

Department of Legislative Services
 Maryland General Assembly
 2019 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1156 (Delegate Mosby)
 Health and Government Operations

Medical Cannabis - Medical Cannabis Business Development Fund -
 Establishment

This bill repeals the requirement that the Natalie M. LaPrade Medical Cannabis Commission make grants relating to small, minority, and women business owners and instead establishes the Medical Cannabis Business Development Fund, administered by the Department of Housing and Community Development (DHCD), to provide grants and financial assistance to minority and women owners and entrepreneurs of small businesses. The Comptroller must determine the State income tax paid by each owner of a licensed medical cannabis entity attributable to income derived from the medical cannabis industry and distribute 2% of that amount into the new fund. **The bill takes effect July 1, 2019.**

Fiscal Summary

State Effect: General fund revenues decrease, and special fund revenues increase, by \$42,500 in FY 2020; out-years reflect continued diversion of tax revenues to the new fund. General fund expenditures increase by \$363,000 in FY 2020 for the Comptroller’s Office; out-years reflect ongoing costs. Special fund expenditures decrease by a net of \$182,500 in FY 2020 from elimination of the commission’s grant program, offset by new spending under the special fund; out-years reflect availability of additional monies.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
GF Revenue	(\$42,500)	(\$56,600)	(\$62,300)	(\$68,500)	(\$75,400)
SF Revenue	\$42,500	\$56,600	\$62,300	\$68,500	\$75,400
GF Expenditure	\$363,000	\$83,000	\$85,800	\$88,700	\$91,800
SF Expenditure	(\$182,500)	(\$168,400)	(\$162,700)	(\$156,500)	(\$149,600)
Net Effect	(\$180,500)	\$85,300	\$76,900	\$67,700	\$57,800

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

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The Medical Cannabis Business Development Fund is a special, nonlapsing fund that consists of (1) income tax revenue distributed, as specified; (2) money appropriated in the State budget; (3) interest earnings; and (4) any other money from any other source accepted for the benefit of the fund. The fund is subject to audit by the Office of Legislative Audits.

DHCD must make grants from the fund to educational and business development organizations to train and assist minority and women owners and entrepreneurs of small businesses seeking to become medical cannabis licensees or to establish new businesses to provide necessary services solely to medical cannabis licensees. Grants to educational and business development organizations may comprise no more than 15% of the money in the fund annually.

DHCD must also provide financial assistance to minority and women owners and entrepreneurs of small businesses seeking medical cannabis licensure or to establish new businesses to provide necessary services solely to medical cannabis licensees.

By January 15 annually, DHCD must report to the commission and the General Assembly on any grants awarded or financial assistance provided to eligible individuals during the preceding year. DHCD must adopt regulations to implement the bill.

By December 1 annually, the Comptroller must determine the State income tax paid by each owner of a licensed medical cannabis grower, processor, or dispensary that is attributable to income derived from the medical cannabis industry for the immediately preceding taxable year. The commission must provide the Comptroller any information required to make this determination. After making specified income tax revenue distributions, the Comptroller must distribute 2% of the State income tax paid by each licensed medical cannabis entity owner attributable to income tax derived from the medical cannabis industry into the Medical Cannabis Business Development Fund.

Current Law:

Natalie M. LaPrade Medical Cannabis Commission

The Natalie M. LaPrade Medical Cannabis Commission is responsible for implementation of the State's medical cannabis program, which is intended to make medical cannabis available to qualifying patients in a safe and effective manner. The program allows for the licensure of growers, processors, and dispensaries and the registration of their agents, as well as registration of independent testing laboratories and their agents. There is a framework to certify health care providers (including physicians, dentists, podiatrists,

nurse practitioners, and nurse midwives), qualifying patients, and their caregivers to provide qualifying patients with medical cannabis legally under State law via written certification.

Legislation to alter the commission and medical cannabis industry was introduced during the 2017 and 2018 sessions. Chapter 598 of 2018, an emergency bill, made a number of significant reforms including requiring the commission to conduct ongoing, thorough, and comprehensive outreach to small, minority, and women business owners and entrepreneurs that may have an interest in applying for a medical cannabis license, including (1) developing partnerships with specified entities and collaborating with these partners to ensure outreach is appropriately targeted; (2) establishing and conducting training programs for employment in the medical cannabis industry; and (3) disseminating information about the licensing process through targeted media. The commission was also required to partner with the Department of Labor, Licensing, and Regulation to identify employment opportunities within the medical cannabis industry for job seekers, dislocated workers, and ex-offenders.

Chapter 598 of 2018 also required the commission to make grants to appropriate educational and business development organizations to train and assist small, minority, and women business owners and entrepreneurs seeking to become licensed. Pursuant to Chapter 598, in December 2018, the commission announced five grant awards to educational and business development organizations to develop medical cannabis educational and business development training programs. The programs are designed to provide training and assistance to small, minority, and women business owners and entrepreneurs seeking to become licensed in Maryland's medical cannabis industry. For more information regarding the commission and Maryland's medical cannabis program, please see the **Appendix – Medical Cannabis**.

