

Department of Legislative Services  
 Maryland General Assembly  
 2020 Session

FISCAL AND POLICY NOTE  
 First Reader

House Bill 416 (Delegate Mosby, *et al.*)  
 Health and Government Operations

Medical Cannabis - Medical Cannabis Business Development Fund -  
 Establishment

This bill repeals the requirement that the Natalie M. LaPrade Medical Cannabis Commission make grants relating to small, minority, and women business owners and instead establishes the Medical Cannabis Business Development Fund, administered by the Department of Housing and Community Development (DHCD), to provide grants and financial assistance to minority and women owners and entrepreneurs of small businesses. The Comptroller must determine the State income tax paid by each owner of a licensed medical cannabis entity attributable to income derived from the medical cannabis industry and distribute 2% of that amount into the new fund. **The bill takes effect July 1, 2020.**

Fiscal Summary

**State Effect:** General fund revenues decrease, and special fund revenues increase, by \$25,500 in FY 2021; out-years reflect continued diversion of tax revenues to the new fund. General fund expenditures increase by \$365,100 in FY 2021 for the Comptroller’s Office; out-years reflect ongoing costs. Special fund expenditures increase from spending under the new special fund; out-years reflect availability of additional monies.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
GF Revenue	(\$25,500)	(\$33,200)	(\$39,800)	(\$43,800)	(\$44,700)
SF Revenue	\$25,500	\$33,200	\$39,800	\$43,800	\$44,700
GF Expenditure	\$365,100	\$82,100	\$84,100	\$87,000	\$90,000
SF Expenditure	\$25,500	\$33,200	\$39,800	\$43,800	\$44,700
Net Effect	(\$390,700)	(\$115,300)	(\$123,900)	(\$130,800)	(\$134,700)

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

**Local Effect:** None.

**Small Business Effect:** Potential meaningful.

## **Analysis**

**Bill Summary:** The Medical Cannabis Business Development Fund is a special, nonlapsing fund that consists of (1) income tax revenue distributed, as specified; (2) money appropriated in the State budget; (3) interest earnings; and (4) any other money from any other source accepted for the benefit of the fund. The fund is subject to audit by the Office of Legislative Audits (OLA).

DHCD must make grants from the fund to educational and business development organizations to train and assist minority and women owners and entrepreneurs of small businesses seeking to become medical cannabis licensees or to establish new businesses to provide necessary services solely to medical cannabis licensees. Grants to educational and business development organizations may comprise no more than 15% of the money in the fund annually.

DHCD must also provide financial assistance to minority and women owners and entrepreneurs of small businesses seeking medical cannabis licensure or to establish new businesses to provide necessary services solely to medical cannabis licensees.

By January 15 annually, DHCD must report to the commission and the General Assembly on any grants awarded or financial assistance provided to eligible individuals during the preceding year. DHCD must adopt regulations to implement the bill.

By December 1 annually, the Comptroller must determine the State income tax paid by each owner of a licensed medical cannabis grower, processor, or dispensary that is attributable to income derived from the medical cannabis industry for the immediately preceding taxable year. The commission must provide the Comptroller any information required to make this determination. After making specified income tax revenue distributions, the Comptroller must distribute 2% of the State income tax paid by each licensed medical cannabis entity owner attributable to income tax derived from the medical cannabis industry into the Medical Cannabis Business Development Fund.

### **Current Law:**

#### *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. Additionally, there are legal protections for third-party vendors authorized by the commission to test, transport, or dispose of medical cannabis, medical cannabis products, and medical cannabis waste.

Legislation to alter the commission and medical cannabis industry was introduced during the 2017 and 2018 sessions. Chapter 598 of 2018, an emergency bill, made a number of significant reforms including requiring the commission to 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. Chapter 598 of 2018 also required the commission to 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. Pursuant to Chapter 598, in December 2018, the commission announced five grant awards to educational and business development organizations to develop medical cannabis educational and business development training programs. The programs are designed to provide training and assistance to small, minority, and women business owners and entrepreneurs seeking to become licensed in Maryland's medical cannabis industry.

#### *Income Tax Distribution*

The Revenue Administration and Compliance divisions of the Comptroller of the Treasury are primarily responsible for collecting and administering the income tax. Individual income tax revenues (after an allowance for refunds, administrative costs, and unallocated withholdings) are distributed to the general fund. The local portion of the tax imposed by the counties and Baltimore City is collected by the State and, after deducting administrative costs and a pro rata share of refunds, is distributed to local governments.

**Background:** Statute limits the number of grower and processor licenses the commission can issue, and regulations establish a limit on the number of dispensary licenses. Specifically, the commission can issue 22 grower, 28 processor, and 102 dispensary licenses. As of January 2020, the commission had issued 17 final grower licenses, 18 final processor licenses, and 85 final dispensary licenses. Additionally, the commission had registered six independent laboratories. The commission maintains a list of licensees on its [website](#). Furthermore, there were 37,363 registered patients, 88,594 certified patients, 8,003 caregivers, and 1,705 certifying providers. The commission reported that between December 2018 and December 2019 there were \$268.3 million in retail sales at medical cannabis dispensaries in the State.

