

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 2

(Delegate Glenn)

Health and Government Operations

Finance

Natalie M. LaPrade Medical Cannabis Commission Reform Act

This emergency bill requires outreach to encourage participation in the medical cannabis industry by small, minority, and women business owners and that grants be made to train such business owners. The Natalie M. LaPrade Medical Cannabis Commission must promulgate emergency remedial regulations based on the results of a disparity study, which informs future licensing decisions. The bill establishes new license caps for medical cannabis growers and processors, requires certain licenses to be issued by June 2018, and restricts when reports regarding the demand for any additional licensees may be submitted. A “compassionate use” special fund is established to provide free or discounted medical cannabis to specified individuals. Reporting requirements for the commission and licensees are established. Commission membership is altered and reconstituted, effective October 1, 2019.

Fiscal Summary

State Effect: Special fund expenditures increase by at least \$122,500 in FY 2018 for salaries and contractual services; out-years reflect grants, consulting, licensing, other ongoing costs, and deferral of a demand study. Potentially significant staff costs are not reflected below. General fund expenditures increase by at least \$9,700 in FY 2018 for outreach, with ongoing costs in out-years. Special fund revenues increase by \$24,000 in FY 2018 from licensing fees; out-years reflect additional and ongoing licensing fees. Capitalization and certain costs related to the compassionate use fund is not reflected below. **This bill establishes a mandated appropriation for FY 2019 and/or 2020, as discussed below.**

(in dollars)	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
SF Revenue	\$24,000	\$523,000	\$551,000	\$1,395,000	\$1,395,000
GF Expenditure	\$9,700	\$119,500	\$125,000	\$128,400	\$133,300
SF Expenditure	\$122,500	\$2,519,800	\$477,300	\$463,800	\$463,800
Net Effect	(\$108,200)	(\$2,116,300)	(\$51,300)	\$802,800	\$798,000

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 government finances.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

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

Effective October 1, 2019, commission membership is reduced from 16 to 13 members. The Secretary of Health (or designee) continues to serve; the other members must include:

- 9 members appointed by the Governor with the advice and consent of the Senate, including 2 licensed noncertified providers, as specified, 1 nurse or health care provider with experience in hospice, 1 pharmacist, and 1 scientist, as specified;
- 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 terms of all current commission members terminate October 1, 2019, and new commission member terms are staggered, as specified. However, the Governor is authorized to reappoint a commission member serving before enactment of the bill (but only in filling five of the specified positions that require the advice and consent of the Senate).

The bill establishes a number of new requirements for commission members, including age and residency and, for specified members, experience requirements. Additionally, new prohibitions related to conflicts of interest are established. To the extent practicable by law, membership must reflect the racial, ethnic, and gender diversity of the State. Members must file financial disclosure forms with the State Ethics Commission.

Within 30 days after receiving a list of three names submitted by the commission, the Governor must appoint an executive director from the list with the advice and consent of the Senate. The executive director serves at the pleasure of the commission.

The Governor may remove a commission member for just cause. Except for the Secretary of Health, a commission member is entitled to both the salary provided in the commission's budget and reimbursement for reasonable expenses.

The bill requires the commission's website to (1) provide information concerning the collateral consequences, with respect to federal law, of registering as a qualifying patient or caregiver and (2) disclose the methodology for ranking applicants for licensure and the results of such rankings.

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 targeted media. The commission must also partner with the Department of Labor, Licensing, and Regulation (DLLR) to identify employment opportunities within the medical cannabis industry for job seekers, dislocated workers, and ex-offenders. These partnerships must comply with federal and State law.

The commission must 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 commission's annual report to the Governor and General Assembly (due by January 1 of each year) is expanded to include the amount sold, by condition treated, and average consumer price for medical cannabis products provided under the program. Additionally, by January 1, 2019, the commission, in consultation with the Maryland Department of Health (MDH), must report to the General Assembly on the treatment of an opioid use disorder by using medical cannabis.

