

Analysis  
**Department of Agriculture**  
Report on Cannabis Funding

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**Analyst:** John Terpening

**Request:** Acknowledge receipt of the report

**Analysis:** The Department of Agriculture's 2019-21 budget bill, HB 5002 (2019), included the following budget note instruction:

*The Oregon Department of Agriculture is directed to work with the Oregon Liquor Control Commission (OLCC) and the Oregon Health Authority (OHA) to determine an appropriate funding mechanism for the reimbursement of the Department's laboratory expenses related to the testing of cannabis in cases referred by OLCC and OHA, and report back to the Joint Committee on Ways and Means during the 2020 session.*

In accordance with the budget note, the Department submitted their report to the Co-Chairs of the Joint Committee on Ways and Means on January 17, 2020.

The report from ODA outlines two possible funding mechanisms discussed with OLCC, the first is to include laboratory expenditures as part of the overall costs for administering the state's cannabis program. Based on the December 2019 Oregon Economic and Revenue forecast, the current amount of marijuana tax revenue available for administration is \$14.2 million, which goes to the Department of Revenue, Criminal Justice Commission, and OLCC for tax enforcement, law enforcement funding, and medical marijuana inspections.

The second possible funding mechanism is to include a license surcharge on all cannabis license holders that would be designed to cover laboratory costs. This would increase marijuana licenses fees and require coordination between OLCC and ODA to determine an appropriate amount and then transfer the funds from OLCC to ODA.

Both options would require statutory changes to either the marijuana tax revenue distribution or the cannabis license fees. It is anticipated that as the 2021-23 budget is being developed, ODA and OLCC will determine which funding mechanism is the most appropriate and include that in their budget requests.

**Legislative Fiscal Office Recommendation:** Acknowledge receipt of the report



January 17, 2020

The Honorable Senator Betsy Johnson, Co-Chair  
The Honorable Senator Elizabeth Steiner Hayward, Co-Chair  
The Honorable Representative Dan Rayfield, Co-Chair  
Joint Committee on Ways and Means  
900 Court Street NE  
H-178 State Capitol  
Salem, OR 97301

Dear Co-Chairpersons:

### **Nature of the Request**

The Oregon Department of Agriculture (ODA) respectfully requests permission to appear before the Joint Committee on Ways and Means, to report on work with the Oregon Liquor Control Commission (OLCC) and the Oregon Health Authority (OHA) on funding mechanisms for reimbursement of laboratory (lab) expenses related to testing cannabis (medical and recreational marijuana).

### **Agency Action**

ODA's 2019-21 Legislatively Adopted Budget, HB 5002 (2019), included a budget note directing ODA to work with OLCC and OHA to determine an appropriate funding mechanism for the reimbursement of ODA's lab expenses related to the testing of cannabis in cases referred by OLCC and OHA, and to report back to the Joint Committee on Ways and Means during the 2020 session.

The Natural Resource subcommittee's hearing on the ODA budget, subsequent stakeholder testimony, and a presentation by ODA on the various work related to cannabis by ODA programs prompted the budget note. The budget for the ODA Laboratory (Lab) is a mix of General and Other Funds and relies on ODA programs to pay the lab costs associated with compliance work in each program. Other than the license fees in the Food Safety, Weights and Measures, and Hemp programs, there is not a mechanism for recovery of expenditures related to cannabis work.

As required by the budget note, ODA and OLCC discussed in detail the current funding structure for OLCC licensed cannabis businesses, the funding structure that ODA has for hemp businesses, and the limited funding that OHA has for the medical program. In addition, there was discussion about how the ODA Lab is budgeted and its reliance on Other Funds revenue for sampling and testing expenditures. The discussions were primarily focused on compliance testing in three areas:

- Failed pesticide tests (OLCC/OHA referrals),
- Emerging issues testing (e.g. vaping crisis testing), and
- Possibility of establishing a reference lab within ODA.

Possible funding mechanism to reimburse ODA Lab expenditures:

There are two possible funding mechanisms to accomplish reimbursement of expenditures. The first is to include lab expenditures as part of the administrative costs incurred in managing the state's cannabis programs. According to the December 2019 Oregon Economic and Revenue forecast, the current 19-21 biennium total marijuana tax revenue forecast is \$248.2 million, with a total of \$14.2 million in administrative costs prior to general distribution.

