

Department of Legislative Services
 Maryland General Assembly
 2017 Session

FISCAL AND POLICY NOTE
 Third Reader - Revised

House Bill 1443

(Delegate Glenn, *et al.*)

Health and Government Operations

Finance

Natalie M. LaPrade Medical Cannabis Commission Reform Act

This emergency bill repeals and reconstitutes the membership of the Natalie M. LaPrade Medical Cannabis Commission and requires extensive outreach to encourage industry participation by small, minority, and women business owners. The State’s “certification agency” (the Maryland Department of Transportation (MDOT)) must conduct a disparity study by July 1, 2017, implement a new Small Medical Cannabis Enterprise Program, and establish a process for certification by May 15, 2017. The cap on medical cannabis grower licenses increases to 20, and processor licenses are capped at 20. Beginning April 11, 2017, Stage One pre-approval licenses cannot be issued until the disparity study is complete, and they must be issued using a new scoring process that focuses on racial, ethnic, and geographic diversity. A new special fund provides free or discounted medical cannabis to specified individuals. The bill establishes reporting requirements for the commission and licensees, and it requires the commission to adopt various implementing regulations.

Fiscal Summary

State Effect: Transportation Trust Fund (TTF) expenditures for MDOT increase by \$51,300 in FY 2017 and as much as \$1.2 million in FY 2018 to initiate the disparity study and hire staff to implement the new program. General fund expenditures for the Department of Labor, Licensing, and Regulation (DLLR) increase by \$23,400 in FY 2017 and \$138,900 in FY 2018 to subsidize staff salaries. Special fund expenditures for the commission increase by \$40,700 in FY 2017 and at least \$227,300 in FY 2018 to hire consultants, pay salaries to the new commissioners, and conduct outreach. Out-years reflect ongoing costs. Special fund revenues for the commission likely decrease.

(in dollars)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
SF Revenue	\$0	(-)	(-)	(-)	(-)
GF Expenditure	\$23,400	\$138,900	\$147,600	\$155,300	\$163,600
SF Expenditure	\$92,000	\$1,448,000	\$1,776,200	\$636,700	\$397,900
Net Effect	(\$115,300)	(\$1,586,900)	(\$1,923,800)	(\$792,100)	(\$561,400)

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

Local Effect: The bill is not expected to materially affect local operations or finances.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Natalie M. LaPrade Medical Cannabis Commission – Membership, Salaries, and Duties

Commission membership is reduced from 16 to 9 members. The Secretary of Health and Mental Hygiene (or designee) continues to serve on the commission; the other 8 members must include:

- 5 members appointed by the Governor with the advice and consent of the Senate;
- 1 member appointed by the Governor from a list of 3 individuals recommended by the President of the Senate;
- 1 member appointed by the Governor from a list of 3 individuals recommended by the Speaker of the House; and
- 1 member appointed by the Governor from either of the lists from the President or the Speaker.

The bill eliminates all current commission membership positions (except for the Secretary of Health and Mental Hygiene), which generally terminate when the bill takes effect. However, the bill makes an exception for current members whose terms would have expired on September 30, 2017, such that their terms now terminate on June 1, 2017. In addition, to ensure a level of continuity, the Governor is authorized to reappoint a commission member who was serving before enactment of the bill (but only in filling the five positions which require advice and consent of the Senate).

The Governor may remove a commission member for just cause and must appoint an executive director (with the advice and consent of the Senate). Except for the Secretary of Health and Mental Hygiene, a commission member is entitled to both the salary provided in the commission's budget and reimbursement for reasonable expenses. Salaries must be paid once every two weeks.

The bill establishes new requirements for commission members. An appointed member of the commission must (1) be at least 25 years old; (2) have resided in Maryland for at least five years and be a current resident of the State; (3) be a qualified voter of the State; and (4) have substantial experience in specified areas generally relating to fiduciary

responsibilities or as an academic or professional in a field relating to health, agriculture, law enforcement, or finance. A commission member may not (1) have any financial, ownership, or management interest, including ownership of any stocks, bonds, or other similar financial instruments, in any medical cannabis licensee; (2) have an official relationship to a person who holds a medical cannabis license; (3) be an elected official of State or local government; (4) receive or share in the receipts or proceeds of any medical cannabis licensee; or (5) have a beneficial interest in any contract for the manufacture or sale of medical cannabis or the provision of any independent consulting services in connection with any medical cannabis license. To the extent practicable, membership must reflect the racial, ethnic, and gender diversity of the State. Members must file financial disclosure forms.

