

Department of Legislative Services
 Maryland General Assembly
 2017 Session

FISCAL AND POLICY NOTE
 First Reader

Senate Bill 788 (Senator Edwards)
 Judicial Proceedings

Natalie M. LaPrade Medical Cannabis Commission - Medical Cannabis Grower Licenses

This bill requires the Natalie M. LaPrade Medical Cannabis Commission to issue 25 medical cannabis grower licenses by December 31, 2017. The bill modifies the requirement to actively seek to achieve geographic diversity when licensing medical cannabis growers by giving additional weight and consideration to an applicant located in a qualified distressed county, as defined under the Economic Development Article. Additionally, the commission must actively seek medical cannabis grower applicants that incorporate elements of a medical cannabis research program in their applications, which may include collaboration with higher education and health care institutions.

The bill takes effect July 1, 2017.

Fiscal Summary

State Effect: Special fund revenues for the commission increase by about \$1.5 million in FY 2018 from application and licensing fees for additional licensed growers. Future years reflect annual grower license fees. Special fund expenditures increase by at least \$400,000 in FY 2018 only for the commission to hire a contractor to review and score additional grower applications according to the bill’s specifications and within the limited timeframe accorded by the bill.

(in dollars)	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
SF Revenue	\$1,490,000	\$1,250,000	\$1,250,000	\$1,250,000	\$1,250,000
SF Expenditure	\$400,000	\$0	\$0	\$0	\$0
Net Effect	\$1,090,000	\$1,250,000	\$1,250,000	\$1,250,000	\$1,250,000

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

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Current Law/Background:

Qualified Distressed County

A “qualified distressed county” means a county with (1) an average rate of unemployment for the most recent 24-month period for which data are available that exceeds 150% of the average rate of unemployment for the State during that period; (2) an average per capita personal income for the most recent 24-month period for which data is available that is equal to or less than 67% of the average per capita personal income for the State during that period; or (3) a county that no longer meets either criterion, but met at least one of the criteria at some time during the preceding 24-month period.

Natalie M. LaPrade Medical Cannabis Commission

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.”

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.

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 Regional Economic Studies Institute (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.

State Revenues: Special fund revenues increase by an estimated \$1,490,000 in fiscal 2018 and by \$1,250,000 annually thereafter. The Department of Legislative Services (DLS) notes that some portion of this revenue increase may have been realized under current law because the 15-grower limit may be lifted June 1, 2018, to meet demand. However, the timing and specific amount of any potential future increase in growers under current law is uncertain because it depends on patient demand and the commission's determination.

The bill requires that 25 medical cannabis growers be licensed by the commission before December 31, 2017. This analysis assumes no changes in any of the 15 Stage One pre-approvals for a license that have already been awarded; however, the estimate reflects immediately reopening applications for grower licenses to award 10 additional pre-approvals for a license. Based on the earlier interest in obtaining a grower license and the bill's requirement for a greater focus on geographic diversity as well as a new focus on a research component, the estimate assumes 100 applicants pay the \$2,000 Stage One application fee. It also reflects the awarding of 10 additional Stage One pre-approvals for a license, with all 10 applicants selected for pre-approval paying the \$4,000 application fee at Stage Two as well as the first-year license fee of \$125,000 when approved in fiscal 2018. The same 10 licensees continue to pay the annual licensing fee of \$125,000, resulting in \$1,250,000 being collected annually thereafter.

Special fund revenues attributable to grower agent registration fees also increase, but DLS does not have a reliable estimate for the number of grower agents hired by each licensed grower. Growers pay a \$200 registration fee for each agent. Previously, the commission has advised that, although regulations require grower agent identification cards to be renewed every two years, the commission only plans to charge the fee initially.

State Expenditures: Special fund expenditures for the commission increase by at least \$400,000 in fiscal 2018 to hire a contractor to assist the commission in awarding the 10 additional grower licenses needed to meet the bill's requirement of 25 medical cannabis growers being licensed by December 31, 2017. The commission based this estimate on the costs to conduct the initial scoring of grower licenses through RESI. The commission advises that the additional scoring requirements established under the bill are significant; an outside contractor is needed to review and score the new applications, particularly given the expedited timeframe to do so under the bill.

As noted above, this estimate assumes that determinations made in August 2016 stand, and those grower applicants that were awarded Stage One license pre-approvals are able to retain their award. DLS advises that, to the extent the bill's intent is to have the commission revoke previously awarded license pre-approvals, reopen applications for the entire 25 licenses to be issued, and rescore all new applications based on the additional elements to be considered in making the licensing determinations, costs increase significantly more, including the likely refunding of certain fees already paid. Moreover, the timeframe for

cultivation and distribution of medical cannabis in the State is further delayed, likely significantly.

Small Business Effect: Meaningful to the extent that a small business is able to obtain a grower license under the bill's provisions sooner than it otherwise would. However, it is unknown whether any of the new applicants will be small businesses.

If the bill requires the commission to rescore the original determinations and revoke previously awarded license pre-approvals, there is a significant negative operational and fiscal impact on any small business growers awarded Stage One pre-approvals for a license as their implementation is delayed or their award is lost due to any such rescoring. Further, any need to rescore all original determinations delays the timeframe for cultivation and distribution of medical cannabis – not just for growers but also for processors and 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.

Additional Information

Prior Introductions: None.

Cross File: HB 1429 (Delegates Platt and Buckel) - Health and Government Operations.

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

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