

ANALYSIS

Oregon Liquor and Cannabis Commission - Oregon Department of Agriculture Cannabis Reference Laboratory Services and Resources

Analyst: Michelle Deister

Request: Acknowledge receipt of a report by the Oregon Liquor and Cannabis Commission and the Oregon Department of Agriculture on services and resources associated with the Cannabis Reference Laboratory.

Analysis: The 2023 budget bills for the Oregon Liquor and Cannabis Commission (OLCC) and the Oregon Department of Agriculture (ODA), SB 5519 and HB 5002 respectively, included identical budget notes directing the agencies to report on an interagency agreement outlining the roles, responsibilities, and resources of each agency in the creation and operation of a cannabis reference laboratory. HB 2931 (2023) created the reference laboratory, supported by cannabis licensing revenue, to review private lab testing results for cannabis, ensuring accurate results for product potency and purity, to protect consumers and support appropriate regulation.

The budget note requires ODA and OLCC to enter into a statement of work addressing payment details for support of the lab; responsibilities of each agency relative to samples and testing; use of facilities and supplies; representation in legal proceedings; and interactions with private laboratories. The budget note required a status report to Ways and Means on lab expenditures, fees, utilization, staffing, and costs, for the purpose of determining a budget estimate for future biennia.

OLCC's 2023-25 budget included a revenue transfer to ODA totaling \$2.28 million. \$531,689 for staffing costs of three chemist positions to devise protocols, conduct tests and report results, and \$1.75 million, on a one-time basis, for the purchase of lab equipment. At the time the budgets were approved, the assumed ongoing operational costs of the three positions was \$607,648 for the 2025-27 biennium, with no services and supplies costs for positions, equipment, or facility overhead were included.

The cannabis reference lab began testing cannabis samples for contaminants in March 2024. Protocols have been developed and samples have been tested for potency, pesticides and heavy metals, with over 150 tests conducted in 2024, and an assumed 300 tests by the end of the biennium. The agencies report the following:

- The interagency agreement is structured as a "not-to-exceed" agreement, and ODA bills OLCC for expenses as incurred. Of the \$2.28 million provided for support of the

laboratory in the current biennium, OLCC has transferred \$1.15 million as of December 31, 2024.

- The three chemist positions are exclusively devoted to cannabis testing, and personal services expenditures billed to OLCC are based on actual costs for the positions. These costs are expected to increase in the 2025-27 biennium, due to pay equity and actual classification levels of the employees hired.
- No “per sample” cost has been contemplated for purposes of developing a fee-for-service model. Not enough historical data exists to estimate testing and volume based on regulatory initiatives or consumer complaints.

For the 2025-27 biennium, ODA is assuming its costs, including maintaining three chemists devoted to cannabis testing, and associated services and supplies, and an indirect rate of 15% of personal services costs and non-position-related services and supplies. This rate is consistent with charges to other customers for lab services, and ODA’s standard cost allocation rate, and is in lieu of charging OLCC for actual lab space and a proportionate share of utilities.

A revised estimate of reference lab operating costs in the 2025-27 biennium is \$1,377,268 Other Funds. This includes a more accurate projection of personal services costs for the existing three chemist positions devoted to the reference lab (\$780,333), services and supplies costs associated with these positions (\$111,885), program-related services and supplies (\$320,000), and the indirect rate of 15% of personal services and other services and supplies (\$165,050). The revised biennial cost does not any amount for repair or replacement of dedicated lab equipment. The estimated revenue transfer from OLCC to ODA to fund the reference lab in the 2027-29 biennium using the assumptions outlined above plus inflation of 3% is \$1.58 million.

The Legislative Fiscal Office notes that the increased costs for the reference lab, as well as a new cost allocation methodology related to the cost of administrative hearings for OLCC, is projected to reduce OLCC’s cannabis regulatory program’s 2025-27 ending balance to less than one month of operating costs. As a result, fee increases for recreational marijuana licensees in the 2025-27 biennium will be required to achieve a standard of 3-6 months of operating expenditures.

Recommendation: The Legislative Fiscal Office recommends acknowledging receipt of the report.

Oregon Liquor and Cannabis Commission Chase

Request: Report on the Oregon Department of Agriculture (ODA) cannabis reference laboratory by Oregon Liquor and Cannabis Commission (OLCC).

Recommendation: Acknowledge receipt of the report.

Discussion: Following the legalization of adult-use marijuana in Oregon, concerns surrounding product labeling; testing accuracy; and health and safety regulations emerged. To ensure quality control and consumer protection for cannabis products, the need for a dedicated cannabis reference laboratory was identified.

