



Board Caucus Meeting

Tuesday, March 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

Kathy Hoffman, Policy and Rules Manager
Audrey Vasek, Policy and Rules Coordinator
Jeff Kildahl, Policy and Rules Coordinator
Robert DeSpain, Policy and Rules Coordinator
Chris Thompson, Director of Legislative Relations

APPROVAL OF MEETING MINUTES

MOTION: Member Garrett moved to approve the March 8, 2022, Board caucus minutes.

SECOND: Chair Postman seconded.

ACTION: Chair Postman approved the motion.

BOARD MEETING PREP AND RULES UPDATE

Kathy Hoffman: Good morning Chair Postman and Board Member Garrett. Not a lot to share in terms of updates since last week, related to CR 102, 103 and those kinds of things – but there are two informational updates I wanted to provide.

The first is with respect to the “listen and learn” session that has been scheduled for conceptual draft rules around our social equity program. That messaging went out yesterday with a copy of the conceptual draft rules and agenda. We’re going to share those out during the Social Equity in Cannabis Task Force meeting, and as well this coming Thursday there is a Licensing meeting at 4pm and we’ll share those there too. I’ll also be sending out invitations to some of the legislators that are interested in our work, as well as other community members directly.

Secondly, our policy statement with respect to implementing our quality control rules – providing that phase-in period for retail sell-down and phase in for processors and producers. Our draft policy statement went out to industry stakeholders and associations last Thursday, March 10. We are providing a two-week turnaround on that, with a response due by close-of-business on March 24. That gives us enough time to review feedback and determine whether or not we’re going to incorporate any of that into the final policy statement, so that we can file the policy statement – at this point my thinking is, we can file it a few days ahead of time with an effective date that coincides with the rules’ effective date, because we can’t

make the policy statement effective before the rules become effective, because the language that makes the policy statement possible doesn't become effective until April 2.

Any questions? Hearing none, I'll hand it over to Audrey for prep for tomorrow.

Chair Postman: Great, thank you. Good morning, Audrey.

Audrey Vasek: Good morning Chair Postman and Board Member Garrett.

Tomorrow I'll be requesting approval to file a CR 102 rule proposal related to axe throwing at liquor licensed premises. For a brief background, axe throwing has become increasingly popular as an activity that businesses would like to offer in combination with alcohol service. However, current rules don't provide a framework to address the public health and safety concerns that arise when alcohol service is combined with axe throwing.

This CR 102 proposal was developed through a collaborative rule development process that considered input from public health and prevention groups, axe throwing businesses, liquor licensees and other interested members of the public. A "listen and learn" session was held on February 3, to gather feedback and suggestions for visions to conceptual draft rules, and at peak there were 65 individuals in attendance. The feedback we received is provided in an attachment to the CR 102 memo, and the memo also describes how this feedback was incorporated into the proposed rules. For example, the rule proposal adds a definition for "barriers" in response to some of the feedback we've heard.

In brief summary, the proposed rules would require licensees that offer axe throwing to create a safety operating plan that includes two main components: one - protocols for monitoring patron intoxication and consumption of alcohol; and two - a floor plan designating consumption areas where alcohol is allowed and identifying axe throwing areas where alcohol is not allowed.

The proposed rules would require these axe throwing areas to have barriers to keep them separate from the designated alcohol consumption areas, and to prevent axes from travelling outside those areas. The proposed rules do not require that businesses use specific methods or materials to comply with these requirements. The proposed rules also outline how to request to make a change in a safety operating plan and include a reference to penalties for non-compliance.

The CR 102 form also includes estimated costs of compliance information to meet Regulatory Fairness Act (RFA) requirements, and the agency does not anticipate that the rule proposal will impose more than minor costs on businesses as that term is defined in the RFA.

Ms. Vasek detailed the tentative timeline:

March 16, 2022	Board is asked to approve filing proposed rules (CR 102). CR 102 filed with the Office of the Code Reviser. WSLCB webpage updated and notice circulated by GovDelivery distribution list. Formal comment period begins.
April 6, 2022	Notice published in the Washington State Register under WSR 22-07.
April 27, 2022	Public hearing held and formal comment period ends.
No earlier than May 11, 2022	Board is asked to adopt rules if no substantive changes are made (CR 103).

