

Department of Legislative Services
 Maryland General Assembly
 2017 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1501 (Delegate Vogt, *et al.*)
 Health and Government Operations

Natalie M. LaPrade Medical Cannabis Commission - Grower and Processor Licenses and Local Impact Grants

This bill requires the Natalie M. LaPrade Medical Cannabis Commission to distribute \$250,000 annually as local impact grants – to be shared among the counties and municipalities in which growers and processors are located. Each geographic area in which a grower or processor is located must establish a local development council (LDC) to advise the jurisdiction on the needs and priorities of the most proximate communities to the grower or processor. The bill also requires additional licenses to be issued. Accordingly, the commission has to (1) award Stage One pre-approvals for a grower license to the next 6 highest ranked applicants by the Regional Economic Studies Institute (RESI) in August 2016; (2) establish a separate application review process to award 4 additional grower licenses based on a specified scoring system; and (3) award Stage One pre-approvals for a processor license to the next 10 highest ranked applicants by RESI.

The bill takes effect June 1, 2017.

Fiscal Summary

State Effect: No likely impact in FY 2017. Special fund revenues increase by \$1.9 million in FY 2018 from application and license fees as discussed below; future years reflect ongoing payment of annual license fees. Special fund expenditures increase in FY 2018 for a consultant to score and rank additional grower applicants and to distribute local impact grants; future years reflect ongoing local impact grants

| (in dollars) | FY 2018 | FY 2019 | FY 2020 | FY 2021 | FY 2022 |
|----------------|-------------|-------------|-------------|-------------|-------------|
| SF Revenue | \$1,930,000 | \$1,650,000 | \$1,650,000 | \$1,650,000 | \$1,650,000 |
| SF Expenditure | \$650,000 | \$250,000 | \$250,000 | \$250,000 | \$250,000 |
| Net Effect | \$1,280,000 | \$1,400,000 | \$1,400,000 | \$1,400,000 | \$1,400,000 |

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

Local Effect: Local revenues and expenditures increase in jurisdictions in which there is a grower or processor beginning in FY 2018.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Local Impact Grants

Local impact grants must be used for improvements – primarily in the communities in immediate proximity to a grower or processor and specifically for (1) infrastructure improvements; (2) facilities; (3) public safety; (4) sanitation; (5) economic and community development, including housing; and (6) other public services and improvements.

An LDC must be established in each area where a grower or processor is located. The LDC consists of 15 specified members appointed by the chief executive of the county, in consultation with the Senators and Delegates who represent the surrounding communities, and the respective county councils, city councils, or county commissioners.

Prior to spending local impact grant funds, a county or municipality must develop, in consultation with the LDC, a multiyear plan for how to spend the funds on services and improvements. A county or municipality has to submit its plan to the LDC for review and comment before adopting it or spending grant funds; the LDC has 45 days for its review and comment and to make recommendations on the plan. The LDC must advise the county or municipality on the impact of the grower or processor on the needs and priorities of the communities in immediate proximity to the grower or processor. At the request of the LDC, the county or municipality has to hold a public hearing on the plan and then make its best efforts to accommodate the recommendations of the LDC and any testimony presented at the hearing before adopting the plan.

A grower or processor must provide the LDC with a master plan for the development of the site on which the grower or processor will be located.

Grower Licenses

The commission must award Stage One pre-approval for a license to the medical cannabis grower license applicants ranked 16 through 21 by RESI in 2016. Additionally, the commission must award four medical cannabis grower licenses according to an application review process with a scoring system that awards from one to five additional points based

on the percentage of equity ownership by members of a “disadvantaged class,” which is defined as a class of individuals who are economically disadvantaged, including women, veterans, African Americans, Asians, Latinos, and Pacific Islanders.

The bill makes a corresponding change to the maximum number of grower licenses issued (increasing it from 15 to 25 to accommodate the additional 10 licenses required under the bill). The new higher cap is lifted on June 1, 2018, when the commission may issue the number of licenses necessary to meet demand in an affordable, accessible, secure, and efficient manner.

Processor Licenses

The commission must award Stage One pre-approvals for a license to the medical cannabis processor license applicants ranked 16 through 25 by RESI in 2016.

The bill establishes a limit of 25 for the number of processor licenses that the commission may issue until June 1, 2017, when the commission is authorized to issue the number of processor licenses necessary to satisfy demand in an affordable, accessible, secure, and efficient manner. As June 1, 2017, is the effective date of the bill, these provisions have no impact.