The commission must report to the General Assembly by January 1, 2019, on potential rules and regulations governing marketing and advertising practices of regulated medical cannabis entities.

Natalie M. LaPrade Medical Cannabis Compassionate Use Fund

The bill establishes the Natalie M. LaPrade Medical Cannabis Compassionate Use Fund, a special nonlapsing fund administered by MDH. The fund is subject to audit by the Office of Legislative Audits (OLA). 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. MDH must set fees in an amount necessary to fund the program but cannot impose fees on a licensee during the two years immediately following pre-approval. MDH must adopt implementing regulations for this program and the fund.

By December 1, 2018, the commission, in consultation with MDH, must report to the General Assembly on (1) the revenues necessary to implement the program; (2) fee levels and which licensees should be assessed a fee to generate sufficient revenues; (3) the use of any other funding mechanism to implement the program; and (4) any anticipated savings in prescription drug costs for Medicaid resulting from providing medical cannabis under the program. The commission may hire an independent actuary to assist with the preparation of the required report.

Evaluation of Disparity Study

The commission, in consultation with the State’s “certification agency” (the Maryland Department of Transportation (MDOT)); the Governor’s Office of Small, Minority, and Women Business Affairs (GOMA); and the Office of the Attorney General must (1) evaluate a [disparity] study of the medical cannabis industry and market to determine whether there is a compelling interest to implement remedial measures, which may include applying the requirements of the State’s Minority Business Enterprise (MBE) Program, to assist minorities and women in the medical cannabis industry; (2) evaluate race-neutral programs or other methods that may address the needs of minority and women applicants and minority- and women-owned businesses seeking to participate in the medical cannabis industry; and (3) submit emergency regulations, if necessary and allowed by law, based on the findings of the study. Any remedial measures adopted may only be applied prospectively and may not have any effect on licensees awarded Stage One pre-approval before the effective date of the bill.

The commission may report to the General Assembly any information the commission determines is necessary to the consideration, development, or implementation of any required remedial measures.

Issuance of Additional Licenses and Licensee Reporting Requirements

In fiscal 2019 and 2020, the Governor must appropriate *at least* \$1.0 million, in the aggregate, to the commission to review, evaluate, and rank applications for licensure. The commission is prohibited from retaining a third party to assist in the evaluation or ranking of license applications if the third party has a direct or indirect financial, ownership, or any management interest in any licensee or any applicant, or has an official relationship with a person who holds a license or an applicant.

Generally, the commission may *not* review, evaluate, or rank applications or grant Stage One pre-approvals for licensure until the emergency regulations related to the disparity study are adopted. The bill expresses the intent of the General Assembly that the commission submit the emergency regulations by June 1, 2018. Until the regulations are submitted, the commission must report to specified committees of the General Assembly at least once every 30 days on the progress toward submitting the emergency regulations.

Notwithstanding these restrictions, by June 1, 2018, the commission *must* grant Stage One pre-approval for two medical cannabis grower licenses from the grower license applications that were initially ranked by the Reginal Economic Studies Institute (RESI) in July 2016 in accordance with the numerical selection sequence for additional grower license pre-approvals in August 2016, as specified. If either of these two applicants fails to meet commission requirements for licensure, the commission must rescind the applicant's Stage One pre-approval, and the cap on the number of medical cannabis grower licenses is reduced correspondingly. In addition, by June 1, 2018, the commission *must* also grant Stage One pre-approval for a grower license if the person is a licensed processor and applied for a grower license and was initially ranked among the top 30 grower applicants by RESI. Likewise, the commission must grant Stage One pre-approval for a processor license if the person is a licensed grower and applied for a processor license and was ranked among the top 30 processor applicants by the commission in August 2016.

Once the required emergency regulations are adopted, the commission must accept new applications (in addition to those already received); allow previous applicants to amend (if necessary) and resubmit or withdraw applications; and resume reviewing, evaluating, and ranking applications in accordance with the evaluation system adopted in regulations. The commission may waive the initial application fee for an applicant who previously applied and may charge a reasonable fee for the resubmission of an unamended or amended application. The commission may not be required to consider a person for licensure who previously applied for licensure and was not awarded a license unless the person resubmits the application and pays any required fees.