The \$14.2 million administrative costs include:

- OLCC costs for medical marijuana tracking and inspection (\$7 million)
- Distributions to the Oregon Criminal Justice Commission (CJC) for the Illegal Marijuana Market Enforcement Grant Program (\$3 million)
- Department of Revenue (DOR) collection costs

The administrative costs allotted to OLCC, DOR, and the CJC are focused on tax enforcement, law enforcement funding, and medical marijuana inspections.

The general distributions are as follows:

- 40% - State School Fund
- 20% - Mental Health, Alcoholism, & Drug Services
- 15% - State Police
- 10% - Cities
- 10% - Counties
- 5% - Alcohol & Drug Abuse Prevention, Intervention & Treatment

The second possible funding mechanism is to include a license surcharge on cannabis license holders to cover the cost of lab expenditures. This would require OLCC and ODA to establish the surcharge amount and a mechanism to transfer the funds to ODA. This option would likely increase marijuana license fees.

**Background - Lab Challenges Related to Cannabis**

Testing:

All cannabis must be tested for the presence of a number of different contaminants, including pesticides. Action levels indicate a level of pesticides that, when exceeded, is considered sufficient to warrant regulatory or remedial action under Oregon's cannabis regulations. Cannabis that fails the action levels for pesticides are referred to the ODA Pesticides program for investigation. The ODA Pesticides program has limited the number of samples by using an alternative inspection process called the Marijuana Compliance Assistance Program (MCAP). MCAP was established in part to reduce the sample workload and costs to conduct lab work.

Lab Equipment (New and Replacement):

Cannabis testing can require very specialized equipment that must be obtained and maintained. The equipment is expensive and can cost \$300,000 to \$450,000 to buy. Cannabis samples are inherently “dirty” requiring frequent equipment cleaning, part replacement, and flushing which results in increased instrument downtime, supplies, and staff time to perform these activities.

Lab Capacity:

The ODA Lab is already at full capacity and struggles to keep up with current demands. The extreme variability in cannabis products requires time to create testing methods that are reliable, can withstand legal challenges, and can be completed in a timeframe that does not hold up enforcement processes. ODA operates its lab six days a week and strives to turnaround samples in less than 90 days. Stable funding is necessary to maintain a lab at adequate levels to respond to both routine and emerging issues. Funding that is not stable makes it challenging to manage the workload, retain staff and keep scientifically current.

Reasons for a State Reference Lab:

This concept has been suggested several times as a way to assist in compliance testing. A reference lab provides a neutral party for method development, quality assurance review of other labs, and unbiased compliance testing. A state reference lab in Oregon specifically could:

- Conduct compliance testing to make sure licensed labs are testing and reporting appropriately by comparing lab results listed in the Cannabis Tracking System (CTS) to products being sold to consumers.
- Investigate complaints from licensees about faulty lab testing.
- Conduct market basket testing – i.e. random testing of products at retail as recommended in the January 2019 Oregon Secretary of State audit of OLCC.
- Compliance testing to assist in OLCC investigations.
- Compliance testing for public health investigations.
- Compliance testing to assist in ODA hemp investigations
- Compliance testing for law enforcement requests.

Without significantly enhanced state lab capabilities, including a reference lab doing this kind of work, the OLCC specifically will not be in the position to effectively protect consumers nor effectively regulate a system of product testing that relies on the accurate results of independent private labs licensed by the state.

The creation of a reference lab would take careful planning and would likely entail a significant investment. Accurate costs are not available at this time and more work would need to be done to detail the role of the lab, along with the infrastructure, staffing, and equipment needs.

**Action Requested**

The Oregon Department of Agriculture requests permission to appear along with the OLCC before the Joint Committee on Ways and Means during the 2020 regular session to discuss

*The Honorable Senator Betsy Johnson, Co-Chair*  
*The Honorable Senator Elizabeth Steiner Hayward, Co-Chair*  
*The Honorable Representative Dan Rayfield, Co-Chair*  
*January 17, 2020*  
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ongoing laboratory expenditures related to cannabis and to describe potential funding mechanisms to reimburse ODA.

**Legislation Affected**

None.

Sincerely,

A handwritten signature in black ink, appearing to read "Alexis M. Taylor". The signature is fluid and cursive, with the first name "Alexis" being more prominent and the last name "Taylor" following in a similar style.

Alexis M. Taylor, Director  
Oregon Department of Agriculture