

Department of Legislative Services
 Maryland General Assembly
 2020 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 821 (Senator Klausmeier)
 Finance

Cannabis - Medical Cannabis Boutique Grower License and Pesticides

This bill establishes a new medical cannabis boutique grower and processor license within the State’s medical cannabis program that authorizes a licensee to grow and process medical cannabis on the same premises. The bill establishes minimum qualifications for boutique license applicants; procedures to apply for, evaluate, and issue the licenses; and reporting requirements for licensees; it also makes certain conforming changes to the current statutory framework for the State’s medical cannabis program. In addition, the bill authorizes a person to submit an application to the Maryland Department of Agriculture (MDA) for approval to use a pesticide in the production of cannabis.

Fiscal Summary

State Effect: Special fund expenditures increase by \$1.0 million in FY 2021 for staff and contractual expenses to evaluate applications; out-years primarily reflect annualization and elimination of one-time costs. Special fund revenues increase by \$800,000 in FY 2021 from application fees and by \$1.25 million annually thereafter from annual licensing fees.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
SF Revenue	\$800,000	\$1,250,000	\$1,250,000	\$1,250,000	\$1,250,000
SF Expenditure	\$1,010,200	\$430,300	\$340,500	\$317,700	\$328,700
Net Effect	(\$210,200)	\$819,700	\$909,500	\$932,300	\$921,300

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: A “boutique grower” is an entity granted a medical cannabis boutique grower and processor license under the bill. A “boutique license” is a medical cannabis boutique grower and processor license.

Licensing and Renewal Requirements

A person may not have an ownership interest in or control of more than one boutique grower. To apply, a boutique grower must pay a \$4,000 application fee and demonstrate adequate capitalization, as specified. An entity seeking licensure as a boutique grower must meet local zoning and planning requirements. A boutique grower facility cannot exceed 30,000 square feet. A boutique grower license is valid for one year upon initial licensure and renewal. The annual licensing fee is \$125,000. From each annual licensing fee collected, \$50,000 must be distributed to the commission and \$75,000 must be distributed to MDA to administer pesticide approval provisions related to cannabis.

Application Evaluation Requirements for the Commission

The commission must, to the extent authorized by federal and State law, actively seek to achieve racial, ethnic, gender, and geographic diversity when licensing boutique growers, and must encourage applicants who qualify as a minority business enterprise or who are small, minority, or women-owned business entities to apply for licensure. The commission must establish goals to (1) license boutique growers with no less than 30% ownership of the grower consisting of entities certified as minority-owned business enterprises (MBEs) or women-owned business enterprises in specified fields; (2) license boutique growers whose use of subcontractors and vendors consists of at least 30% of subcontractors and vendors certified as MBEs or women-owned business enterprises; and (3) license boutique growers who employ a workforce comprising at least 30% of employees from economically disadvantaged communities.

The commission must encourage licensing boutique growers that grow strains of cannabis, including strains with high cannabidiol (CBD) content, and a broad variety of tetrahydrocannabinol and CBD content, with demonstrated success in alleviating symptoms of specific diseases or conditions.

Administrative Requirements for the Commission

The commission must license a boutique grower that meets all commission requirements to operate in the State to provide cannabis to (1) licensed processors; (2) licensed dispensaries; and (3) registered independent testing laboratories. Notwithstanding current statutory limitations on the number of grower and processor licenses, the commission may

issue up to 10 boutique licenses under the bill. The commission must also establish an application review process to grant boutique licenses and establish specified safety and security standards.

Boutique Agents

The bill establishes minimum requirements for boutique agents, requires boutique agents to be registered with the commission, and establishes procedures that must be followed when an agent ceases to be associated with the licensee. The bill also establishes legal protections for a boutique agent acting in accordance with related statutory provisions.

Use of Pesticides and Application for Pesticide Review by the Maryland Department of Agriculture

A person may submit a written application to the Secretary of Agriculture to approve the use of a pesticide in the production of cannabis. The Secretary must notify the applicant whether or not the request is granted or denied. The application must include a certified risk assessment for the pesticide that was performed by an independent accredited laboratory approved by the Secretary. The risk assessment must conclude that the use of the pesticide in the cultivation of cannabis will not lead to unreasonable adverse effects on human health or the environment after considering the use of the pesticide (1) on food or tobacco; (2) by the type of application method; or (3) on crops with agronomic characteristics similar to cannabis. In evaluating whether a pesticide poses an unreasonable risk to human health, the Secretary must consult with the Secretary of Health.

A boutique grower may only use a pesticide in the production of medical cannabis if the pesticide is registered with the U.S. Environmental Protection Agency (EPA) for specified uses or if it is registered with MDA in accordance with the bill.

Current Law/Background:

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, there are legal protections for third-party vendors authorized by

the commission to test, transport, or dispose of medical cannabis, medical cannabis products, and medical cannabis waste.

