WHITEWATER TOWNSHIP BOARD
AGENDA FOR 2ND REGULAR MEETING – JANUARY 24, 2017
7:00 p.m. at the Whitewater Township Hall
5777 Vinton Road, Williamsburg, MI 49690
Phone 231-267-5141/Fax 231-267-9020

At this time, the Board invites everyone to silence their electronic devices.

A. Call to Order

B. Roll Call of Board Members

C. Set/Adjust Meeting Agenda

D. Declaration of Conflict of Interest

E. Public Comment
Any person shall be permitted to address a meeting of the township board. Public comment shall be carried out in accordance with the following board rules and procedures:
1. Comments shall be directed to the board, with questions directed to the chair.
2. Any person wishing to address the board shall speak from the lectern and state his or her name and address.
3. Persons may address the board on matters that are relevant to township government issues.
4. No person shall be allowed to speak more than once on the same matter, excluding the time needed to answer board member's questions. The chair shall control the amount of time each person shall be allowed to speak, which shall not exceed five (5) minutes.

F. Correspondence (none)

G. Public Hearing (none)

H. Reports/Presentations (none)

I. Unfinished Business
1. Review Emergency Services Building Renovations – Relocate Sleeping Quarters
2. Review Whitewater Township Planning & Zoning Fees (awaiting input re: elimination of residential sign fee)
3. Update on Junk Complaint (no report available)

J. New Business
1. Request for Grand Traverse Fire Department Rural Division to Purchase 2009 Ford Expedition
2. Whitewater Township Park – 2017 Season Dates and Rates
3. Excel Site Rental – Installation Invoice
4. Recreation Fund Budgeted Transfer
5. Ambulance Fund Budget Amendment
6. Medical Marijuana – Introduction to New Laws
7. Set Budget Work Session Dates

K. Tabled Items
   1. Review Administrative Policy Section 5 (tabled 10/14/2014)
   2. Review Ordinance 22 Pension Plan (tabled 10/25/2016)

L. Board Comments/Discussion

M. Announcements
   1. Next regular Township Board meeting February 14, 2017

N. Public Comment

O. Adjournment

Whitewater Township will provide necessary reasonable auxiliary aids and services to individuals with disabilities who are planning to attend. Contact the township clerk at 231-267-5141 or the TDD at 800-649-3777.

Ron Popp

From: Direct Designs <directdesigns@hughes.net>
Sent: Thursday, January 12, 2017 12:23 PM
To: Ron Popp
Cc: Cheryl A. Goss
Subject: Fw: Whitewater Addition
Attachments: WhitewaterFP011717.pdf

Ron,

This is the suggestion from Mark Pressell to satisfy Grand Traverse County.

The way I understand it is that the way the roof is designed the roof above the sleeping room would need to be 2 foot taller than the adjacent roof for separation.

His options are as follows:

1) move the sleeping rooms to the west towards the post office (attached)
2) move the sleeping rooms to the South extending 10 feet with a gable roof.
3) fire suppress the entire west end of the building and have the wall between the apparatus bays and the new sleeping, bathrooms, Kitchen and meeting room.

Option (3) would require more suppression which would require more water supply.

Marks suggestion is to have a fire suppression firm come out and give their suggestions and estimate of cost for either system and at that time they could also evaluate the buildings water supply.

Dependable Fire Equipment has beed the most resonable company

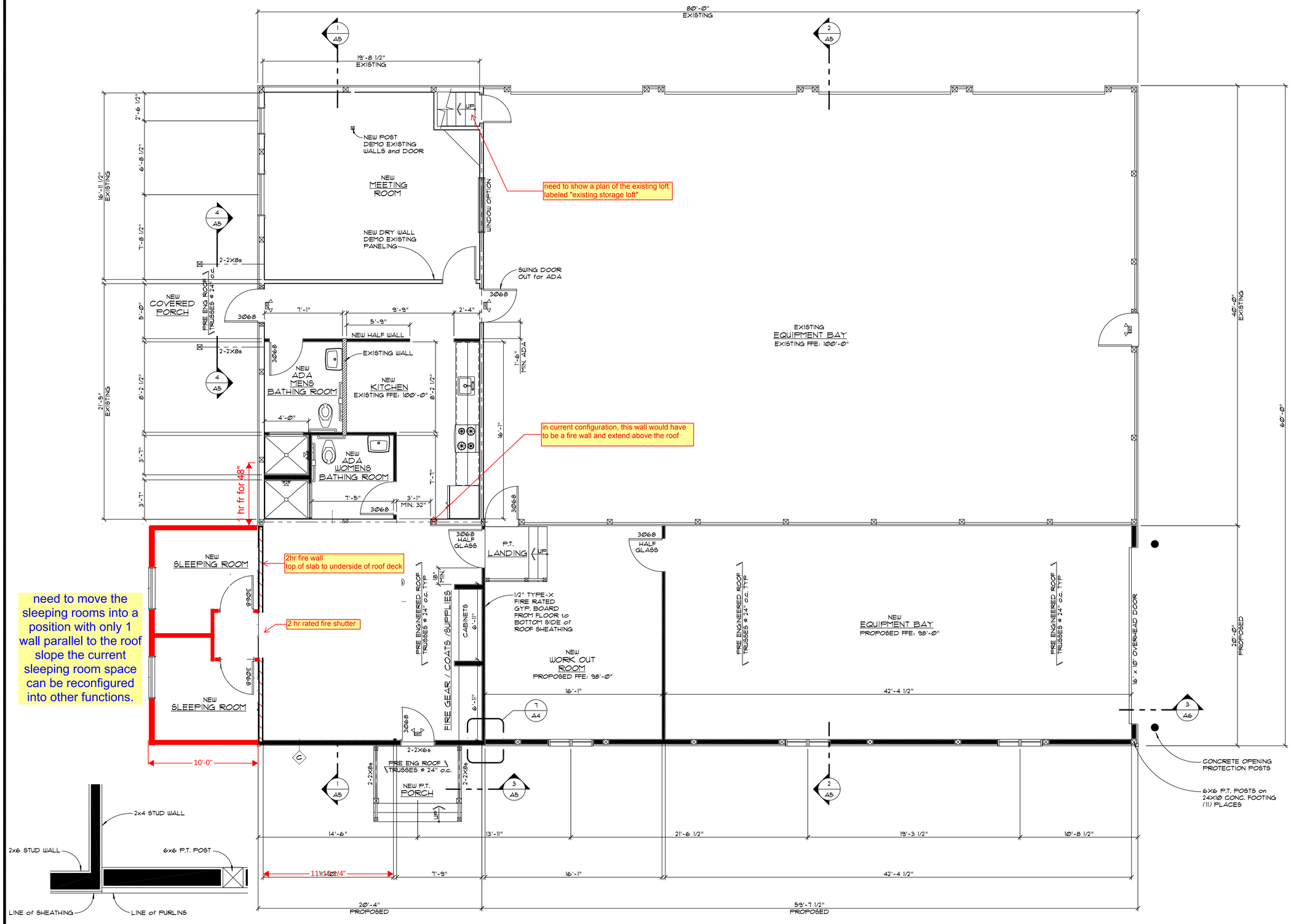
I did also suggest that Mark Pressell attend the meeting with Dependable although when speaking with Mark he thought that it would not be nessary having worked with Dependable in the past, but he did not have a problem if need be.

Thank You Dan Rudy
Direct Designs
7571 Helena Road
Alden, Mich. 49612
Office 231-331-6334
Cell 231-409-1450
directdesigns@hughes.net

----- Original Message -----
From: Pressell Engineering
To: 'Direct Designs'
Sent: Saturday, January 07, 2017 2:49 PM
Subject: whitewater

Dan see attached regarding the required separation with a fire wall that will only require the Fire Suppression system in the building containing the sleeping rooms. the revised is required so that the fire wall can be located parallel to the roof slope.

Mark A. Pressell
Pressell Engineering & Design
pedesign@centurytel.net
231-839-3969



BUILDING SECTION

SCALE: 1/4"= 1'-0"

FLOOR PLAN

SCALE: 1/4"= 1'-0"

DIRECT Designs
CUSTOM HOMES DESIGN & CONSTRUCTION
• RESIDENTIAL HOMES & ADDITIONS •
DANIEL J. RUDY
7571 HELENA RD. ALDEN, MI. 49612
TEL/FAX 231.331.6554

proscell engineering design
8995 W. Kelly Rd.
Lake City, MI 49651
231.839.3969

WHITEWATER TOWNSHIP FIRE DEPARTMENT

8380 OLD 72 WILLIAMSBURG, MICHIGAN 49690

Project
WHITEWATER TOWNSHIP

8380 OLD 72
WILLIAMSBURG, MI. 49690

Sheet
FLOOR PLAN

Drawn By
DJR

Approved By

Date Issued
August 9th 2016

File No.
15-215

Sheet No.
A4

Ron Popp

From: Theo Weber <tweber@gtfire.org>
Sent: Tuesday, January 17, 2017 9:54 AM
To: Ron Popp
Subject: 2009 Expedition

Ron,

I spoke with a local used car service regarding you're your Expedition.

Based on the mileage (68,000) and the good condition he placed the value between $8-10,000.00.

I am aware of a need repair on that vehicle which would cost about $800.00 to fix the control door for AC/heat. I know because it happened to ours as well.
It so expense because they have to take most of the dash out to get to it.

This is just some information for you to consider.

Theodore A. Weber
Chief / CEO
Grand Traverse Rural Fire Department
2266 E. M113
Suite B
Kingsley, MI 49649
Office: 231-263-7875
Fax: 231-263-0506
www.gtfire.org
www.facebook.com/gtrural
tweber@gtfire.org

2009 Ford Expedition

Style: XLT Sport Utility 4D

Edit Options | Check Specs | Print Report

Mileage: 68000 Change

Have you seen the **2017 model?** Go

Your Blue Book® Value

Trade In to a Dealer	Get an Instant Cash Offer	Sell to a Private Party

Next Steps: Find a Car

Browse reviews, photos, specs and more.

Make | Model

See what you should pay

Valid for ZIP code 49690 through 01/19/2017

Write a review on your 2009 Ford

Value based on:			
Fair	Good	Very Good	Excellent

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Find Participating Dealers ready to buy your car – today!

Get your offer

New Cars You Might Like

2017 Chevrolet Tahoe

2017 GMC Yukon

2017 Chevrolet Suburban

Sellers Tools

Get an Instant Cash Offer

Local dealers are ready to buy your current car

See Local Prices

(2 Expedition Listings Found)

Give Buyers
Show them a clean Autocheck vehicle history report

Sell Your Current Car
Reach millions on KBB.com & Autotrader.com

Refinance Your Car
See if you can lower your monthly payment with rates from 2.24%* APR with AutoPay.

New Car Price Quote

3 Easy Steps!
Step 1: Select a vehicle
Step 2: Find a dealer
Step 3: Get free quotes

Ford ▾ Expedition ▾

ZIP Code: 49690 Start

Popular on KBB.com

10 Best SUVs Under $25,000 (2016)

More Favorites

- **Class of 2017: New Cars Ready to Roll**
- **2016-17 Compact SUV Comparison**
- **Midsize Sedan Buyer's Guide**
- **Kelley Blue Book Best Buy Awards of 2017**

To: Whitewater Township Board

From: Cheryl A. Goss, Parks & Recreation Administrator

Date: 01/18/2017

Re: **Whitewater Township Park – 2017 Dates and Rates**

2017 DATES

Upon consulting the calendar, the following recommendations are made with respect to the opening, closing, and free camping weekend dates for 2017:

- Park to open on Friday, May 12
- Free camping weekend to take place May 12 through May 14 – two nights of free camping in exchange for picking up debris on sites
- Park to close on Sunday, October 1

An appropriate motion would be: Motion to designate May 12 as the opening date, May 12 through 14 as Free Camping Weekend, and October 1 as the closing date of Whitewater Township Park Campground for the 2017 season.