Income Tax Distribution

The Revenue Administration and Compliance divisions of the Comptroller of the Treasury are primarily responsible for collecting and administering the income tax. Individual income tax revenues (after an allowance for refunds, administrative costs, and unallocated withholdings) are distributed to the general fund. The local portion of the tax imposed by the counties and Baltimore City is collected by the State and, after deducting administrative costs and a pro rata share of refunds, is distributed to local governments.

Background: As of January 9, 2019, the commission issued 15 final and 3 pre-approved grower licenses; 16 final and 2 pre-approved processor licenses; and 71 final and 31 pre-approved dispensary licenses. Additionally, the commission has registered five independent laboratories. The commission maintains a list of licensees on its [website](#). Furthermore, there were 79,427 registered patients, 54,236 certified patients,

4,890 caregivers, and 1,243 certifying providers. The commission reported that, in the first 13 months of sales, there were \$112.1 million in retail sales at medical cannabis dispensaries in the State.

State Revenues: Under the bill, general fund revenues decrease by an estimated \$42,476 in fiscal 2020, and special fund revenues increase correspondingly. **Exhibit 1** shows the estimated impact of the bill on the general fund and the new Medical Cannabis Business Development Fund from the required distributions over the five-year period covered by this fiscal and policy note.

Exhibit 1
Revenue Impact on the General Fund and the
Medical Cannabis Business Development Fund
Fiscal 2020-2024

	<u>FY 2020</u>	<u>FY 2021</u>	<u>FY 2022</u>	<u>FY 2023</u>	<u>FY 2024</u>
General Fund	(\$42,476)	(\$56,635)	(\$62,299)	(\$68,529)	(\$75,381)
Medical Cannabis	42,476	56,635	62,299	68,529	75,381
Business Development Fund					

Source: Department of Legislative Services

Medical cannabis sales totaled over \$96.0 million in 2018, and cannabis sales are expected to grow as more licenses are issued and the number of patients increases. Thus, this estimate is based on projected medical cannabis sales in Maryland of almost \$250 million in tax year 2020 and reaching nearly \$441 million by tax year 2024. This estimate also assumes a profit margin of 18% of sales. Most of the pre-approved license holders are limited liability corporations, so it is assumed that taxpayers file under the individual income tax. However, to the extent that the taxpayers are corporations, general funds decrease by a lesser amount and special fund revenues are less because the bill does not redirect corporate income tax revenues.

State Expenditures:

Comptroller Expenditures

General fund expenditures increase by \$362,975 in fiscal 2020, which accounts for the bill's July 1, 2019 effective date. This estimate reflects the cost of hiring one full-time permanent revenue administrator in the Comptroller's Office to (1) promulgate regulations for the apportionment of income and potentially tax expenditures; (2) determine eligible

income tax paid by licensed medical cannabis entity owners that is attributable to income derived from the medical cannabis industry; and (3) make required distributions to the new fund. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses. The estimate also includes a one-time cost to create a new tax form for licensed medical cannabis entity owners to make the required distributions.

Position	1.0
Salary and Fringe Benefits	\$82,460
One-time Expense for New Tax Form	275,000
Operating Expenses	<u>5,515</u>
Total FY 2020 General Fund Expenditures	\$362,975

Future year expenditures reflect a full salary with annual increases and employee turnover and ongoing operating expenses.

Natalie M. LaPrade Medical Cannabis Commission

Special fund expenditures for the commission decrease by an estimated \$225,000 annually beginning in fiscal 2020 from repealing the requirement that the commission provide grants to appropriate educational and business development organizations to train and assist small, minority, and women business owners seeking licensure in the medical cannabis industry. As mentioned above, in fiscal 2019, the commission issued its first round of grants – five grants of \$25,000 each. This analysis assumes that, in the absence of the bill, the commission would have continued to issue grants at the same funding level in out-years.

The commission can provide information to the Comptroller with existing budgeted resources and staff.

Administration of the Fund by the Department of Housing and Community Development

It is assumed that DHCD can implement the grant program with existing resources and staff. However, depending on the magnitude of the grant program and actual funding available, DHCD may need to hire staff to administer the program or incur expenditures to train existing staff. Given the limited funding available to the new fund, any staffing or training costs would require additional general fund expenditures.

The Office of Legislative Audits can conduct any necessary audit-related work during the regularly scheduled DHCD fiscal compliance audit using existing resources and personnel.

Grant Funding from the Medical Cannabis Business Development Fund

Given the limited funding available, it is assumed that DHCD uses all available funding annually to issue grants and provide financial assistance to eligible organizations and individuals. Thus, special fund expenditures from the new fund increase by \$42,476 in fiscal 2020, increasing to \$75,381 in fiscal 2024.

Small Business Effect: Under the bill, less funding is awarded as grants to educational and business development organizations to train and assist minority and women business owners and entrepreneurs who are seeking to obtain licensure. For example, in fiscal 2020, instead of \$225,000 through the commission, grant funding is limited to less than \$6,375.

