

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 267

(Senator Conway, *et al.*)

Judicial Proceedings

Natalie M. LaPrade Medical Cannabis Commission - Composition and Licenses

This emergency bill repeals the current membership of the Natalie M. LaPrade Medical Cannabis Commission and reconstitutes it as five-member commission. The appointments must be confirmed by the Senate of Maryland. Additionally, the bill increases the number of medical cannabis growers that the commission is authorized to license from 15 to 20 – until June 1, 2018, when the cap may be lifted. The bill also establishes that the commission may license up to 25 processors – until June 1, 2018, when the cap may be lifted. The commission must (1) hire a medical cannabis consultant that meets specified qualifications to assist in scoring and grading applications for cannabis grower and processor licenses and (2) rescore the top 75 grower applications and the top 20 processor applications that were ranked by the Regional Economic Studies Institute (RESI) in accordance with newly enumerated weighted averages.

Fiscal Summary

State Effect: The bill likely results in certain license fees already paid being refunded, annual license fees that would otherwise be collected in FY 2018 not being collected, and additional expenditures related to hiring a consultant to rescore grower and processor license applications, with licenses likely not issued until FY 2019. Thus, special fund expenditures increase by as much as \$2.5 million in FY 2017 to issue refunds and by at least \$500,000 in FY 2018 for the consultant. Special fund revenues decrease by \$2.5 million in FY 2018, potentially with a slight offset in FY 2019 if Stage Two application fees must be paid again. Future years reflect lifting of the caps and revenue collections mirroring what could have occurred under current law.

(in dollars)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
SF Revenue	\$0	(\$2,475,000)	\$120,000	\$0	\$0
SF Expenditure	\$2,475,000	\$500,000	\$0	\$0	\$0
Net Effect	(\$2,475,000)	(\$2,975,000)	\$120,000	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Terms and Membership for the Natalie M. LaPrade Medical Cannabis Commission

The bill repeals the current law statutory provisions that establish board membership and creates a new five-member board: three members appointed by the Governor and one member each appointed by the President of the Senate and the Speaker of the House of Delegates. All members are subject to confirmation by the Senate of Maryland. The membership of the commission must reflect the racial diversity of the State. A member may not be employed or otherwise affiliated with a grower, processor, or dispensary for two years from the date on which the member's term ended.

Rescoring of Grower and Processor License Applicants

The consultant hired to assist in rescoring and grading grower and processor applications must have at least five years of experience either in growing, processing, and dispensing cannabis or as a consultant to growers, processors, or dispensaries. The consultant may not have a conflict of interest with an applicant for a grower license. (The bill is silent on whether the consultant may have a conflict of interest with an applicant for a processor license.)

The bill establishes that, if the required rescoring results in any applicant awarded a grower license in August 2016 being removed from the top 15 licenses awarded, the maximum number of grower licenses, as established under the bill, is correspondingly reduced by the same number of licenses so removed as a result of the rescoring.

The rescoring for grower applicants must be based on a total score of 100, using weighted averages for eight broad categories: (1) operational factors (18%); (2) safety and security factors (15%); (3) commercial horticultural or agricultural factors (10%); (4) production control factors (10%); (5) business and economic factors (15%); (6) adequate capitalization (10%); (7) majority equity African American ownership (that does not include any conversion or option rights or ownership that is conditioned on any conversions, options, or other similar rights) (7%); and (8) any additional factors deemed necessary (15%). The bill enumerates specific elements for consideration under each category. The commission

must rescore the grower applications without any change in investors, except that applicants may add up to two additional African American investors.

Likewise, the rescoring for processor applicants must be based on a total score of 100, using weighted averages for eight broad categories: (1) operational factors (18%); (2) safety and security factors (15%); (3) commercial laboratory, pharmaceutical manufacturing, and consumer products production factors (10%); (4) production control factors (10%); (5) business and economic factors (15%); (6) adequate capitalization (10%); (7) majority equity African American ownership (that does not include any conversion or option rights or ownership that is conditioned on any conversions, options, or other similar rights) (7%); and (8) any additional factors as deemed necessary (15%). The bill enumerates specific elements for consideration under each category. The commission must rescore the processor applications without any change in investors, except that applicants may add up to two additional African American investors.