2017 RATES

Information re: Camping Fees:

- The 2016 off-peak season rate at WTP was $23 per night (May, June, and September).
- The 2016 peak season rate at WTP was $28 per night (July, August).
- Traverse City State Park's 2017 camping rate is $31 per night for sites with electric.
- Barnes Park's 2017 camping rate is $30 per night for sites with electric.

The last camping fee increase at Whitewater Township Park was a $1 per night increase for each rate, effective in 2015. Seasonal camping fees are based on the off-peak season rate x 67 nights.

My recommendation is that the board approve a $1 per night increase in both rates for 2017.

An appropriate motion would be: **Motion to increase the 2017 off-peak season camping fee to $24 per night and the 2017 peak season camping fee to $29 per night.**

Review of other WTP rates: No increase is recommended for the following:

- Reservation fee
- Boat launch fees
- Wood/ice fees
- Pavilion fees

Information re: Dump Station Fees (non-campers only):

- At least since 2012, WTP's rate has been $5 per dump.
- Barnes Park rate is $15 per dump.
- Kalkaska RV Park and Campground rate is $12 per dump.
- The non-camper rate for Traverse City State Park was not available online.

My recommendation is that the board approve an increase in the dump station rate for non-campers to $10 per dump.

An appropriate motion would be: Motion to increase the 2017 rate for dump station use (non-campers only) to $10 per dump.

(continued)

Information re: Storage Rates

Each year, the ranger station gets a number of requests from campers who would like to temporarily store boats or campers at the park. We have generally not accommodated these requests. In 2016, in the latter half of the season, we did accommodate a handful of these requests and did charge a nominal fee for the storage, as well as required that a hold harmless document be signed by the camper absolving the park of any liability for damage to the stored unit.

There is a demand for temporary storage. Some people have gone so far as to rent a campsite to temporarily store their boat or camper until they return, but this is very expensive.

If we are going to allow storage of recreational units at Whitewater Township Park, we should have a storage policy and rates. I would recommend the following policy and rate:

- The designated storage area is in the southwest corner of the additional parking area on Park Road.
- Maximum of 5 recreational units allowed at any one time.
- Spaces available on a first come/first serve basis.
- Occupation of the recreational unit at any time is prohibited (per state law).
- The maximum allowable storage period is 14 days.
- Rate shall be $5 per night. All fees must be paid in advance.
- Recreational units must be secured by locking all entry doors and the hitch must be disabled by a locking mechanism.
- Owner assumes liability for any damage to park property or other stored units caused during the placement or removal of the recreational unit.
- Whitewater Township assumes no liability for any loss, injury, or damage as a result of storage of the unit.
- Owner will be required to sign the Whitewater Township Indemnification and Hold Harmless Agreement for Storage of Recreational Unit.
- Recreational units left more than 14 days will be assessed a $10 per day fee.

An appropriate motion would be: Motion to adopt the Whitewater Township Storage of Recreational Unit Policy and $5 per night rate for storage of recreational units at Whitewater Township Park.

# # #

To: Whitewater Township Board

From: Cheryl A. Goss

Date: 01/19/2017

Re: **Excel Site Rental – Installation Invoice**

On January 6, 2017, I received the attached invoice from Excel Site Rental. The invoice details charges for trucking and setup of the portable housing unit. This unit was installed at 8380 Old M-72 on Thursday, December 29, 2016.

Treasurer Benak brought to the board the information about these portable housing units, and the board discussed and approved the rental of this unit on 11/10/2016. Following is what took place with respect to this issue on 11/10.

"Excel Site Rentals (added)
Benak provided information on an extended stay trailer for use by MMR personnel during the renovation/addition of 8380 Old M-72. Discussion followed concerning various details. ***Motion by Lawson that we move forward and rent the trailer/portable for the MMR staff during the construction project and rent the one with the holding tanks, not to exceed $1400 per month.*** *Discussion followed regarding rental properties that might be available and where to park an extended stay trailer.* ***Goss seconded the motion.*** *There was further discussion regarding electrical installation costs and proposed locations for placement of the trailer.* ***Roll call vote: Lawson, yes; Popp, no; Benak, yes; Goss, yes; Hubbell, yes. Motion carried."***

After receiving the installation invoice, I spoke with Treasurer Benak about the charges. She stated that Tim Tinker from Excel Site Rentals did not discuss installation charges with her.

Prior to the installation, I had several conversations with Tim Tinker regarding the fact that we were getting bids on the temporary electrical installation and how that would affect the timing of installing the unit. Installation charges were not mentioned to me during any of those conversations.

I don't think any of us contemplated that the unit would be delivered and set up for free. However, an estimate of these costs should have been provided by Tim Tinker in advance of our decision to bring in the unit.

I was present on the morning of December 29 when the unit was brought in and did stay on site for about 2-1/2 hours. I was also there later on that day around 4:00 p.m. for about half an hour. Setup was not completed on the 29th and they had to come back on the 30th to run water to the unit and complete other details of setup. I have talked to Chuck, the head installation guy, several times since the unit was installed. During one conversation, I mentioned the amount of the invoice. He confirmed their hourly rates at that time.

I can attest to the fact that it did take all of those personnel to deliver and install the unit and that they were on site the number of hours billed for. Maneuvering this 14 x 70 unit down the east side of the building, where there is only about 17' feet of width available between the cemetery fence on the east and the railing on the west side, was a very time-consuming feat. Old M-72 was blocked for at least two hours during this process. They also spent a lot of time leveling the unit. The difficulty of our location is not the fault of Excel Site Rentals.

While we should have been given an estimate of these charges well in advance of our decision to bring in the unit, the math on the invoice is correct and it should be paid forthwith.

An appropriate motion would be: Motion to authorize payment of Excel Site Rental Invoice 17501 in the amount of $5,342.00.

# # #

Invoice

P.O. Box 1088
1530 Enterprise Drive
Kalkaska, MI. 49646

Date	Invoice #
12/31/2016	17501

Bill To

Whitewater Township

Well Information

Fire Dept.

TAX ID # 27-3187230

Field Ticket #	Terms
24107	Net 30

Date	Qty.	Description	Price Each	Amount
12/29/2017	2.5	WT107 - Trucking of Equipment - Per Hour - HT 8	125.00	312.50
	2.5	Escort to Delivery Trailer - Per Hour	95.00	237.50
	1	Permits to move Trailer	250.00	250.00
	1	Delivery of Sewer Skid - Per Hour	95.00	95.00
	1	Set Up Trailer - Per Hour	95.00	95.00
	1	WT105 - Trucking of Equipment - Per Hour - Loader	125.00	125.00
	43	5 Men - On Site Labor to Set up Unit	56.00	2,408.00
	2.5	Loader Rental - Per hour	110.00	275.00
12/30/2017	24	4 Men - On Site Labor to finish Set up	56.00	1,344.00
	4	4 Men - Travel	50.00	200.00

Total	$5,342.00
Payments/Credits	$0.00
Balance Due	$5,342.00

Please Remit to:
Excel Site Rentals LLC.
P.O. Box 1088
Kalkaska. MI. 49646
(231) 258-5870 Office
(231) 258-4470 Fax
www.excelsiterentals.com

Field Ticket

Excel Site Rentals, LLC.

P.O. Box 1088
Kalkaska, MI. 49646
231-258-5870

24107

Customer: White Water TWP

Lease Name: Fire Dept

Received By: Cheryl

DATE REQUIRED	EMPLOYEE NAME	TERMS	DATE	PURCHASE ORDER NO.

Date	Job Description	Price
12/29	WT102 Tim Tinker Loaded & hauled HTS to Fire Barn & set in place	
	Tim Tinker Semi 2½ hrs x $125/hr	$312.50
	Tom Stiener Escort 2½ hrs x $95/hr	$237.50
	Permits	$250.00
	PL51 Dick Emerick Delivery of Sewer Skid	$95.00
	PL54 Chuck Martin Delivery Set up Trailer	$95.00
	WT105 Robbie Hammerberg Delivery of Loader	$125.00
	Set-up Labor	
12/29	Tom Stiener $56/hr x 9½ hrs	$532.00
12/29	Chuck Martin $56/hr x 9½ hrs	$532.00
12/29	Dick Emerick $56/hr x 9½ hrs	$532.00
12/29	Robbie Hammerberg $56/hr x 5 hrs	$280.00
12/29	Buck Wiggins $56/hr x 9½ hrs	$532.00
	Loader useage 2½ hrs x $110/hr	$275.00
12/30	4 guys @ 6 hrs ea 24hrs x $56/hr	$1344.00
	Travel for 4 guys to Location	$200.00
	Total	$5,342.00

TERMS AND CONDITIONS OF RENTAL

All tools and equipment are used at Renter's risk. Renter assumes all responsibility for tools and equipment while out of possession of owner and agrees that owner shall not be liable for negligence or damage to any property of anyone caused by tool or equipment, or it's failure during use. Renter agrees to hold owner harmless and indemnify owner against all persons for all negligence or damage.

To: Whitewater Township Board

From: Cheryl A. Goss

Date: 01/19/2017

Re: **Recreation Fund Budgeted Transfer**

The Recreation Fund cash balance recently dipped into negative territory due to the fact that the planned-for transfer of $25,000 from the General Fund to the Recreation Fund in this fiscal year has not taken place.

See Page 6 of the General Fund approved budget for 2016/2017 attached.

The budgeted transfer should be made at this time .

An appropriate motion would be: Motion to transfer $25,000 from the General Fund to the Recreation Fund, as budgeted.

###

Month: 5/31/2015	Prior Year Actual	Original Budget	Amended Budget	Actual Thru May	Estimated Total	(6) Requested	(7) Recommended	(8) Adopted
Fund: 101 - GENERAL FUND								
Expenditures								
Dept: 862 Soc Sec/Medicare (Employer)								
716 Medicare (Employer)	1,733	2,104	2,104	326	0	2,309	2,249	2,249
Soc Sec/Medicare (Employer)	9,141	11,100	11,100	1,718	0	12,181	11,864	11,864
Dept: 865 Insurance								
820 Liability Insurance	12,208	13,000	13,000	12,619	0	13,500	13,500	13,500
821 Workers Compensation	10,541	9,000	9,000	8,889	0	2,891	10,000	10,000
Insurance	22,749	22,000	22,000	21,508	0	16,391	23,500	23,500
Dept: 890 Contingency								
890 Contingency	0	25,000	25,000	0	0	25,000	25,000	25,000
Contingency	0	25,000	25,000	0	0	25,000	25,000	25,000
Dept: 901 Capital Expenditure								
970 Capital Expenditure	1,691	100,000	100,000	0	0	4,000	4,000	4,000
971 Land	0	0	0	0	0	0	0	0
Capital Expenditure	1,691	100,000	100,000	0	0	4,000	4,000	4,000
Dept: 966 Transfers Out								
999 Transfers To Other Funds	105,500	175,000	175,000	0	0	165,000	198,000	198,000
Transfers Out	105,500	175,000	175,000	0	0	165,000	198,000	198,000
Total Expenditures	368,257	624,608	624,608	63,670	0	549,379	667,692	667,692
GENERAL FUND	99,676	-173,972	-173,972	6,157	0	-32,867	-88,780	-88,780

970 Capital Expenditure - Allocated to computer hardware

999 Transfers to Other Funds

$ 15,000 Road Fund
100,000 Road Repair/Replacement Fund
25,000 Recreation Fund
58,000 Ambulance Fund (for 8380 Old M-72 renovation/addition)

To: Whitewater Township Board

From: Cheryl A. Goss

Date: 01/19/2017

Re: **Ambulance Fund Budget Amendment**

It was discussed at the board's 01/10/2017 meeting that the Building Rental line item of the Ambulance Fund would be over its allocation with posting of three months' rental expense (January, February, March) for the portable housing unit, so perhaps a budget amendment is necessary.