The commission may rescind Stage One pre-approval of an applicant if the applicant's facility is not operational within 12 months after issuance of the Stage One pre-approval due to a lack of good faith effort to become operational. If the applicant can demonstrate that the failure to become operational was due to unforeseen hardship beyond the applicant's control, the commission may extend the timeframe to become operational for an additional 12 months before rescinding the Stage One pre-approval.

To the extent permitted by federal and State law, the commission must actively seek to achieve racial, ethnic, gender, 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 licensure as growers, dispensaries, and processors.

When applying for licensure, an applicant must submit an affidavit attesting to (1) the number and ownership interest of any minority and women owners of the applicant; (2) the number of minority and women employees of the applicant; and (3) any other information considered necessary by the commission.

The bill increases the term of grower, dispensary, and processor licenses for initial licenses from four to six years and renewal licenses from two to four years.

Growers: The definition of “grower” is clarified to mean a licensed entity that cultivates or packages medical cannabis and is authorized by the commission to provide cannabis to a processor, dispensary, or independent testing laboratory. The bill increases the current cap on the number of grower licenses that may be issued from 15 to 22. However, if an applicant for licensure that received Stage One pre-approval in calendar 2016 fails to satisfy the commission’s requirements for licensure, the commission *must* rescind the applicant’s Stage One pre-approval. If this happens, the cap on the number of medical cannabis grower licenses is reduced by *one*.

The bill requires the commission to encourage licensing medical cannabis growers that grow strains of cannabis with a broad variety of tetrahydrocannabinol (better known as THC) and cannabidiol (better known as CBD) content. The bill also repeals language encouraging the commission to license medical cannabis growers that prepare medical cannabis in a range of routes of administration.

Additionally, the bill repeals language authorizing the commission to issue additional licenses as necessary to meet demand beginning June 1, 2018. Instead, beginning December 1, 2024, the commission may report to the General Assembly on the number of licenses necessary to meet demand. Prior to submitting the report, the commission must provide the Legislative Policy Committee (LPC) at least 30 days to submit comments to the commission. A statutory change would then be required to increase the cap.

A licensed grower or a registered grower agent may not be penalized or arrested under State law for (1) cultivating, possessing, packaging, transferring, transporting, selling, or distributing medical cannabis to a processor or dispensary or (2) transporting the medical cannabis to an independent testing laboratory.

Dispensaries: The bill authorizes the commission, beginning December 1, 2024, to report to the General Assembly on the number of licenses necessary to meet demand. Prior to submitting the report, the commission must provide LPC at least 30 days to submit comments to the commission.

Processors: The bill establishes a new cap of 28 on the number of processor licenses that may be issued. However, if an applicant for licensure that received Stage One pre-approval in calendar 2016 fails to satisfy the commission's requirements for licensure, the commission *must* rescind the applicant's Stage One pre-approval. If this happens, the cap on the number of medical cannabis processor licenses is reduced correspondingly.

Additionally, the bill authorizes the commission, beginning December 1, 2024, to report to the General Assembly on the number of licenses necessary to meet demand. Prior to submitting the report, the commission must provide LPC at least 30 days to submit comments to the commission. A statutory change would then be required to increase the cap.

A licensed processor or a registered processor agent may not be penalized or arrested under State law for (1) acquiring, possessing, processing, packaging, labeling, transferring, transporting, selling, or distributing medical cannabis or products containing medical cannabis to a dispensary or (2) transporting the medical cannabis to an independent testing laboratory.

Licensee Reporting Requirements: Beginning June 1, 2018, and annually thereafter, all licensees must report to the commission on (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 submits an application for licensure earlier than seven years after satisfying the sentence imposed for the conviction, including parole, probation, or mandatory supervision; (2) the individual was convicted of crimes related to being a drug kingpin or volume dealer; or (3) the commission finds a substantial reason to deny the registration.