House Bill 2931 (2023) directed ODA, in consultation with OLCC and the Oregon Health Authority (OHA), to establish a reference laboratory to provide regulatory and technical support in the enforcement of Oregon's cannabis laws.

To address the complexities of regulating the cannabis marketplace, ODA and OLCC coordinated to leverage ODA's existing expertise in testing plants and food items. The 2023 Legislative Assembly authorized funding to enable ODA to acquire advanced machinery and hire additional staff to expand ODA's reference lab scope to include cannabis products – resulting in a state cannabis reference laboratory (CRL).

CRL serves as a neutral third-party entity with a multifaceted role, including method development, quality assurance reviews of other laboratories, and unbiased compliance testing. CRL testing results assist cannabis regulation by:

- Identifying, verifying, and supporting cannabis product recalls.
- Detecting harmful contaminants like pesticides, heavy metals, residual solvents, mycotoxins, and microbial contaminants that could pose risk to consumers.
- Monitoring and promoting consistency in testing results among licensed laboratories through proficiency testing and cross-lab comparison studies.

Pursuant to a Senate Bill 5519 (2023) budget note, OLCC and ODA were directed to enter into an interagency agreement (IAA) that specifies OLCC contributions and ODA services provided by a reference laboratory. The IAA, executed December 31, 2023, had a not-to-exceed amount of \$2.3 million, which included \$1.8 million for one-time equipment purchases and approximately \$532,000 for three chemist positions. Through December 2024, OLCC transferred \$1.1 million to ODA to acquire the necessary equipment and hire staff to conduct cannabis product testing.

Determining the ongoing CRL costs (e.g., sample costs) will require additional time and analysis for ODA to accurately estimate. Since the number of samples OLCC may have in any given year is unpredictable, the costs of processing samples vary, and ODA incurs fixed laboratory costs regardless of the number of samples processed, a per-sample pricing model is not yet feasible. ODA will continue to carefully assess these factors to establish an accurate and sustainable cost structure.

The 2025-27 budgeted transfer amount from OLCC to ODA in the Governor's Recommended Budget was \$696,000. Upon further analysis, ODA determined the projected 2025-27 costs for administering the CRL were higher (\$1.4 million). The additional costs to administer the CRL include position related costs, supply costs for testing activities, and an indirect rate of 15 percent for ODA central service costs (e.g., human resources, accounting). Cannabis-related licensure fees will be used to fund the increased CRL costs.



Oregon

Tina Kotek, Governor

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January 29, 2025

Senator Kate Lieber, Co-Chair
Representative Tawna Sanchez, Co-Chair
Joint Committee on Ways and Means
900 Court Street NE
H-178 State Capitol
Salem, OR 97301

Dear Co-chairs:

Nature of the Request

As required under a budget note the Oregon Liquor and Cannabis Commission (OLCC) and the Oregon Department of Agriculture (ODA) received during the 2023 legislative session, we respectfully submit our report on the Cannabis Reference Lab Agreement between the OLCC and the ODA. The budget note received was the following:

The Oregon Liquor and Cannabis Commission (OLCC) and the Oregon Department of Agriculture (ODA) shall enter into an inter-agency agreement that specifies OLCC contributions and ODA services provided by a reference laboratory. The reference laboratory shall provide a means of reviewing private lab test results for compliance with health and safety regulations related to accuracy, purity, potency and compliance of cannabis, hemp, and derived products. The agreement shall incorporate a statement of work that specifies expectations and commitments that include, but are not limited to the following issues:

- Financial information, including funds available and authorized, basis for method of contribution, frequency of payment, and periodic evaluation of costs and payments;
- Responsibilities regarding receiving, tracking, quality assurance, protocols, archiving and reporting results of samples and associated testing;
- Development of standardized testing content and timeliness and availability of results;
- Use of facilities and supplies, and how time and costs will be shared between users;
- Assistance with contested case and legal proceedings, including documentation, testimony, and other expertise; and
- Respective relationships with private laboratories, including interactions, oversight, and communications.

ODA shall track and report lab utilization, staff time, and costs attributable to the OLCC compared with other users for purposes of developing a fee schedule and biennial budget estimate for future biennia.

By March 2025, the OLCC and ODA shall report to the Joint Committee on Ways and Means on the status of reference laboratory information, including actual expenditures, staffing, utilization of lab services by entity, tests performed and anticipated, and other information as may be requested for inclusion by the Legislative Fiscal Office.

The legalization of adult-use marijuana in Oregon brought about the need for a dedicated cannabis reference lab. The ODA and OLCC continue to collaborate to address the complexities of this newly regulated marketplace. Regulations pertaining to pesticide use, food safety, and weights and measures were largely unfamiliar to OLCC licensees. As the cannabis market expanded, concerns arose regarding the accuracy of product labeling and testing, a process standard for various commodities nationwide.

