



Senate Fiscal Agency  
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## BILL ANALYSIS



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House Bill 4209 (Substitute H-5 as passed by the House)  
House Bill 4827 (Substitute S-1)  
Sponsor: Representative Mike Callton, D.C. (H.B. 4209)  
Representative Klint Kesto (H.B. 4827)  
House Committee: Judiciary  
Senate Committee: Judiciary

Date Completed: 12-8-15

**CONTENT**

**House Bill 4209 (H-5) would create the "Medical Marihuana Facilities Licensing Act" to do the following:**

- Provide for the licensure of marihuana growers, processors, secure transporters, provisioning centers, and safety compliance facilities.
- Establish the licensure process within the Department of Licensing and Regulatory Affairs (LARA).
- Create the Medical Marihuana Licensing Board within LARA to implement the proposed Act, including the licensing process, and give the Board jurisdiction over the operation of all marihuana facilities.
- Provide that a marihuana facility could not be licensed unless the municipality where it would be located had adopted an authorizing ordinance.
- Require a municipality to approve an applicant for a license within its boundaries before the Board could consider the application.
- Require applicants for a license to pay an application fee and require licensees to pay an annual regulatory assessment, which would be deposited in a proposed "Marihuana Regulatory Fund".
- Require money in that Fund to be used for implementing, administering, and enforcing the Act.
- Require provisioning centers to pay a tax on their retail gross income, and require the tax to be deposited in a proposed "Medical Marihuana Excise Fund".
- Require money in the Excise Fund to be distributed to municipalities and counties where marihuana facilities were located, and to the State.
- Authorize the Board to impose license sanctions and civil fines for violations of the proposed Act or rules.
- Impose various restrictions on Board members, employees, and agents related to conflicts of interests and relationships with licensees, and require members, employees, and agents to make certain disclosures.
- Exempt licensees from marihuana-related criminal or civil prosecution and penalties, and other sanctions, for performing activities within the scope of their license.
- Provide that a registered qualifying patient or registered primary caregiver would not be subject to criminal prosecution or sanctions for purchasing marihuana from a provisioning center.
- Require LARA to promulgate rules in consultation with the Board.
- Create the Marihuana Advisory Panel to make recommendations to the Board.
- Appropriate \$8.5 million to LARA in fiscal year 2015-16 from the Marihuana Regulatory Fund for implementation, administration, and enforcement of the Act.

**House Bill 4827 (S-1) would create the "Marihuana Tracking Act" to:**

- **Require LARA to establish a statewide internet-based monitoring system for integrated tracking, inventory, and verification.**
- **Require the system to have specified capabilities.**
- **Require LARA to seek bids to establish, operate, and maintain the system.**
- **Require the awardee to deliver the functioning system within 180 days after the contract was awarded.**
- **Allow LARA to terminate the contract for a violation of the Act.**
- **Provide for the confidentiality of information in the system.**

The bills are tie-barred. Each bill would take effect 90 days after its enactment.

**House Bill 4209 (H-5)**

Licenses

Categories; Definitions. Beginning 180 days after the effective date of the Medical Marihuana Facilities Licensing Act, a person could apply to the proposed Medical Marihuana Licensing Board for State operating licenses in the following categories:

- Class A, B, or C grower.
- Processor.
- Provisioning center.
- Secure transporter.
- Safety compliance facility.

"State operating license" would mean a license issued under the Act that, except for a secure transporter authorized for mobile operations at multiple sites, allows the licensee to operate at a single site as a grower, processor, secure transporter, provisioning center, or safety compliance facility.

"Grower" would mean a licensee that is a commercial entity located in this State that cultivates, dries, trims, or cures and packages marihuana for sale to a processor or provisioning center.

"Processor" would mean a licensee that is a commercial entity located in this State that purchases marihuana from a grower and that extracts resin from the marihuana or creates a marihuana-infused product for sale and transfer in packaged form to a provisioning center.

"Provisioning center" would mean a licensee that is a commercial entity located in this State that purchases marihuana from a grower or processor and sells, supplies, or provides marihuana to registered qualifying patients, directly or through their registered primary caregivers. The term would include any commercial property where marihuana is sold at retail to registered qualifying patients or registered primary caregivers. A noncommercial location used by a primary caregiver to assist a qualifying patient connected to the caregiver through the marihuana registration process of the Department of Licensing and Regulation (LARA) in accordance with the Michigan Medical Marihuana Act (MMMA) would not be a provisioning center for purposes of the proposed Act.

"Secure transporter" would mean a licensee that is a commercial entity located in this State that stores marihuana and transports it between marihuana facilities for a fee.

"Safety compliance facility" would mean a licensee that is a commercial entity that receives marihuana from a marihuana facility or a registered qualifying patient or a registered primary

caregiver, tests if for contaminants and for tetrahydrocannabinol (THC) and other cannabinoids, and returns it to the facility, patient, or caregiver with the test results.

"Marihuana facility" would mean a location from which any of those license holders operates.

"Marihuana-infused product" would mean a topical formulation, tincture, beverage, edible substance, or similar product containing marihuana that is intended for human consumption in a manner other than smoke inhalation.

"Registered qualifying patient" would mean a qualifying patient who has been issued a current registry identification card under the Michigan Medical Marihuana Act (MMMA) or a visiting qualifying patient as that term is defined in the MMMA.

"Registered primary caregiver" would mean a primary caregiver who has been issued a current registry identification card under the MMMA.

Grower License. A grower license would authorize the grower to grow not more than the following number of plants under the indicated class:

- Class A: 500 plants
- Class B: 1,000 plants
- Class C: 1,500 plants

A grower license would authorize the sale of marihuana seeds or seedlings only to a grower by means of a secure transporter and purchase of marihuana seeds or seedlings only from a grower, registered qualified patient, or registered primary caregiver.

The license would authorize the sale of marihuana, other than seeds or seedlings, only to a processor or provisioning center.

The license would authorize the grower to transfer marihuana to and from a secure compliance facility for testing or to or from a processor or provisioning center located within the same marihuana facility. Otherwise, a grower could transfer marihuana only by means of a secure transporter.

To be eligible for a grower license, the applicant and each investor in the grower could not have a greater than 10% interest in a secure transporter or a safety compliance facility.

Until December 21, 2021, a grower would have to have a minimum of two years' experience as a registered primary caregiver, or have an individual with that experience as an active employee.