Sale or Transfer of Ownership of a Medical Cannabis License

The holder of a medical cannabis grower, processor, or dispensary licensee may sell or transfer ownership of the license if the licensee was physically and actively engaged in the cultivation, processing, or dispensing of medical cannabis for at least two years immediately preceding the sale or transfer.

Prohibitions

The bill establishes a general prohibition against a constitutional officer or a Secretary of a principal department of the Executive Branch of State government owning, being employed by, or having a business relationship with an entity holding a medical cannabis license unless the ownership, employment, or business relationship existed prior to their election or appointment. Additionally, the bill prohibits a former member of the General Assembly, for the one-year period immediately after leaving office, from (1) owning or being employed by any licensed medical cannabis entity or (2) having an official relationship with a licensed medical cannabis entity.

Registration and Use of Crop Protection Agents

By June 1, 2018, the Maryland Department of Agriculture, in consultation with the commission, must submit specified emergency regulations that allow the registration and use of crop protection agents in the cultivation of medical cannabis as part of an integrated pest management plan. Any crop protection agent used in the cultivation of medical cannabis must be applied consistent with State and federal requirements. The commission must develop specified guidance for registered independent testing laboratories to follow when analyzing medical cannabis and may remove a crop protection agent from the approved list if there is reasonable, documented evidence that the agent has the potential to cause harm to patients.

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 administers the program, which makes medical cannabis available to qualifying patients and their caregivers legally under State law via written certification. The commission comprises 16 members, including the Secretary of Health, with 15 members appointed by the Governor. Commission members may not receive compensation, but they are entitled to standard reimbursement for travel.

A qualifying patient with a written certification can obtain a 30-day supply of medical cannabis, which is defined as 120 grams of usable cannabis. The first medical cannabis was available for sale in the State in late 2017. 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. For more information regarding the commission and Maryland's medical cannabis program, please see the **Appendix – Medical Cannabis**.

Licensees and Registrants

Statute limits the number of growers that may be licensed by the commission to 15 until June 1, 2018, when the commission may issue enough grower licenses to meet demand. There is no statutory or regulatory limit on the number of processors that may be licensed. Regulations establish a limit of 2 dispensary licenses per senatorial district or up to 94 dispensary licenses statewide. The commission opened applications for grower, processor, and dispensary licenses in September 2015. In August 2016, the commission announced the 15 growers and 15 processors who were awarded Stage One license pre-approvals, and in December 2016, 102 dispensary Stage One licensee pre-approvals were announced (some of which hold a combination license and thereby fall within the limits on each type of license). By the end of calendar 2017, the commission had issued final licenses for 14 growers, 12 processors, and 22 dispensaries. For further discussion on the license application process and controversy over geographic, racial, and ethnic diversity in the licensing process, please see the appendix.

Licensees are required to apply to the commission for a registration card for each agent. An “agent” is an owner, employee, volunteer, officer, or director of a licensee. The commission is prohibited from registering an agent who has been convicted of a felony drug offense.

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 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. Each industry is composed of specific industry classifications defined by U.S. Census North American Industry Classification System (NAICS) codes.

The most recent disparity study was completed in 2017 and serves as the basis for the most recent reauthorization of the MBE program. It found continued and ongoing disparities in the overall annual wages, business earnings, and rates of business formation between nonminority males and minorities and women in Maryland. In August 2013, GOMA announced a new statewide goal of 29% MBE participation that applied to fiscal 2014 and 2015; as no new goal has been established, the 29% goal remains in effect for fiscal 2018.

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.