**State Revenues:** Under the bill, general fund revenues decrease by an estimated \$25,519 in fiscal 2021, and special fund revenues increase correspondingly.

**Exhibit 1** shows the estimated impact of the bill on the general fund and the new Medical Cannabis Business Development Fund from the required distributions over the five-year period covered by this fiscal and policy note.

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**Exhibit 1**  
**Revenue Impact on the General Fund and the**  
**Medical Cannabis Business Development Fund**  
**Fiscal 2021-2025**

	<u>FY 2021</u>	<u>FY 2022</u>	<u>FY 2023</u>	<u>FY 2024</u>	<u>FY 2025</u>
General Fund	(\$25,519)	(\$33,175)	(\$39,810)	(\$43,791)	(\$44,667)
Medical Cannabis Business Development Fund	25,519	33,175	39,810	43,791	44,667

Source: Department of Legislative Services

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Medical cannabis sales totaled over \$96.0 million in 2018 and \$252.2 million in 2019. Sales are expected to continue to grow as more licenses are issued and the number of patients increases. Thus, this estimate projects Maryland medical cannabis sales of approximately \$390 million in tax year 2021 and almost \$460 million by 2025. This estimate also assumes State taxable income is 43% of sales. Most medical cannabis license holders are limited liability corporations; thus, they generally may elect to be classified as a corporation or a partnership. This estimate assumes that one-quarter of medical cannabis limited liability corporations file individual income tax returns. However, to the extent that the taxpayers are corporations, general funds decrease by a lesser amount and special fund revenues are less because the bill does not redirect corporate income tax revenues.

**State Expenditures:**

*Comptroller Expenditures*

General fund expenditures increase by \$365,144 in fiscal 2021, which accounts for the bill’s July 1, 2020 effective date. This estimate reflects the cost of hiring one full-time permanent revenue administrator in the Comptroller’s Office to (1) promulgate regulations for the apportionment of income and potentially tax expenditures; (2) determine eligible income tax paid by licensed medical cannabis entity owners that is attributable to income derived from the medical cannabis industry; and (3) make required distributions to the new fund. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating

expenses. The estimate also includes a one-time cost to create a new tax form for licensed medical cannabis entity owners to make the required distributions.

Position	1.0
Salary and Fringe Benefits	\$84,619
One-time Expense for New Tax Form	275,000
Operating Expenses	<u>5,525</u>
<b>Total FY 2021 General Fund Expenditures</b>	<b>\$365,144</b>

Future year expenditures reflect a full salary with annual increases and employee turnover and ongoing operating expenses.

*Natalie M. LaPrade Medical Cannabis Commission*

There are statutory and regulatory limitations on the number of licenses the commission is authorized to issue, and according to the commission, these caps have been reached in terms of the number of interested parties applying for licensure. Since there are more applicants than available licenses, the commission also does not plan to issue any grants in the near future. Additionally, there is no funding appropriated or planned in the Governor's proposed fiscal 2021 budget. Thus, the bill is not anticipated to have any impact on special fund revenues or expenditures by the commission related to grants to appropriate educational and business development organizations.

The commission can provide information to the Comptroller's Office with existing budgeted resources and staff.

*Administration of the Fund by the Department of Housing and Community Development*

It is assumed that DHCD can implement the grant program with existing resources and staff. However, depending on the magnitude of the grant program and actual funding available, DHCD may need to hire staff to administer the program or incur expenditures to train existing staff. Given the limited funding available to the new fund, any staffing or training costs would require additional general fund expenditures.

The OLA can conduct any necessary audit-related work during the regularly scheduled DHCD fiscal compliance audit using existing resources and personnel.

*Grant Funding from the Medical Cannabis Business Development Fund*

Given the limited funding available, it is assumed that DHCD uses all available funding annually to issue grants and provide financial assistance to eligible organizations and

individuals. Thus, special fund expenditures from the new fund increase by \$25,519 in fiscal 2021, increasing to \$44,667 in fiscal 2025.

**Small Business Effect:** Since the commission's grant program is not currently active, under the bill, additional funding is awarded in the form of grants and financial assistance for training and to establish new businesses, as specified. Thus, small businesses benefit from additional funding and training under the bill, potentially meaningfully depending on the distribution of the funding.

**Additional Comments:** The Comptroller's Office advises that it will be impossible to make the required distribution in the first year the bill is effective (specifically on December 1, 2020) since that would require distribution changes that were not in place for the tax year 2019 filing season. Accordingly, new special fund revenues and expenditures for fiscal 2021 are likely not available. Even so, this analysis *assumes* that the required distribution is able to be made in fiscal 2021 for tax year 2019 and that there is no offsetting impact on future year distributions.

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### Additional Information

**Prior Introductions:** HB 1156 of 2019 received a hearing in the House Health and Government Operations Committee, but no further action was taken.

**Designated Cross File:** None.

**Information Source(s):** Comptroller's Office; Maryland Department of Health; Department of Housing and Community Development; Department of Legislative Services; Office of Legislative Audits

**Fiscal Note History:** First Reader - February 18, 2020  
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Analysis by: Kathleen P. Kennedy

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