The commission must 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 media demonstrated to reach large numbers of minority and women business owners and entrepreneurs. The commission must also partner with the Division of Workforce Development and Adult Learning (DWDAL) in DLLR to identify employment opportunities within the medical cannabis industry for job seekers, dislocated workers, and ex-offenders.

The commission may 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 annual report to the Governor and General Assembly (due by January 1 of each year) is expanded to include minority and business owners who are licensed by the commission and the required outreach conducted by the commission. In addition, the current reporting requirement on physicians certified by the commission is modified to reflect providers certified by the commission (when Chapter 474 of 2016, which broadens the types of health care providers who may qualify patients as eligible for medical cannabis, takes effect – June 1, 2017).

Natalie M. LaPrade Medical Cannabis Compassionate Use Fund

The bill establishes the Natalie M. LaPrade Medical Cannabis Compassionate Use Fund, a special nonlapsing fund that is administered by the Department of Health and Mental Hygiene (DHMH). The fund is subject to audit by the Office of Legislative Audits. The purpose of the fund is to establish a program to allow eligible individuals enrolled in

Medicaid or in the Veterans Administration Maryland Health Care System to obtain medical cannabis from a licensed dispensary free of charge or at a reduced cost. Accordingly, the fund is used to reimburse a licensed dispensary for the cost of the medical cannabis dispensed to an eligible individual. DHMH must adopt implementing regulations for this program and the fund.

By December 1, 2017, the commission, in consultation with DHMH, must report to the General Assembly on (1) the revenues necessary to implement the program; (2) the amount of fees and which licensees should be assessed those fees to generate sufficient revenues; and (3) the use of any other funding mechanism to implement the program.

Disparity Study

Uncodified language requires MDOT (as the certification agency), in consultation with the General Assembly and the Office of the Attorney General, to initiate a study of the medical cannabis industry and market to evaluate whether there is a compelling interest to apply the State Minority Business Enterprise (MBE) Program, or a similar program, to assist minorities and women in the medical cannabis industry, and whether that program would comply with federal and State law. The study must also evaluate race-neutral programs or other methods that may be used to address the needs of minority and women applicants and minority and women-owned businesses seeking to participate in the medical cannabis industry. MDOT must report on the findings of the study to the commission and the Legislative Policy Committee by July 1, 2017.

In consultation with the Office of the Attorney General, the commission must submit emergency regulations to implement remedial measures based on the findings of the disparity study.

Small Medical Cannabis Business Enterprise Program

The bill establishes a Small Medical Cannabis Business Enterprise Program in MDOT (as the certification agency). The program must certify a business entity as a small medical cannabis enterprise if the business entity meets one of two sets of conditions. Accordingly, the business entity must either:

- be at least 51% owned by one or more individuals who have a personal net worth that does not exceed the limits on personal net worth prescribed by the existing MBE program *and* meet the small business size standards for the MBE program or the Small Business Reserve (SBR) Program; or
- be a certified MBE under the existing program.

By May 15, 2017, the certification agency must establish a process for reviewing and evaluating applicants seeking certification under the new program. The process must include provisions for a special unit within the certification agency to expedite certifications during the initial 180 days of the program. Additionally, the certification agency must modify the current MBE directory to include small medical cannabis business enterprises certified under the new program. A small medical cannabis business enterprise certified under the new program must submit an annual affidavit to the certification agency as well as any other information required to determine whether the business entity continues to satisfy the eligibility requirements for certification.

Issuance of Additional Medical Cannabis Grower, Dispensary, and Processor Licenses and Reporting Requirements

Beginning April 11, 2017, the commission generally may *not* award any additional Stage One pre-approvals for grower, dispensary, or processor licenses unless (1) the required disparity study is completed and (2) the criteria for the award of Stage One pre-approval include any necessary remedial measures that are tailored to address the findings of the disparity study. The commission is likewise prohibited from reviewing, evaluating, or ranking an application for a license.

However, uncodified language establishes that, following the completion of the disparity study and adoption of any regulations necessary to implement the findings of the study, the commission *must* accept new applications for licensure (in addition to those already received). The commission has to then resume reviewing, evaluating, and ranking applications for licensure – in accordance with an evaluation system based on the findings of the study – and awarding licenses as authorized under the bill. The commission must permit a person who previously applied for licensure to amend and resubmit the application or to withdraw that application entirely. The initial application fee may be waived for a person who previously applied, but the commission may charge a reasonable fee for the submission of an amended application.

