarrassed that we have a diverse set of products in our stores. That's how we support a variety of businesses from small Tier I growers to the large Tier III, or those that have multiple licenses and do processing and producing. Our system is allowing for all of that, and to use that as a sign that we need to stop this regulatory move is obviously bothering me.

In terms of recession, alcohol sales go up. We don't have enough of that data to see what happens with cannabis, but nobody should be shocked that these types of products have some rise and fall. But our fall is from an aberration that we saw last year. It's not a fall from natural growth. If you looked at a curve, it would still be like this (hands display increase), with just this little tiny dip.

Mr. Thompson: The Chair is correct that there is a lot of misinformation out there.

Member Garrett: David, they need to everything you are saying right now. How can that message get back to the top of the thinking process and wherever this bill is sitting?

Mr. Thompson: There's a lot of misinformation that we're up against. One example that David was just referring to is the claim that sales are down 8%. That is just flat false. There's a claim that it takes us 18 months to do any rules. That is flat false. Those pieces of misinformation are being twisted further to spin this narrative.

To your question, Board Member Garrett, the avenues open to us at this point in the process are extremely limited. Members are in caucus, or they are on the floor, basically all day. So, we don't have access to anyone that won't respond to texts or emails. There's unlikely to be a lot of response there, in this home-stretch that we have today.

We can work with, as the Chair aptly described, the sponsor as a champion. She is a champion on this. We can work with her, she's very responsive to us. Getting to leadership is much more difficult for any of us. We can try, and then we wait. We've already alerted a lot of the stakeholders who support this legislation, and they are sending messages to key members, especially leadership. I've heard from the patient community. I've heard from public health. I've heard from law enforcement. I've heard from industry that supports us. They're all making those efforts. Nobody knows whether any of it will make any difference in the end.

Chair Postman: I get that. I know the pressures that leadership is under to try to get things done. Everybody has things they need to do. I just felt like we were really close. There was growing support for this bill as it was moving along. The Committee votes and everything else were just fighting this.

The other piece of this – legislators are being told what's happening in other states, and we checked with the national experts, and that information is not true. They used Nevada is an example, and it's just not true. I know there is no one today that will have the time to look into what six other states have done or not done, but yes – Chris, we're here if there is anything either one of us can do to help, or if there is anybody we need to call. I think it's important to make sure members know that what they are being told, though, is demonstrably false. I think the email that quoted Jim Morgan, I think his tracking of this so much better that something coming from a lobbyist trying to stop this bill.

Mr. Thompson: Yes.

Chair Postman: The thing we all need to understand, and I hope they do, is that if this bill doesn't pass – what we lose is the ability to stop the public crisis that is growing with these unregulated products. And

we're told all the time that everybody agrees with us about that. The thought that they would kill this bill over what is essentially is an internecine battle in the industry over hemp-derived THC and let these stores keep selling this phony stuff is really outrageous. I'm going to hold out hope for the next five or six hours that it doesn't happen.

Mr. Thompson: I think it would make sense to draw up a short list of – since we're staring into the abyss, the bill lives or dies today – a message to share with all the legislators in the House, not just the sponsor, to say "if this dies, here's what we're looking at. A, B, C, D. If this bill as we've requested it passes and goes on to be signed into law, here's what we can see as the consequence of that". Make it as clear as we can to all the members of the House.

Member Garrett: You're saying exactly what I keep trying to say, because we're saying this to each other. We need to do exactly what you are saying, is get that message out there, because sometimes the last thing a person hears is what sticks the most. We're talking about what they just recently heard, and all the negatives, how is our message coming now to the forefront?

Chair Postman: We've been doing it. Rick, and Chris in particular, have been on this and communicating with legislators.

Member Garrett: Okay.

Chair Postman: But you're right. We need to keep doing it. I think, Chris, that's a good idea. I do have some notes from looking at the numbers that I can share with you as soon as we're done here. I think people need to know what is at stake. I'm glad that the stakeholders are engaged. I think public health and safety and law enforcement – I thought they'd really change the tenor of this debate by getting into it, so people understand what is really at stake. Let's do it.

Also, even though not everybody in the industry gives us that courtesy, let's include the cannabis trade associations that we know of and make sure they see our message today when it goes out.

Mr. Thompson: Okay.

Member Garrett: Good.

Chair Postman: We're not saying anything secret.

Member Garrett: Exactly.

Mr. Thompson: We'll draft something up and check in with you before we hit send. That's, I think, for the moment that's the thing we can do that would be the most useful or helpful at this point. At the moment, we've answered the questions about "what do you think this would do". We've provided our take on all 15 of those amendments. I can only hope that at some level the policy still matters, and it isn't just optics or how it feels, and which lobbyist is for or against it.