Since all of the Ambulance Fund expenses are one cost center, and we do not adopt a line item budget, the amount in the Building Rental line item does not need to be amended. The rental expense will not cause the total expenditure amount allocated to be exceeded.

However, we do need to discuss how the board wants the portable housing unit rental cost posted.

At this point, I believe only the MMR personnel are using the unit, so you might say that all of the rent should be paid out of the Ambulance Fund.

But at some point, when the renovation starts and the administrative part of the building is no longer habitable, i.e, the bathrooms and kitchen are "out of order," the fire personnel may need to make use of these facilities in the portable housing unit.

Please advise in what manner the clerk's office should post the portable housing unit rental expense. Do you want it all allocated to the Ambulance Fund? Or do you want it split half and half (or some other uneven split) between the Ambulance and Fire Funds?

Office of the Whitewater Township Supervisor

Memo

To: Whitewater Township Board

From: Ron Popp, Supervisor

CC:

Date: 1-17--2017

Re: New Medical Marihuana Laws

Board Members,

Last fall the Michigan Legislator enacted three (3) new Public Acts that Whitewater Township will deal with in 2017. The following pages are analysis of the Public Acts and are provided for educational purposes.

In October of 2016, Whitewater Township began participation in a program offered by Fahey Schultz Burzych Rhodes, PLC to craft an ordinance, for or against, these new Public Acts. The plan was to deliver the draft ordinance to participating townships near the end of 2016 for scheduling ease in the New Year. Production is a bit behind, with a new target date in the first quarter of 2017.

The Township has an informal request for permission to operate a provisioning center within the boundaries of Whitewater Township. The Farmacy has included some statements for your review and are attached to the packet.

We will need to decide before December 15, 2017 if we will allow this type of Land Use in Whitewater Township.

Respectfully,

Ron Popp

Supervisor, Whitewater Township

Ron Popp

From: William Fahey <wfahey@fsbrlaw.com>
Sent: Thursday, October 13, 2016 4:09 PM
To: Cheryl A. Goss; Ron Popp
Subject: Medical Marihuana Facilities Licensing Act (MMFLA)

Ron and Cheryl,

You have probably heard about the new MMFLA that will license commercial medical marihuana facilities beginning in late 2017. Even though that is still a long time off, several townships have asked us what they should be doing now regarding that legislation and the decisions it will require townships to make. Since our firm represents so many townships, and several of them have contacted us in the last few days to seek advice on the new MMFLA, we want to offer you an opportunity that will specially benefit your Township, give you the best possible current advice and significantly reduce your costs by cost-sharing with other townships.

Even though applications for the new commercial marihuana facilities cannot be made to the state until December 15, 2017, you can expect to see a lot about commercial marihuana facilities in the coming months. If you have not already, you will certainly start hearing from representatives of the new medical marihuana trade, asking if your township has an ordinance allowing or regulating commercial medical marihuana facilities, or if you have any plans to adopt such an ordinance.

With the amount of money to be made by commercial marihuana growers and vendors, and the amount of hype being given out by their attorneys, we expect that activities and communications on this subject may become frequent and frenzied, as potential competitors in the new market jockey for potential locations and market share.

The "big picture" under the new MMFLA is that your Township will have a chance to say "yes" or "no" to whether marihuana grow centers or provisioning centers (formerly known as dispensaries) can be located in the Township. If you say no, that's the end of it. They must go somewhere else (but that might be in an adjoining township that wants to allow them, even if it is right on your border!).

The "carrot" offered to townships that allow these uses is that they can get up to $5,000 annually to enforce their regulatory ordinances for such uses and will get a share of the new sales taxes generated by the new uses. But it is not known what degree of control will townships have if they allow the uses and what costs townships will incur in the administration and enforcement of the law, supervision of the uses, and the criminal law enforcement costs that may come with these uses (illicit drug sales, theft, armed robbery and violent crime).

One of the problems at this time is that the MMFLA is brand-new and contains a large number of new concepts. Another current problem is that there are still many details left open by the new MMFLA that will not be answered until the state adopts rules sometime late next year. Yet many townships are being asked to make decisions now about whether they want to participate in the new commercial medical marihuana market or not. That decision is entirely up to your Township Board, but there is currently precious little informed research for you to consider in making even that initial decision.

We want to help fill that information void by giving interested townships an opportunity to receive a detailed report on the new MMFLA, analyzing what is now clear and known, what considerations and choices you need to make now, and providing you initial model ordinances that either allow or prohibit (as you choose)

commercial medical marihuana facilities in your Township. With enough townships participating, we can offer this report and model ordinances for a cost of not to exceed $500 to each interested Township.

If the Township is interested in participating in this project and receiving this report (to be produced in November 2016), please just send me a return email indicating that you want your Township to be included. I'll be sure you get the report and model ordinances as soon as they are ready.

Thanks for your consideration.

BILL FAHEY

FAHEY SCHULTZ BURZYCH RHODES PLC
YOUR TOWNSHIP ATTORNEYS

ALLIED SERVICE PROVIDER MTA

William K. Fahey, Attorney
4151 Okemos Road
Okemos, MI 48864
Direct Dial: (517) 381-3150
Front Desk: (517) 381-0100
Direct Fax: (517) 381-3170
Cell: (517) 974-2250
wfahey@fsbrlaw.com
Website: www.fsbrlaw.com

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Ron Popp

From: William Fahey <wfahey@fsbrlaw.com>
Sent: Friday, October 21, 2016 9:50 AM
To: Cheryl A. Goss; Ron Popp
Subject: FW: Medical Marihuana Issues
Attachments: 2016 New Medical Marijuana Laws Fact Sheet.pdf

Cheryl and Ron,

We are continuing to assemble a detailed memorandum outlining the new law's medical marihuana issues for the Township, together with proposed ordinances. In the meantime, I am passing along a recent (but very basic) FAQ on the new law just prepared by the MTA.

BILL FAHEY

FAHEY SCHULTZ BURZYCH RHODES PLC
(517) 381-3150
wfahey@fsbrlaw.com

New Medical Marijuana Laws Q&A

By Catherine Mullhaupt, MTA Staff Attorney
October 20, 2016

Note: *This guidance has been written for townships, but the statutes discussed apply to cities, villages and townships in the same way. A county cannot adopt an ordinance allowing any of the facilities authorized by these statutes.*

Q. Has marijuana been legalized?

A. No. Marijuana has not been legalized in Michigan. It is still an illegal drug under federal and state law.

The Michigan Medical Marihuana Act, Initiated Law 1 of 2008, MCL 333.26421, et seq., allows qualified patients and registered caregivers identified with those patients to use marijuana for specified medical conditions. That law did not legalize marijuana, but it prohibits prosecuting or penalizing qualified patients and registered caregivers who use marijuana for those purposes as long as they comply with the MMMA.

Subsequent court opinions clarified that only those persons who were qualified patients and registered caregivers (and persons who met the requirements of Section 8 of the MMMA, even if not registered with the state) could exchange or use medical marijuana. A third party--a person providing or selling marijuana to a qualified patient who is not that person's registered caregiver--does not have the protection from prosecution under the MMMA. Any arrangement outside of the patient-caregiver relationship, including "dispensaries," does not comply with the MMMA and is illegal.

Q. Don't you know how to spell "marijuana"?

A. Yes, but for some reason, that is how the word is spelled in the Michigan Medical Marihuana Act and in the Medical Marihuana Facilities Licensing Act and Medical Marihuana Licensing Act. But everyone else, including the courts, uses the more common spelling with the "j".

Q. What is legal today?

A. Only a patient-caregiver relationship conducted in compliance with the Michigan Medical Marihuana Act is legal today. Note that the MMMA was recently amended by PA 283 of 2016 to include certain marijuana-infused products, or "edibles," and to clarify what plants and parts of plants are allowed within the limits imposed by the Act.

Q. What is illegal today?

A. Anything that is not authorized by the Michigan Medical Marihuana Act is illegal today.

Q. So how come we see medical marijuana dispensaries all over?

A. Because the local jurisdiction has chosen to not enforce state or federal laws that make marijuana illegal outside of the patient-caregiver relationship protected by the MMMA. In most cases, the city, village or township has "decriminalized" certain uses of marijuana and/or chosen to not utilize enforcement resources for small amounts or certain levels of activity. But that is a forbearance, not legalization.

Q. Wait a minute—didn't a law just get passed that makes marijuana dispensaries legal?

A. No. Marijuana "dispensaries" or grow operations or any other activity involved with marijuana that does not comply with the Michigan Medical Marihuana Act are still unlawful.

Q. No, it did—the Medical Marihuana Facilities Licensing Act. The Governor signed it!

A. Yes. But the Medical Marihuana Facilities Licensing Act, Public Act 281 of 2016, MCL 333.27101, et seq., does not take effect until December 20, 2016.

And the MMFLA includes an additional delay in implementation of 360 days to enable the Michigan Department of Licensing and Regulatory Affairs (LARA) to establish the licensing system required by the Act. ***A person cannot apply to the state for a license of any kind under the MMFLA until December 15, 2017.***

And no one can apply to the state for a license of any kind under the MMFLA UNLESS the township has already adopted an ordinance that authorizes that type of facility.

So even after December 15, 2017, any marijuana provisioning center or other activity involving marijuana that does not comply with the Michigan Medical Marihuana Act ***will still be illegal***, unless that township has adopted an ordinance that authorizes that type of facility under the Medical Marihuana Facilities Licensing Act.

(Note that the word "dispensary" has been commonly used to refer to a variety of medical marijuana activities, but the new laws do not refer to "dispensaries." Under the MMFLA, "provisioning centers" are what many people would describe as a "dispensary.")

Q. What if an applicant comes to our meeting now and demands that we adopt an ordinance or approve their license?

If a township is approached by an applicant stating that the board must adopt an ordinance, then that applicant has misunderstood the law.

A township cannot be required to adopt an ordinance to allow facilities authorized under the MMFLA now or at any time.

If a township is approached by an applicant demanding that the township consider their application or stating that the board must authorize their facility:

- Before December 15, 2017, no township can be required to consider an application. Even if a township adopts an ordinance to allow the facilities authorized by the MMFLA, the licensing system is not in place, and no applications will be considered by LARA until December 15, 2017.

- After December 15, 2017, if a township **has not** adopted an ordinance allowing any of the facilities authorized by the MMFLA, then the township is not required to consider any applications for MMFLA licenses, because no licenses will be approved by LARA.

