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FISCAL AND POLICY NOTE
First Reader

Senate Bill 999

(Senator Conway)

Judicial Proceedings

Natalie M. LaPrade Medical Cannabis Commission Reform Act

This emergency bill repeals all statutory provisions related to the Natalie M. LaPrade Medical Cannabis Commission, instead establishes a division and related licensing unit within the Department of Health and Mental Hygiene (DHMH), reestablishes a special fund to cover program costs, and grants the division authority over the medical cannabis program. Most components of the existing program are retained but under the new regulatory structure; thus, requirements for qualifying patients, their caregivers, certifying providers, and licensed growers, dispensaries, and processors as well as registered agents (employees and volunteers) are substantially similar to those under current law. Additional licenses have to be awarded, beyond those already granted pre-approval by the existing commission, but under a new process for scoring applicants that focuses more on geographic and minority ownership factors. A new account, under the authority of the Board of Public Works (BPW) and capitalized by 2% of licensee gross annual sales, provides equity investments and lending capital to small, minority, and women-owned businesses in Maryland. By September 1, 2017, the division must adopt regulations that repeal regulations related to the existing commission and implement the bill's provisions.

Fiscal Summary

State Effect: Due to significant uncertainties about whether the timeframe in the bill is feasible and the fees to be established in regulation, the timing and magnitude of impacts on special fund revenues and expenditures are unclear. However, the bill requires additional licenses to be issued, presumably in early FY 2018, with revenues accruing that year. The bill also results in additional expenditures for more division staff, the required salaries for the nine-member licensing unit (\$360,000 annually), and consultant services. It is unclear when the new account may be capitalized and available to support businesses as intended; however, it is likely not capitalized until FY 2020. At that time, general fund expenditures increase for additional staff at BPW. Significant additional costs may be incurred that are not reflected in this analysis, such as litigation costs and potential refunds.

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

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Definitions

Who May Obtain Medical Cannabis: A “qualifying patient” is an individual who has been provided a written certification by a certifying provider in accordance with a bona fide provider-patient relationship. Additionally, if younger than age 18, a qualifying patient must have a caregiver. A “caregiver” is a person who has agreed to assist with a qualifying patient’s medical use of cannabis and, for a qualifying patient younger than age 18, a parent or legal guardian.

A “certifying provider” is an individual who (1) is a physician, dentist, podiatrist, nurse practitioner, or nurse midwife who has an active, unrestricted license and/or certification to practice in Maryland and is in good standing with his or her respective State licensing board; (2) has a State controlled dangerous substances (CDS) registration; and (3) is registered with the division to make cannabis available to patients for medical use, in accordance with regulations adopted by the division. A “written certification” is issued by a certifying provider to a qualifying patient with whom the provider has a bona fide provider-patient relationship; it indicates that a patient is justified in receiving medical cannabis by a qualifying condition. The patient’s condition must be one for which the potential benefits of the medical use of cannabis likely outweigh the risks. A written certification may include a written statement certifying that, in the provider’s professional opinion, a 30-day supply of medical cannabis would be inadequate to meet the medical needs of the qualifying patient.

Entities Involved in the Process: A “dispensary” is an entity licensed under the bill that acquires, possesses, processes, transfers, transports, sells, distributes, dispenses, or administers cannabis, products containing cannabis, related supplies, related products containing cannabis (including food, tinctures, aerosols, oils, or ointments), or educational materials for use by a qualifying patient or caregiver. A “dispensary agent” is an owner, employee, volunteer, officer, or director of a dispensary.

A “grower” is an entity licensed under the bill that cultivates, manufactures, processes, packages, or dispenses medical cannabis or processes medical cannabis products. A licensed grower is authorized to provide cannabis to a qualifying patient, a caregiver, a

processor, a dispensary, or an independent testing laboratory. A “grower agent” is an owner, employee, volunteer, officer, or director of a grower.

An “independent testing laboratory” is a facility, entity, or site that offers or performs tests related to the inspection or testing of cannabis and products containing cannabis.

A “processor” is an entity that (1) transforms medical cannabis into another product or extract and (2) packages and labels medical cannabis. A “processor agent” is an owner, member, employee, volunteer, officer, or director of a processor. Although not part of the defined terms, a processor must be licensed and its agents must be registered.