	Concise Explanatory Statement provided to individuals who offered written or oral comment at the public hearing or during the formal comment period, consistent with RCW 34.05.325. CR 103 and adopted rules are filed with the Office of the Code Reviser. WSLCB webpage updated and notice circulated by GovDelivery distribution list.
June 11, 2022	Rules are effective 31 days after filing, unless otherwise specified. See RCW 34.05.380(2).

Chair Postman: You and I talked about this, I think last week, so I have a couple of follow ups. One, the rules would be different than what the Board approved as a settlement for one operator about a year ago, right? Because that, as I recall, though I had just got here, was much more specific as to what that plan was. Is my recollection right?

Ms. Vasek: Correct, yes, the operating plan -- that specific plan and the settlement agreement is tailored to them. They came up with the parameters and they're working with Licensing. The proposed rules are much more general; they don't go into details the way that settlement plan did.

Chair Postman: And what's the thinking about that -- if we came up with that as sort of the ideal safety thing, why wouldn't we just expand that to anybody else, and say, "Well if you do want to get into the business, here's what we developed."

Ms. Vasek: The thinking was that the general rules would provide more flexibility for different business types, rather than just the axe throwing business that is trying to add alcohol versus maybe a restaurant that is going to be adding axe throwing

Chair Postman: I see.

Ms. Vasek: So, this will provide flexibility but still keep those public health and safety parameters there.

Chair Postman: Right, ok. And is it right that we can't find any state that has any kind of safety requirements from alcohol regulators for axe throwing? Somebody mentioned that to me -- that we would be the only ones, if we did this-- we would be the only ones that had any kind of safety plan in place?

Ms. Vasek: Correct, there aren't other states that have regulations around this yet. So, we would be the first.

Chair Postman: Interesting. Okay.

Member Garrett: David, you should go to one!

Chair Postman: I don't know. Well there is the one, I suppose I could try it before -- at least before we got to the 103, so maybe I'll do that.

Member Garrett: I was telling Audrey, I think I'm going to go, but I'm also starting to see them in different movies and TV shows.

Chair Postman: Me too, I've noticed that. It pops up now, in TV. It's a thing, clearly.

Member Garrett: Yes.

Chair Postman: I still don't get it, but it's a thing. Well, I look forward to that, and it probably would be good for me to go and visit the one at least that we know of that's operating under our plan. Thanks, we appreciate that Ms. Vasek.

Ms. Vasek: Thank you.

Chair Postman: And it looks like our next item up --Jeff Kildahl.

RULES PETITION REVIEW AND CONSIDERATION

Jeff Kildahl: Good morning Chair Postman and Board Member Garrett, thank you for the opportunity to be here today, to present staff recommendation on a rule petition concerning labeling requirements for cannabis vaping cartridges.

To provide some background, the Board received this rule petition on January 18, 2022, from Phillip Reimer. In the petition, Mr. Reimer states that he is requesting a new rule to require the labeling of individual vaping cartridges independent of the outside packaging labels. Mr. Reimer proposes these labels should identify the cartridges as either sativa or indica. The issue presented by this petition is whether or not the Board should adopt a new rule section, or amend an existing section in chapter 314-55 WAC, to require cannabis processors to place individual labels directly on cannabis vaping cartridges to identify the cannabis cartridges contained in the vaping cartridges as sativa or indica.

Under current law and rule, RCW 69.53.42 authorizes the Board, among other things, to adopt rules requiring labeling requirements of cannabis concentrates. WAC 314-55-105(2) identifies standards that apply to all packaging and labeling of cannabis concentrates, and WAC 314-55-550 allows for the prohibition of certain vaping ingredients of devices.