Additional Comments: The Comptroller's Office advises that it will be impossible to make the required distribution in the first year the bill is effective since that would require distribution changes that were not in place for the tax year 2018 filing season. Accordingly, new special fund revenues and expenditures for fiscal 2020 are likely not available. Even so, this analysis assumes that the required distribution is able to be made in fiscal 2020 for tax year 2019 (the distribution for that tax year would likely be made in fiscal 2021 under the bill) and that there is no offsetting impact on future year distributions.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Comptroller's Office; Maryland Department of Health; Department of Housing and Community Development; Department of Legislative Services – Office of Legislative Audits

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mm/jc

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Appendix – Medical Cannabis

Natalie M. LaPrade Medical Cannabis Commission

The Natalie M. LaPrade Medical Cannabis Commission is responsible for implementation of the State’s medical cannabis program, which is intended to make medical cannabis available to qualifying patients in a safe and effective manner. The program allows for the licensure of growers, processors, and dispensaries and the registration of their agents, as well as registration of independent testing laboratories and their agents. There is a framework to certify health care providers (including physicians, dentists, podiatrists, nurse practitioners, and nurse midwives), qualifying patients, and their caregivers to provide qualifying patients with medical cannabis legally under State law via written certification. Additionally, recent legislation extended legal protections to third-party vendors authorized by the commission to test, transport, or dispose of medical cannabis, medical cannabis products, and medical cannabis waste. In December 2018, the commission proposed regulations that require registration of secure transportation companies and address the shipment of products between licensees.

Controversy Over Geographic, Racial, and Ethnic Diversity

In August 2016, the commission announced the award of 15 grower and 15 processor Stage One license pre-approvals. In December 2016, the commission announced the award of 102 dispensary Stage One license pre-approvals. After the award announcements, significant controversy involved two main issues: the decision to include geographic diversity as a final factor in choosing the grower finalists and the absence of any minority-led grower among the 15 Stage One approved grower finalists.

Legislation to alter the commission and medical cannabis industry was introduced during the 2017 and 2018 sessions. Chapter 598 of 2018, an emergency bill, made a number of significant reforms including (1) requiring outreach to encourage participation in the medical cannabis industry by small, minority, and women business owners; (2) requiring the commission to promulgate emergency remedial regulations based on the results of a disparity study and delay reviewing, ranking, or evaluating license applications until the regulations are adopted; (3) raising the statutory cap on grower licenses from 15 to 22; (4) establishing a new license cap of 28 processors; and (5) requiring the commission to report to the General Assembly regarding potential rules and regulations governing marketing and advertising practices for licensees by January 1, 2019.

Pursuant to Chapter 598, in December 2018, the commission announced five grant awards to educational and business development organizations to develop medical cannabis educational and business development training programs. The programs are designed to provide training and assistance to small, minority, and women business owners and entrepreneurs seeking to become licensed in Maryland’s medical cannabis industry.

Evaluation of Disparity Study and Conclusions

The disparity study evaluated in accordance with Chapter 598 concluded that there is a compelling interest to implement remedial measures to assist minorities and women seeking to participate in the medical cannabis industry. Based on these findings, the commission submitted emergency regulations in October 2018. The regulations alter the application review process for obtaining a medical cannabis grower, processor, and dispensary license by implementing remedial measures to assist minorities and women in the medical cannabis industry. The regulations also alter the current weighted criteria used when ranking applicants for licenses to include certain race-neutral and race-conscious provisions, addressing the needs of women and minority-owned applicants.

License and Ownership Transfers

Chapter 598 of 2018 also addressed the sale or transfer of ownership for regulated medical cannabis entities. Specifically, a medical cannabis grower, processor, or dispensary license holder may only transfer ownership of a license if the licensee was physically and actively engaged in cultivating, processing, or dispensing medical cannabis for at least two years immediately preceding the sale or transfer. Regulations require licensed growers, processors, and dispensaries to (1) notify the commission of any proposed transfer of 5% or more of an ownership interest; (2) submit criminal history and audited financial information for the potential owner or transferee; (3) obtain written commission approval of the transfer; and (4) pay a transfer fee. Statute prohibits the commission from issuing more than one medical cannabis grower license to each applicant. Regulations specify that license applicants may only have an interest in one of each type of license. In February 2018, the commission issued a [bulletin](#) highlighting rules related to the sale or transfer of a medical cannabis license. The bulletin also addressed third-party management agreements, which some licensees have entered into to allow third parties to contract to operate the licensee's business without possessing an ownership stake.

Status of Medical Cannabis Implementation

As of January 9, 2019, the commission issued 15 final and 3 pre-approved grower licenses; 16 final and 2 pre-approved processor licenses; and 71 final and 31 pre-approved dispensary licenses. Additionally, the commission has registered five independent laboratories. The commission maintains a list of licensees on its [website](#). Furthermore, there were 79,427 registered patients, 54,236 certified patients, 4,890 caregivers, and 1,243 certifying providers. The commission reported that, in the first 13 months of sales, there were \$112.1 million in retail sales at medical cannabis dispensaries in the State.