Medical Cannabis Division, Natalie M. LaPrade Medical Cannabis Licensing Unit, and Funding

New Division within DHMH: The bill establishes the Medical Cannabis Division (hereinafter referred to as “the division”) within DHMH. The purpose of the division is to develop policies, procedures, guidelines, and regulations to implement programs to make medical cannabis available to qualifying patients in a safe and effective manner. The division is authorized to employ staff and to set reasonable fees to cover its operating costs.

The division is specifically responsible for developing identification cards for qualifying patients and caregivers as well as adopting regulations that establish requirements for the cards, including (1) information required to be included on an identification card; (2) a method for distributing identification cards; and (3) a method to track identification cards. In addition, the division has to develop and maintain a website that provides (1) information on how an individual can obtain medical cannabis in the State and (2) contact information for licensed growers, processors, and dispensaries.

Licensing Unit within the Division: The bill establishes a Natalie M. LaPrade Medical Cannabis Licensing Unit (hereinafter referred to as “the unit”) in the division that consists of nine members of the public appointed to four-year terms. The Governor, President of the Senate, and Speaker of the House of Delegates each appoint three members, and the Governor designates the chair from among the membership. All appointments require the consent of both the Senate and the House of Delegates. The membership of the unit must reflect the racial and gender diversity of the State. A member of the unit receives an annual salary of \$40,000 and is entitled to reimbursement for travel expenses.

The bill specifies that, each year, the unit must solicit, review, minimally qualify, and rank applicants for grower, processor, and dispensary licenses. (Elsewhere in the bill, licenses are required to be issued every other year.)

Ensuring Ongoing Operations: The bill establishes that all the functions, powers, duties, equipment, assets, liabilities, and employees of the existing commission transfer to the division. Within 30 days of the bill taking effect, DHMH has to take any action necessary to ensure that both the division and the unit are operational. DHMH also has to assign the staff necessary, including contractual staff, to the division to support its work as well as that of the unit. The bill also specifies that any actions performed by the Natalie M. LaPrade Medical Cannabis Commission before enactment of the bill, including the ranking of applicants for a license and the issuance or pre-approval of a license must be given full force and effect by the division.

Special Fund to Support the Program: The bill establishes a Natalie M. LaPrade Medical Cannabis Division Fund as a special, nonlapsing fund that consists of budget appropriations, any other money from any other source accepted for the benefit of the fund, and any fees collected by the division. The fund is subject to an audit by the Office of Legislative Audits (OLA).

New Account to Support Certain Businesses: The bill establishes a Small, Minority, and Women-Owned Medical Cannabis Business Account (hereinafter referred to as “the account”) as a special, nonlapsing fund under the authority of BPW. The account is capitalized by 2% of the gross annual sales of each grower, processor, and dispensary licensed by the division. (However, the bill is silent as to the mechanism for doing so.)

The purpose of the account is to provide equity investments and lending capital to small, minority, and women-owned business enterprises in the State, including minority and women-owned businesses that operate, or are seeking to operate, in the medical cannabis industry. The bill establishes a process whereby BPW makes grants to eligible fund managers who then provide investment capital and loans to such businesses in Maryland. (An “eligible fund manager” is an entity that has significant financial or investment experience with small, minority, and women-owned businesses in the State.) When the unit evaluates applications for a grower, processor, or dispensary license, it has to consider any matching funds granted to these businesses by an eligible fund manager in the same manner as the unit would consider the capitalization of an applicant who is not a small, minority, or women-owned business. Accordingly, an eligible fund manager that receives grants has to reserve a portion of the grant funding from the account to match up to 100% of the capitalization reserves collectively shown by minority and women-owned business applicants during each licensure cycle for the solicitation of applications, application review, and issuance of medical cannabis grower, processor, and dispensary licenses performed by the unit.

Otherwise, the bill establishes priorities for the grant funding, but gives eligible fund managers leeway to use their professional judgment. Although an eligible fund manager providing grants has to prioritize meeting the investment needs of minority and

women-owned businesses *licensed as* medical cannabis growers, processors, and dispensaries, the manager may determine the portion of the overall grant funding received that should be reserved for serving the investment and financing needs of small, minority, and women-owned businesses operating in industries *other than* the medical cannabis industry. An eligible fund manager must keep proper records of funds and accounts, provide an annual report to the Governor and the General Assembly, and is subject to audit by OLA. An eligible fund manager may use grant money to pay expenses for administrative, actuarial, legal, and technical services.