While holding a license as a grower, the grower could not be a registered primary caregiver and could not employ an individual who was simultaneously a registered primary caregiver.

A grower would have to enter each transfer of marihuana into the State's database for marihuana tracking.

Processor License. A processor license would authorize the purchase of marihuana only from a grower and the sale of processed marihuana or marihuana-infused products only to a provisioning center.

A processor license would authorize the processor to transfer marihuana to and from a safety compliance facility for testing or to or from a grower or provisioning center located within the same marihuana facility. Otherwise, a processor license could transfer marihuana only by means of a secure transporter.

To be eligible for a processor license, the applicant and each investor in the processor could not have a greater than 10% interest in a secure transporter or safety compliance facility.

Until December 21, 2021, a processor would have to have a minimum of two years' experience as a registered primary caregiver, or have an individual with that experience as an active employee.

While holding a license as a processor, the processor could not be a registered primary caregiver or employ an individual who was simultaneously a registered primary caregiver.

A processor would have to enter each transfer of marihuana into the State's database for marihuana tracking.

Secure Transporter License. A secure transporter license would authorize the licensee to store and transport marihuana and money associated with the purchase or sale of marihuana between marihuana facilities for a fee upon request of a person with legal custody of that marihuana or money.

To be eligible for a secure transporter license, the applicant and each investor with a greater than 10% interest in the secure transporter could not have a greater than 10% interest in a grower, processor, provisioning center, or safety compliance facility.

A secure transporter would have to enter each transfer of marihuana into the State's database for marihuana tracking.

Provisioning Center License. A provisioning center license would authorize the purchase or transfer of marihuana only from a grower or processor and the sale or transfer only to a registered qualifying patient or registered primary caregiver.

A provisioning center license would authorize the licensee to transfer marihuana to or from a safety compliance facility for testing. Otherwise, all transfers of marihuana to a provisioning center from a separate marihuana facility would have to be by means of a secure transporter.

To be eligible for a provisioning center license, the applicant and each investor in the center could not have a greater than 10% interest in a secure transporter or safety compliance facility.

A provisioning center could sell or transfer marihuana to a registered qualifying patient or registered primary caregiver only after it had been tested and bore the label required for retail sale.

A provisioning center would have to enter each transfer of marihuana into the State's database for marihuana tracking.

Alcoholic beverages could not be sold, distributed, or consumed on the premises of a provisioning center.

Safety Compliance Facility License. A safety compliance facility license would authorize the facility to receive, test, and return marihuana.

A safety compliance facility would have to be accredited by an entity approved by the Board within one year after the date the license was issued. The Board could grant a variance from this requirement if it found that the variance was necessary to protect and preserve the public health, safety, or welfare.

To be eligible for a safety compliance facility license, the applicant and each investor with a greater than 10% interest in the facility could not have a greater than 10% interest in a grower, secure transporter, processor, or provisioning center.

A safety compliance facility would have to do all of the following:

- Perform tests to certify that marihuana was reasonably free of chemical residues such as fungicides and insecticides.
- Use validated test methods to determine THC, THC acid, cannabidiol (CBD), and CBD acid levels.
- Perform tests that determined whether marihuana complied with the standards LARA established for microbial and mycotoxin contents.
- Perform other tests necessary to determine compliance with any other good manufacturing practices as prescribed by rules.
- Enter each transfer of marihuana, along with test results, into the State's database for marihuana tracking.

### Licensing Process

Application. A license application would have to be made under oath on a form prescribed by the Medical Marihuana Licensing Board. It would have to contain information prescribed by the Board, including all of the following:

- The name, business address and telephone number, Social Security number, and, if applicable, Federal tax ID number of the applicant.
- The identity of every person having a greater than 1% direct or indirect ownership interest in the applicant; as well the names and addresses of the following: beneficiaries if the applicant were a trust, all shareholders, officers, and directors if the applicant were a corporation, all partners if the applicant were a partnership or limited liability partnership, and the managers, if the applicant were a limited liability company.
- An identification of any business that was directly or indirectly involved in the growing, processing, testing, transporting, or sale of marihuana.
- Whether an applicant had been indicted for, charged with, arrested for, or convicted of, pleaded guilty or no contest to, or forfeited bail concerning any criminal offense under the laws of any jurisdiction, either felony or controlled substance-related misdemeanor, not including traffic violations, regardless of whether the offense had been reversed on appeal or otherwise.
- Whether an applicant had ever applied for or had been granted any commercial license or certificate by a licensing authority in Michigan or any other jurisdiction that had been denied, restricted, suspended, revoked, or not renewed.
- Whether an applicant had filed, or been served with, a complaint or other notice filed with any public body regarding the delinquency in payment of, or a dispute over the filings concerning the payment of, any tax required under Federal, state, or local law.
- A statement listing the names and titles of all public officials or officers of any unit of government, and their spouses, parents, and children, who directly or indirectly owned any financial interest in, had any beneficial interest in, were creditors of, or held any interest in any contractual or service relationship with an applicant.
- A description of the type of marihuana facility; written approval of the facility location from the municipality; anticipated or actual number of employees; and projected or actual gross receipts.
- A paper copy of electronic posting website reference for the ordinance that the municipality adopted to authorize operation of one or more licensed marihuana facilities in the municipality.
- Financial information in the manner and form prescribed by the Board.
- Any other information the Board required by rule.

In addition, each applicant would have to submit with its application, on forms provided by the Board, a passport quality photograph and one set of fingerprints for each person having a greater than 1% direct or indirect ownership interest in the facility and each person who was an officer, director, or managerial employee of the applicant.

The Board would have to use information on an application as a basis to conduct a thorough background investigation on the applicant. Information the Board obtained from the background investigation would be exempt from disclosure under the Freedom of Information Act (FOIA).

A false application would be cause for the Board to deny a license.

The Board could not consider an incomplete application but, within a reasonable time, would have to return it to the applicant with notification of the deficiency and instructions for submitting a corrected application.

An applicant would have to provide written consent to the inspections, examinations, searches, and seizures provided for in the Act and to the disclosure to the Board and its agents of otherwise confidential records, including tax records, while applying for and holding a license. Information the Board received under this provision would be exempt from FOIA.

An applicant would have to certify that the applicant did not have an interest in any other State operating license that was prohibited under the Act.