- After December 15, 2017, if a township **has** adopted an ordinance allowing any of the facilities authorized by the MMFLA, **and** the application involves one of the type(s) of facilities that the township allows in its ordinance, **and** the cap on the number of that type of facility imposed by the township's ordinance has not been reached, then the township will be asked to provide information to LARA as part of the licensing approval process.

Q. What do we need to do if we do NOT want any of the facilities authorized under the new Medical Marihuana Facilities Licensing Act in our township (or city or village)?

A. Do nothing. Literally. Do. Nothing. Period.

You do not need to adopt an ordinance to prohibit the types of facilities authorized under the MMFLA. They are already prohibited by state and federal law, unless the township adopts an ordinance to allow them ("opt in") under the MMFLA.

You would only adopt an ordinance dealing with the types of facilities authorized under the MMFLA if the township WANTS to allow one or more type of facilities authorized under the MMFLA.

A township cannot be required to adopt an ordinance allowing the facilities authorized by the MMFLA.

You do not have to consider any application for any facilities currently because no application will be considered by the state until December 15, 2017. And even after that date, if the township has not adopted an ordinance allowing that type of facility, that application will not be considered by the state.

Note that, because dispensaries and other marijuana facilities or operations outside of the patient/caregiver relationship are NOT currently lawful (even where marijuana has been decriminalized locally), existing dispensaries or other marijuana facilities or operations are not currently lawful non-conforming uses for zoning ordinance purposes.

Q. What do we need to do if we DO want any of the facilities authorized under the new Medical Marihuana Facilities Licensing Act in our township (or city or village)?

A. Any time before December 15, 2017, a township that wants to allow medical marijuana facilities to operate within the township could adopt an ordinance allowing one or more of the specific types of facilities authorized by the new Medical Marihuana Facilities Licensing Act. ***Note that adopting such an ordinance before December 15, 2017 does NOT make a facility lawful!***

December 15, 2017 is the earliest an applicant may submit an application to the Medical Marihuana Licensing Board (MMLB) for consideration.

Any time after December 15, 2017, a township that wants to allow medical marijuana facilities to operate within the township would adopt an ordinance allowing one or more of the specific types of facilities authorized by the new Medical Marihuana Facilities Licensing Act.

The ordinance should specify which type(s) of facilities—and how many of each type—the township is choosing to allow. If a township "opts in" with an ordinance that does not specify a cap on the type(s) or number of each, applications for any of the types and any number of a type within the township will be considered by LARA.

But a license from the state is still required before a specific facility is authorized to legally operate under the MMFLA. The township board's adoption of the ordinance allowing medical marijuana facilities does not automatically make all facilities lawful.

Also note that, because dispensaries and other marijuana facilities or operations outside of the patient/caregiver relationship are NOT currently lawful (even where marijuana has been decriminalized locally), existing dispensaries or other marijuana facilities or operations are not currently lawful non-conforming uses for zoning ordinance purposes.

Q. What types of facilities may be authorized under the new Medical Marihuana Facilities Licensing Act if a township allows them by ordinance?

A. The following types of medical marijuana facilities are authorized by the MMFLA. One or more types may be allowed by a township ordinance:

Class A, B, or C Grower—"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."

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

Processor—"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—"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 includes 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 in accordance with the Michigan Medical Marihuana Act will not be a provisioning center for purposes of the Licensing Act."

Secure Transporter—"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—"A licensee that is a commercial entity that receives marihuana from a marihuana facility or registered primary caregiver, tests it for contaminants and for tetrahydrocannabinol (THC) and other cannabinoids, returns the test results, and may return the marihuana to the facility."

Q. Why would a township consider allowing one or more of the types of facilities authorized under the new Medical Marihuana Facilities Licensing Act?

A. Some communities accept medical marijuana use for compassionate reasons, and believe that the Medical Marihuana Facilities Licensing Act will better facilitate the spirit and the actual practice of the patient-caregiver relationship authorized by the statewide initiative that created the Medical Marihuana Act in 2008.

Other communities may be responding to a real demand or broad support locally for providing medical marijuana facilities and business opportunities.

And it may be a revenue source:

- **Annual administrative fee:** Once a township adopts an ordinance allowing one or more of the types of facilities authorized by the Medical Marihuana Facilities Licensing Act, the township may in that ordinance require "an annual, nonrefundable fee of not more than $5,000.00 on a licensee to help defray administrative and enforcement costs associated with the operation of a marihuana facility in the municipality." ("Nonrefundable" as in not returned if the application is not approved by the state or if a license is not renewed.)

- **Property tax revenues:** These facilities are businesses and may actually be quite profitable. And in some communities medical marijuana facilities will utilize commercial properties that are currently vacant or even off the tax roll due to foreclosure.

- **State shared revenues, as appropriated:** A state tax will be imposed on each provisioning center at the rate of 3% of the provisioning center's gross retail receipts, which will go to the state Medical Marihuana Excise Fund. The money in the fund will be allocated, *upon appropriation*, to the state, counties and municipalities in which a marihuana facility is located, with "25% to municipalities in which a marihuana facility is located, allocated in proportion to the number of marihuana facilities within the municipality."

Q. How will the state manage this licensing system and track compliance?

A. The MMFLA requires licensees to "adopt and use a third-party inventory control and tracking system that is capable of interfacing with the statewide monitoring system to allow the licensee to enter or access information in the statewide monitoring system as required under this act and rules." Yes, there already are such third-party software systems commercially available.

The Marihuana Tracking Act, Public 282 of 2016, MCL 333.27901, et seq., enacted at the same time as the MMFLA, requires LARA to establish a confidential statewide internet-based monitoring system for integrated tracking, inventory, and verification. It will be a system "established, implemented, and maintained directly or indirectly by the department [LARA] that is available to licensees, law enforcement agencies, and authorized state departments and agencies on a 24-hour basis for all of the following:

(i) Verifying registry identification cards.

(ii) Tracking marihuana transfer and transportation by licensees, including transferee, date, quantity, and price.

(iii) Verifying in a commercially reasonable time that a transfer will not exceed the limit that the registered qualifying patient or registered primary caregiver is authorized to receive under section 4 of the Michigan medical marihuana act, 2008 IL 1, MCL 333.26424."

Q. The information on who is a qualified patient or a registered caregiver is currently confidential and exempt from public disclosure under the MMMA. How will the license process be treated—is that information going to be confidential?

A. The MMFLA requires that:

"Except as otherwise provided in this act, all information, records, interviews, reports, statements, memoranda, or other data supplied to or used by the board [MMFL Board] are subject to the freedom of information act, …, except for the following:

(i) Unless presented during a public hearing or requested by the licensee or applicant who is 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 investigation of applicants or licensees and to trade secrets, internal controls, and security measures of the licensees or applicants.

(ii) All information, records, interviews, reports, statements, memoranda, or other data supplied to or used by the board that have been received from another jurisdiction or local, state, or federal agency under a promise of confidentiality or if the release of the information is otherwise barred by the statutes, rules, or regulations of that jurisdiction or agency or by an intergovernmental agreement.

(iii) All information in the statewide monitoring system."

So the Medical Marihuana Facility Licensing Board's records **are** subject to the FOIA and public disclosure, with some specific exceptions.

Here are the records that will be **exempt** from disclosure:

- 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 investigation of applicants or licensees and to trade secrets, internal controls, and security measures of the licensees or applicants* **is exempt from disclosure, UNLESS**:

    1. That data, information, record, etc. was presented during a public hearing (of the MMFLB), in which case it is NOT exempt from disclosure.
       OR
    2. The licensee or applicant who is the sole subject of that data, information, record, etc. requests it, in which case it may be released to that licensee or applicant.

- All information, records, interviews, reports, statements, memoranda, or other data supplied to or used by the MMLFB that have been received from another jurisdiction or local, state, or federal agency (including a township) **is exempt from disclosure BUT ONLY IF:**

    1. The other jurisdiction or local, state, or federal agency (including a township) supplied it to the MMFLB *under a promise of confidentiality*.
       OR
    2. The release of the information is otherwise *barred by the statutes, rules, or regulations of that jurisdiction or agency or by an intergovernmental agreement*.

- All information in the statewide monitoring system is **exempt from disclosure.**

The Marihuana Tracking Act states that "the information in the system is confidential and is exempt from disclosure under the freedom of information act. Information in the system may be disclosed for purposes of enforcing this act; the Michigan medical marihuana act; and the medical marihuana facilities licensing act."

For more information on the three Michigan laws governing medical marijuana use, see the statutes online (click on the linked titles of the Acts in this fact sheet) or review the Senate Fiscal Analysis of September 23, 2016, which outlines all the provisions of the three bills as they were enacted.

This fact sheet is not intended as a legal opinion, and a township should consult with its attorney before taking any steps to adopt an ordinance under these statutes, and for specific legal guidance on how the Acts interact with the individual township's other ordinances, including a zoning ordinance.

Legislative Analysis

Phone: (517) 373-8080
http://www.house.mi.gov/hfa

Analysis available at
http://www.legislature.mi.gov

MEDICAL MARIHUANA FACILITIES ACT AND MARIHUANA TRACKING ACT

House Bill 4209 as enacted
Public Act 281 of 2016
Sponsor: Rep. Mike Callton, D.C.

House Bill 4210 as enacted
Public Act 283 of 2016
Sponsor: Rep. Lisa Posthumus Lyons

House Bill 4827 as enacted
Public Act 282 of 2016
Sponsor: Rep. Klint Kesto

House Committee: Judiciary
Senate Committee: Judiciary/Discharged
Complete to 10-20-16

OVERVIEW:

The package of bills deals with the production, transporting, and retail sale of medical marihuana.

It establishes a licensing and regulatory framework for medical marihuana provisioning centers (i.e., retail sellers to patients and caregivers), growers, processors, secure transporters, and safety compliance facilities, and imposes a 3% tax on retailers. It also creates a "seed-to-sale" tracking system for medical marihuana, and, among other things, allows for the manufacture and use of marihuana-infused products (such as products known as "edibles" or "medibles") by qualifying patients.

A five-member Medical Marihuana Licensing Board within the Department of Licensing and Regulatory Affairs (LARA) has responsibility for implementing and administering the new act, and the department and board would determine the application fees and regulatory assessments.

All three bills take effect December 20, 2016. However, applications for licenses could not be made for 360 days after that date (December 15, 2017).

The regulatory framework for marihuana draws on elements of the regulatory structures in place for alcohol under the Michigan Liquor Control Code and for gaming under the Michigan Gaming Control and Revenue Act. It involves creating **separate licenses** for persons engaged in different aspects of the commercial medical marihuana delivery system and for each location, as described below. Further, whether and how many licensed marihuana facilities are permitted in a municipality, and where located, would depend on local ordinances. (Municipality refers to a city, township, or village.) A registered primary caregiver or qualified registered patient is <u>not</u> required to be licensed under this act.

A **Grower** is licensed to cultivate, dry, trim, or cure and package marihuana for sale to a processor or provisioning center. There are three levels of Grower license based on the amount of product grown. A Grower could not be a registered primary caregiver.

A **Processor** is a licensed commercial facility 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.

A **Provisioning Center** (the retail seller or dispensary) is a licensed commercial entity that purchases marihuana from a grower or processor and sells, supplies, or provides marihuana to patients, directly or through the patient's caregiver. The term includes any commercial property where marihuana is sold at retail to patients or caregivers.