Certifying Providers and Qualifying Patients

Registration of Medical Providers Who Certify Patients as Eligible Program Participants: The division must register as a certifying provider an individual who meets all requirements under the bill (including those associated with the definition of certifying provider) and who submits a satisfactory application. To be registered, however, a certifying provider has to submit a proposal that includes (1) reasons for including a patient under the care of the provider; (2) an attestation that a standard patient evaluation will be completed, including a history, a physical examination, a review of symptoms, and any other pertinent medical information; and (3) the provider's plan for ongoing assessment and follow-up care of a patient and for analyzing and collecting data. The division may not require an individual to meet additional requirements to be registered as a certifying provider (for example, by regulation). A certifying provider may register biennially. The division must grant or deny a renewal registration based on the provider's performance in complying with regulations adopted by the division. The division must report on certified providers, by January 1 each year, to the Governor and the General Assembly.

The bill encourages the division to approve provider applications for chronic and debilitating diseases or medical conditions that produce (1) cachexia, anorexia, or wasting syndrome; (2) severe or chronic pain; (3) severe nausea; (4) seizures; or (5) severe or persistent muscle spasms. The division is authorized to approve applications for other conditions as well, if the condition is severe, is one for which other medical treatments have been ineffective, and the symptoms can reasonably be expected to be relieved by the medical use of cannabis. Moreover, the division may not limit treatment of a particular medical condition to one class of providers.

Generally, a certifying provider, or the spouse of a certifying provider, may not receive any gifts from or have an ownership interest in a medical cannabis grower, processor, or dispensary. However, a certifying provider may receive compensation from a medical cannabis grower, processor, or dispensary if the certifying provider (1) obtains the approval of the division before receiving compensation and (2) discloses the amount of compensation received to the division.

Approval as a Qualifying Patient: A certifying provider may discuss medical cannabis with a patient; a qualifying patient may already be a patient of the certifying provider or may be referred to the certifying provider. By definition, a qualifying patient must have a bona fide provider-patient relationship with a certifying provider in order to be provided a written certification. The written certification establishes that the provider has completed an assessment of the patient's medical history and current medical condition and determined that the patient meets the inclusion criteria in the provider's application (has a particular medical condition, one for which the potential benefits of the medical use of cannabis likely outweigh the health risks for the patient). The certifying provider has to provide each written certification to the division (presumably directly rather than via the qualifying patient); upon receipt of a written certification, the division has to issue an identification card to each qualifying patient or caregiver named in the written certification.

A caregiver may serve no more than five qualifying patients at a time, and a qualifying patient may have no more than two caregivers. Generally, a qualifying patient or caregiver may only obtain medical cannabis from a medical cannabis grower or dispensary licensed by the division; however, a qualifying patient younger than age 18 may only obtain medical cannabis through the patient's caregiver.

Licensure of Growers, Processors, and Dispensaries

Additional Licenses to Be Issued: By October 1, 2017, the division has to assist the unit in soliciting, reviewing, scoring, and ranking applications for medical cannabis grower licenses, processor licenses, and dispensary licenses. The bill establishes that the division must issue:

- at least 5 but no more than 7 grower licenses;
- at least 5 but no more than 7 processor licenses; and
- at least 15 but no more than 25 dispensary licenses.

These licenses are to be issued *in addition to* the Stage One pre-approval grower, processor, and dispensary licenses that were issued by the commission in August 2016.

Meeting the Ongoing Demand: Beginning July 1, 2019, and every two years thereafter, the division may issue the number of grower, processor, and dispensary licenses necessary to meet the demand for medical cannabis by qualifying patients and caregivers issued identification cards in an affordable, accessible, secure, and efficient manner.

The division has to establish an application review process for granting medical cannabis grower, processor, and dispensary licenses in which applications are reviewed, evaluated, prequalified based on minimal licensing standards, and ranked based on criteria established by the division. An applicant for a medical cannabis grower, processor, or dispensary

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license that is prequalified by the division but is not ranked high enough to be awarded a license must be placed on a waiting list in the order in which the applicant ranked for the purposes of the award of licenses by the division in *future* licensure cycles. Unless the division determines that there are material changes to the status and operations of an applicant on a waiting list, the division must consider the applicant's placement on the waiting list when awarding licenses in future licensure cycles.