Cannabis vaping cartridges are small devices filled with cannabis concentrates that attach to a pen- to a small pen-shaped holder. When used as intended, the mouthpiece of the cannabis vaping cartridge is held to the user's mouth and the vaping pen is activated. The pen component applies intense heat to the cannabis concentrate inside the cartridge to atomize the concentrate into a vapor, which is inhaled by the user to consume the cannabis product. Given their small size, streamlined design, exposure to heat, and contact with the user's mouth, it may not be feasible for cannabis processors to affix or emboss a label directly to the cannabis cartridge. The exterior child-resistant packaging of cannabis vaping cartridges provides significantly more space to label the product with accurate analysis information readily available to the consumer.

The change to current rules would also be necessary for the Board to inspect or approve all labeling on cannabis vaping cartridges. In addition, cannabis vaping cartridges contain concentrates formulated by licensed cannabis processors that may contain mixed cannabis plant material from different strains, including both indica and sativa types of cannabis, and may contain proprietary blends of ingredients that may alter the effect on the consumer. While the Board has regulatory authority to require labeling of cannabis products, there is not currently a requirement for any cannabis products to be labeled as sativa or indica. A label on a cannabis vaping cartridge designating either sativa or indica may possibly convey a false sense of certainty of the products' effects on the consumer.

Based on the small size and design of the cannabis vaping cartridges, requiring labeling on cannabis vaping cartridges may significantly increase regulatory burden while offering marginal benefit. The information currently required on the outside packaging of the cannabis vaping cartridges provides more specific detail than labeling the cartridge itself.

Director's Office staff recommend that consistent with RCW 34.05.330(1)(a)(1), the Board deny Mr. Reimer's rule petition request to require the labeling of individual cannabis vaping cartridges received on January 18, 2022, for the reasons described above.

That concludes my presentation on the petition, I'm happy to answer any questions you have.

Chair Postman: Any questions from member Garrett?

Member Garrett: No.

Chair Postman: I agree with the recommendation, I appreciate the question being raised by Mr. Reimer, I think -- you know, we're always looking at what is the best way to share information with the end-consumer on these things, but I think that the conclusion in your memo really does summarize it well, and if we were asked, "what would you try to do to label something for the public health" -- sativa or indica may not be at the top of the list in any case, it's not necessarily the most important, and like you said it's very limited real estate, there.

So, with that, thank you. I certainly agree with the recommendation, and would entertain a motion to accept the staff recommendation, which is to deny the petition to create rules requiring labeling of marijuana vapor cartridges with indica or sativa.

MOTION: Member Garrett moved to deny the petition as described above.

SECOND: Chair Postman seconded.

ACTION: Chair Postman approved the motion

Chair Postman: Great, I will second, and that is approved. Thanks, Mr. Kildahl, we appreciate your work.

Mr. Kildahl: Thank you.

2022 WASHINGTON STATE LEGISLATIVE SESSION SUMMARY

Chair Postman: Our last staff report today is a return engagement from Chris Thompson, our Legislative Director. Now that the 2022 legislative session is in the rear view mirror, though not clearly forgotten yet, and a lot of bills to be signed, et cetera, et cetera; but at least that part's done. So, welcome back, and you can summarize a couple of months' work, yes?

Chris Thompson: Yes, good morning and thank you Mr. Chairman, Board Member Garrett, good to see you again this morning.

The session is largely in the rear-view mirror for us, it's on the front-burner in the Governor's Office, of course, for that 20-day window to act on legislation. There were quite a number of bills, well over 300, I believe, passed this session. A number have already been acted on in the Governor's Office. So, I was

just going to touch on a few highlights for what the legislature did, rather than dwell on what didn't happen or what might've been, although we can discuss that if you like.