When ranking applications for licensure, the commission must establish an evaluation preference, worth at least 10% of the total available evaluation points, for certified small medical cannabis business enterprises. The commission must use this evaluation preference for each cycle of solicitation and review of applications it conducts.

To the extent permitted by federal and State law, the commission must actively seek to achieve racial, ethnic, and geographic diversity when licensing growers, dispensaries, and processors. The commission must also encourage applicants who are small, minority, or women-owned business entities to apply for certification under the Small Medical Cannabis Business Enterprise Program.

Growers: The bill increases the current cap on grower licenses that may be issued from 15 to 20 growers. If an applicant awarded Stage One pre-approval for a grower license in August 2016 fails to satisfy the requirements for licensure due to a lack of good faith effort by the applicant to become operational by August 15, 2017, the commission must rescind that applicant's Stage One pre-approval. Should this happen, the cap on the total number of grower licenses the commission may award decreases by the same number of Stage One pre-approvals for licensure that are rescinded. The bill repeals language authorizing the commission to issue additional licenses as necessary to meet demand beginning June 1, 2018. Instead, the commission must conduct a study to determine the demand for medical cannabis by qualifying patients in the State and report to the General Assembly by December 1, 2020. Accordingly, any increase in the number of growers requires legislative action. The bill increases the term of renewal grower licenses from two to four years.

Dispensaries: Although the bill establishes that, beginning April 11, 2017, the commission may not award additional Stage One pre-approvals for a dispensary license until specified actions are taken, as discussed above, the bill creates an exception for an applicant licensed as a grower. Specifically, the commission (1) must grant Stage One pre-approval for a dispensary license to an applicant that is a licensed medical cannabis grower and (2) may grant final approval if the applicant meets commission requirements.

Processors: The bill establishes a cap of 20 on the number of processor licenses that may be issued. However, beginning June 1, 2019, the commission may increase the number of processor licenses in order to meet demand for medical cannabis by qualifying patients and caregivers issued identification cards in an affordable, accessible, secure, and efficient manner. There is no corresponding requirement for a demand study; instead, if (and when) the commission increases the cap, it must report to the General Assembly on the new total number of processor licenses. The bill increases the term of renewal processor licenses from two to four years.

Reporting Requirements for Licensed Growers, Dispensaries, and Processors: Beginning June 1, 2017, and annually thereafter, all licensees must report to the commission (1) the number of minority and women owners of the licensee; (2) the ownership interest of any minority and women owners; and (3) the number of minority and women employees of the licensee.

Registration of Grower, Dispensary, and Processor Agents with a Felony Drug Conviction

The bill modifies the current prohibition against registering an individual convicted of a felony drug offense as a medical cannabis grower agent, dispensary agent, or processor agent. Instead, the commission *may* register an individual convicted of a felony drug offense as an agent *unless* (1) the individual was convicted of the offense or satisfactorily completed his or her sentence (whichever was later) within the seven-year period

immediately preceding the date on which the individual submitted an application or (2) the commission finds a substantial reason to deny the registration.

Prohibitions

An “owner” is defined as any type of owner or beneficiary of a business entity, including an officer, director, principal employee, partner, investor, stockholder, or beneficial owner of the business entity as well as a person having *any* ownership interest regardless of the percentage of ownership interest. A constitutional officer or a Secretary of a principal department of the Executive Branch of State government may not (1) be an owner or an employee of any business entity that holds a medical cannabis license or (2) have an official relationship to a business entity that holds a medical cannabis license.

Current Law/Background:

Maryland’s Medical Cannabis Program

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 an MBE.”

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 (not including dispensary licenses issued to licensed growers). 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 an MBE 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 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. The commission announced 102 dispensaries who were awarded Stage One license pre-approvals in December 2016. This number included 10 pre-approvals issued to applicants who also received grower license pre-approvals. All of the Stage One pre-approvals awarded in 2016 have 365 days from the date of pre-approval notification to complete all necessary steps to obtain final licensure. Should an awardee fail to do so, the commission may not issue a final license.

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, 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.