Factors to Be Considered: The division must strongly encourage and conduct ongoing outreach to business enterprises that qualify as a certified minority business enterprise (MBE) or a women-owned business enterprise to apply for licensure. When evaluating an applicant for licensure as a medical cannabis grower, processor, or dispensary, the division is required to consider or encourage a variety of factors, as outlined below.

Applicant Is Favored/Should:	Applies to a License to Be a Medical Cannabis		
	<u>Grower</u>	<u>Processor</u>	<u>Dispensary</u>
Grow strains of cannabis with demonstrated success in alleviating symptoms of specific diseases or conditions	Yes	No	No
Prepare medical cannabis in a range of routes of administration	Yes	No	No
If a scoring system is used, have “vertically integrated” operations located in close proximity to enhance safety, security, and efficiency of operations, thereby reducing costs and decreasing prices for patients – at least 5% of score	Yes	Yes	No
If a scoring system is used, be located within a certified historically underutilized business zone marked by high unemployment, a zip code where the percentage of minority residents convicted of nonviolent drug offenses exceeds the overall State average, and/or a subdivision of the State with a high patient demand based on incidence of chronic and debilitating diseases and medical conditions – at least 5% of score	Yes	Yes	Yes
Help achieve racial, ethnic, and geographic diversity	Yes	Yes	Yes
Be given an evaluation preference if it meets minimal licensure standards and is a certified MBE or a women-owned business enterprise – equal in weight to at least 10% of total available evaluation points to be assigned by the unit for use in ranking applications and be used for each cycle of solicitation and review of applications conducted by the unit	Yes	Yes	Yes

Limitations on Licenses Issued: An applicant for *each type* of license may not be issued more than one license of that type and an individual may not have an ownership interest in more than one such license awarded by the division. Even so, a person is not prohibited from being concurrently licensed by the division as a grower, dispensary, or processor.

Provisions Applicable Only to Growers: The division must license medical cannabis growers that meet all requirements established by the division to operate in the State. The application for a grower license may be submitted in paper or electronic form, and a grower must submit an application fee. An entity seeking licensure as a medical cannabis grower has to meet local zoning and planning requirements.

The division must set standards for licensure of growers to ensure public safety and safe access to medical cannabis, which may include a requirement for the posting of security. Additionally, the division must establish requirements for the manufacturing process applicable to growers, including a product-tracking system, which must be met to obtain a license. An entity licensed to grow medical cannabis has to ensure that safety precautions established are followed by any facility operated by the grower.

A licensed grower may provide cannabis *only* to licensed processors, licensed dispensaries, qualifying patients and caregivers, and independent testing laboratories registered with the division. A licensed grower may dispense cannabis from a facility of a grower that is licensed as a dispensary. Further, an entity licensed to grow medical cannabis may grow and process medical cannabis on the same premises. A qualifying patient or caregiver may obtain medical cannabis from a facility of a grower licensed as a dispensary.

Provisions Applicable to Both Processors and Dispensaries: A processor or dispensary must be licensed by the division, and its agents must be registered. To qualify for a processor or dispensary license, an applicant must submit an application fee and an application that includes (1) the legal name and physical address of the proposed processor or dispensary; (2) each principal officer and director's name, address, and date of birth, none of whom may have served as a principal officer or director for a licensee that had its license revoked; and (3) proposed operating procedures that are consistent with division regulations for oversight, including storage of medical cannabis and products containing medical cannabis only in enclosed and locked facilities.

The division must establish requirements for product-handling procedures applicable to processors and dispensaries, including a product-tracking system, which must be met to obtain a license.

General Licensing Requirements: Each initial license is valid for four years, and a renewal license is valid for two years. The division has to establish requirements for security that a grower, processor, or dispensary must meet to obtain a license. The division may inspect

a grower, processor, or dispensary licensed under the bill to ensure compliance with the bill. The division may impose penalties on or rescind the license of a grower, processor, or dispensary that does not meet the standards for licensure.

Reporting Requirements for Licensees: Beginning July 1, 2017, each licensed grower, processor, and dispensary must report annually to the division on the number of minority owners, their ownership share, and the number of minority employees.