Application Fee. A nonrefundable application fee would have to be paid at the time an application was filed, to defray the costs associated with the background investigation. In consultation with the Board, LARA would have to set the amount of the fee for each category and class of license by rule. If the costs of investigation and processing exceeded the fee, the applicant would have to pay the additional amount to the Board.

Eligibility. An applicant would be ineligible to receive a license if any of the following applied:

- The applicant had been convicted of or released from incarceration for a felony under the laws of this or any other state or the United States within the past five years or had been convicted of a controlled substance-related felony within the past 10 years.
- Within the past five years, the applicant had been convicted of a misdemeanor involving a controlled substance, theft, dishonesty, or fraud in any state or had been found responsible for violating a substantially corresponding local ordinance in any state.
- The applicant had knowingly submitted a license application that contained false information.
- The applicant was a member of the Board.
- The applicant failed to demonstrate the ability to maintain adequate premises liability and casualty insurance for its proposed facility.
- The applicant failed to meet other criteria established by rule.

An applicant also would be ineligible for a license if he or she held an elective office of a governmental unit of this or another state or the Federal government; were a member of or employed by a regulatory body of a governmental unit in this or another state or the Federal government; or were employed by a governmental unit of this State.

In determining whether to grant a license, the Board also could consider various specified factors, including the following:

- The sources and total amount of the applicant's capitalization to operate and maintain the proposed facility.

- Whether the applicant had filed, or had filed against it, a bankruptcy proceeding within the past seven years.
- Whether the applicant had a history of noncompliance with any regulatory requirements in this State or any other jurisdiction.
- Whether at the time of application the applicant was a defendant in litigation involving its business practices.

License Issuance & Renewal. The Board would be required to issue a license to an applicant who submitted a complete application and paid both the application fee and a regulatory assessment established by the Board for the first year of operation, if the Board determined that the applicant was qualified to receive a license. The Board would have to review all applications and inform each applicant of its decision.

A license would be issued for a one-year period and would be renewable annually. Except as otherwise provided in the proposed Act, the Board would have to renew a license if all of the following were met:

- The licensee applied to the Board on a renewal form provided by the Board that required information prescribed by rules.
- The Board received the application on or before the expiration date of the current license.
- The licensee paid the regulatory assessment required under the Act.
- The licensee met any other renewal requirements set forth in rules.

If a renewal application were not submitted by the license's expiration date, the license could be renewed within 60 days after that date upon application, payment of the regulatory assessment, and satisfaction of any renewal requirement and late fee set forth in rules. The licensee could continue to operate during the 60-day period if the license were renewed by the end of that period.

The expiration of a license would not terminate the Board's authority to impose sanctions on the licensee.

In deciding on a renewal application, the Board would have to consider any specific written input it received from an individual or entity within the local unit of government where the applicant was located.

Provision of Consent & Information. A licensee would have to consent in writing to inspections, examinations, searches, and seizures that were permitted under the Act, and provide a handwriting exemplar, fingerprints, photographs, and information as authorized in the Act and rules.

An applicant or licensee would have a continuing duty to provide information requested by the Board and to cooperate in any investigation, inquiry, or hearing conducted by the Board.

True Party of Interest. The Board would have to issue a license only in the name of the true party of interest.

For the following true parties of interest, information concerning the indicated individuals would have to be included in the disclosures required of an applicant or licensee:

- For an individual or sole proprietorship: the proprietor and spouse.
- For a partnership and limited liability partnership: all partners and their spouses.
- For a limited partnership and limited liability limited partnership: all general and limited partners and their spouses.
- For a limited liability company: all members, managers, and their spouses.

- For a privately held corporation: all corporate officers or people with equivalent titles and their spouses and all stockholders and their spouses.
- For publicly held corporation: all corporate officers or people with equivalent title and their spouses.
- For a multilevel ownership enterprise: any entity or person that received or had the right to receive a percentage of the gross or net profit from the enterprise during any full or partial calendar or fiscal year.
- For a nonprofit corporation: all individuals and entities with membership or shareholder rights in accordance with the articles of corporation or the bylaws, and their spouses.

License Exclusivity. Each license would be exclusive to the licensee, and a licensee or any other person would have to apply for and receive the Board's approval before a license was transferred, sold, or purchased. The attempted transfer, sale, or other conveyance of an interest of more than 1% in a license without prior Board approval would be grounds for suspension or revocation of the license or other sanction considered appropriate by the Board.

### Licensing Board

The five-member Medical Marihuana Licensing Board would be created within LARA. The members would have to be residents of the State appointed by the Governor. Not more than three could be from the same political party. One member would have to be appointed from three nominees submitted by the Senate Majority Leader and one from three nominees submitted by the Speaker of the House. The Governor would have to designate one member as the chairperson.

The members would be appointed for terms of four years, except, of those first appointed, one would be appointed for two years and two would be appointed for three years. The Governor could remove a member for neglect of duty, misfeasance, malfeasance, nonfeasance, or any other just cause.

A board member could not hold any other public office for which he or she received compensation, except necessary travel or other incidental expenses.

A person would not be eligible to serve on the Board if he or she were not of good moral character or had been indicted for, charged with, or convicted of, pleaded guilty or no contest to, or forfeited bail concerning any felony or a misdemeanor involving a controlled substance violation, theft, dishonesty, or fraud.

Members would have to be reimbursed for all actual and necessary expenses and disbursements incurred in carrying out official duties.

In conjunction with the Board, LARA would have to employ an executive director and other personnel as necessary to assist the Board in carrying out its duties. The executive director could not hold any other office or employment.

### Board Responsibilities

The Board would have general responsibility for implementing the proposed Act. The Board would have the powers and duties specified in the Act and all other powers necessary and proper to fully and effectively implement and administer the Act for the purpose of licensing, regulating, and enforcing the licensing and regulation system established under the Act for marihuana growth, processing, testing, and transportation. The Board would be subject to the Administrative Procedures Act.

The Board's duties would include the following:

- Granting or denying each application for a State operating license within a reasonable time.
- Deciding all license applications in reasonable order.
- Implementing and collecting the application fee, the regulatory assessment, and the tax on provisioning centers.
- Providing for the levy and collection of fines for a violation of the Act or rules.
- Providing oversight of a marihuana facility through the Board's inspectors, agents, and auditors and through the State Police or Attorney General for the purposes of certifying revenue, receiving complaints from the public, or conducting investigations into the operation of the facilities.
- Reviewing and ruling on any complaint by a licensee regarding investigative procedures of the State that were believed to be unnecessarily disruptive of marihuana facility operations.
- Holding at least two public meetings each year.