Maryland's Minority Business Enterprise Program

The State's MBE program requires that a statewide goal for MBE contract participation be established biennially through the regulatory process under the Administrative Procedure Act. The biennial statewide MBE goal is established by the Special Secretary for the Governor's Office of Minority Affairs (GOMA), in consultation with the Secretary of Transportation and the Attorney General. Generally, prior to each reauthorization of the State's MBE program, the State conducts a disparity study to determine whether there is continued evidence that MBEs are underutilized in State contracting.

The most recent disparity study was published in February 2017 and serves as the basis for the reauthorization of the MBE program proposed under Senate Bill 4 of the 2017 session. It found, among other things, that there are substantial and statistically significant disparities that are consistent with discrimination against minorities and nonminority women in State procurement. It also establishes that the MBE program is consistent with the study data and is narrowly tailored to the compelling interests of the State.

An MBE is a legal entity, other than a joint venture, that is:

- organized to engage in commercial transactions;
- at least 51% owned and controlled by one or more individuals who are socially and economically disadvantaged; and
- managed by, and the daily business operations of which are controlled by, one or more of the socially and economically disadvantaged individuals who own it.

Maryland's Small Business Reserve Program

Chapter 75 of 2004 established SBR and defined a small business as either a certified minority-owned business or a business other than a broker that is independently owned and operated, not a subsidiary of another firm, and not dominant in its field of operation. In addition, Chapters 538 and 539 of 2012 (as amended by Chapter 76 of 2014) established that, to qualify as a small business under SBR, a business must meet *either* of the following criteria in its most recently completed three fiscal years:

- the firm did not employ more than 25 people in its retail operations; 50 people in either its wholesale or construction operations; or 100 people in either its service, manufacturing, or architectural and engineering operations; *or*
- average gross sales did not exceed \$2.0 million for manufacturing operations, \$3.0 million for retail operations, \$4.0 million for wholesale operations, \$4.5 million for architectural and engineering services, \$7.0 million for construction operations, and \$10.0 million for service operations.

Small businesses self-report their small business status by registering on eMaryland Marketplace, the State's online procurement portal. Chapter 119 of 2016 transferred responsibility for administering SBR from the Department of General Services to GOMA and repealed its termination date, making the program permanent. Currently, almost 6,000 certified small businesses in Maryland are eligible to participate in SBR. Fiscal 2014 was the first year since its inception that the program achieved its target of 10% of State procurement dollars being awarded to certified small businesses.

State Revenues:

Effect of Caps on Licenses Issued

The bill increases the cap on the number of grower licenses the commission may issue to 20, but no additional licenses may be issued until the required disparity study is completed, the commission issues new regulations and implements any remedial actions required based on the findings of the study, and new applications are accepted and scored under a

new scoring process. Depending on whether available data can be used for the disparity study, the study will likely take between 8 and 24 months to complete – despite the bill’s requirement that study findings be reported by July 1, 2017 (less than 3 months after this bill takes effect). After its completion, the commission must contract with an outside consultant to reopen applications and issue the additional licenses according to the new process and regulations. Given the requirement to complete a disparity study, and the amount of time it took for the commission to develop and then adopt regulations and begin to issue initial licenses, the additional licenses are likely not issued for *at least* another 6 months after the study has been completed. For example, after expansion of the commission in 2014, it took more than a year to finalize regulations, hire RESI to process applications, review the results, and begin issuing licenses.

Thus, if the commission issues the additional five grower licenses authorized under the bill, the licenses are likely not able to be awarded until fiscal 2019 at the earliest, and possibly later. Under current law, the commission would be able to issue additional grower licenses as required to meet demand, beginning June 1, 2018, and there is no cap on processor licenses. Given the permanent-but-higher cap on the number of grower licenses and the new cap on processor licenses (that may be lifted June 1, 2019), the bill likely results in foregone special fund revenues as it either delays issuance of new licenses and/or further limits the number that may be issued.

In addition, the bill establishes that the cap on grower licenses that may be awarded must be decreased by the number of Stage One pre-approval licensees that fail to satisfy the commission’s requirements for final approval by August 15, 2017. To the extent that any do not meet those requirements, the commission must rescind their Stage One pre-approval and cannot issue additional licenses as it would have been able to do under current law. Thus, special fund revenues may decrease further.

Increased Term of Certain Licenses

The Department of Legislative Services (DLS) notes that the bill increases the term of a renewal grower and processor license from two to four years. Since the commission’s licensure fees (established in regulation) are annual, DLS assumes that changing the terms of licensure has no effect on the commission’s special fund revenues.