The policy is a really good one. The misinformation and the self-interest underlying the misinformation is really hard to combat. You know the old truth that "a falsehood is half way around the world before the truth has boots on to get out of bed". That is a very real thing that we are looking at right here.

So, we can't keep up with the misinformation, and we can't ensure that decisions will be made on merits and what is actually true. But, we can do what we can do, and that's it.

Chair Postman: Let's leave it all on the field. Let's see what we can do. We know that some of these amendments that were designed to drag this down, that cannabis lobbyists are involved in those discussions. Like I said, we will operate in the public realm as we do, and we'll share what we say, but we know what we're up against.

I think Rick would like to join us here. I know Chris, you've got a million things to do so if you need to leave we understand. Thanks for all you are doing, we'll send you some notes here soon.

GENERAL AGENCY UPDATES – RICK

Rick Garza: I just wanted to, briefly – Chris, thanks for all your work. Not only on the bill we've been talking about, but the lab bill got out and is moving. Thanks for all your work on that too.

It's just disappointing. We just spent time talking about our sales being up or down. What in the world that has to do with a bill that is about public health and safety and consumer protection – that's how this disinformation is being used. Anything possible to try and work against the bill.

I want to thank David for being engaged with our THC cannabinoid bill and working with staff directly. Ollie, it's disappointing, but as our representative on the Social Equity in Cannabis Task Force, you did everything to support (HB) 2022, the social equity bill. You did everything you could, and we did, to try and move that bill out of Appropriations. I just wanted to recognize the work of our Board members directly, on these bills that are important to us.

And, then, staff. Kathy, Justin, Becky, Jim, Brian, everybody is always there – through the weekends, through the nights, to help us figure out how to respond what is going on.

It's been a great effort, Chris, by you and the staff and our Board members, to try and get this to move along. We'll see where we end up. It'd be a travesty if we're not able to deal with these impairing cannabinoids that are even outside of our marketplace. That's why I think it's so important what you said, Chris, three or four points about what we lose without our bill – the state, the legislature – and what is gained. It's in the bill.

Chair Postman: That's right.

Mr. Garza: Whatever effort you can make quickly to do that, Chris. Thanks for all your efforts, and thanks to the Board and staff.

Member Garrett: I was going to say, Rick, back to 2022, and Chris, to even have our staff that we had on the phone on a Saturday morning, still trying to see what we can do on 2022 and get it moved. To all the staff that came together on a Saturday morning to see what we can do, only to hear that it was too late or that decisions had been made. We had about five staff still together on Saturday morning trying to get the bill through. Thank you, Chris, for bringing us together.

Chair Postman: The LCB was really open-minded about that bill, Ollie. And I think your approach to this was "we didn't expect this bill, we have our own rulemaking going on, but what do we do and how do we go forward". I feel good about that part of it.

Member Garrett: Yes.

Chair Postman: Rick, I'm glad you raised that, about what do the sales figures have to do with the bill. It's a little weird to be defending how much cannabis we are selling. And I hope this isn't controversial, but I will say, I don't see my job as trying to get as many people in Washington state to ingest cannabis as often as possible and as much as possible and to buy the most expensive product in the store every time. I don't think that is a regulator's role. We're regulating a diverse market both in business size and in product availability. I hope that we're not going to be measured negatively by that 1.7% drop in sales from this January from last January. It's just not the way it should be. But, we should be operating on facts. And that's what it's about, and the facts are on our side.

Thanks, Chris, best of luck

Mr. Thompson: All right, thank you.

Chair Postman: Rick, was there anything else you wanted to add for agency updates today?

Mr. Garza: No, thank you, Chair Postman.

Chair Postman: Thank you.

BOARD MEMBER AND EXECUTIVE ASSISTANT REPORTS

Chair Postman: Member Garrett, anything more for Board member report?

Member Garrett: No, thank you.

Chair Postman: Dustin, anything we forgot, or anything to add?

Dustin Dickson: Nothing additional from me, Chair, thank you.

Chair Postman: Great, thank you everybody for your patience today while we did our Executive Session. We ran a little over our normal time, but I appreciated our report from our Legislative Director. With that, will adjourn.

We will not have a Board meeting tomorrow, we did not have items on an agenda that needed to be acted on, so as we do from time to time we have cancelled tomorrow's meeting but will resume in two weeks. Thanks, everybody.

Meeting adjourned at 11:07am.

Minutes approved this 8th day of March, 2022.



David Postman
Board Chair



Ollie Garrett
Board Member

Minutes Prepared by: Dustin Dickson, Executive Assistant to the Board