The Board also would be required to review the patterns of marihuana transfers by the licensees under the Act as recorded in a statewide database established for use in administering and enforcing the Act and making recommendations to the Governor and the Legislature in a written annual report and additional reports requested by the Governor.

Except as otherwise provided in the Act and as described below, all information, records, interviews, reports, statements, memoranda, or other data supplied to or used by the Board would be subject to FOIA.

Unless presented during a public hearing or requested by the licensee or applicant who was the sole subject of the data, all of the information, records, interviews, reports, statements, memoranda, or other data supplied to, created by, or used by the Board related to background investigations of applicants or licensees and to trade secrets, internal controls, and security measures of the licensees and applicants would not be subject to FOIA.

All information, records, interviews, reports, statements, memoranda, or other data supplied to or used by the Board that had been received from another jurisdiction or local, state, or Federal agency under a promise of confidentiality, or whose release was otherwise barred by the statutes, rules, or regulations of that jurisdiction or agency or by an intergovernmental agreement, would not be subject to FOIA.

In addition, all information in the statewide database of marihuana transactions would not be subject to FOIA.

#### Board Jurisdiction over Facilities

The Medical Marihuana Licensing Board would have jurisdiction over the operation of all marihuana facilities. The Board would have all powers necessary and proper to fully and effectively oversee the operation of marihuana facilities, including the authority to do all the following:

- Investigate applicants for State operating licenses, determine the eligibility for licenses, and grant licenses to applicants according to the proposed Act and rules.
- Investigate all individuals employed by marihuana facilities.
- Enter the premises, offices, facilities, or other places of business of a licensee, at any time and without a warrant or notice to the licensee, if evidence of compliance or noncompliance with the Act or rules were likely to be found and consistent with constitutional limitations, for specified purposes.
- Investigate alleged violations of the Act or rules and take appropriate disciplinary action against a licensee.

- Require all relevant records of licensees to be kept on the premises authorized for operation of the marihuana facility of the licensee or in the manner prescribed by the Board.
- Require each licensee of a marihuana facility to submit to the Board a list of the stockholders or other people having a 1% or greater beneficial interest in the facility, in addition to any other information the Board considered necessary.
- Eject or exclude, or authorize the ejection or exclusion of, an individual from a facility if he or she violated the Act, rules, or final orders of the Board, subject to a subsequent hearing by the Board concerning the propriety of the ejection or exclusion.
- Conduct periodic audits of licensed facilities.
- Take disciplinary action as the Board considered appropriate to prevent practices that violated the Act and rules.
- Review a licensee that was under review or the subject of discipline by a regulatory body in any other jurisdiction for a violation of a controlled substance or marihuana law or regulation in that jurisdiction.

The Board could seek and would have to receive the cooperation and assistance of the Departments of State Police and Attorney General in conducting background investigations of applicants and fulfilling its responsibilities under the Act.

### Sanctions & Hearings

If an applicant or a licensee failed to comply with the Medical Marihuana Facilities Licensing Act or rules, if a licensee no longer met the eligibility requirements for a license under the Act, if a licensee failed to comply with the Marihuana Tracking Act, or if an applicant or licensee failed to provide information the Board requested to assist in any investigation, inquiry, or Board hearing, the Board could deny, suspend, revoke, or restrict a license. The Board also could suspend, revoke, or restrict a license and require the removal of a licensee or an employee of a licensee for a violation of the Licensing Act, rules, the Marihuana Tracking Act, or any ordinances adopted by a municipality under the Licensing Act.

The Board could impose civil fines of up to \$5,000 against an individual and up to \$10,000 or an amount equal to the daily gross receipts, whichever was greater, against a licensee for each violation of the Licensing Act, rules, or an order of the Board.

The Board would have to comply with the Administrative Procedures Act when denying, revoking, suspending, or restricting a license or imposing a fine.

The Board could suspend a license without notice or hearing upon a determination that the safety or health of patrons or employees was jeopardized by continuing a marihuana facility's operation. If the Board did so, a prompt postsuspension hearing would have to be held to determine if the suspension should remain in effect. The suspension could remain in effect until the Board determined that the cause for suspension had been removed. The Board could revoke the license or approve a transfer or sale of the license upon determining that the licensee had not made satisfactory progress toward abating the hazard.

After denying an application for a license, the Board would be required, upon request, to provide a public investigative hearing at which the applicant would be given the opportunity to present testimony and evidence to establish its suitability for a license. Other testimony and evidence could be presented, but the Board's decision would have to be based on the whole record before the Board and would not be limited to testimony and evidence submitted at the hearing.

Except for license applicants who could be granted a hearing at the discretion of the Board, any party aggrieved by an action of the Board suspending, revoking, restricting, or refusing to renew a license, or imposing a fine, would have to be given a hearing before the Board

upon request. A written request for a hearing would have to be made to the Board within 21 days after notice of the Board's action was served.

In addition, the Board could conduct investigative and contested case hearings, issue subpoenas for the attendance of witnesses; and issue subpoenas for the production of books, ledgers, records, memoranda, electronically retrievable data, and other pertinent records.

### Rules

In consultation with the Board, LARA would have to promulgate rules and emergency rules as necessary to implement, administer, and enforce the proposed Act. The rules would have to ensure the safety, security, and integrity of the operation of marihuana facilities, and would have to include rules to do the following:

- Set appropriate standards for marihuana facilities and associated equipment.
- Provide for the levy and collection of fines for a violation of the Act or rules.
- Prescribe use of a statewide database to track all marihuana transfers.

The rules also would have to establish the following:

- Operating regulations for each category of licensee.
- Qualifications and restrictions for people participating in or involved with operating marihuana facilities.
- Testing standards, procedures, and requirements for marihuana sold through provisioning centers.
- Quality control standards, procedures, and requirements for marihuana facilities.
- Chain of custody standards, procedures, and requirements for facilities.
- Daily purchasing limits at provisioning centers for registered qualifying patients and registered primary caregivers to ensure compliance with the MMMA.
- Marketing and advertising restrictions for marihuana products and facilities.
- Maximum THC levels for marihuana-infused products sold or transferred through provisioning centers.
- Restrictions on edible marihuana-infused products to prohibit shapes that would appeal to minors.
- Minimum levels of insurance that licensees would have to maintain.