Capitalization of the Natalie M. LaPrade Medical Cannabis Compassionate Use Fund

The bill establishes the new fund and requires DHMH to establish a program, but it does not definitively specify a dedicated funding source. Instead, the commission, in consultation with DHMH, must report to the General Assembly by December 1, 2017, on the anticipated amount of revenues necessary to implement the program, the amount of fees and the licensees on which they should be assessed to generate sufficient revenue, and

the use of any other funding mechanism to implement the program. Thus, although the fund may be capitalized as early as fiscal 2018, the actual timing, source, and amount of any capitalization is unknown.

State Expenditures:

Disparity Study and Small Medical Cannabis Business Enterprise Program

TTF expenditures for MDOT increase to conduct the required disparity study. MDOT advises that this type of study is similar to the disparity study that it must complete periodically for the State's MBE program; the study analyzes the availability and utilization of firms in Maryland's geographic and product markets by analyzing data in specific industry categories. Each industry is composed of specific industry classifications defined by U.S. Census North American Industry Classification System (NAICS) codes.

Medical cannabis is a new industry to Maryland, so the most recent study, published in February 2017, did not analyze NAICS codes specific to the industry. However, MDOT advises that existing codes *may* be able to be used to complete the study, similar to the approach taken to evaluate the Off-shore Wind and Video Lottery/Casino industries. If such an approach is viable, expenditures for MDOT increase by approximately \$50,000, likely in fiscal 2018, to hire a consultant to conduct the analysis. This process will take approximately eight months: four months to procure a contractor through the request for proposal process and four months to complete the study.

However, if an entirely new study must be completed, TTF expenditures for MDOT increase by between \$1.5 million and \$2.0 million over fiscal 2018 and 2019, as completion of a new study will take up to two years. Under either scenario, the requirement that MDOT report to the General Assembly on study findings by July 1, 2017, is not feasible.

The bill also requires MDOT to (1) establish the Small Medical Cannabis Business Enterprise Program; (2) establish a process for reviewing and evaluating applicants seeking certification under the program by May 15, 2017 (including provisions for a special unit to expedite certifications during the initial 180 days of the program); (3) collect annual affidavits and any additional information to determine whether certified business entities continue to satisfy the eligibility requirements; and (4) modify the MBE directory. MDOT cannot absorb these responsibilities with existing resources and needs three additional staff; moreover, the bill requires a special unit to be established – at least for the first six months of the program. Thus, TTF expenditures increase by \$51,296 in fiscal 2017, which assumes the employees are hired expeditiously (on May 1, 2017) to attempt to meet the requirement for MDOT as the certification agency to establish a process for reviewing and evaluating applicants by May 15, 2017. This estimate reflects the cost of hiring one intake officer and two MBE officers to implement and maintain the Small Medical Cannabis Business

Enterprise Program. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

	<u>FY 2017</u>	<u>FY 2018</u>
New Positions	3	-
Salaries and Fringe Benefits	\$37,057	\$218,839
Operating Expenses	<u>14,239</u>	<u>1,875</u>
Total TTF Expenditures for MBE Program	\$51,296	\$220,714

Future year TTF expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses. To the extent that the demand for certification under the Small Medical Cannabis Business Enterprise Program is less robust than anticipated by MDOT, these employees may be able to be redirected to other duties within the Office of Minority Business Enterprise.

Additional Administrative Costs for the Commission

Special fund expenditures increase for the commission to pay salaries for the eight eligible commission members. Although the budgeted amount anticipated for this purpose is unknown, the provision was modeled after a similar provision for lottery and gaming commissioners, who are paid \$18,000 annually. Thus, the medical cannabis commission must likely pay eight of the commissioners at least \$18,000 annually. Assuming eight commissioners are in place by May 1, 2017 (including the current commissioners who hold over until June 1), special fund expenditures for the commission increase by \$24,000 in fiscal 2017 and by \$144,000 annually thereafter. Since the commissioners are not State employees, this estimate does not include any fringe or health care benefits. The bill decreases the commission membership by a net of seven members. Thus, the commission realizes minimal savings from a reduction in reimbursement and travel costs for these seven commission members. Any such impact has not been factored into this analysis.