So, to start with -- the budget -- a very important success was receiving full funding for our request for the SMP, the System Modernization Project, was fully funded. We're delighted to see that. We're also pretty excited to see the budget include a major commitment to community reinvestment. This was related to a Governor's Executive Request legislation, which did not pass. The House version passed the House, and made it a fair amount of the way through the Senate, but didn't, in the end, pass. What did pass were a couple of provisions on the budget -- while we've been excited about the \$125 million proposed annually by the Governor, they included \$200 million in the budget, along with \$1 million for the Department of Commerce to do some planning work for distribution of those funds. The account is under the umbrella of OFM (Office of Financial Management), and Commerce has until December to develop a preliminary plan and then until June of 2023 to develop a final plan on distribution of those funds. The object of expenditure, or the purposes for which that funding is intended, is the same as we saw in the legislation. It's in light of disproportionate impacts from the war on drugs, a focus on economic development, re-entry services, violence prevention and intervention, as well as ways of supporting re-entry. I'm not certain exactly what date these funds might become available; it's for Commerce to develop this plan, but the LCB did strongly support this effort by the governor and the budget does take a major step forward down the road that was laid out by the Governor in his Executive Request legislation.

Chair Postman: Is there any question about what could happen with that money given that the legislation didn't pass?

Mr. Thompson: Well, the legislation didn't pass, so there isn't a permanent statutory program in ongoing funding, but this \$200 million was an annual appropriation for fiscal '23, and I don't see explicit indication in the budget that there's a contingent action that must occur prior to the use of the funds. I don't know what the plan is for managing or how soon those funds might be released. Commerce has some pretty extensive planning requirements related to topics that came up in the legislation. So, they're to look at outcomes, they're to look at how to ensure funds are used in ways that achieve the established objectives, there are two accountability measures, and they're also directed or encouraged to look at the work of existing work groups, such as -- and they mentioned specifically the Social Equity in Cannabis Task Force, the Re-Entry Council, and some others. So, there's a lot of consultation to do, there's a lot of program planning to do, and I don't know how quickly Commerce will be ready to bring a plan to OFM and what needs else to happen to authorize expenditure of those funds. There's some other parameters in there -- the desire is to fund programs that won't require ongoing support from the state, and that would incentivize matching funds being provided, and that sort of thing. Fairly typical grant or funding program, community funding program parameters there.

The third thing in the budget I was going to mention is the \$500,000 that was provided to LCB for contracting with an independent entity to prioritize social equity applicants. That was included at that level, so that'll certainly support the work that Becky and her staff are already very deeply engaged in, and preparing for the launch of that program.

Turning to legislation that did pass, I'd like to start with our joint request from LCB and the Department of Agriculture for lab quality testing standards. That legislation passed almost unanimously, both the House and the Senate had very strong support. No expressed opposition in testimony at public hearing in either the House or the Senate. Really strong support, including from not just the agency team, but the Cannabis Alliance, for instance, also specifically weighed specifically in on this, so we're very happy that the both the legislation passed and that it was fully funded in the budget. That's about \$316,000 for LCB. The Department of Health, and the Department of Agriculture also got appropriations to fund the staffing

needs that they have to put together the team that would support -- it's called the Inter-Agency Coordination Team -- created through the legislation. And those would be the more technically trained scientific personnel to develop, really, the substantive requirements for what quality standards look like in cannabis testing labs.

The second bill I will mention, this one has already been signed by the Governor, this one is House Bill 1210, which changes the word "marijuana" to the word "cannabis" throughout the RCWs, and directs the LCB to employ expedited rulemaking to make the same change in terminology within our regulations, in Title 314 WAC. That was at our request. I like to remind anyone listening when I discuss this, we saw an opportunity to use that process for a real expedited completion of the work across our WACs.

The other cannabis-related legislation that was passed by the legislature is the reorganization of the statute that talks about where cannabis revenues ought to go, or what the intended use of those funds are. So that's -- it's been changed substantially through the process of the session. In the end, there wasn't as much restructuring of the statute as was started out with the original bill, but there is some restructuring there. There are a few changes. Some without real impact, some with some impact, in terms of where those dollars would go. For instance, there's a little bit less for the state general fund, and there's a little bit more for the Health Care Authority and the basic health plan. Not big changes. There's also a study directed in there, by JLARC (Joint Legislative Audit and Review Committee) to look at this question again, and to consider options or recommendations for how to restructure that statute for, perhaps, better transparency or clarity, which were the primary reasons for Senator Saldaña in developing this bill, initially.