Application of 2017 Disparity Study to Maryland's Medical Cannabis Industry

In response to proposed legislation during the 2017 session, and controversy related to geographic, racial, and ethnic diversity in the licensing process, Governor Hogan issued an executive order in April 2017 directing GOMA to initiate a disparity study of Maryland's regulated medical cannabis industry. The commission provided MDOT with NAICS codes for the medical cannabis industry in Maryland. MDOT provided these codes to the State's disparity study consultant to evaluate whether the State's most recent disparity study, published in February 2017, covered NAICS codes applicable to the medical cannabis industry in Maryland.

This evaluation, which was finalized and published in January 2018, concluded, among other things, that the vast majority of NAICS codes associated with both the major industry activities and ancillary industry activities that are expected to be relevant to the medical cannabis business are included in the 2017 disparity study. Further, the vast majority of "lifecycle spend" associated with the major industry activities that are expected to be relevant to the medical cannabis business occurs in NAICS codes that are included in the 2017 disparity study. Thus, the evaluation concluded that the 2017 disparity study does provide a strong basis in evidence for applying race- and/or gender-conscious remedial measures, including the State's MBE program, to the types of work involved in the medical cannabis business.

Maryland's Small Business Reserve Program

Chapter 75 of 2004 established the Small Business Reserve (SBR) program 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. 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.

Chapter 438 of 2017 expanded SBR to apply to all State agencies, and increased the program's goal from 10% to 15% of State procurement dollars being awarded to certified small businesses. Small businesses self-report their small business status by registering on eMaryland Marketplace, the State's online procurement portal. GOMA is responsible for administering SBR. Currently, more than 6,000 certified small businesses in Maryland are eligible to participate in SBR.

State Revenues:

Effect of Caps on Licenses Issued

The bill increases the cap on the number of grower licenses the commission may issue to 22 (allowing for 7 more) and establishes a cap of 28 (allowing for 13 more) processor licenses, both of which are permanent until changed in statute, which likely does not occur until after submission of the demand studies (December 1, 2024, at the earliest). These caps are subject to reduction under specified conditions. Generally, the commission may not award any *new* licenses until the commission has adopted any necessary remedial emergency regulations in response to the results of the evaluation of the disparity study of the medical cannabis industry. However, the bill makes exceptions and requires the commission to grant Stage One pre-approval for licensure to specified previously ranked grower and processor applicants by June 1, 2018.

Special fund revenues for the commission increase by \$24,000 in fiscal 2018, \$523,000 in fiscal 2019, \$551,000 in fiscal 2020, and \$1,395,000 in fiscal 2021 and annually thereafter from application and licensing fees. The information and assumptions used in calculating the estimate are stated below:

- 3 previously ranked growers and 3 previously ranked processors are granted Stage One pre-approval by June 1, 2018;
- since the commission is required to accept new applications and resume reviewing, evaluating, and ranking applications for licensure upon adoption of the required emergency regulations, the commission begins the process to issue additional grower and processor licenses as authorized under the new caps in fiscal 2019, which is sooner than the commission would otherwise have done;
- it takes approximately one year for applicants to finalize a license after receiving Stage One pre-approval;
- the commission collects the phase two application fee upon issuance of Stage One pre-approval and the first annual license fee upon issuance of the final license;
- accordingly, in fiscal 2018, 3 grower and 3 processor applicants pay the \$4,000 phase two application fee;

- in fiscal 2019, 3 growers pay the \$125,000 annual licensing fee, 3 processors pay the \$40,000 annual licensing fee, and 4 growers and 10 processors pay the \$2,000 phase one application fee;
- in fiscal 2020, 4 growers and 10 processors pay the \$4,000 phase two application fee, 3 growers pay the \$125,000 annual licensing fee, and 3 processors pay the \$40,000 annual licensing fee;
- in fiscal 2021 and in future years, 7 growers pay the \$125,000 annual licensing fee, and 13 processors pay the \$40,000 annual licensing fee; and
- although these license caps for growers and processors are subject to reduction under specified conditions, this analysis does not account for any such reductions.