Each licensed dispensary must submit a quarterly report to the division that includes (1) the number of patients served; (2) the county of residence of each patient served; (3) the medical condition for which medical cannabis was recommended; (4) the type and amount of medical cannabis dispensed; and (5) if available, a summary of clinical outcomes, including adverse events and any cases of suspected diversion. The quarterly report may not include any personal information that identifies a patient.

Registration Requirements for Agents: Each licensed grower, processor, or dispensary has to apply to the division for a registration card for each agent associated with the entity by submitting the agent's name, address, and date of birth. Each agent has to be registered with the division *before* the agent may volunteer or work for the entity; that process involves obtaining a State and national criminal history records check (CHRC) in accordance with the bill. The division may not register as an agent an individual who has been convicted of a felony drug offense. Additionally, each agent of a processor or dispensary must be at least 21 years old; an age limit is not specified for a grower agent.

Within one business day after an agent ceases to be associated with a licensed grower, processor, or dispensary, the entity has to both notify the division and return the agent's registration card to it. On receipt of such a notice, the division must immediately revoke the agent's registration and, if the registration card was not properly returned, notify the Department of State Police.

Role of a Registered Independent Testing Laboratory: The division must register *at least one* private independent testing laboratory to test cannabis and products containing cannabis to be sold in the State. To qualify for registration as an independent testing laboratory, a laboratory must (1) meet division application requirements; (2) pay any required fee; and (3) meet division-established accreditation, inspection, and testing standards and requirements. The division has to adopt regulations that establish (1) the standards and requirements that must be met as a condition of registration; (2) the required standards of care; (3) initial and renewal terms for an independent laboratory registration and the renewal procedure; and (4) the bases and processes for denial, revocation, and suspension of a registration of an independent testing laboratory. The division may inspect an independent testing laboratory to ensure compliance.

Requirement to Become Operational and Provisions for License Transfer: The holder of a medical cannabis grower, processor, or dispensary license may sell or transfer ownership of a license if the licensee was physically and actively engaged in the cultivation, processing, or dispensing of medical cannabis for at least two years prior to selling or transferring ownership of the license. Unless a licensee can demonstrate unforeseen hardship beyond the licensee's control and obtain an extension from the division, a licensee forfeits its license if its facility is not operational within six months after issuance of the license due to a lack of good faith effort by the licensee to become operational. The bill establishes special conditions and required actions related to the sale or transfer of a license held by a minority business enterprise or a women-owned business enterprise.

Protections and Prohibitions

The bill specifies the persons who, when acting in accordance with the bill, are not subject to arrest, prosecution, or any civil or administrative penalty (including disciplinary action by a professional licensing board) and may not be denied any right or privilege for the medical use of cannabis. They are a qualifying patient (who is in possession of an amount of cannabis determined by the division to constitute a 30-day supply or has a statement in the written certification that a 30-day supply is inadequate to meet the patient's needs), caregiver, certifying provider, licensed grower, licensed dispensary, licensed processor, and a hospital, medical facility, or hospice program where a qualifying patient is receiving treatment.

A licensed dispensary, registered dispensary agent, licensed processor, or registered processor agent may not be penalized or arrested under State law for acquiring, possessing, processing, transferring, transporting, selling, distributing, or dispensing cannabis and related products, supplies, or educational materials for use by a qualifying patient or caregiver (or by a licensee, in the case of a licensed processor or registered processor agent only). Similar protections are not established for a licensed grower or registered grower agent.

A State employee who incurs counsel fees in connection with a federal criminal investigation or prosecution solely related to the employee's good faith discharge of public responsibilities under the bill is eligible for reimbursement of counsel fees as authorized by § 12-314 of the State Government Article. The Governor may suspend implementation of the bill on making a determination that there is a reasonable chance of federal prosecution of State employees for involvement with its implementation.

A person may not distribute, possess, manufacture, or use cannabis that has been diverted from a qualifying patient, caregiver, licensed grower, or licensed dispensary. A violator is guilty of a felony and subject to maximum penalties of five years imprisonment, a \$10,000

fine, or both – in addition to any penalties for manufacture, possession, or distribution of marijuana under the Criminal Law Article.

