

**TESTIMONY SUBMITTED TO THE
NEW YORK STATE SENATE SUBCOMMITTEE
ON CANNABIS**

**STANDING COMMITTEES ON AGRICULTURE,
FINANCE, AND INVESTIGATIONS AND GOVERNMENT
OPERATIONS**



October 30, 2023

Good afternoon.

Thank you, Chairman Cooney and members of the Cannabis Sub-committee; and Chairs Krueger, Skoufis, and Hinchey, and your fellow colleagues in the Senate for joining and extending the invitation to present at this hearing.

My name is Charlie Williams, I am Vice-President of the Dormitory Authority of the State of New York, or DASNY. I am joined by DASNY General Counsel R. Nadine Fontaine and Senior Director of External Relations Daniel Brown.

You are all familiar with DASNY, but briefly – DASNY is a public authority focused primarily on three lines of activity: construction services, financing, and grants management. DASNY serves NYS agencies, higher education institutions, hospitals, schools and other entities. In 2023, DASNY managed 1,068 construction projects for more than a dozen different client institutions, issued \$2.6 billion in bonds and executed 831 grant disbursement agreements with local governments, not-for-profits and other eligible entities. DASNY has about 460 employees located in Albany, NY; NYC; Buffalo, NY; Rochester, NY and at remote building sites in every region.

In 2022, DASNY's authority was expanded to permit it to make a limited investment in NYS Social Equity Cannabis Investment Fund (the "Fund"). Governor Hochul first proposed the Fund in the 2022-23 Executive Budget and the Legislature had the foresight to pass the legislation, in April 2022. This unique \$200 million public-private partnership – the first of its kind in the country – is focused on providing critical capital support to Conditional Adult Use Retail

Dispensary (CAURD) licensees. Lack of capital is identified as a primary barrier to market entry for many social equity entrepreneurs, and the Fund was formed to help address that deployment barrier and support social equity licensees.

The State approved \$50 million as the state investment into the Fund and the Fund was tasked with raising up to \$150 million in private debt funding. The Fund was successful in securing a funding commitment in an amount up to \$150 million from Chicago Atlantic, which closed in June 2023.

I would like to discuss DASNY's role in the state's cannabis social equity investment fund program and provide a timeline of the Authority's activities.

As you know, the Marijuana Regulation & Taxation Act (MRTA) was signed into law on March 31, 2021, legalizing adult-use cannabis in New York State and creating a new Office of Cannabis Management (OCM). OCM began the herculean task of establishing a new regulatory agency in a new industry. Following enactment of MRTA, the Fund was created in April 2022 and DASNY immediately began work on this new program. Significant work within an abbreviated period of time, was performed by DASNY, the Fund and SESC in getting this program to where it is today.

DASNY created a subsidiary, the Social Equity Servicing Corporation, or SESC, to serve as agent to the Fund. SESC works on behalf of the Fund, to find retail dispensary locations, negotiate leases, build out dispensaries and ultimately service the loan agreements and rent payments.

Following the Fund's enactment, and within the span of a few months (April, 2022 - September 2022), DASNY created its SESC subsidiary, executed a number of procurements, including: selection of a Fund Manager, selection of design build teams to conduct the design and construction of the dispensaries, issuing RFIs and

RFPs for banking services, point of sale systems, and more, all while developing an expansive statewide commercial real estate plan. SESC, as agent for the Fund, began the complex task of identifying premium retail dispensary locations around the State and initiating construction build-out of the leased locations.

DASNY's SESC subsidiary partnered with OCM and real estate experts to create a profile of what New York's ideal dispensary would look like in terms of size, quality and location. Market and consumer data from other states' dispensary efforts informed the effort to identify key trade areas that might offer the highest probability of success for our social equity entrepreneurs. Once we settled on the trade areas, SESC and the Fund set about the enormously complex task of identifying specific sites.

The effort began with the evaluation of up to 10,000 commercial retail sites statewide; and from there the funnel narrowed. First, proximity to schools, churches and any other existing dispensaries needed to be determined. Then any local zoning restrictions had to be considered. Mortgage or other property considerations like condominium status were evaluated – for example, federally chartered banks might be unwilling to allow a cannabis use for its mortgaged properties due to its federal schedule 1 drug status; and a condominium board might not approve a cannabis commercial use. Then landlord interest in cannabis generally and in our unique public private partnership had to be assessed, and specific site conditions evaluated.

This initial identification required months of work by SESC, partnered with OCM and commercial real estate experts. To give you a thumbnail sense of the funnel, of the first approximately 2,300 sites evaluated, SESC sent about 150 Requests for Information to property owners (RFI – to determine owner interest), and less than half of those were returned and pursued as potential targets.

In the midst of the nascent real estate effort, a federal lawsuit was filed in September 2022 challenging the CAURD licensing process in five regions of the State (Brooklyn, Central New York, Finger Lakes, Western New York and the Hudson Valley).

In November 2022, the federal court agreed and issued an injunction prohibiting licenses in these regions (which was narrowed to just the Finger Lakes in March 2023 and ultimately lifted due to settlement in May 2023).

Meanwhile only a handful of Long Island towns opted into the legal sale of cannabis, and in some cases enacted restrictive cannabis dispensary zoning requirements that do not meet the key trade area requirements of the Fund program. The net result was that about half the State's population was essentially blocked from Fund retail dispensaries at that time, requiring a change in direction and focus and halting real estate efforts in enjoined regions.

Notwithstanding these significant hurdles, the Fund started signing leases in December 2022, OCM matched licensees to the locations, and the design build process began as the real estate identification and negotiation process continued statewide.

Then, two additional lawsuits were filed in State court between March 16, 2023 and August 2, 2023 challenging the licensing and the CAURD program. These cases were consolidated by a state court judge, and another temporary injunction was issued in August 2023 halting OCM actions on CAURD licensees statewide, resulting in yet another pause of the SESC real estate negotiation process in the near term. This injunction remains in effect resulting in the loss of approximately 40 sites that were in active negotiations with landlords.

To date, on behalf of the Fund, SESC has advanced 24 executed leases; 16 of these were “matched” to operators by OCM before the most recent injunction; 23 construction work orders were issued; and 12 of those 16 matched dispensaries are complete or substantially complete. The Court has allowed sites that had met all OCM licensing requirements prior to August 7 to move forward and has approved an injunction exemption for at least one Fund-supported operator. SESC and the Fund continue to work with OCM to request the court exempt additional locations from the injunction. Including this exemption and the temporary “pop-up” locations, 6 Fund dispensaries are open, or will open or reopen soon.

SESC and DASNY are completely focused on the success of the New York State Cannabis Social Equity Investment Fund – a one-of-a-kind, new public-private partnership - and our social equity entrepreneurs. This is a new industry governed by a new agency that is 100% focused on creating the country’s strongest most equitable cannabis market from the bottom of the vertical to the top – seed to sale. The Fund is completely committed to success of the licensees participating in the program and has provided operators with capacity-building services, including shoulder-to-shoulder mentoring during and immediately after opening; assistance with securing commercial banking services, armed and unarmed security services, insurance for dispensary operations; obtaining a two-year contract with a point-of-sale system provider at no cost to the licensee; and more.

SESC and the Fund are committed partners to OCM, New York State, and our entrepreneurs in this endeavor, and we look forward to a positive resolution of the current litigation and continuing our important work.

Thank you again for this opportunity and thank you for your support for DASNY and excellent work our employees do on behalf of New York State.