A **Secure Transporter** is a licensed commercial entity that stores, transfers, and transports marihuana between separate marihuana facilities for a fee. Only these entities can transport marihuana in the regulated system. A transporter does not transport marihuana to a patient or caregiver.

A **Safety Compliance Center** is a licensed commercial entity that receives marihuana from a marihuana facility or a registered primary caregiver, tests it for contaminants and for tetrahydrocannabinol and other cannabinoids, returns the test results, and may return the marihuana to the marihuana facility.

Marihuana delivered from a Grower to a Provisioning Center; from a Grower to a Processor; or from a Processor to a Provisioning Center must be delivered by a Secure Transporter. Also, marihuana within the regulated system that is delivered to and from a Safety Compliance Center must use a Secure Transporter.

Functions are kept separate as follows, as regards applicants and investors: Neither a grower nor a provisioning center can have an interest in a secure transporter or safety compliance facility, and a grower could not be a registered caregiver; a processor cannot be a registered caregiver or employ someone who is a registered caregiver, and cannot have an interest in a secure transporter or a safety compliance facility; a secure transporter cannot have an interest in a grower, processor, provisioning center, or safety compliance facility, and also cannot be a patient or caregiver; and a safety compliance facility cannot have an interest in a grower, processor, provisioning center, or a secure transporter.

A **tax of 3%** is imposed on the gross retail income of each provisioning center (retail seller/dispensary). Retail sales will presumably be subject to the **state's 6% general sales tax**, although no mention of this is made in the legislation. Taxes will not apply to registered primary caregivers or qualified registered patients; as noted earlier, they are not required to be licensed under the new regulatory system.

Brief Fiscal Impact Statement: Revenues from the application fees, regulatory assessment, and fines are estimated to be sufficient to cover the regulatory costs LARA and other state departments will incur. Plus, an $8.5 million appropriation was made for FY 16 from the Marihuana Registry Fund to LARA. LARA estimates, based on a "worst case" scenario, are that ongoing costs will total approximately $21.1 million annually. The

department also estimates that there will be an additional $726,000 in one-time information technology costs associated with establishing a statewide marihuana monitoring system.

A reasonable estimate for the revenue Michigan can expect from the 3% tax on the gross retail income of each provisioning center (retail seller) would be in the vicinity of $24 million per year. Revenues from the 6% general sales tax, if levied on medical marihuana, could thus be expected to be around $50 million. Initial tax collections are likely to be lower than those estimates because they are based on Colorado's experience, and Michigan's market is unlikely to be as large as Colorado's when these taxes are initiated; thus these revenue estimates represent approximate expectations after Michigan's market has developed. For a more detailed discussion, see ***Fiscal Impact***, on Page 26.

House Bill 4209 creates the new Medical Marihuana Facilities Licensing Act and contains the extensive licensing and regulatory framework. A registered primary caregiver or qualified registered patient is not required to be licensed under this act. It appears that a registered primary caregiver could continue to cultivate 12 plants each for up to 5 patients without being part of the new commercial regulatory structure, but could not sell to a provisioning center.

There are two related bills. House Bill 4827 creates a second new act (the Marihuana Tracking Act) requiring the establishment of a "seed-to-sale" system to track marihuana.

House Bill 4210 amends the existing Michigan Medical Marihuana Act to allow for the manufacture and use of marihuana-infused products (such as products known as "medibles") by qualifying patients, among other things.

The remainder of the summary provides (1) brief summaries of the key provisions of each bill; (2) followed by more extensive summaries of the bills— in particular House Bill 4209, which is a very detailed new regulatory act; and (3) more comprehensive fiscal impact statements.

BRIEF SUMMARY OF HOUSE BILL 4209:

House Bill 4209 creates the Medical Marihuana Facilities Licensing Act to create a licensing and regulation framework for medical marihuana growers, processors, secure transporters, provisioning centers (retail sellers), and safety compliance facilities.

Significant provisions include the following:

- A state operating license, renewed annually, will be required to operate as a grower, processor, provisioning center, secure transporter, or safety compliance facility. Applicants may begin submitting applications for licensure as a grower, processor, provisioning center, secure transporter, or safety compliance facility beginning December 15, 2017, (360 days from the bill's effective date of December 20, 2016). *A registered primary caregiver or qualified registered patient is not required to be licensed under the act.*

- Until June 30, 2018, a two-year residency requirement is imposed on applicants.

- A municipality may enact an ordinance to authorize one or more types of marihuana facilities, and limit the number of each type of facility, within its boundaries; charge an annual local fee up to $5,000 on licensees; and enact other ordinances related to marihuana facilities such as zoning ordinances. A marihuana facility cannot operate in a municipality unless the municipality adopts an ordinance authorizing that type of facility.

- In case of conflicts with certain business organization-related statutes, provisions in the act regulating the five new licensee classifications will supersede.

- A five-member Medical Marihuana Licensing Board is created within the Department of Licensing and Regulatory Affairs (LARA). The Board has general responsibility for implementing the act and all powers necessary and proper to fully and effectively implement and administer the act as specified.

- Licensees, registered qualifying patients, and registered primary caregivers (hereinafter "patient" and "caregiver") will receive specified protection from marihuana-related criminal or civil prosecutions or sanctions ***if*** they are in compliance with the act. "A registered qualifying patient" includes a visiting qualifying patient.

- The medical purpose defense for patients and caregivers provided under Section 8 of the MMMA will be preserved for any prosecution involving marihuana.

- A tax rate of 3% will be imposed on the gross retail income of each provisioning center.

- Rather than annual renewal license fees, an annual regulatory assessment will be imposed on certain licensees to pay for medical-marihuana-related services or expenses of certain state and local agencies.

- Two new funds will be created to receive revenue from taxes, application fees, annual regulatory assessments, fines, and other charges.

- Rules must be promulgated as specified in the bill, including the establishment of maximum THC levels for medical edibles sold at provisioning centers and daily purchasing limits by patients and caregivers to ensure compliance with the Michigan Medical Marihuana Act.

- Licensees must file annual financial statements of their total operations, reviewed by a certified public accountant.

- A 17-member Marihuana Advisory Panel is created within LARA to make recommendations concerning rules and the administration of the act.

BRIEF SUMMARY OF HOUSE BILL 4827:

Briefly, the bill creates the Marihuana Tracking Act, and does the following:

- ❖ Requires the creation of a system to track, among other things, lot and batch information throughout the chain of custody; all sales and refunds; plant, batch, and product destruction; inventory discrepancies; loss, theft, or diversion of products containing marihuana; and adverse patient responses.
- ❖ Requires the system to track patient purchase limits and flag purchases in excess of authorized limits.
- ❖ Provides real-time access to the system to local law enforcement agencies, state agencies, and LARA.
- ❖ Requires operation of the system to comply with HIPAA and exempt information in the system from disclosure under FOIA.
- ❖ Requires licensees under the Medical Marihuana Facilities Licensing Act (House Bill 4209) to supply LARA with tracking or testing information regarding each plant, product, package, batch, test, sale, or recall in or from the licensee's possession or control. A provisioning center would have to include information identifying the patient to, or for whom, the sale was made and the primary caregiver, if applicable, to whom the sale was made.
- ❖ Creates penalties for a licensee who willfully fails to comply with the reporting requirements: a civil infraction for a first offense and a misdemeanor penalty for a second or subsequent offense.

BRIEF SUMMARY OF HOUSE BILL 4210:

The bill, among other things:

- ❖ Revises the definitions of "medical use" and "usable marihuana" to include products using extracts and plant resins (known as "edibles").
- ❖ Defines "marihuana-infused product" and "usable marihuana equivalent."
- ❖ Provide immunity to a qualifying patient or caregiver from arrest or prosecution or penalty for certain conduct.
- ❖ Prohibits transporting or possessing a marihuana-infused product in a vehicle except as specified and create a civil fine for a violation.
- ❖ Prohibits using butane to separate plant resin from a marihuana plant inside a residential structure.
- ❖ Specifies the bill is curative and the provisions retroactive.
- ❖ Renames the *Michigan Medical Marihuana Fund* as the *Marihuana Registry Fund* and, for the fiscal year ending September 30, 2016, appropriate $8.5 million from the Fund to LARA for its initial costs of implementing the Medical Marihuana Facilities Licensing Act and the Marihuana Tracking Act.

DETAILED SUMMARY OF HB 4209

A detailed summary of the Legislative findings and Parts 1–8 of the Medical Marihuana Facilities Licensing Act (MMFLA), follows:

Legislative Findings/Emergency Rules

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.

[The emergency rule process, governed under MCL 24.248, eliminates some of the procedures (e.g., certain notice and participation procedures) and thus is much shorter than the traditional process. The emergency rule is effective on filing and remains in effect until a date fixed in the rule or six months after the date of its filing, whichever is earlier. The rule may be extended once for not more than six months.]

Part 1. General Provisions

Part 1 contains key definitions, the most important of which are described in the initial portion of the summary. A few others include:

"Licensee" is a person holding a state operating license, and a "state operating license" or "license" means a license issued under the act that allows the licensee to operate as one of the following, as specified in the license: a grower, processor, secure transporter, provisioning center, safety compliance facility. A "marihuana facility" is a location at which a license holder is licensed to operate under the act.

"Person" means an individual, corporation, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, trust, or other legal entity.

"Registered qualifying patient" means a qualifying patient who has been issued a current registry identification card under the Michigan Medical Marihuana Act (MMMA), and is expanded to include a visiting qualifying patient as that term is defined in Section 3 of the MMMA.

Part 2. Application of Other Laws

Licensees

The act specifies that for the purposes of regulating the commercial entities established under it, any provisions of the following acts that are inconsistent with the MMFLA do not apply to a grower, processor, secure transporter, provisioning center, or safety compliance facility operating in compliance with the act:

- Business Corporation Act and Nonprofit Corporation Act.
- Public Act 327 of 1931 (Michigan general corporation statute).
- Michigan Revised Uniform Limited Partnership Act.
- Michigan Limited Liability Company Act.
- Public Act 101 of 1907 (re: carrying on business under an assumed or fictitious name).
- Public Act 164 of 1913 (re: copartnerships)
- Uniform Partnership Act

Protection from civil, criminal, and administrative sanctions

In general, when engaging in certain protected activities, *a person granted a state operating license who is operating within the scope of the license, and the licensee's agents,* will not be subject to state or local criminal penalties regulating marihuana; state or local criminal

or civil prosecution for marihuana-related offenses; certain searches or inspections; seizure of marihuana, real or personal property, or anything of value based on a marihuana-related offense; or license or other sanctions by a business, occupational, or professional licensing board or bureau based on a marihuana-related offense.

Such protected activities include growing marihuana; purchasing, receiving, selling, transporting, or transferring marihuana from or to a licensee or its agent, a patient, or a caregiver; possessing, processing, or transporting marihuana; possessing or manufacturing marihuana paraphernalia for medical use; transferring, testing, infusing, extracting, altering, or studying marihuana; and receiving or providing compensation for products or services.

Landlords

A person who owns or leases real property upon which a licensed facility is located, and who had no knowledge that the licensee violated the act, will be protected from state or local laws regulating marihuana, state or local civil or criminal prosecution based on a marihuana-related offense, certain searches or inspections, seizure of real or person property based on a marihuana-related offense, and sanctions by a business or occupational or professional licensing board or bureau.