The bill does not authorize any individual to engage in (and does not prevent the imposition of any civil, criminal, or other penalties for) any of the following: (1) undertaking any task under the influence of marijuana or cannabis when doing so would constitute negligence or professional malpractice; (2) operating, navigating, or being in actual physical control of any motor vehicle, aircraft, or boat while under the influence of marijuana or cannabis; or (3) smoking marijuana or cannabis in any public place, in a motor vehicle, or on a private property that is subject to specified policies prohibiting the smoking of marijuana or cannabis on the property. The provision regarding specified policies prohibiting the smoking of marijuana or cannabis on private property does not apply to vaporizing cannabis.

The bill's provisions may not be construed to provide immunity to a person that violates its provisions from criminal prosecution for a violation of any law prohibiting or regulating the use, possession, dispensing, distribution, or promotion of CDS, dangerous drugs, detrimental drugs, or harmful drugs, or any conspiracy or attempt to commit any of those offenses. Further, a hospital, medical facility, or hospice program is not required to report to the division any disciplinary action taken by the hospital, medical facility, or hospice program against a certifying provider, including the revocation of privileges, after the registration of the certifying provider by the division.

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 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. 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.

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.

State Fiscal Effect: The Department of Legislative Services (DLS) advises that an estimate of the bill's fiscal impacts is complicated by the number of uncertainties associated with implementation of the bill. Thus, this analysis discusses the broad impacts and certain components of revenues and costs which are more predictable. Given the amount of time it took for the commission to develop and then adopt regulations and begin to issue licenses, reconstituting the program likely delays the availability of medical cannabis for qualifying patients in the State for at least a year or two. 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.

Although the bill specifies that DHMH must, within 30 days of the effective date of the bill, take any action necessary to ensure the division and unit are both operational, DLS notes that certain provisions in the bill may make that infeasible. Specifically, the unit comprises nine members of the public, with the Governor, President of the Senate, and Speaker of the House of Delegates each responsible for appointing three members. All of these members are then subject to the consent of both the Senate of Maryland and the House of Delegates. Depending on when the bill actually takes effect and how expeditiously the members of the unit are appointed, the unit may not actually be able to be properly appointed until the 2018 legislative session.

Moreover, the bill establishes an ambitious timeframe for adopting entirely new regulations, including fees and certain requirements associated with licensure (by September 1, 2017), as well as soliciting, reviewing, scoring, and ranking applications for all three types of licenses according to specified factors (by October 1, 2017). The bill specifically assigns responsibility for most duties to the division, including those associated with licensing; however, the division takes a subordinate role to the unit in soliciting, reviewing, scoring, and ranking applications – particularly as relates to the additional licenses required to be issued in 2017. While the bill establishes that the ranking of applicants and the issuance or pre-approval of licenses by the existing commission must be given full force and effect by the division, it is not clear how such a ranking carrying over relates to the requirement to solicit, review, score, and rank new applications.

Also, those already issued pre-approvals/licenses must essentially put their implementation on hold, pending a determination of regulatory requirements. The bill establishes that a license is forfeited if the facility is not operational within six months of issuance due to a lack of a good faith effort – this analysis assumes that all entities awarded Stage One pre-approval for a license are given the additional six-month extension allowed under the bill to become operational. Even so, it is not clear whether they can maintain sufficient progress to avoid forfeiting their licenses in the future. The regulations that have not yet been finalized require prompt refunding of annual license fees if a license is not actually issued – which could be an option until such time as other applications are fully processed.

State Revenues:

Support for the Medical Cannabis Program

All special fund revenues currently collected by the commission are collected instead by the division under the bill. Special fund revenues for the division are affected in the near term due to the requirement for the division to reopen the application process and score a new set of grower, dispensary, and processor license applications with consideration given to the specified new factors and weights applied accordingly. The number of additional licenses which must be issued is established in the bill as a range for each type of license: (1) between 5 and 7 additional grower licenses; (2) between 15 and 25 dispensary licenses; and (3) between 5 and 7 processor licenses. These licenses are to be issued in addition to the Stage One pre-approval licenses already issued by the commission in August 2016. Assuming applicant pools of 100 each for growers and processors and 500 for dispensaries (in each case fewer than the initial pool of applicants), taking the midpoint of each range for the number of licenses awarded, and using the existing fee schedule (which may change when regulations are promulgated), the bill likely results in more than \$3.3 million in fee revenues – which, under current law, might be realized a year or two down the road as demand for medical cannabis increases under the program and the existing cap on grower licenses is lifted. Under the timeframe envisioned in the bill, these revenues likely accrue

in fiscal 2018, although some portion of them could be delayed. This estimate does not account for any additional registered agents due to more licensees.