The bill generally prohibits the commission from awarding Stage One pre-approval for any license (grower, dispensary, or processor) until the certification agency conducts a disparity study and the criteria for awarding such approval includes remedial measures, as necessary. Thus, special fund expenditures for the commission increase by *at least* \$400,000 in the fiscal year in which the commission issues any additional licenses (likely not before fiscal 2019) to hire a consultant to assist the commission in awarding additional licenses and establishing a new licensing process. The commission based this estimate on the costs to conduct the initial scoring of grower licenses through RESI. DLS notes that the bill requires the commission to award Stage One pre-approval for a dispensary license to an applicant that is a licensed grower (allowing for a licensed grower-dispensary facility as under current law); any such awards are done outside of the new scoring process.

Special fund expenditures also increase by an estimated \$250,000 in fiscal 2020 for the commission to hire a consultant to conduct the required study to determine the demand for medical cannabis by qualifying patients by December 1, 2020. Otherwise, the commission can adopt regulations and submit reports with existing budgeted resources.

Costs to Conduct Required Outreach

DLLR advises that current staff from DWDAL can partner with the commission to identify employment opportunities within the medical cannabis industry for job seekers, dislocated workers, and ex-offenders. However, since these employees are federally funded, and DLLR cannot use federal funds for activities regarding medical cannabis, general funds are needed to cover the portion of employees' salaries for time spent fulfilling the bill's requirements. Since the bill does not specify a time limit, it is assumed that these costs are ongoing. Thus, general fund expenditures for DLLR increase by \$23,263 in fiscal 2017 (assuming the partnership begins May 1, 2017), by \$138,884 in fiscal 2018, and by a minimum of \$147,615 annually thereafter.

Special fund expenditures for the commission increase, likely beginning at the end of fiscal 2017 and continuing into fiscal 2018, to conduct the required outreach, including (1) developing partnerships with the specified entities; (2) establishing and conducting training programs for employment in the medical cannabis industry; and (3) disseminating information required to reach large numbers of minority and women business owners and entrepreneurs. The commission estimates that costs to hire a consultant to assist with the required outreach are likely around \$100,000, based on current costs to hire a diversity consultant and the breadth of the required outreach. Thus, special fund expenditures for the commission to hire the consultant increase by an estimated \$16,667 in fiscal 2017 and \$83,333 in fiscal 2018. Some costs are likely maintained in the out-years, because the outreach must be ongoing, but it is unknown whether a consultant is still needed. To the extent that the commission chooses to issue grants to appropriate educational and business development organizations for training, as authorized under the bill, special fund expenditures further increase. However, the amount and timing of such grant funding is unknown and has not been factored into this analysis.

Administration of the Natalie M. LaPrade Medical Cannabis Compassionate Use Fund

Concurrent with program implementation, DHMH may need additional staff to reimburse licensed dispensaries for the cost of medical cannabis dispensed to eligible individuals under the program. Although there is no specific authorization to use either the new fund or the existing fund for administrative costs, this analysis assumes that special funds from one of the funds are used to cover any administrative costs for DHMH related to administering the new program; otherwise, general fund support is needed. The Comptroller's Office can administer the fund, as directed by DHMH, with existing

budgeted staff and resources. The Office of Legislative Audits can conduct the required audit with existing budgeted staff and resources.

Small Business Effect: The bill requires the commission to conduct extensive outreach and to provide specified assistance to encourage small minority and women-owned businesses to enter the medical cannabis industry. This likely results in more small businesses entering the industry than under current law.

Additional Comments: The bill does not materially affect the timeframe for making medical cannabis available to qualifying patients in Maryland. Despite the commission being reconstituted, this analysis assumes expeditious appointment of new members and limited disruption in the commission continuing to implement the State's medical cannabis program. As five members (as well as the executive director) of the commission must be appointed by the Governor with the advice and consent of the Senate (which likely occurs after the General Assembly has adjourned *Sine Die*), those appointees are assumed to serve in an acting capacity until required consent can be obtained. DLS advises, however, that some disruption is inevitable. Also, any delays in completing the disparity study and establishing a process to review and evaluate applicants for certification as small medical cannabis business enterprises do not affect Stage One pre-approvals for licenses already awarded; those business entities may proceed to final licensure.

Additional Information

Prior Introductions: None.

Cross File: SB 999 (Senator Conway) - Judicial Proceedings.

Information Source(s): Office of the Attorney General; Comptroller's Office; Department of Budget and Management; Department of Health and Mental Hygiene; Maryland Department of Transportation; Governor's Office of Minority Affairs; Department of Labor, Licensing, and Regulation; Comptroller's Office; Board of Public Works; Department Legislative Services (Office of Legislative Audits); Department of Legislative Services

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