Increased Term of Certain Licenses

The bill increases the terms of licensure for growers and processors from four to six years for initial licenses and from two to four years upon renewal. The commission advises that, since the commission's licensure fees (established in regulation) are paid on an annual basis, 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 MDH to administer the fund and set fees in an amount necessary to provide revenues for the purposes of the fund. However, the bill prohibits the commission from imposing fees on licensees during the two years immediately following pre-approval. Therefore, funding from fees assessed on licensees is not available until early fiscal 2019 at the earliest. The actual timing and amount of any capitalization are unknown and depend on any fees assessed and outside sources of funding.

Grant Revenues

The commission *must* issue grants to appropriate educational and business development organizations for training; thus, revenues for such institutions increase. The University System of Maryland notes that it may realize grants and partner with the commission to (1) educate medical professionals and health care providers; (2) educate potential minority applicants and trade associations; (3) prepare Maryland's workforce for employment within the industry; and (4) analyze and test medical cannabis grown in Maryland.

State Expenditures: Special fund expenditures for the commission increase by at least \$122,500 in fiscal 2018, \$2,519,759 in fiscal 2019, \$477,253 in fiscal 2020, and \$463,753 in fiscal 2021 and annually thereafter to rescore and issue new licenses, conduct required

outreach, issue grants, contract for consulting related to the compassionate use fund, and pay commission salaries. General fund expenditures for DLLR increase by \$9,724 in fiscal 2018, and by at least \$119,507 from fiscal 2019 to 2022, to conduct required outreach. General fund expenditures for MDOT, GOMA, and MDH may also increase. More detail regarding these expenditures is provided below.

Administrative Costs for the Commission

Special fund expenditures increase for the commission to pay salaries for the eligible commission members upon enactment of the bill. Although the 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 commissioners (other than the Secretary of Health) at least \$18,000 annually. The bill does not change the composition of the commission until October 1, 2019, so special fund expenditures increase by \$22,500 in fiscal 2018, assuming the salaries for current commissioners begin on June 1, 2018, and by \$270,000 in fiscal 2019. The number of commissioners, other than the Secretary of Health, decreases to 12 on October 1, 2019, so special fund expenditures for the commission salaries are \$229,500 in fiscal 2020, and \$216,000 in fiscal 2021 and annually thereafter. Since the commissioners are not State employees, this estimate does not include any fringe or health care benefits.

Special fund expenditures also decrease by an estimated \$250,000 in fiscal 2019 from funding that had been budgeted to hire a consultant to conduct a study to determine the demand for medical cannabis by qualifying patients. Under the bill, this study may not be submitted prior to December 1, 2024.

The fiscal 2019 budget provides the commission \$100,000 in fiscal 2018 for contractual services to update licensing regulations, contingent on passage of this bill. Thus, special fund expenditures increase by \$100,000 in fiscal 2018 to adopt emergency regulations. The commission can likely modify its website and submit required reports related to the program with existing budgeted resources – including the report on treatment of an opioid use disorder by using medical cannabis. Costs associated with the required report on the Compassionate Use Fund are discussed below.

Costs to Conduct Required Outreach, Provide Grants, and Develop Partnerships

DLLR advises that current staff from the Division of Workforce Development and Adult Learning 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 \$9,724 in fiscal 2018 (assuming the partnership begins June 1, 2018), \$119,507 in fiscal 2019, and by a minimum of \$125,037 annually thereafter.

Special fund expenditures for the commission increase, likely beginning in fiscal 2019, 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 \$100,000 in fiscal 2019. 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.

The commission is required to issue grants to appropriate educational and business development organizations for training. Thus, special fund expenditures increase by \$500,000 in fiscal 2019, and by \$250,000 annually thereafter. This estimate assumes that at least \$500,000 is needed initially to issue grants, and that the need for such grants decreases after the commission issues additional licenses. Even so, since the requirement is permanent, ongoing funding is assumed.

Based on projected revenues under current law and revenues realized under the bill, the commission may have an insufficient special fund balance to cover new costs in fiscal 2019, depending on the timing of new revenues and actual grant expenditures. Thus, general funds may be necessary.