In addition, the rules would have to establish standards, procedures, and requirements for the following:

- Waste product disposal and storage by facilities.
- Chemical storage.
- The secure and safe transportation of marihuana between facilities.
- Storage of marihuana.

### Taxes, Fees, Funds, & Appropriation

Tax on Provisioning Center. A tax would be imposed on each provisioning center at the rate of 3% of its gross retail income. If a law authorizing the recreational or nonmedical use of marihuana in the State were enacted, this provision would not apply beginning 90 days after the effective date of that law.

The tax would have to be administered by the Department of Treasury in accordance with the proposed Act and the revenue Act. In the event of a conflict between those statutes, the proposed Act would prevail.

Medical Marihuana Excise Fund. This Fund would be created in the State Treasury. Except for the application fee, the regulatory assessment, and any local licensing fees, all money collected from the tax on provisioning centers and all other fees, fines, and charges imposed under the proposed Act would have to be deposited in the Medical Marihuana Excise Fund.

The money in the Fund would have to be allocated, upon appropriation, as follows:

- 30% to municipalities in which a marihuana facility was located, allocated in proportion to the number of facilities within the municipality.
- 40% to counties in which a marihuana facility was located, allocated in proportion to the number of facilities within the county.
- 5% to counties in which a marihuana facility was located, allocated in proportion to the number of facilities within the county, to be used exclusively to support the county sheriffs.
- 25% to the State for deposit in the State General Fund.

The State Treasurer would have to direct the investment of the Medical Marihuana Excise Fund and credit to it interest and earnings from Fund investments. For auditing purposes, LARA would be the administrator of the Fund. Money in the Fund at the close of the fiscal year would remain in the Fund and not lapse to the General Fund.

Regulatory Assessment. A regulatory assessment would have to be collected annually from licensed growers, processors, provisioning centers, and secure transporters. Beginning in the first year in which marihuana facilities were authorized to operate in the State, and then annually, LARA, in consultation with the Board, would have to establish the total regulatory assessment at an amount that was estimated to be sufficient to cover the actual costs and support the expenditures listed below:

- The Department's costs to implement, administer, and enforce the proposed Act, except for the costs to process and investigate license applications supported with the application fee.
- Expenses of medical marihuana-related legal services provided to LARA by the Department of Attorney General.
- Expenses of medical marihuana-related services provided to LARA by the State Police.
- \$500,000 to be allocated to LARA for expenditures of the Department for licensing substance use disorder programs.
- An amount equal to 5% of the sum of the preceding amounts to be allocated to the Department of Health and Human Services (DHHS) for marihuana-related expenditures, including substance use disorder prevention, education, and treatment programs.

By the date a licensee began operating and then annually, each grower, processor, provisioning center, and secure transporter would have to pay to the State Treasurer an amount determined by LARA to reasonably reflect the licensee's share of the total regulatory assessment established by the Department.

The regulatory assessment for a Class A grower license could not exceed \$10,000.

Marihuana Regulatory Fund. The application fee and the regulatory assessment would have to be deposited in the Marihuana Regulatory Fund, which would be created in the State Treasury.

Except as provided for the allocation of \$500,000 of the regulatory assessment to LARA and a portion to the DHHS, LARA would have to spend money from the Fund, upon appropriation, only for implementing, administering, and enforcing the proposed Act.

The State Treasurer would have to direct the investment of the Fund and credit to it interest and earnings from Fund investments. The Treasurer would be the administrator of the Fund

for auditing purposes. Money in the Fund at the close of the fiscal year would have to remain in the fund and not lapse to the General Fund.

Appropriation. For the 2015-16 fiscal year, \$8.5 million would be appropriated to LARA from the Marihuana Regulatory Fund for the purpose of funding the operations of the Department and the Board in implementing, administering, and enforcing the Act.

#### Protect from Prosecution & Other Sanctions

Licensees. Except as otherwise provided, if a person had been granted a State operating license and were operating within its scope, the licensee and its agents would not be subject to any of the following for activities described below:

- Criminal penalties under State law or a local ordinance regulating marihuana.
- State or local criminal prosecution for a marihuana-related offense.
- State or local civil prosecution for a marihuana-related offense.
- Search or inspection, except for an inspection authorized under the proposed Act by law enforcement officers, the municipality, or LARA.
- Seizure of marihuana, real or personal property, or anything of value based on a marihuana-related offense.
- Any sanction, including disciplinary action or denial of a right or privilege, by a business or occupational or professional licensing board or bureau based on a marihuana-related offense.

The activities that would be protected are as follows:

- Growing, possessing, processing, or transporting marihuana.
- Purchasing, receiving, selling, transporting, or transferring marihuana from or to a licensee, a licensee's agent, a registered qualifying patient, or a registered primary caregiver.
- Possessing or manufacturing marihuana paraphernalia for medical use.
- Testing, transferring, infusing, extracting, altering, or studying marihuana.
- Receiving or providing compensation for products or services.

Property Owner or Lessor. Except as otherwise provided, a person who owned or leased real property on which a licensed facility was located and who had no knowledge that the licensee violated the Act, would not be subject to criminal penalties, prosecution, search or inspection, seizure, or other sanction (as listed above) for a marihuana-related offense.

Marihuana Facility. Any other State law that was inconsistent with the proposed Act would not apply to a marihuana facility operating in compliance with the Act.

Patient or Caregiver. A registered qualifying patient or registered primary caregiver would not be subject to criminal prosecution or sanctions for purchasing marihuana from a provisioning center if the quantity purchased were within the limits established under the MMMA.

Affirmative Defense. The proposed Act would not limit the medical purpose defense provided in Section 8 of the MMMA to any prosecution involving marihuana. (Section 8 allows a patient and a patient's primary caregiver, if any, to assert the medical purpose for using marihuana as a defense to any prosecution involving marihuana.)

#### Marihuana Advisory Panel

The Marihuana Advisory Panel would be created in LARA and required to make recommendations to the Board concerning promulgation of rules and, as requested by the Board or the Department, the administration of the proposed Act.