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.

The commission does not distribute any grants or financial assistance to local communities or jurisdictions where medical cannabis facilities are located.

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 in statute or regulation. While there is no statutory limit on the number of dispensary licenses either, regulations establish a limit of 2 dispensary licenses per senatorial district, or up to 94 statewide. There is also no requirement for the commission to seek to achieve racial, ethnic, and geographic diversity when licensing medical cannabis processors, but there is such a statutory requirement for dispensaries. There is no requirement to encourage applicants who qualify as a minority business enterprise for either processor or dispensary licenses.

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.

State Revenues: In total, special fund revenues increase by \$1,930,000 in fiscal 2018 and \$1,650,000 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 commission must award 6 Stage One pre-approvals for a grower license to the applicants ranked 16 through 21 by RESI in 2016 and conduct another application review process to issue an additional 4 grower licenses in accordance with requirements established under the bill. Thus, the commission must issue an additional 10 grower licenses. In addition, the commission has to award an additional 10 Stage One pre-approvals for a processor license to the applicants ranked 16 through 25 by RESI in 2016. DLS assumes that the commission expeditiously awards the Stage One pre-approvals to the applicants that were already ranked through RESI and that Stage Two application fees and annual license fees are paid concurrent with the start of fiscal 2018 for the 16 affected applicants. DLS also assumes that the commission can conduct the required application review process for the additional 4 grower licenses within one year, with application fees both at Stage One and Stage Two as well as the initial annual license fee for these additional growers collected in fiscal 2018.

Under these assumptions, special fund revenues attributable to grower license fees total \$1,490,000 in fiscal 2018. This reflects 100 applicants paying the \$2,000 application fee at Stage One; this group of applicants must be scored with consideration of disadvantaged class. A total of 10 applicants pay the \$4,000 application fee at Stage Two (the 4 selected through the new process and the 6 already ranked by RESI); the same 10 pay the first-year annual license fee of \$125,000 when approved. Annually thereafter, these 10 growers continue to pay the annual license fee of \$125,000, resulting in special fund revenues increasing by \$1,250,000 each year. The estimate assumes that the 100 growers applying

for the additional 4 licenses to be issued must pay the Stage One application fee, even if they already paid such a fee for the original determination of awards. Conversely, the estimate assumes that the 6 applicants who are being awarded due to their RESI ranking do not pay the Stage One application fee again.

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.

Special fund revenues attributable to processor license fees total \$440,000 in fiscal 2018 (10 applicants paying the \$4,000 application fee at Stage Two and 10 paying the first-year annual license fee of \$40,000 when approved) and \$400,000 annually thereafter (10 processors paying the annual license fee of \$40,000). This estimate assumes that the applicants have all paid the Stage One application fee and do not pay it again.

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

State Expenditures: Special fund expenditures increase by \$650,000 in fiscal 2018, with ongoing annual spending of \$250,000. The \$250,000 reflects required distribution of local impact grants among the counties and municipalities where growers and processors are located. Absent information from the commission on how these grants would be distributed, DLS assumes that the commission can issue the grants with existing budgeted resources.

Special fund expenditures for the commission increase by \$400,000 in fiscal 2018 only to hire a contractor to review and score the grower applications to assist the commission to awarding 4 additional grower licenses with consideration of disadvantaged class. The commission based this estimate on the costs to conduct the initial scoring of grower licenses through RESI. The commission advises that the process associated with scoring additional applications under a new process requires an outside contractor.

Local Fiscal Effect: Local revenues and expenditures increase from \$250,000 in local impact grants distributed each year. Counties and municipalities where a grower or processor is located may benefit from a grant award. These jurisdictions must also establish an LDC and follow the processes associated with plans to use the funding.

Small Business Effect: Meaningful to the extent that a small business is able to obtain a grower or processor license sooner than it otherwise would due to the additional awards for both growers and processors based on ranking and the new scoring process for certain growers. However, it is unknown whether any of the applicants, including those within the pool that has already submitted an application, are small businesses.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore City; Montgomery County; Maryland Association of Counties; Maryland Municipal League; University System of Maryland; Department of Health and Mental Hygiene; Department of Legislative Services

Fiscal Note History: First Reader - March 2, 2017
fn/ljm

Analysis by: Kathleen P. Kennedy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510