The commission is also required to develop a partnership with GOMA. GOMA can work with the commission to provide outreach, compliance, training, and technical assistance to the commission. GOMA also plans to provide technical assistance to MBEs, which will entail training and advocacy related to contractual opportunities. Further, if the MBE or SBR program is applied to the medical cannabis industry in the State, GOMA plans to work closely with State agencies to ensure that agencies take appropriate steps to implement the programs. GOMA advises that it would likely need to hire two additional staff to the extent that it is required to work directly with the commission and the medical cannabis industry is added to the MBE and SBR program. The Department of Legislative Services (DLS) generally concurs but notes that if the partnership is less robust, or the medical cannabis industry is not added to the MBE program, GOMA likely does not require additional staff.

Evaluation of Disparity Study and Issuance of Additional Licenses Based on the Results

The commission, in consultation with MDOT, GOMA, and the Office of the Attorney General, must (1) complete the required evaluation of a [disparity] study of the medical cannabis industry and market and determine whether there is compelling interest to implement remedial measures (including application of the State's MBE program) and to implement those measures as necessary and (2) evaluate race-neutral programs or other methods to address the needs of minority and women applicants and minority and women-owned businesses seeking to participate in the industry.

The commission has already identified NAICS codes for the medical cannabis industry in the State, and the State's disparity study consultant has determined the State's 2017 disparity study is applicable to the NAICS codes identified. Thus, immediate costs related to evaluation of the study for the commission and MDOT are likely minimal. However, a similar round of evaluation must be repeated every few years. MDOT advises that hiring the consultant to evaluate industry-specific NAICS codes costs approximately \$75,000. It is unknown whether the commission or MDOT bears the costs for the ongoing evaluation of disparity.

Since the 2017 disparity study does cover the NAICS codes identified for the industry, the commission, in consultation with MDOT, GOMA, and the Office of the Attorney General, must promulgate emergency regulations to implement any necessary remedial measures. The bill expresses legislative intent that these regulations be promulgated by June 1, 2018. Upon promulgation of the emergency regulations, the commission must resume reviewing, evaluating, and ranking applications for licensure, which likely begins in fiscal 2019.

The bill requires the Governor to appropriate *at least* \$1.0 million in the aggregate to review, evaluate, and rank licensure applications in fiscal 2019 and 2020. The fiscal 2019 budget includes \$1.8 million for this purpose, contingent upon passage of this bill, which satisfies this mandate. Thus, special fund expenditures for the commission increase by \$1.8 million in fiscal 2019 to hire a consultant to assist the commission in awarding additional licenses and establishing a new licensing process as necessary based on the remedial measures taken.

If the State's MBE program is applied to the medical cannabis industry, MDOT cannot expand the program with existing resources. MDOT advises that its Office of Minority Business Enterprise is currently understaffed and struggles to meet mandated time requirements to be in compliance with regulations. DLS concurs that MDOT needs to hire at least three additional full-time permanent employees beginning the year in which the MBE program is applied to medical cannabis to answer phone inquiries, review applications, and conduct investigations and annual review processing.

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

Concurrent with program implementation, MDH may need additional staff to reimburse licensed dispensaries for the cost of medical cannabis dispensed to eligible individuals under the program and generally implement the fund. 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 MDH related to administering the new program; otherwise, general fund support is needed. To the extent that the commission hires an independent actuary to assist with the preparation of the required report, as authorized by the bill, expenditures in fiscal 2019 increase further. The commission estimates that costs to hire an independent actuary are approximately \$100,000.

The Comptroller's Office can administer the fund, as directed by MDH, with existing budgeted staff and resources. OLA can conduct the required audit with existing budgeted staff and resources.

Implementation of Other Provisions

The Maryland Department of Agriculture can likely adopt required emergency regulations with existing 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. Additionally, small, minority, and women-owned businesses likely benefit from the remedial emergency regulations promulgated by the commission based on the findings of the disparity study.

Additional Information

Prior Introductions: None.

