

Department of Legislative Services
 Maryland General Assembly
 2017 Session

FISCAL AND POLICY NOTE
 First Reader

Senate Bill 1038 (Senators Serafini and Ready)
 Judicial Proceedings

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

This emergency bill increases the number of medical cannabis growers that the Natalie M. LaPrade Medical Cannabis Commission is authorized to license from 15 to 17 – until June 1, 2018, when the cap may be lifted. The commission must award Stage One pre-approval for a medical cannabis grower license to the top 15 applicants, as ranked by the Regional Economic Studies Institute (RESI) in July 2016.

Fiscal Summary

State Effect: Special fund revenues for the commission increase by \$258,000 in FY 2017 from application and licensing fees for the additional licensed growers. Future years reflect annual grower license fees. The commission can issue the additional grower licenses with existing budgeted resources.

(in dollars)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
SF Revenue	\$258,000	\$250,000	\$250,000	\$250,000	\$250,000
Expenditure	0	0	0	0	0
Net Effect	\$258,000	\$250,000	\$250,000	\$250,000	\$250,000

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

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Current Law/Background: Chapter 403 of 2013 established, Chapters 240 and 256 of 2014 expanded, and Chapter 251 of 2015 and Chapter 474 of 2016 further modified the State’s medical cannabis program. The Natalie M. LaPrade Medical Cannabis Commission currently allows for the licensure of growers, processors, and dispensaries and the registration of their agents. The program also establishes a framework to certify physicians, qualifying patients (including veterans), and their caregivers to provide qualifying patients with medical cannabis legally under State law via written certification. Effective June 1, 2017, dentists, podiatrists, nurse practitioners, and nurse midwives are authorized to be “certifying providers” – along with physicians – under the medical cannabis program. Specifically, a qualifying patient who has been provided with a written certification from an authorized certifying health care provider in accordance with a bona fide provider-patient relationship may obtain a 30-day supply of medical cannabis. Medical cannabis is defined in regulation as any product containing usable cannabis or medical cannabis finished product. A 30-day supply is defined as 120 grams of usable cannabis, unless a qualifying patient’s certifying physician determines that this amount is inadequate to meet the medical needs of the patient. Regulations establish posttraumatic stress disorder as one of several debilitating medical conditions.

Statute dictates that medical cannabis may only be obtained from a grower or dispensary licensed by the commission and that the commission may license no more than 15 growers initially. However, beginning June 1, 2018, the commission may issue the number of grower licenses necessary to meet demand for medical cannabis by qualifying patients and caregivers in an affordable, accessible, secure, and efficient manner. Section 13-3306 of the Health-General Article requires the commission to “actively seek to achieve racial, ethnic, and geographic diversity when licensing medical cannabis growers” and to “encourage applicants who qualify as a minority business enterprise.”

The commission is authorized to set fees to cover its operating costs; these fees were established by regulations promulgated in September 2015. Grower application fees are paid in two stages: Stage One is \$2,000 and Stage Two is \$4,000. There is also an annual license fee of \$125,000. Dispensary application fees are also paid in two stages: Stage One is \$1,000 and Stage Two is \$4,000. There is also an annual license fee of \$40,000. An individual may apply for a grower-dispensary license with the applicable fee structure simply being a combination of grower and dispensary fees. The number of growers is still capped at 15 even if some licenses are combined grower-dispensary licenses.

The commission opened applications for grower, processor, and dispensary licenses in September 2015. The application forms included instructions and a description of the scoring process for evaluating the applications. The commission received 145 grower applications, 124 processor applications, and 811 dispensary license applications. Towson

University's 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: The bill requires the commission to award Stage One pre-approval for a medical cannabis grower license to the top 15 applicants as ranked by RESI in July 2016. This means that the commission must award the additional two grower licenses authorized under the bill to the two applicants that were replaced for award of a Stage One pre-approval for a license in August 2016, as discussed above. Since this award is required and the commission knows which two grower applicants must be awarded a Stage One pre-approval for a license, the Department of Legislative Services (DLS) assumes the commission can award these pre-approvals for a license in short order after enactment of the bill. Thus, revenues from additional fees that must be collected are likely realized in May or June 2017. This analysis also assumes no changes in any of the Stage One pre-approvals for a license that has already been awarded.

Accordingly, special fund revenues increase by an estimated \$258,000 in fiscal 2017 (two applicants paying the \$4,000 application fee at Stage Two and two paying the first-year license fee of \$125,000 when approved) and by \$250,000 annually thereafter (two growers paying the annual licensing fee of \$125,000). Since the commission must award a Stage One pre-approval for a license to each of the two applicants that were ranked in the top 15 applicants by RESI in July 2016 and both of these applicants have already submitted applications and the Stage One application fee, this estimate does not include any additional special fund revenues from Stage One application fees. 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 are uncertain because they depend on patient demand and the commission's determination.

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.

Small Business Effect: Meaningful to the extent that a small business is able to obtain a grower license under the bill's provisions sooner than it otherwise would. However, it is unknown whether the two applicants that receive a Stage One pre-approval for a medical cannabis grower license under the bill are small businesses.

Additional Information

Prior Introductions: None.

Cross File: HB 1259 (Delegate B. Wilson, *et al.*) - Health and Government Operations.

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

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md/ljm

Analysis by: Kathleen P. Kennedy

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