Patients and caregivers

A patient or caregiver will not be subject to criminal prosecution or sanctions for purchases of marihuana from a provisioning center *if* the quantity purchased is within the limits established under the Michigan Medical Marihuana Act (MMMA). In addition, a caregiver may transfer up to 2.5 ounces of marihuana to a safety compliance facility for testing without being subject to criminal prosecution or sanctions.

Further, the act will not limit the medical purpose defense provided in Section 8 of the MMMA to any prosecution involving marihuana.

Municipalities

A marihuana facility may not operate in a municipality unless an ordinance authorizing that type of facility has been adopted. A municipality could enact an ordinance to authorize one or more types of marihuana facilities within its boundaries and could also limit the number of each type of facility. (Municipality refers to a township, city, or village.)

The ordinance could establish an annual, nonrefundable fee of not more than $5,000 for a licensee, to help defray administrative and enforcement costs associated with the operation of a marihuana facility. Other ordinances relating to facilities, including zoning restrictions, could also be adopted. However, regulations regarding the purity or pricing of marihuana or that interfere or conflict with statutory regulations for licensing marihuana facilities could not be imposed.

Within 90 days after a municipality receives notification from an applicant of a license application, the municipalities must provide all of the following to the Medical Marihuana Licensing Board:

- A copy of the local ordinance authorizing the marihuana facility and of the zoning regulations that apply to the proposed facility.

- A description of any violation of the local ordinance or zoning regulation described above committed by the applicant—but only if the violations relate to activities licensed under the act or the MMMA.

The Board may consider the information provided under this provision in the license application process. However, a municipality's failure to provide the Board with the required information could not be used against the applicant.

Information obtained by the municipality from an applicant related to licensure is be exempt from disclosure under the Freedom of Information Act.

Rules

LARA, in consultation with the Board, is required to promulgate rules and emergency rules as necessary to implement, administer, and enforce the act. The rules must ensure the safety, security, and integrity of the operation of marihuana facilities.

Among other things the rules must address: appropriate standards for facilities; minimum levels of insurance for licensees; testing standards, procedures, and requirements for marihuana sold through provisioning centers; the use of the statewide monitoring system to track marihuana transfers and provide for a funding mechanism to support the system; the levy and collection of fines for violations of the act or rules; the chain of custody standards and standards for waste disposal; procedures for securely and safely transporting marihuana between marihuana facilities; labeling and packaging standards, procedures, and requirements for marihuana sold or transferred through provisioning centers (including a prohibition on labeling or packaging intended to appeal to or has the effect of appealing to minors); and marketing and advertising restrictions for marihuana products and facilities.

The rules must also establish daily purchasing limits at provisioning centers for patients and caregivers to ensure compliance with the Michigan Medical Marihuana Act. Further, the rules must establish health standards to ensure the safe preparation of products intended for human consumption in a manner other than smoke inhalation as well as the maximum tetrahydrocannabinol (THC) levels for marihuana-infused products sold of transferred through provisioning centers and restrictions on edible marihuana-infused products to prohibit shapes that appeal to minors.

Inventory control and tracking system

Licensees are required to adopt and use a third-party inventory control and tracking system capable of interfacing with the statewide monitoring system to allow the licensee to enter or access information in the system as required in the act and rules. The act details the extensive list of capabilities an inventory and tracking system must have in order for the licensee to comply with requirements applicable to its type of license. The list includes the capability to track all marihuana plants, products, patient and primary caregiver purchase totals, waste, transfers, sales, and returns linked to unique identification numbers. Moreover, the licensee's system must be able to report and track adverse patient responses or dose-related efficacy issues, and provide analytics to LARA regarding key performance indicators such as total daily sales, total plants in production or destroyed, and total inventory adjustments. (See the act for a complete list.)

Examination

A marihuana facility, and all articles of property within it, are subject to examination at any time by a local police agency or the Michigan State Police.

Part 3. Medical Marihuana Licensing Board

Membership

The Medical Marihuana Licensing Board is created within LARA and consists of five state residents, appointed by the governor. Not more than three could be members of the same political party. One member must be appointed from a list of three nominees submitted by the Senate Majority Leader and one from three nominees submitted by the Speaker of the House; the governor appoints the chairperson. Other than initial appointees, terms will be four years. Actual and necessary expenses and disbursements incurred in carrying out official duties will be reimbursed. Board members could not hold any other public office for which they receive compensation other than necessary travel or other incidental expenses.

Qualifications and disqualifications for appointment are established in the act; for example, a person who is not of good moral character or who had been convicted of, pleaded guilty to, or forfeited bail for any felony or a misdemeanor involving controlled substances, theft, dishonesty, or fraud under any state, federal, or local laws could not serve as a Board member.

The act also grants the governor authority to remove a member for neglect of duty or other just causes; requires the employment of an executive director and other personnel as necessary to assist the Board; and lists circumstances that disqualify persons from appointment or employment by the Board, as well as other restrictions on and responsibilities for Board members, the executive director, and employees similar to those in place for corresponding positions under the Michigan Gaming Control and Revenue Act. However, the Board could not employ an individual who has a direct or indirect interest in a licensee or marihuana facility.

Duties and powers of the Board

The Board has the power 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 act's licensing and regulation system for marihuana growth, processing, testing, and transporting. The Board is subject to the Administrative Procedures Act, and its duties include the following:

- Granting or denying applications for a state operating license within a reasonable time and deciding applications in reasonable order.

- Conducting public meetings in accordance with the Open Meetings Act.

- Consulting with LARA in promulgating rules and emergency rules. The Board cannot promulgate a rule establishing a limit on the number or type of marihuana facility licenses that may be granted.

- Implementing and collecting the application fee and, in conjunction with the Department of Treasury, the tax and regulatory assessment described in the act.

- Providing for the levy and collection of fines for violations 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 purpose of certifying the revenue, receiving complaints from the public, or conducting investigations into the operation of a marihuana facility as considered necessary and proper to ensure compliance with the act and rules, and to protect and promote the overall safety, security, and integrity of the operation of a marihuana facility.

- Providing oversight of marihuana facilities to ensure that marihuana-infused products (e.g., edible or topical preparations) meet health and safety standards that protect the public to a comparable degree with state and federal standards applicable to similar food and drugs.

- Reviewing and ruling on complaints by licensees regarding investigative procedures of the state believed to be unnecessarily disruptive of marihuana facility operations, though the need to inspect and investigate is presumed at all times. In order to prevail, a licensee must establish by a preponderance of the evidence that the procedures unreasonably disrupted its marihuana facility operations.

- Holding at least two public meetings per year, and maintaining records that are separate and distinct from the records of other state boards. Records must be available for public inspections subject to the act's confidentiality and nondisclosure provisions. Further, three votes are required in support of final determinations on license applications and other license determinations, except that four votes are required to support a license suspension or revocation.

- Reviewing the patterns of marihuana transfers by licensees and making recommendations to the governor and the Legislature in a written annual report due April 15 of each year.

With some exceptions, all information, records, interviews, reports, statements, memoranda, or other data supplied to or used by the Board are subject to the Freedom of Information Act. For example, information in the statewide monitoring system is not be subject to FOIA; neither is information used by the Board for background investigations of applicants or licensees.

Jurisdiction of Board

The act grants jurisdiction to the Board to oversee the operation of all marihuana facilities, including, among other things, the following:

- Investigate applicants, determine eligibility, and grant state operating licenses.
- Investigate employees of marihuana facilities.
- Conduct (through its investigators, agents, auditors, or the State Police) warrantless searches, without notice, of a licensee's premises consistent with constitutional

limitations, for specified purposes, including to inspect, examine, and audit relevant records and impound or seize records, etc., if the licensee fails to cooperate.

- Investigate alleged violations of the act or rules.
- Require each licensee to submit a list of stockholders or other persons having a one percent or greater beneficial interest in the marihuana facility.
- Eject or exclude an individual from a facility for a violation of the act, rules, or a final order of the Board.
- Conduct periodic audits of licensed marihuana facilities.
- Take disciplinary action as the Board considers appropriate to prevent practices that violate the act and rules.
- Review a licensee that is under review or subject to discipline by a regulatory body in another jurisdiction for a controlled substance or marihuana law or regulation in that jurisdiction.

The Board may seek and must receive the cooperation and assistance of the Department of State Police (MSP) in conducting background investigations of applicants and in fulfilling its responsibilities. The MSP may recover its costs of cooperation.

The Board is also authorized to conduct investigative and contested case hearings; issue subpoenas for the attendance of witnesses as well as for the production of books, ledgers, records and other pertinent documents; and administer oaths and affirmations. The executive director or a designee could also issue subpoenas and administer oaths and affirmations.

Disclosures and prohibited conduct

Board members and employees will be subject to numerous requirements regarding disclosure of certain information. For instance, by January 31 of each year, each Board member must prepare and file with the governor's office and the Board a disclosure form affirming that the member (or members of that person's family) are not members of a board of a licensee, or financially interested in or employed by a licensee or applicant; that the member continues to meet criteria for board membership; and must disclose any legal or beneficial interests in real property that is or may be directly or indirectly involved with marihuana operations.

Similar affirmations must be made by Board employees and filed with the Board by January 31 of each year. Employees, with the exception of the executive director or a key employee must also file a financial disclosure statement listing all personal assets and liabilities, property and business interests, and sources of income and also disclose whether a spouse, parent, child, or child's spouse has a financial interest in or is employed by a licensee or applicant.

A Board member, employee, or agent of the Board who within the previous 10 years has been indicted for, charged with, or convicted of, pled guilty to, or forfeited bail concerning a misdemeanor involving a controlled substance, dishonesty, theft, or fraud or a local ordinance in any state involving those crimes, or conduct that is a felony under the laws of any state, the U.S., or other jurisdiction must immediately provide detailed written notice of the conviction or charge to the chairperson of the Board.

Further, Section 305 of the act places numerous restrictions on conduct and communications by Board members, employees, and agents of the Board and requires these individuals to immediately report certain events; these center primarily on conduct that could create conflicts of interest, that restrict disclosure of information possessed by the Board considered confidential, or that involve outside employment. Further, the act prohibits certain conduct by Board members, employees, and licensees and applicants, such as offering or taking bribes.

A violation of Section 305 by a licensee or applicant could result in a license denial, revocation, or suspension, or other allowable disciplinary action. A violation by a Board member could result in removal from the Board or other disciplinary action as recommended by the Board to the governor. A violation by an employee or agent of the Board could lead to termination from employment, depending on the circumstances. A violation of Section 305 does not create a civil cause of action.

Part 4. Licensing

Application

Beginning December 15, 2017, (360 days after the bill's effective date of December 20, 2016), a complete application must be submitted to the Board for state operating licenses in the categories of Class A, B, or C grower; processor; provisioning center; secure transporter; or safety compliance facility. Both the nonrefundable application fee and the regulatory assessment established for the first year of operation must accompany the application. If a deficiency in an application is identified, the Board must provide the applicant with a reasonable period of time to correct the deficiency.

The application must be made under oath on a form provided by the Board and contain information as specified in the bill. Required information includes a description of the type of marihuana facility, certain criminal history information pertaining to the applicant, financial information, projected or actual gross receipts, any past commercial license sanctions, and the identity of every person having any ownership interest in the applicant, among other things.

An applicant must also notify the municipality in which the marihuana facility will be located that the applicant has applied for a state operating license; the municipality must be notified by registered mail within 10 days after the application was submitted. Certification that the notice has been delivered or will be within 10 days after submission of the application must be included with the application.