So, that's the cannabis front.

There were two alcohol bills that passed. One is by Senator King, Senate Bill 5940, which allows our industry members licensees such as -- for instance -- distillers to get into the business of providing by contract, bottling and packaging services to other industry members. If our licensees have invested in a big way in equipment for bottling, for instance, and can offer that service to other industry members that might save the other member from having to make that capital investment, it might open up good new lines of business for licensees. So, that was pretty strongly supported and approved in the legislature.

The other bill was House Bill 1359. This bill reduces by half the license or license renewal fee for specified alcohol licensees. The original House bill has a fairly short list of license types that were impacted. The Senate significantly lengthened that list of licensees that could take advantage of the lower fee -- the 50% reduction in fee. So, Beer and wine restaurants, breweries and wineries, tavern snack bars, sports entertainment facilities, these are just some examples of some license types that were added in the Senate. Unfortunately, I'm hearing that there's some concern about potential budget impacts at UW, WSU, and perhaps Health Care Authority, because those dollars collected from license renewal fees were earmarked for programs in those agencies -- alcohol and drug programs for instance -- that, it appears the legislature did not backfill. So, I've been hearing from staff at UW and WSU about this. Our staff, I'm told, had alerted those agencies when we saw this change come up in the legislation. It was in Ways and Means Committee, but it was very late in the session. I'm assuming this wasn't a deliberate decision or intent of the legislature, but just something that got slipped through the cracks in the scramble of the home stretch to finish the session that this item didn't get addressed. Because it was such an expansion of license types, I don't know how many licenses that amounts to, but there is some concern at those agencies, and unfortunately I don't think there's anything the LCB is in a position to do, as we can't appropriate funds. That would have to be the legislature appropriating those funds, so I don't know yet what those impacts might be, but I think that's an unintended consequence of extending the scope of that license fee reduction.

So, those are kind of the highlights, clearly, you know, this conversation isn't really complete without mentioning a couple of disappointments this session. Obviously, first and foremost, LCB requested legislation to create effective regulatory scope for the agency to deal with impairing cannabinoids, both in and outside of the I-502 system. The Board knows, I think, pretty well the many twists and turns of this effort through the session. The House version was held up on the floor of the House with 15 amendments as time was running short. Over in the Senate, there were a number of strong supporters of this effort, but also, the late stage of the session -- that last bill, that last effort, wasn't even introduced until the last day of February. So, there was very little time to connect with Senate members, to make sure they understood the necessity and the urgency of the legislation as well as why some alternative proposals were not adequate to achieving, even more limited objectives that some had sought to achieve. So, that was certainly a disappointment.

The social equity legislation also did not pass. We had been very involved in and engaged in efforts to expand the social equity program led by Representative Wicks. There were several things that would have expanded or facilitated implementation of that program that, sadly, we didn't get approval for, so we will proceed with the program that is authorized under the legislation originally requested by LCB, House Bill 2870, which does give us something to work with, and hopefully an opportunity to move toward implementation and demonstrate some success at the approach that we have and will develop further, as we get deeper into the rulemaking process, and consult with stakeholders. So, we're very excited about that, even though we're also disappointed that some of the improvements didn't make it through the process.

How about if I stop there, and see if you have questions, or anything else you want to address -- other topics, or legislation?

Chair Postman: I don't want to dwell on the disappointments, but other things that I know we tried to help with, and we were unable, and it was disappointing, was the cannabis commission excise tax exemption for medical users. I was surprised there was controversy around it, going in, but I think those are things we can continue to work with stakeholders on between now and next session, make it maybe, shine a little more light on them. But it is what it is.

We appreciate the work you did, you were in some tough spots, there, Chris, and we appreciate your cool head through that. And, I think we talked about this last week, but when we all have a chance to take a breath and clear our heads a little bit, internally we should start having some conversations about what we do now, and how to do it better, and some of that's within our power and some of it's clearly not, was the other thing we learned. So, I think we'll have plenty to talk about. But we also -- you start looking at the timelines that we're going to be under to develop budget requests and legislation for next session, there's not a lot of down-time.