Assuming all awards already made are unaffected, licensing revenues continue to be collected – although, as noted above, it is not clear if the entities awarded Stage One pre-approval for a license can viably proceed with implementation. Thus, under an alternate scenario, the annual license fees they paid are refunded to them.

Support for Small, Minority, and Women-Owned Business Enterprises

The bill specifies that the account receives 2% of the gross annual sales of each grower, processor, and dispensary licensed by the division; however, there is no clear mechanism for collecting these revenues from the licensees. DLS notes that these licensees are private businesses and, at least for the entities that received Stage One pre-approval for a license, the requirement that 2% of gross annual sales be deposited into the account did not exist and as such, their business models do not reflect this expenditure. Further, with the reconstitution of the medical cannabis program under the bill, further delays are inevitable, despite the ambitious timeframe established in the bill. Thus, the timing and magnitude of any revenues to the account are unknown. When the medical cannabis program is operational, the account may be capitalized and the support envisioned provided.

State Expenditures:

Contractual Support to Backfill for Loss of Subject Matter Expertise

This analysis assumes that all staff of the commission simply transfer as staff of the division (9 authorized regular positions and 21 authorized full-time equivalent contractual positions); further, any additional support needed must be provided by DHMH. Thus, staff with other duties in the department may have to be diverted to assist the division and unit.

Even so, the division likely needs additional regular staff to undertake the duties assigned to it under the bill – for example, the division must *strongly* encourage and conduct ongoing outreach to applicants who qualify as an MBE or a women-owned business enterprise and *actively* seek to achieve racial, ethnic, and geographic diversity when licensing entities. Further, the current commission comprises 15 members with significant and varied subject matter expertise. For example, commission membership includes a horticulturist, an addictions specialist, physicians with several areas of specialty, a hospice care nurse, a pharmacist, a representative of the Maryland State’s Attorney’s Office, adult and minor public patient supporters, and a medical researcher. These subject matter experts lend their expertise free of charge to develop regulations, establish policies, and guide the establishment of the State’s medical cannabis program. Accordingly, contractual services may be required to replace that knowledge.

Unit Membership

Under the bill, nine unit members are each to be paid \$40,000 annually; thus, special fund expenditures increase by \$360,000 annually for their salaries, likely beginning in fiscal 2018.

Consulting Fees to Collect and Score Applications

This analysis assumes that the unit is responsible for establishing a new scoring and ranking system. Even so, a consultant is likely also needed to assist in accepting and scoring applications for the licenses required to be issued in 2017. Thus, special fund expenditures increase for this purpose. The RESI contract cost more than \$2.3 million; thus, costs could be in that range again. Special fund expenditures related to hiring a consultant are likely incurred in fiscal 2018.

Managing the New Account

Concurrent with program implementation, BPW needs additional staff to manage the day-to-day administration of the account. Accordingly, general fund expenditures increase at that time for two staff at BPW.

Small Business Effect: The bill reduces profits of licensed growers, processors, and dispensaries through the account receiving 2% of their gross annual sales – to provide equity investments and lending capital to small, minority, and women-owned business enterprises in Maryland. Any such enterprises that are small businesses benefit.

The bill also has significant negative operational and fiscal impacts on any growers, processors, and dispensaries that were awarded Stage One pre-approvals for a license and are delayed in their implementation and/or have more immediate competition than assumed under their business plan, resulting in lost revenues related to selling medical cannabis. The commission advises that some applicants have spent millions of dollars to meet the requirements of the application process, obtain the Stage One pre-approval for a license, and otherwise prepare for implementation.

The bill reopens applications for all three types of licenses – in the case of growers, it eliminates the cap (which would otherwise remain in place until June 2018); to the extent that small businesses apply and are approved, they benefit.

Additional Information

Prior Introductions: None.

Cross File: HB 1443 (Delegate Glenn, *et al.*) - Health and Government Operations.

Information Source(s): Office of the Attorney General; Comptroller's Office; Department of Budget and Management; Department of Health and Mental Hygiene; Board of Public Works; Department Legislative Services (Office of Legislative Audits); Department of Legislative Services

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