An applicant must also submit a passport quality photograph and set of fingerprints for each person having any ownership interest in the facility and each person who is an officer, director, or managerial employee of the applicant. LARA may designate an entity or agent to collect the fingerprints; the applicant is responsible for the cost associated with the fingerprint collection. (Currently, a fingerprint-based criminal history search of the MSP and FBI databases is $50; the entity taking the fingerprints and submitting the prints to the MSP may charge an additional fee.)

Further, an applicant must provide written consent to inspections, examinations, searches, and seizures as authorized in the act and also to disclosure to the Board of otherwise confidential records. (This includes federal, state, and local tax records and credit bureau

or financial institution records). An applicant must also certify that it does not have an interest in any other state operating license prohibited under the act.

The Board is required to use information provided on the application as a basis to conduct a thorough background investigation on the applicant; this information is exempt from disclosure under FOIA. A false application is grounds for denial of the license.

Application fee

The application must be accompanied by a nonrefundable application fee to defray costs associated with the background investigation conducted by the Board. LARA, in consultation with the Board, sets the amount of the application fee for each category and class of license by rule. If the costs of the investigation and processing the application exceed the application fee, the applicant must pay the additional amount to the Board. Disclosure of information included with the application will be restricted as provided in the act.

Disqualifiers for licensure

The following circumstances will disqualify an applicant from license approval:

- Being convicted of, or released from incarceration for, a felony under federal, Michigan, or other states' laws within the past 10 years, or convicted of a controlled substance-related felony within the past 10 years.
- Being convicted of a misdemeanor within the past 5 years involving a controlled substance, theft, dishonesty, or fraud in any state, or been found responsible for violating a local ordinance in any state for any of those offenses that substantially corresponds to a misdemeanor in that state.
- Knowingly submitting an application containing false information.
- Being a member of the Board.
- Failure to demonstrate ability to maintain adequate premises liability and casualty insurance for the proposed marihuana facility.
- Certain public employment or holding an elective office (e.g., holding an elective governmental office or being employed by a state or federal regulatory body). This does not apply to an elected precinct delegate or elected officer or employee of a federally recognized Indian tribe.
- Until after June 30, 2018, having less than a continuous two-year period of residency in the state immediately preceding the date of filing the application.
- A local ordinance has not been adopted to approve the type of facility for which licensure is sought.
- Failure by the applicant to meet other criteria established by rule.

Further, the Board may consider other factors as detailed in the act, including an applicant's moral character, integrity, and reputation; ability to purchase and maintain the required types and level of insurance; sources and total amount of capitalization to operate and maintain the proposed marihuana facility; criminal history of relevant offenses, including arrests, charges, expungements, pardons, or reversals of convictions (felony or misdemeanor); whether an applicant had filed, or had filed against it, a proceeding for bankruptcy within the past seven years; history of delinquent taxes or noncompliance with regulatory requirements in any jurisdiction; whether, at the time of license application, the applicant is a defendant in litigation involving its business practices; and whether the applicant meets other standards in rules applicable to the license category.

Issuance of license

If the Board determines the applicant is qualified, it must issue the license. A state operating license is valid for one year and issued only in the name of the true party of interest. Board approval must be obtained before a license is transferred, sold, or purchased.

Licensees must consent in writing to inspections, examinations, searches, and seizures that are permitted under the act and must provide a sample of handwriting, fingerprints, photographs, and information as authorized in the act or by rules.

Transfer, sale, or purchase of license/loan against a license

A state operating license is a revocable privilege under the act granted by the state and is not a property right. Granting a license does not create or vest any right, title, franchise, or other property interest. The act specifies that the license is exclusive to the licensee; before a license is transferred, sold, or purchased, the licensee or any other person must *apply for and receive the Board's and the municipality's approval*. Further, a licensee or any other person is prohibited from leasing, pledging, or borrowing or loaning money against a license.

The attempted transfer, sale, or other conveyance of an interest in a license without prior Board approval is grounds for suspension or revocation of the license or other sanction considered appropriate by the Board.

Liability insurance for licensees and applicants

The act requires licensees and applicants to obtain liability insurance in the amount of $100,000. Specifically, before a license is granted or renewed, the licensee or applicant must file with LARA proof of financial responsibility for liability for bodily injury to lawful users resulting from the manufacture, distribution, transportation, or sale of adulterated marihuana or adulterated marihuana-infused products in an amount not less than $100,000. An insured licensee cannot cancel the liability insurance without first giving 30 days' prior written notice to LARA and procuring new proof of financial responsibility (in other words, a new policy) and delivering that proof to LARA within 30 days after giving notice of the impending cancellation of the other policy.

"Adulterated marihuana" means a product sold as marihuana that contains any unintended substance or chemical or biological matter other than marihuana that causes adverse reaction after ingestion or consumption. "Bodily injury" will not include expected or intended effect or long-term adverse effect of smoking, ingestion, or consumption of marihuana or marihuana-infused product.

License renewal

Licenses must be renewed annually. Except as otherwise provided in the act, the Board is required to renew a license **if all** of the following requirements are met:

- The renewal application is made on a form provided by the Board that requires information prescribed in rules.
- The application is received by the Board on or before the expiration date of the current license.

- The regulatory assessment is paid (payment of an annual regulatory assessment replaces the annual renewal fee typical of state licenses).
- The licensee meets the act's requirements and any other renewal requirements set forth in rules.

LARA must notify the licensee by mail or email advising of the time, procedure, and regulatory assessment under Section 603 of the bill. However, failure to receive notice under this provision does not relieve the licensee of the responsibility to renew the license.

If not submitted by the current license's expiration date, the license may be renewed within the following 60 days upon application, payment of the regulatory assessment, and the satisfaction of any renewal requirements and late fees set forth in rules. The licensee may continue to operate during the 60 days after the license expires **if** the license were renewed by the end of that 60-day period. The Board retains authority to impose sanctions on a licensee whose license has expired.

Further, in making a decision on an application for renewal, the Board is required to consider any specific written input it receives from an individual or entity within the local unit of government in which the renewal applicant is located.

License sanctions/Civil fines for violations

The following sanctions will apply:

- For a transfer, sale, or other conveyance of an interest of more than one percent without prior Board approval: license suspension or revocation, or other sanction considered by the Board to be appropriate.

- For an *attempted* transfer, sale, or other conveyance of an interest in a license without prior Board approval: license suspension or revocation, or other sanction considered by the Board to be appropriate.

- For failure by a licensee or applicant to comply with the act or rules or the Marihuana Tracking Act (HB 4827), failure to continue to meet eligibility requirements for a license, or failure to provide information as requested by the Board to assist in any investigation, inquiry, or Board hearing: license denial, suspension, revocation, or license restrictions.

- For a violation of the act, rules, the Marihuana Tracking Act, or any local ordinance approving the allowed type and number of marihuana facilities: suspension, revocation, or license restrictions and removal of a licensee or an employee

- For each violation of the act, rules, or an order of the Board: a civil fine up to $5,000 against an individual and up to $10,000 or an amount equal to the daily gross receipts, whichever is greater, against a licensee. Assessment of a civil fine under this provision is not a bar to the investigation, arrest, charging, or prosecution of an individual for any other violation of the act and is not grounds to suppress evidence in any criminal prosecution that arises under the act or any other law of the state.

The Board must comply with the Administrative Procedures Act when imposing a license sanction or fine. A license could be suspended without notice or hearing if the safety or health of patrons or employees is jeopardized by continuing a marihuana facility's operation. If a license is suspended without notice or hearing, a prompt post-suspension hearing must be held to determine if the suspension should remain in effect. If the licensee does not make satisfactory progress toward abating the hazard, the Board may revoke the license or approve a transfer or sale of the license. In addition, the bill provides for public, investigatory hearings, upon request, for license denials and for any party aggrieved by an action of the Board in imposing a license sanction or fine or refusing to renew a license.

Employees

A licensee must conduct a background check of a prospective employee before the person is hired. Written permission must be obtained from the Board before hiring a person who has a pending charge or conviction within the past 10 years for a controlled substance-related felony.

(Note: The bill does not specify if this would be a fingerprint or name-based background check. If a name-based check through ICHAT, the state's Internet Criminal History Access Tool, only the public criminal history record information maintained by the Michigan State Police would be accessible. The following information is not included: federal, tribal, traffic, or juvenile records; local misdemeanors; and criminal history from other states.)

Part 5. License Categories

The license categories (as defined in Part 1) are as follows:

Grower License

This license authorizes the grower to grow not more than the following number of marihuana plants under the indicated license class for each license the grower holds in that class:

- Class A–500 marihuana plants.
- Class B–1,000 marihuana plants.
- Class C–1,500 marihuana plants.

A grower is only authorized to operate in an area zoned for industrial or agricultural uses or in an area that is unzoned and authorized by a municipal ordinance for that type of facility. A grower license authorizes sales of marihuana seeds or marihuana plants only to a grower by means of a secure transporter. The sale of marihuana, other than seeds, can be made only to a processor or provisioning center. A grower may only transfer marihuana by means of secure transporter. The license applicant and each investor in the grower must not have an interest in a secure transporter or a safety compliance facility.

In addition, a grower must comply with the following requirements:

- Until December 31, 2021, have a minimum of two years' experience as a registered primary caregiver or have an active employee with that experience.
- While holding a license as a grower, not be a registered primary caregiver and not employ an individual who is simultaneously a registered primary caregiver.

- Enter all transactions, current inventory, and other information into the statewide monitoring system as required in the act, rules, and the Marihuana Tracking Act.

Processor License

A processor license authorizes purchase of marihuana only from a grower and sale of marihuana-infused products only to a provisioning center. A processor may transfer marihuana only by means of a secure transporter.

The applicant and each investor in the processor must not have an interest in a secure transporter or a safety compliance facility. In addition, a processor must comply with the following requirements:

- Until December 31, 2021, have a minimum of two years' experience as a registered primary caregiver or have an active employee with such experience.
- While holding a license as a processor, not be a registered primary caregiver and not employ an individual who is simultaneously a registered primary caregiver.
- Enter all transactions, current inventory, and other information into the statewide monitoring system as required in the act, rules, and the Marihuana Tracking Act.

Secure Transporter License

This license authorizes 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. The license does not authorize transport to a registered qualifying patient or registered primary caregiver.

The applicant for a secure transporter license and each investor with an interest in the secure transporter must not have an interest in a grower, processor, provisioning center, or a safety compliance facility and must not be a patient or a caregiver. All transactions, current inventory, and other information must be entered into the statewide monitory system as required in the Marihuana Tracking Act. During the transportation of marihuana, a secure transporter is subject to administrative inspection by a law enforcement officer at any point to determine compliance with the act.

Further, a secure transporter must comply with all of the following:

- Each driver transporting marihuana must have a Michigan chauffeur's license.
- Each employee having custody of marihuana or money related to a marihuana transaction must not have been convicted of or released from incarceration for a felony under Michigan, federal, or other states' laws within the past five years or been convicted of a misdemeanor involving a controlled substance within the past five years.
- During the transportation of marihuana, a two-person crew is required to operate each vehicle, with one of the individuals remaining with the vehicle at all times.
- A route plan and manifest must be entered into the statewide monitoring system and a copy carried in the transporting vehicle and presented to a law enforcement officer upon request.
- Marihuana must be transported in one or more sealed containers and not be accessible while in transit.

- The vehicles must be unmarked or have other indications it is carrying marihuana or a marihuana-infused product.