Cross File: SB 1 (Senator Conway, *et al.*) - Finance.

Information Source(s): Governor's Office of Small, Minority, and Women Business Affairs; Office of the Attorney General; University System of Maryland; Morgan State University; Maryland Department of Health; Department of Labor, Licensing, and Regulation; Maryland Department of Transportation; Maryland Department of Veterans Affairs; NERA Economic Consulting; Department of Legislative Services - Office of Legislative Audits; Department of Legislative Services

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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.

Medical cannabis may only be obtained from a grower or dispensary licensed by the commission, and the commission may license no more than 15 growers. 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. There is no established limit on the number of processor licenses in statute or regulation, but the commission chose to limit the initial number to 15. While there is no specific restriction on the number of dispensaries in statute, regulations set a limit of 2 dispensary licenses per senatorial district or up to 94 dispensary licenses statewide.

License Application Process

The commission is required to actively seek to achieve racial, ethnic, and geographic diversity when licensing growers and to encourage such applicants who qualify as a minority business enterprise (MBE). There is no requirement for the commission to seek to achieve racial, ethnic, and geographic diversity when licensing 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 opened applications for grower, processor, and dispensary licenses in September 2015. Towson University's Regional Economic Studies Institute (RESI) was commissioned to review grower and processor applications through a double-blind review process in which all identifying information was redacted. The scoring system authorized the commission to take into account the geographic location of the growing operation to ensure geographic diversity in the award of licenses. The scoring system did not include a consideration of race, based on a letter from the Office of the Attorney General stating that

constitutional limits prohibited the consideration of race or ethnicity for licensing when there is no disparity study that indicates past discrimination in similar programs.

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, and 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 has the authority to not issue a final license.

Controversy Over Geographic, Racial, and Ethnic Diversity

Since the award announcements, there has been significant controversy surrounding two main issues: the decision to include geographic diversity as a final factor in choosing the grower finalists; and the fact that none of the 15 Stage One approved grower finalists is led by minorities.

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. In July 2016, a subcommittee of the commission unanimously voted to preliminarily approve the top 15 growers based on the RESI scoring, which did not include a consideration of location. Afterward, the subcommittee reversed its 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. In addition, none of the top 15 growers is minority owned, which prompted a lawsuit by an African American-owned company that was denied a grower license seeking to halt the medical cannabis program until the commission takes action to ensure racial and ethnic diversity among licensed growers.

A number of bills relating to the composition of the commission and the number of grower and processor licenses, as well as licensing criteria and the approval process, were introduced during the 2017 legislative session. However, none of these bills passed.

In April 2017, Governor Lawrence J. Hogan directed the then Governor's Office of Minority Affairs to initiate a disparity study of Maryland's regulated medical cannabis industry to be conducted by the Maryland Department of Transportation (MDOT) in cooperation with the commission. According to MDOT, the study is underway, and will

be completed by early 2018. Additionally, in July 2017, Governor Hogan announced nine new appointments to the commission; of these, three appointments filled vacancies, and six replaced commissioners whose terms had expired. As a result of these appointments, minority representation on the commission doubled.

The chair of the commission has stated that the commission is committed to seeking and promoting racial diversity and minority inclusion and will continue to work with the legislature to help solve these complex problems, but it does not want to further delay the program. At its October 3, 2017 meeting, the commission announced that, as a result of discussions with the Legislative Black Caucus, it intended to form a minority affairs subcommittee to help address some caucus concerns; this committee has since been formed.

Status of Medical Cannabis Implementation

As detailed in its annual report, the commission had issued final licenses for 14 growers, 12 processors, and 22 dispensaries by year-end 2017. Additionally, the commission had approved one-year provisional registrations for four independent testing laboratories. The commission maintains a list of licensees on its website, which can be found at <http://mmcc.maryland.gov/Pages/industry.aspx>. The first medical cannabis in the State was available for sale in late 2017, and at least seven dispensaries planned to be open for business by January 2018.