Use of Pesticides on Medical Cannabis

Chapter 598 of 2018 required MDA, in consultation with the commission, to submit emergency regulations to allow the registration and use of crop protection agents in the cultivation of medical cannabis as part of an integrated pest management plan. Prior to this legislation, no pesticides were permitted for use on medical cannabis in the State. MDA issued the required emergency regulations, effective July 6, 2018, that permit the use of specified pesticides, or crop protection agents, in the cultivation of medical cannabis. The final regulation became effective October 8, 2018. The list of pesticides allowed in the cultivation of medical cannabis is available on MDA's [website](#).

Status of Medical Cannabis Implementation

Statute limits the number of grower and processor licenses the commission can issue, and regulations establish a limit on the number of dispensary licenses. Specifically, the commission can issue 22 grower, 28 processor, and 102 dispensary licenses. As of January 2020, the commission had issued 17 final grower licenses, 18 final processor licenses, and 85 final dispensary licenses. Additionally, the commission had registered six independent laboratories. The commission maintains a list of licensees on its [website](#). Furthermore, there were 37,363 registered patients, 88,594 certified patients, 8,003 caregivers, and 1,705 certifying providers. The commission reported that between December 2018 and December 2019 there were \$268.3 million in retail sales at medical cannabis dispensaries in the State.

State Revenues: The bill establishes a \$4,000 application fee and a \$125,000 annual licensing fee for a boutique grower license. Thus, special fund revenues for the commission increase by \$800,000 in fiscal 2021, which assumes 200 interested parties apply for licensure under the bill. Assuming the commission awards all 10 licenses it is authorized to issue under the bill, annual license fees generate \$1.25 million in revenues each year beginning in fiscal 2022. Annual licensing fee revenue is split 40%/60% between the commission and MDA. Thus, beginning in fiscal 2022, special fund revenues increase by \$500,000 annually for the commission and by \$750,000 annually for MDA. The number of applicants and the timing to issue new licenses is based on past licensing cycles.

This estimate does not reflect any special fund revenues attributable to registration of boutique agents as the Department of Legislative Services (DLS) does not have a reliable estimate for the number of agents hired by each licensee. Growers, dispensaries, and processors pay a \$200 registration fee for each agent.

State Expenditures:

Administrative Costs for the Commission

Special fund expenditures for the commission increase by \$910,186 in fiscal 2021, which accounts for the bill's October 1, 2020 effective date. This estimate reflects the cost of hiring two full-time permanent employees (two policy analysts) and two full-time contractual enforcement officers (for two years) to (1) issue new licenses; (2) establish new policies and procedures related to the new license category; (3) conduct inspections of new facilities; (4) issue grants and conduct outreach to small, minority, and women business owners and entrepreneurs who have an interest in applying for the new license; and (5) generally implement the bill. It includes salaries, fringe benefits, one-time start-up costs (including grant funding and contractual costs for an outside entity to evaluate the boutique grower license applications), and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- Establishing a new license category and issuing new licenses triggers current law requirements for 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.
- The contractual cost to hire a third party to evaluate license applications is based on actual contractual costs to evaluate license applications during past license cycles.
- Based on past application cycles, the commission expects approximately 200 applications for licensure under the bill.
- Conducting a new round of application evaluations and issuing boutique grower licenses under the bill expands the commission's workload, and the commission cannot implement the bill without additional staff.

Permanent Positions	2
Contractual Positions	2
Salaries and Fringe Benefits	\$247,721
Third-party Contractor Costs	500,000
Grants	135,000
Other Operating Expenses	<u>27,465</u>
Total FY 2021 MDH Administrative Costs	\$910,186

Future year expenditures reflect full salaries with annual increases and employee turnover, ongoing operating expenses, and termination of the two contractual enforcement officers in fiscal 2023 after the initial licensure cycle is complete.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State’s implementation of the federal Patient Protection and Affordable Care Act.

Maryland Department of Agriculture Pesticide Review Costs

Special fund expenditures for MDA increase by \$99,982 in fiscal 2021, which accounts for the bill’s October 1, 2020 effective date. This estimate reflects the cost to hire two full-time permanent employees (one administrative officer with a toxicology background and one administrative assistant) to accept and review applications and risk assessment documents submitted pursuant to the bill. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2
Salaries and Fringe Benefits	\$89,249
Operating Expenses	<u>10,733</u>
Total FY 2021 MDA Expenditures	\$99,982

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

DLS notes that this estimate is in part based on the funding available under the bill and the complexity of review of these types of applications. It also assumes robust participation by all licensed medical cannabis growers, not just those newly licensed under the bill, and that MDA receives a high volume of applications for review. However, costs to conduct a certified risk assessment for a pesticide can be significant, which may be a barrier to application for many interested parties. To the extent that there is less robust participation or MDA has a low volume of applications to review, staffing costs for MDA are lower.

Small Business Effect: Small businesses may become licensed as boutique growers, which gives increased access to the medical cannabis market since individual grower and processor licenses are capped under current law. However, any small business growers and processors already licensed may be negatively affected due to the additional competition for market share. It is unknown whether any applicants under the bill would be or are small businesses.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 1369 (Delegate Hill, *et al.*) - Health and Government Operations.

Information Source(s): Maryland Department of Agriculture; Department of Health; Department of Legislative Services

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