Market basket testing is a crucial aspect of quality control and consumer protection for cannabis retail products. This testing method involves the systematic collection and analysis of a representative selection of commonly purchased items to evaluate their compliance with established standards. By assessing various products within the market basket, OLCC and ODA can monitor factors such as Tetrahydrocannabinol ("THC") and other cannabinoid content, pesticide and solvent testing, and labeling accuracy. This comprehensive approach enables the identification of trends, potential risks, and areas for improvement across the cannabis supply chain. Market basket testing plays a pivotal role in ensuring that consumers have access to safe, high-quality, and accurately labeled cannabis products, contributing to the overall integrity and trustworthiness of the cannabis industry.

The establishment of a state-based Cannabis Reference Lab ("CRL") is a significant stride towards enhancing consumer protection for the people in Oregon who purchase marijuana from licensed stores. It ensures that products meet the required standards and accurately reflect their contents on labels. Importantly, it allows OLCC to investigate complaints independently without relying on a lab licensed by the agency, maintaining transparency and integrity in the regulatory process. This collaborative effort between ODA and OLCC, driven by practicality and a commitment to consumer safety, reinforces the responsible regulation of the cannabis industry in Oregon.

Rather than constructing and staffing an OLCC testing lab, a fiscally responsible approach was taken. The established ODA Regulatory Lab, well-versed in testing plants and food items, was used. The 2023 Legislature authorized in House Bill 2931 OLCC funds to be transferred to ODA to expand the lab's scope, acquire advanced machinery, and hire additional staff, transforming it into a cannabis reference lab. The CRL serves as a neutral third-party entity with a multifaceted role, including method development, quality assurance reviews of other labs, and unbiased compliance testing.

Initial funds were allocated to cover the ODA expenses of acquiring necessary equipment and staffing for the CRL. This financial allocation is a strategic step in establishing the foundational elements required for the lab's operations. While these initial funds are instrumental in starting the project, it is important to note that determining sample costs will require additional time and analysis. Since the number of samples OLCC may have in any given year is unpredictable and the lab incurs fixed costs regardless of the number of samples processed, a per-sample pricing model is not yet feasible. ODA will continue to carefully assess these factors to establish an accurate and sustainable cost structure.

Agency Action

During 2023-25, OLCC and ODA entered into an inter-agency agreement (IAA) on December 31, 2023. In accordance with House Bill (HB) 2931 from the 2023 legislative session, the IAA had a not-to-exceed of \$2,281,689. This amount included \$1,750,000 for one-time equipment expenditures by ODA and \$531,689 for ODA staffing at the laboratory. Payments made from OLCC to ODA are being conducted in a phased approach implemented by ODA.

- Phase 1, Fiscal Year 2024:
 - ODA will purchase lab equipment and supplies;
 - Hire three lab chemist positions.
- Phase 2, Fiscal Year 2025:
 - ODA will implement the other requirements included in the aforementioned budget note and the IAA.

The 2025-27 budgeted transfer from OLCC to ODA for the reference lab is \$695,609.

Fund transfers/payments from OLCC to ODA through December 2024: \$1,149,090 **Other Funds**

- Equipment & Supplies \$1,121,199
- ODA laboratory staff, \$27,891

Key Milestones:

- December 2023 – IAA executed;
- January 2024 – Laboratory moved to current facility;
- March 2024 – Audit testing began and microbiological testing available;
- May 2024 – Potency testing available;
- July 2024 – Equipment ordered;
- July through October 2024 – OLCC Lab inspector, ODA Chemist 3, 2 and 1 hired;
- November 2024 – pesticide testing available;
- April 2025 – anticipated heavy metal, solvents and mycotoxin testing available.

Testing so far:

- Approximately 300 tests have been performed at the CRL.

Action Requested

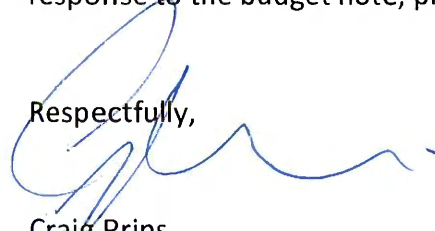
In response to the budget note the agencies received in 2023, the OLCC and the ODA respectfully request the Ways and Means Committee acknowledge receipt of this report.

Legislation Affected

N/A

If you have any questions or would like any additional information regarding the agency's response to the budget note, please let us know.

Respectfully,



Craig Prins
Executive Director
Oregon Liquor and Cannabis Commission

Lisa Charpilloz Hanson
Director
Oregon Department of Agriculture

CC:	Tara Wasiak	OLCC Deputy Director
	Rich Evans	OLCC Public Safety Director
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