Current Law/Background: Chapter 403 of 2013 established, Chapters 240 and 256 of 2014 expanded, and Chapter 251 of 2015 and Chapter 474 of 2016 further modified the State’s medical cannabis program. The Natalie M. LaPrade Medical Cannabis Commission currently allows for the licensure of growers, processors, and dispensaries and the registration of their agents. The program also establishes a framework to certify physicians, qualifying patients (including veterans), and their caregivers to provide qualifying patients with medical cannabis legally under State law via written certification. Effective June 1, 2017, dentists, podiatrists, nurse practitioners, and nurse midwives are authorized to be “certifying providers” – along with physicians – under the medical cannabis program. Specifically, a qualifying patient who has been provided with a written certification from an authorized certifying health care provider in accordance with a bona fide provider-patient relationship may obtain a 30-day supply of medical cannabis. Medical cannabis is defined in regulation as any product containing usable cannabis or medical cannabis finished product. A 30-day supply is defined as 120 grams of usable cannabis, unless a qualifying patient’s certifying physician determines that this amount is inadequate to meet the medical needs of the patient. Regulations establish posttraumatic stress disorder as one of several debilitating medical conditions.

Statute dictates that medical cannabis may only be obtained from a grower or dispensary licensed by the commission and that the commission may license no more than 15 growers initially. However, beginning June 1, 2018, the commission may issue the number of grower licenses necessary to meet demand for medical cannabis by qualifying patients and caregivers in an affordable, accessible, secure, and efficient manner. Section 13-3306 of the Health-General Article requires the commission to “actively seek to achieve racial, ethnic, and geographic diversity when licensing medical cannabis growers” and to “encourage applicants who qualify as a minority business enterprise.”

There is no established limit on the number of processor licenses. There is also no requirement for the commission to seek to achieve racial, ethnic, and geographic diversity when licensing medical cannabis processors nor to encourage applicants who qualify as a minority business enterprise.

The commission is authorized to set fees to cover its operating costs; these fees were established by regulations promulgated in September 2015. Grower application fees are paid in two stages: Stage One is \$2,000 and Stage Two is \$4,000. There is also an annual license fee of \$125,000. Dispensary application fees are also paid in two stages: Stage One is \$1,000 and Stage Two is \$4,000. There is also an annual license fee of \$40,000. An individual may apply for a grower-dispensary license with the applicable fee structure simply being a combination of grower and dispensary fees. The number of growers is still capped at 15 even if some licenses are combined grower-dispensary licenses. Processor application fees are also paid in two stages: Stage One is \$2,000 and Stage Two is \$4,000. There is also an annual license fee of \$40,000.

The commission opened applications for grower, processor, and dispensary licenses in September 2015. The application forms included instructions and a description of the scoring process for evaluating the applications. The commission received 145 grower applications, 124 processor applications, and 811 dispensary license applications. Towson University's RESI was commissioned to review the grower and processor applications through a double-blind review process in which all identifying information was redacted. The scoring system contained six main categories, including additional factors, which stated that, for scoring purposes, the commission may take into account the geographic location of the growing operation to ensure there is geographic diversity in the award of licenses. In August 2016, the commission announced the 15 growers and 15 processors who were awarded Stage One license pre-approvals. The evaluation procedures to be used in the award of dispensary licenses were adopted by the commission in November 2016.

Geographic diversity became an issue when two companies among the top 15 ranked growers did not receive pre-approval after being replaced by other companies in order to provide geographic representation throughout the State. Although the applications did not require applicants to include information related to location, in June 2016, the commission subsequently asked applicants for the locations of their prospective operations. In July 2016, a subcommittee of the commission unanimously voted to preliminarily approve the top 15 growers based on RESI's scoring, which did not include a consideration of location. Afterward, three members of the subcommittee reversed their vote, which resulted in two lower-ranked firms being moved into the top 15 growers in order to achieve geographic diversity. The two companies that were initially included in the top 15 growers but later removed are suing the commission, claiming that the determination of how geographic diversity was to be considered was unclear to applicants.

On October 28, 2016, the Department of Health and Mental Hygiene (DHMH) published regulations revising existing regulations concerning the Natalie M. LaPrade Medical Cannabis Commission. Among other provisions, the regulations require the commission to promptly issue a refund of the annual license fee paid for a grower, processor, or dispensary license in the event that the commission does not issue a license. The period within which the Joint Committee on Administrative, Executive, and Legislative Review may review the regulations expired on December 13, 2016, and DHMH is free to adopt the regulations. However, to date, the department has not taken final action on the regulations.

State Fiscal Effect: Despite the bill's emergency effective date, this analysis assumes that the reconstitution of the commission, which requires gubernatorial and legislative appointment and Senate confirmation, is not accomplished during the 2017 legislative session. Thus, any actions taken by the commission, including the required rescoring, are necessarily delayed until the start of the 2018 legislative session. Accordingly, the rescoring is likely not completed until fiscal 2019 at the earliest. Therefore, the bill's authorization for the commission to award up to 20 medical cannabis grower licenses and 25 medical cannabis processor licenses likely has no meaningful fiscal impact due to the fact that the cap on grower and processor licenses is lifted beginning June 1, 2018. At that time, the commission may issue the number of grower and processor licenses necessary to meet the demand in an affordable, accessible, secure, and efficient manner.