The Panel would have to consist of 15 members, including the following individuals or their designees: the Director of State Police, the DHHS Director, the LARA Director, the Attorney General, and the Director of the Department of Agriculture and Rural Development. In addition, the panel would have to include one registered medical marijuana patient or medical marijuana primary caregiver and one representative of each of the following, appointed by the Governor:

- Growers.
- Provisioning centers.
- Safety compliance facilities.
- Townships.
- Cities and villages.
- Counties.
- Sheriffs.
- Local police.

The first appointed members would have to be appointed within three months after the Act's effective date. Appointed members would serve for terms of three years or until a successor was appointed, whichever was later.

The LARA Director would have to call the first meeting of the Panel within one month after it was appointed. At that meeting, the Panel would have to elect a chairperson and any other officers it considered necessary. After the first meeting, the Panel would have to meet at least twice each year, or more frequently at the call of the chairperson. The Panel would be subject to the Open Meetings Act, and its writings would be subject to FOIA.

Panel members would have to serve without compensation but could be reimbursed for their actual and necessary expenses incurred in performing their official duties as Panel members.

State departments and agencies would have to cooperate with the Panel and, upon request, provide it with meeting space and other necessary resources.

### Reports

Within 30 days after the end of each State fiscal year, each licensee would have to transmit to the Board and the municipality compiled financial statements of the licensee's total operations. The financial statements would have to be compiled by a certified public accountant in a manner and form prescribed by the Board. The CPA would have to be licensed in this State under the Occupational Code. His or her compensation would have to be paid directly by the licensee.

With its annual report concerning patterns of marijuana transfers by licenses, the Board would have to submit a report covering the previous year to the Governor and to the chairpersons of the legislative committees governing issues related to marijuana facilities. The report would have to include an account of Board actions, its financial position, results of operation under the proposed Act, and any recommendations for legislation that the Board considered advisable.

### Licensee Employees

Subject to the laws of the State, before hiring a prospective employee, the holder of a license would have to conduct a background check of the individual. If the background check indicated a pending charge or conviction within the past five years for a controlled substance-related felony, a licensee could not hire the prospective employee without written permission of the Board.

## Municipal Ordinance

A municipality (a city, township, or village) would be permitted to adopt an ordinance authorizing one or more types of marihuana facilities within its boundaries and limiting the number of each type of facility. A marihuana facility could not be licensed unless the municipality in which the facility was located had adopted an authorizing ordinance.

A municipality also would have to approve an applicant for a new State operating license within its boundaries before the Medical Marihuana Licensing Board could consider the application.

An authorizing ordinance could establish an annual, nonrefundable licensing fee of up to \$5,000 to help defray administrative and enforcement costs associated with the operation of a marihuana facility in the municipality.

A municipality also could adopt other ordinances related to marihuana facilities within its jurisdiction, including zoning regulations, but could not impose regulations that would interfere or conflict with uniform statewide regulation of licensees.

Information obtained by a municipality from an applicant under these provisions would be exempt from disclosure under FOIA.

## Provisions Concerning Board Members, Appointees, Employees & Agents

Interest in Licensee; Disclosure Statements & Forms. The Board could not appoint or employ an individual if, during the three years immediately before appointment or employment, he or she held any direct or indirect interest in, or were employed by, a person who was licensed to operate under the proposed Act or under a corresponding license in another jurisdiction or a person with an application for an operating license pending before the Board or in any other jurisdiction. The Board also could not employ an individual who held a controlling interest in a licensee or marihuana facility.

In addition, the Board could not appoint or employ an individual if the individual or his or spouse, parent, child, child's spouse, sibling, or spouse of a sibling had an application for a license pending before the Board or were a member of the board of directors of, or an individual financially interested in, any licensee or marihuana facility.

Each member of the Board, the executive director, and each key employee as determined by LARA would have to file with the Governor a financial disclosure statement listing all assets and liabilities, property and business interests, and sources of income of the individual and his or her spouse, if any, affirming that the member, executive director, and key employee were in compliance with provisions described above.

Other than the executive director and a key employee, each Board employee would have to file with the Board a financial disclosure statement listing all assets and liabilities, property and business interests, and sources of income of the employee and his or her spouse.

In addition, each Board member would have to prepare and file with the Governor's office and the Board a disclosure form, making certain affirmations and disclosures regarding various interests. Each Board employee also would have to file with the Board an annual employee disclosure form, making certain affirmations and disclosures. The forms would have to be filed by January 1 each year.

Additional Disclosures & Limitations. If a Board member, employee, or agent within the previous 10 years had been indicted for, charged with, or convicted of, pleaded guilty or no contest to, or forfeited bail concerning a misdemeanor involving controlled substances,

dishonesty, theft, or fraud, or a substantially corresponding local ordinance in any state involving controlled substances, dishonesty, theft, or fraud, or a felony under Michigan law, the laws of any other state, or the laws of the United States or any other jurisdiction, the Board member, employee, or agent immediately would have to provide detailed written notice to the chairperson.

Any Board member, employee, or agent who was negotiating for, or who acquired by any means, any interest in any person who was a licensee or an applicant, or anyone affiliated with such a person, immediately would have to provide written notice of the details of that interest to the chairperson, and could not act on behalf of the Board with respect to that person.

A Board member, employee, or agent would be prohibited from entering into any negotiations for employment with any person or affiliate of any person who was a licensee or an applicant, and immediately would have to give the chairperson written notice of the details of any such negotiations or discussions in progress. The member, employee, or agent could not take action on behalf of the Board with respect to that person.

The same notice requirement and restriction would apply if a Board member, employee, or agent received an invitation to initiate a discussion concerning employment with a person or an affiliate of a person who was a licensee or an applicant.

A licensee or applicant could not knowingly initiate a negotiation for or discussion of employment with a Board member, employee, or agent. A licensee or applicant who did so would have to notify the chairperson upon becoming aware that the negotiation or discussion had been initiated.

A Board member, employee, or agent would be prohibited from disseminating or otherwise disclosing any material or information in possession of the Board that it considered confidential unless specifically authorized to do so by the chairperson.

Additional restrictions would apply to the acceptance of a gift, gratuity, compensation, travel, lodging, or anything of value from a licensee or applicant, by a Board member, employee, or agent or his or her parent, spouse, sibling, spouse of a sibling, child, or spouse of a child. A licensee or applicant also would be prohibited from offering to give a Board member, employee, or agent anything that he or she could not accept.