Mr. Thompson: No, it's an annual cycle and the work can vary and reasonably expand to fit the 12-month cycle of the year very much so. And I'm glad you mentioned those other items, Mr. Chairman, I do think it's worth reminding our audience that we were deeply engaged in our work toward assisting the Cannabis Alliance especially, on that commission legislation. And, in the end what I was told was there was just some concern about a commission being a way to promote the use of cannabis. Despite the fact that we worked with the advocates and removed all references and mentions and purposes related to anything of that kind -- but other commodity commissions exist in large part to promote sales of that product.

Chair Postman: It's true. They want people to eat a lot of potatoes.

Mr. Thompson: There's this intent that people have in their heads about what these things are for, right?

Chair Postman: Right.

Mr. Thompson: We also were very strongly supportive of the bill to temporarily remove the excise tax on medical cannabis products for patients. And, that was mentioned in the budget -- it looked like that was going to go. It made it through the Senate, it made it all the way to the House floor, and there it sat as the final hours ticked away.

Also, the cannabis retail store security measure; we also actively supported, and saw that run aground over concerns about increased penalties and sensitivity around using the criminal justice system in this regard. So the discussions about forming a task force through a budget proviso didn't materialize either, but that's obviously a topic that'll be of interest and of focus for the Board, the agency, and the industry; both in the coming months, and leading up to next session, I've got a strong feeling.

Chair Postman: Certainly, yes. Okay. Member Garrett, anything to add? Questions?

Member Garrett: No.

Chair Postman: All right, Chris, thank you, we'll let you go, get some rest, and when you're ready let's get together and talk about more about the future than what just happened, but we'll have to do a little of both to know where we're going. Thanks again for the work that you've done over the months for this.

Mr. Thompson: Thank you, I appreciate that.

Chair Postman: Thank you.

BOARD MEMBER AND EXECUTIVE ASSISTANT REPORTS

Chair Postman: That takes us to the end of our agenda, other than Board Member and Executive Assistant reports.

The only thing I have, I think, most anybody who's watching this knows, but just to be clear, the Governor did announce the appointment of our new Board Member, Jim Vollendroff, he'll start May 1st. He's a behavioral health expert. He has a real distinguished career there, and I'm excited to have him join Member Garrett and I. I've only met with him once, when he first reached out to ask about that open position, and we ended up talking for at least an hour. Very engaging, positive, high energy guy, I really, really enjoyed my time with him. He came with, sort of appeared with, incredible support. There was a letter to the Governor signed by 22 legislators asking the Governor to appoint Jim, and that's pretty impressive. People within the administration who have worked with him over the years in various functions, too, supported him. I know the Governor's Office interviewed -- had a fair number of applicants and interviewed a few really good candidates, and I think Jim is going to be a great addition to the Board. So, I look forward to all of you who watch us every day getting to know him, and for us, too. It will be interesting. That's what I have. Ollie, anything?

Member Garrett: No, I agree with what you just said, and I did get the opportunity to have a discussion with them beforehand also. And like you, it led into an hour-long conversation.

Chair Postman: Yes, he seems like just a great guy.

Member Garrett: Yes.

Chair Postman: So, that will be nice and I look forward to it.

Dustin, anything from the Executive Assistant position to report?

Dustin Dickson: No, just reiterating what you both just said about the new Board Member, I talked with him very briefly in setting up some of those meetings, but did get to interact with him a little bit and I look forward to having him on board as well.

Chair Postman: Good, great, and thanks for your help in helping him get ready for that May 1st date.

With that, we will adjourn the Board caucus for March 15, 2022. We will see you, tomorrow for the Board meeting. Have a good day.

Meeting adjourned at 10:42am.

Minutes approved this 29th day of March, 2022.



David Postman
Board Chair



Ollie Garrett
Board Member

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