State Revenues: Special fund revenues for the commission are affected in the near term. The bill requires the commission to rescore the top 75 grower license applications and the top 20 processor license applications from among the initial pool of each group of applicants, with consideration given to the specified new factors and weights applied accordingly. Because these applicants have already paid their Stage One application fees (\$2,000 each), no new revenues are expected in order to initiate the rescoring. However, as the status of the pre-approvals already awarded for a grower and processor license is unclear, due to the required scoring, this analysis assumes annual license fees that would otherwise be collected in fiscal 2018 are not collected.

Accordingly, special fund revenues decrease by at least \$2,475,000 in fiscal 2018 (reflecting 15 growers paying the \$125,000 annual license fee for a total of \$1,875,000 and 15 processors paying the \$40,000 annual license fee for a total of \$600,000). In fiscal 2019, this analysis assumes newly scored growers and processors are awarded pre-approval and pay the Stage Two application fee (\$4,000 each) even though they may have already done so; thus, special fund revenues increase by \$120,000 that year. Any impact due to more than 15 growers or 15 processors being awarded licenses has not been factored into this estimate because the cap will have been lifted and they could be awarded anyway under current law. Likewise, the first annual license fee that must be paid would have already been collected as a renewal license fee under current law, absent the rescoring.

Any impact on revenues associated with licensing dispensaries and other regulatory aspects of making medical cannabis available to qualifying patients has not been accounted for in this analysis; however, the bill likely results in a significant delay in issuance of licenses, agent registrations, and identification cards as well as the collection of associated fees.

State Expenditures: This analysis assumes that, due to the required rescoring, the commission refunds any grower or processor annual license fees that have already been paid. (Although the regulations mentioned above have not yet been finalized, this estimate assumes they are and refunds are paid. It also assumes refunds are not applicable to Stage Two application fees.) Thus, special fund expenditures increase by as much \$2,475,000 to refund the annual license fee (\$125,000 paid by 15 growers and \$40,000 paid by 15 processors for a total of \$2,475,000). This estimate assumes that the processors will have paid their fees; to the extent any have not, the amount of the refunds necessary is reduced. Likewise, if the regulations requiring refunds are not finalized, then such costs are mitigated. For purposes of this analysis, the refunds are assumed to be issued in fiscal 2017; however, that impact could be delayed in fiscal 2018 after the commission has been fully reconstituted.

Special fund expenditures for the commission increase by at least \$500,000 in fiscal 2018 to hire a qualified consultant to rescore the top 75 grower applications and the top 20 processor license applications. Although the bill is an emergency bill, this estimate reflects a delay in implementation due to the requirement to appoint new commission members, with all members appointed subject to confirmation by the Senate, and the need to procure a consultant that meets the bill's requirements and award a contract. Thus, special fund expenditures related to hiring a consultant are likely incurred in fiscal 2018, at the earliest. To the extent that the rescoring is not complete in fiscal 2018, the total consulting fee is borne in both fiscal 2018 and 2019. The commission based this estimate on the costs to conduct the initial scoring of grower and processor applications through RESI. The commission advises that the additional scoring requirements established under the bill are significant and require resources not currently available within the department. The Department of Legislative Services advises that the costs associated with the rescoring processes delineated in the bill are likely much higher.

Revoking Stage One pre-approval for a license (for both growers and processors) likely results in litigation, with a significant operational and fiscal impact on the commission. Any such impact has not been accounted for in this analysis.

Likewise, this analysis does not account for any savings attributable to the commission being inactive for several months, the reduced reimbursement costs associated with fewer members, or the likely need for ongoing contractual assistance due to the loss of members with extensive subject matter expertise.

Small Business Effect: The bill has significant negative operational and fiscal impacts on any growers or processors that were awarded Stage One pre-approvals for a license and are delayed in their implementation or lose the Stage One pre-approval due to the required rescoring. Further, the bill's requirement to replace commission members and conduct a complete rescoring of grower and processor license applications delays the timeframe for cultivation and distribution of medical cannabis – not just for growers and processors but also for dispensaries (which may be small businesses), resulting in lost revenues related to selling medical cannabis. The commission advises that some applicants have spent millions of dollars to meet the requirements of the application process, obtain the Stage One pre-approval for a license, and otherwise prepare for implementation.

There is likely no meaningful impact on the number of small businesses that are able to obtain a grower or processor license because the increase in the cap is a short-term measure, and the cap is likely lifted by the time the commission is able to reissue pre-approvals and licenses, as discussed above.

Additional Information

Prior Introductions: None.

Cross File: HB 487 (Delegate Glenn, *et al.*) - Health and Government Operations.

Information Source(s): Department of Health and Mental Hygiene; Department of Legislative Services

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