A Board member, employee, or agent would be prohibited from engaging in any conduct that constituted a conflict of interest and would have to advise the chairperson immediately of any incident or circumstances that would present a conflict of interest with respect to performing Board-related work or duties.

A Board member, employee, or agent who was approached and offered a bribe immediately would have to provide a written account of the details to the chairperson and to a law enforcement officer of an agency having jurisdiction.

A member, employee, or agency would be required to disclose his or her past involvement with any marijuana enterprise in the past five years and could not engage in political activity or politically related activity during his or her appointment or employment.

Additional prohibitions and reporting requirements would apply to ex parte communications between a licensee or applicant, or an affiliate or representative of a licensee or applicant, and a Board member. (An "ex parte" communication refers to a communication without notice to or participation another party.)

A Board employee or agent would be have to receive permission from the executive director before continuing outside employment held at the time of beginning work for the Board. If permission were granted, the employee or agent could not conduct any business or perform any activities related to outside employment on premises used by the Board or during the employee's working hours for the Board.

Except as allowed under the MMMA, a Board member, employee, or agent would be prohibited from entering into any personal transaction involving marihuana with a licensee or applicant.

If a licensee or applicant, or an affiliate or representative of a licensee or applicant, violated these provisions, the Board could deny a license application, revoke or suspend a license, or take other disciplinary action, as provided above.

A violation by a Board member could result in disqualification or constitute cause for removal or other disciplinary action, as recommended by the Board to the Governor.

A violation by an employee or agent would not require termination of employment if the Board determined that the conduct did not violate the purpose of the proposed Act. Termination would be required, however, under certain circumstances involving an employee or agent who acquired a financial interest in a licensee or applicant, or if the employee or agent were a spouse, parent, child, or spouse of a child of a Board member.

Subsequent Employment, Interest, or Contract; Representation. A member of the Board, the executive director, or a key employee would be prohibited from holding any direct or indirect interest in, being employed by, or entering into a contract for services with an applicant, a Board licensee, or a marihuana facility for a period of four years after the date his or her employment or Board membership terminated.

For two years after the date his or her employment with the Board was terminated, an employee would not acquire any direct or indirect interest, be employed by, or enter into a contract for services with any applicant, licensee, or marihuana facility.

For two years after the termination of his or her office or employment with the Board, a Board member or employee could not represent any person or party other than the State before or against the Board.

A business entity in which a former Board member, employee, or agent had an interest, or any partner, officer, or employee of the business entity, could not make any appearance or represent a party that the former member, employee, or agent was prohibited from appearing for or representing.

#### Legislative Finding

The bill states the following: "The legislature finds that the necessity for access to safe sources of marihuana for medical use and the immediate need for growers, processors, secure transporters, provisioning centers, and safety compliance facilities to operate under clear requirements establish the need to promulgate emergency rules to preserve the public health, safety, or welfare."

### **House Bill 4827 (S-1)**

#### Tracking System

The Department of Licensing and Regulatory Affairs would be required to establish a statewide monitoring system for use as an integrated marihuana tracking, inventory, and verification system. "Statewide monitoring system" would mean an internet-based, statewide database

established, implemented, and maintained directly or indirectly by LARA that is available to licensees under the Medical Marihuana Facilities Licensing Act, law enforcement agencies, and authorized State departments and agencies on a 24-hour basis for all of the following:

- Verifying registry identification cards.
- Tracking marihuana transfer and transportation by licensees, including the transferee, date, quantity, and price.
- Verifying in a commercially reasonable time that a transfer will not exceed the limit that a registered qualifying patient or registered primary caregiver is authorized by receive under the MMMA.

The system would have to allow for interface with third-party inventory and tracking systems, as described in the Licensing Act, to provide for access by the State, licensees, and law enforcement personnel, to the extent they needed and were authorized to receive or submit the information, to comply with, enforce, or administer the Marihuana Tracking Act, the MMMA, or the Licensing Act.

At a minimum, the system would have to be capable of storing and providing access to information that, in conjunction with one or more third-party inventory control and tracking systems under the Licensing Act, allowed all of the following:

- Verification that a registry ID card was current and valid and had not been suspended, revoked, or denied.
- Retention of a record of the date, time, quantity, and price of each sale or transfer of marihuana to a registered qualifying patient or registered primary caregiver.
- Determination of whether a particular sale or transfer transaction would exceed the permissible limit established under the MMMA.
- Effective monitoring of marihuana seed-to-sale transfers.
- Receipt and integration of information from third-party inventory control and tracking systems under the Licensing Act.

#### Rules for Incorporating Information

The Department would have to promulgate rules to govern the process for incorporating information concerning registry ID card renewal, revocation, suspension, and changes and other information applicable to licensees, registered primary caregivers, and registered qualifying patients that would have to be included and maintained in the statewide monitoring system.

#### LARA Bids & Contract

The Department would be required to seek bids to establish, operate, and maintain the statewide monitoring system. It would have to evaluate bids based on the cost of the service and the ability to meet all of the requirements of the Marihuana Tracking Act, the MMMA, and the Licensing Act.

The Department would have to give strong consideration to the bidder's ability to prevent fraud, abuse, and other unlawful or prohibited activities associated with the commercial trade in marihuana in Michigan, and the ability to provide additional tools for the administration and enforcement of the Marihuana Tracking Act, the MMMA, and the Licensing Act.

The Department also would have to ensure that the contract awardee did not disclose or use the information in the system for any use or purpose except the enforcement, oversight, and implementation of the MMMA or the Licensing Act.

In addition, LARA would have to require the contract awardee to deliver the functioning system within 180 days after the contract was awarded.

The Department could terminate a contract with an awardee for a violation of the Marihuana Tracking Act. An awardee could be barred from award of other State contracts under the Act for a violation.

#### Information Disclosure

The information in the system would be confidential and would be exempt from disclosure under FOIA. Information in the system could be disclosed for purposes of enforcing the Marihuana Tracking Act, the Michigan Medical Marihuana Act, and the Medical Marihuana Facilities Licensing Act.

Legislative Analyst: Suzanne Lowe

#### **FISCAL IMPACT**

In total, the bills would have a potentially positive fiscal impact on State government, and an indeterminate fiscal impact on local units of government.

House Bill 4209 (H-5) would create the Medical Marihuana Licensing Board, which would be supported primarily by staff and resources from the Department of Licensing and Regulatory Affairs, as well as the Department of State Police and the Attorney General. In consultation with the Board, LARA would establish application fees for prospective licensees as well as an annual regulatory assessment. Revenue from these sources would be deposited into the Marihuana Regulatory Fund, which also would be established under the bill. It is unclear as to how much the fees would be for the various types of licenses, but the bill specifies that 1) application fees would have to reflect the actual costs associated with processing and investigating the application, and 2) the regulatory assessment would reflect the ongoing costs of implementation, administration, and enforcement of the Act, including costs incurred by LARA, the Department of State Police, and the Attorney General. The regulatory assessment also would include \$500,000 for LARA to use for substance abuse disorder programs, and a 5% surcharge on the regulatory assessment factors, which would be allocated to the Department of Health and Human Services for marihuana-related expenditures including substance use disorder prevention, education, and treatment programs. The total regulatory assessment burden would then be split between each licensee to reasonably reflect the proportion of the total cost that each licensee represented.

The Department of Licensing and Regulatory Affairs has estimated the ongoing cost to administer the Act at about \$21.1 million annually. This figure includes \$13.2 million to hire 113.0 full-time equated employees (FTEs) within LARA for application processing, licensing, and enforcement, \$6.0 million to hire 34.0 FTEs within the Department of State Police for enforcement, and \$550,000 for Attorney General costs. The remaining \$1.5 million<sup>1</sup> would be related to ongoing information technology (IT) costs, contractual services, Civil Service assessments, travel, and other overhead expenses.

These estimates are likely on the highend, as LARA's portion of the costs were estimated based on the current staffing of the Michigan Liquor Control Commission (MLCC), which oversees licensing and enforcement of 17,250 unique locations statewide. Since the medical marihuana market in Michigan cannot support this number of licensees (i.e., 17,250 licensees would mean one grower, processor, provisioning center, secure transporter, or safety compliance facility for every 5.6 registered medical marihuana patients, assuming all patients

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<sup>1</sup> Estimates do not add due to rounding.

participated in the market), the actual number of unique locations would likely be significantly smaller. On the other hand, the amount of regulatory and enforcement work done under the bill on behalf of each unique location could be greater than what the MLCC currently does at each location it regulates. The bill would appropriate \$8.5 million for fiscal year (FY) 2015-16 from the Marihuana Regulatory Fund to LARA to cover costs incurred under the bill, which would or would not be sufficient, depending on the point in the fiscal year that the bill took effect, and how quickly new employees were hired.

Conversely, the cost estimate for the Department of State Police was made using the Michigan Gaming Control Board (MGCB) as a model. This estimate may be lower than actual costs, depending on the amount of work required. The responsibilities of the State Police as they pertain to the MGCB are very different than what would be required under the bill. In their work with the MGCB, State Troopers actively patrol and are responsible for police work at the casinos in Detroit, which are three very large establishments in a small geographical area. Under the bill, the work done by the State Police would be statewide, covering a large number of relatively small establishments. Ultimately, the final determination as to the resources from the Marihuana Regulatory Fund that would be dedicated to the Department of State Police would be made when the regulatory assessment was finalized each year.

To help put these estimates in context, in 2014 in Colorado, which has a 2.9% tax on medical marihuana sold at provisioning centers, registered patients each spent an average of \$3,272<sup>2</sup> on retail medical marihuana during the year. If Michigan patients were to follow similar buying patterns, based on 96,408 registered patients in FY 2013-14, the total medical marihuana market in Michigan would be about \$315.4 million. This assumes that medical marihuana prices, buying habits, availability, and other factors would be consistent with those in Colorado. Using LARA's estimates, the regulatory cost of this market would be about 6.9% of gross sales. This estimate additionally assumes that the number of registered patients would remain static, and assumes a developed market. It is likely that the actual size of Michigan's market would be significantly smaller for some period of time as market participants entered the market.

The bill also would establish a 3% tax on the gross retail income of provisioning centers. Revenue from this tax would be deposited in the Medical Marihuana Excise Fund (created under the bill), and would be distributed as follows: 30% to municipalities with medical marihuana facilities in proportion to the number of facilities; 40% to counties with medical marihuana facilities in proportion to the number of facilities; 5% to counties with medical marihuana facilities in proportion to the number of facilities, solely to support county sheriffs (funds that could not supplant other funding received by the county sheriffs); and 25% to the State General Fund. Using the above estimate for the size of Michigan's medical marihuana market, this tax would raise about \$9.5 million per year, which would be distributed as follows: \$2.8 million to municipalities, \$3.8 million to counties, \$470,000 to county sheriffs, and \$2.4 million to the State General Fund.

The sale of medical marihuana at provisioning centers also could be subject to sales tax, as a recommendation that a patient would benefit from use of marihuana, would not necessarily be interpreted as "dispensed by prescription", a necessary condition for exemption from the sales tax. If medical marihuana sold at provisioning centers were subject to sales tax, those sales would generate an additional \$18.9 million in sales tax revenue.

In addition, House Bill 4209 (H-5) would have a number of smaller fiscal impacts on the State and local units of government. The bill would allow for a local licensing fee of up to \$5,000 annually for a marihuana facility, which would generate an unknown amount of revenue for local governments which elected to pursue that option. The bill also would allow LARA to

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<sup>2</sup> Average is imputed using 2014 monthly patient count and excise tax revenue data from the Colorado Department of Public Health and Environment and the Colorado Department of Revenue.

penalize violations under the bill by levying a civil fine of up to \$5,000 against individuals and \$10,000 against licensees. The bill does not specify who would receive this fine revenue, but in other similar cases, fine revenue is kept by the agency issuing the fine.

This cost estimate includes \$500,000 for creation of the system. Additionally, LARA has estimated that there would be \$776,000 in initial information technology (IT) and database costs related to the marijuana and database tracking system established in House Bill 4827 (S-1) and the initial purchase of IT equipment for the new employees.

In addition, House Bill 4827 (S-1) would have an indeterminate, though likely small, impact on State and local government. The bill would make it a State civil infraction to willfully violate the requirement to supply tracking and testing information to the Department of Licensing and Regulatory Affairs. A second or subsequent violation would be a misdemeanor. An increase in misdemeanor arrests and convictions could place incremental resource demands on local court systems, law enforcement, and jails. Any associated increase in fine revenue would be dedicated to public libraries.

Fiscal Analyst: Ryan Bergan  
Josh Sefton

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.