Provisioning Center License

This license authorizes the purchase and transfer of marihuana only from a grower or processor, and sale and transfer to only a registered qualifying patient or registered primary caregiver. All transfers of marihuana to a provisioning center from a separate marihuana facility must be by means of a secure transporter. The license also authorizes the transfer of marihuana to or from a safety compliance facility for testing by means of a secure transporter.

To be eligible for a provisioning center license, an applicant and each investor in the provisioning center must not have an interest in a secure transporter or safety compliance facility. Further, a provisioning center must comply with the following requirements:

- Sell or transfer marihuana to a patient or caregiver only after it has been tested and bears the label required for retail sale.
- Enter all transactions, current inventory, and other information into the statewide monitoring system as required in the Marihuana Tracking Act.
- Require a check of the statewide monitoring system—before selling or transferring marihuana to a patient or caregiver on behalf of a patient—to determine whether the patient and, if applicable, the caregiver hold a valid, current, unexpired, and unrevoked registry identification card and that the sale or transfer will not exceed the daily purchasing limit established by the Board.
- Prohibit alcoholic beverages from being sold, consumed, or used on the premises of a provisioning center.
- Prohibit a physician from conducting a medical examination or issuing a medical certification document on the premises for the registry identification card purposes.

Safety Compliance Facility License

In addition to the transfer and testing of marihuana from a caregiver as authorized under the act, this license authorizes the facility to receive marihuana from, test it for, and return it to only a marihuana facility. The facility must be accredited by an entity approved by the Board by one year after the date the license is issued or that had previously provided drug testing services to the state or the state court system, and be a vendor in good standing in regard to those services. The Board may grant a variance from this requirement upon a finding that the variance is 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 in the facility must not have an interest in a grower, secure transporter, processor, or provisioning center.

A safety compliance facility must comply with the following requirements:

- Perform tests to certify that marihuana is reasonably free of chemical residues such as fungicides and insecticides.
- Use validated test methods to determine levels of tetrahydrocannabinol, tetrahydrocannabinol acid, cannabidiol, and cannabidiol acid.

- Perform tests that determine whether the marihuana complies with the standards established by LARA for microbial and mycotoxin contents.
- Perform other tests necessary to determine compliance with any other good manufacturing practices as prescribed in rules.
- Enter all transactions, current inventory, and other information into the statewide monitoring system as required in the act, rules, and the Marihuana Tracking Act.
- Have a secured laboratory space that cannot be accessed by the general public.
- Retain and employ at least one staff member with a relevant advanced degree in a medical or laboratory science.

Part 6. Taxes and Fees

A tax is be imposed on each provisioning center at the rate of 3 percent of the provisioning center's gross retail income. Taxes will be remitted quarterly for the preceding calendar quarter to the Michigan Department of Treasury, by 30 days after the end of the quarter and accompanied by a form prescribed by Treasury that shows the center's gross quarterly retail income and the amount of the tax due; a copy of the form must also be submitted to LARA.

If a law authorizing the recreational or non-medical use of marihuana in the state is enacted, Section 601 imposing this tax ceases to apply, beginning 90 days after that law's effective date.

Taxes imposed under this provision is to be administered by the Department of Treasury, and in case of a conflict with the Revenue Act (Public Act 122 of 1941), the provisions of the Medical Marihuana Facilities Licensing Act would prevail.

Medical Marihuana Excise Fund

The fund is created in the state treasury. Except for the license application fee, the annual regulatory assessment, and any local licensing fees, all money collected under the 3 percent tax described above and all other fees, fines, and charges imposed under the act must be deposited in the Fund.

All interest and earnings from Fund investments are be credited to the Fund, and money remaining in the Fund at the close of a fiscal year must remain in the Fund and not lapse to the General Fund. The State Treasurer is be the administrator of the Fund for auditing purposes.

Money in the Fund is to be allocated, upon appropriation, as follows:

- 25 percent to municipalities where the marihuana facilities are located, allocated in proportion to the number of marihuana facilities within the municipality.
- 30 percent to the counties where marihuana facilities are located, allocated in proportion to the number of marihuana facilities within the county.
- 5 percent to counties exclusively to support county sheriffs; this would be in addition to and not a replacement for any other funding received by the county sheriffs.
- 30 percent to the state for the following:
    - Until September 30, 2017, for deposit in the General Fund.

- Beginning October 1, 2017, for deposit in the First Responder Presumed Coverage Fund created in Section 405 of the Worker's Disability Compensation Act.

- 5 percent to the Michigan Commission on Law Enforcement Standards for training local law enforcement officers.
- 5 percent to the Department of State Police.

Regulatory Assessment

A regulatory assessment is to be imposed on certain licensees. All of the following must be included in establishing the total amount of the regulatory assessment established under this provision (Section 603):

- LARA's costs to implement, administer, and enforce the act (except for the costs to process and investigate applications for an initial license, which is supported by its own fee structure).
- Expenses of medical-marihuana-related legal services provided by the attorney general.
- Expenses of medical-marihuana services provided to LARA by the Michigan State Police.
- Expenses of medical-marihuana-related services provided by the Department of Treasury.
- $500,000 to be allocated to LARA for licensing substance use disorder programs.
- An amount equal to 5 percent of the sum of the amounts provided for under the above allocations to be allocated to the Department of Health and Human Services for substance-abuse-related expenditures including, but not limited to, substance use disorder prevention, education, and treatment programs.
- Expenses related to the standardized field sobriety tests administered in enforcing the Michigan Vehicle Code.
- An amount sufficient to provide for the administrative costs of the Michigan Commission on Law Enforcement Standards.

The regulatory assessment is in addition to the initial license application fees, the 3 percent excise tax on provisioning centers, and any local licensing fees. It will be collected annually from licensed growers, processors, provisioning centers, and secure transporters. The regulatory assessment for a Class A grower license (no more than 500 plants) could not exceed $10,000.

Beginning in the first year that marihuana facilities are authorized to operate in the state, and annually thereafter, LARA (in consultation with the Board), is required to establish the total regulatory assessment at an amount that is estimated to be sufficient to cover the actual costs and support the expenditures listed above.

Further, on or before the date a licensee begins operating and annually thereafter, each grower, processor, provisioning center, and secure transporter must pay to the State Treasurer an amount determined by LARA to reasonably reflect the licensee's share of the total regulatory assessment established in the preceding provision. (Presumably this means that larger businesses bear the greater burden of the regulatory assessment since they may require more oversight than a smaller operation.)

Marihuana Regulatory Fund

The MRF is be created in the state treasury, with LARA as the administrator for auditing purposes. Revenue collected under the annual regulatory assessment and the initial license application fee must be deposited in the MRF. Fund interest and earnings from investments are to be credited to the MRF, and money in the Fund at the close of the fiscal year will remain in the Fund and not lapse to the General Fund. Money from the MRF is to be expended upon appropriation, and only for implementing, administering, and enforcing the act.

LARA may use any money appropriated to it from the Michigan Registry Fund created in Section 6 of the Michigan Marihuana Act for the purpose of funding the operations of LARA and the Board in the initial implementation and subsequent administration and enforcement of the act.

Part 7. Reports

By 30 days after the end of each state fiscal year, each licensee must transmit to the Board and to the municipality financial statements of the licensee's total operations. The financial statements must be reviewed by a state-licensed certified public accountant (CPA) in a manner and form prescribed by the Board. The licensee bears the cost of compensation for the CPA.

The Board must submit a report to the governor and the chairs of the legislative committees that govern issues related to marihuana facilities covering the previous year, and include in the report an account of the Board actions, its financial position, results of operation under the act, and any recommendations for legislation that the Board considers advisable. This report must be included as part of an annual report that must be prepared for the governor and legislature and submitted by April 15 of each year. This annual report must include recommendations by the Board, a statement of receipts and disbursements by the Board, actions taken by the Board, and any additional information and recommendations that the Board considers appropriate or that the governor requests.

Part 8. Marihuana Advisory Panel

The Marihuana Advisory Panel is created within LARA. The 17-member panel includes the director of the Department of State Police, director of the Department of Health and Human Services, director of LARA, the attorney general, and the director of the Michigan Department of Agriculture and Rural Development, or their designees. The rest of the membership is appointed by the governor as follows:

- One registered medical marihuana patient or medical marihuana primary caregiver.
- One representative of growers.
- One representative of processors.
- One representative of provisioning centers.
- One representative of safety compliance facilities.
- One representative of townships.
- One representative of cities and villages.
- One representative of counties.
- One representative of sheriffs.

- One representative of local police.
- One state-licensed physician.
- One representative of a secure transporter.

The act establishes the process for appointments and filling vacancies, and how often the panel would meet. The panel is subject to the Open Meetings Act and the Freedom of Information Act. Panel members will serve without compensation but could be reimbursed for actual and necessary expenses.

The panel may make recommendations to the Board concerning promulgation of rules, and as requested by the Board or LARA, administration, implementation, and enforcement of the act and the Marihuana Tracking Act. State departments and agencies must cooperate with the panel and upon request, provide it with meeting space and other resources to assist it in the performance of its duties.

DETAILED SUMMARY OF HB 4827

House Bill 4827 creates the Marihuana Tracking Act and requires the Department of Licensing and Regulatory Affairs (LARA) to establish, maintain, and utilize a system to track marihuana that is grown, processed, transferred, stored, or disposed of under the Medical Marihuana Facilities Licensing Act (House Bill 4209). This could be accomplished either directly or by contract. The system must be operated in compliance with the federal Health Insurance Portability and Accountability Act (HIPAA).

System Platform

The bill requires the system to be hosted on a platform that allows dynamic allocation of resources, data redundancy, and recovery from a natural disaster within hours.

System Capabilities

All of the following capabilities are required:

- Tracking all plants, products, packages, patient and primary caregiver purchase totals, waste, transfers, conversions, sales, and returns that, if practicable, are linked to unique ID numbers.
- Tracking lot and batch information, as well as all products, conversions, and derivatives, throughout the entire chain of custody.
- Tracking plant, batch, and product destruction.
- Tracking transportation of product.
- Performing complete batch recall tracking that clearly identifies certain details specified in the bill relating to the specific batch subject to the recall; e.g., sold product, product available for sale, and product being processed into another form.
- Reporting and tracking loss, theft, or diversion of products containing marihuana; all inventory discrepancies; adverse patient responses or dose-related efficacy issues; and all sales and refunds.
- Tracking patient purchase limits and flagging purchases in excess of authorized limits.
- Receiving electronically submitted information required to be reported under the bill.

- Receiving testing results electronically from a safety compliance facility via a secured application program interface into the system and directly linking the testing results to each applicable source batch and sample.
- Flagging test results having characteristics indicating that they may have been altered.
- Providing information to cross-check that product sales are made to a qualified patient or designated primary caregiver and that the product received the required testing.
- Providing real-time access to information in the database to LARA, local law enforcement agencies, and state agencies.
- Providing LARA with real-time analytics regarding key performance indicators such as total daily sales, total plants in production, total plants destroyed, and total inventory adjustments.

Supplying Information to the System

Persons licensed under the Medical Marihuana Facilities Licensing Act (House Bill 4209) must supply LARA with the relevant tracking or testing information in the form required by the department regarding each plant, product, package, batch, test, transfer, conversion, sale, recall, or disposition of marihuana in or from the person's possession or control. A provisioning center is required to include information identifying the patient to whom or for whom the sale was made and, if applicable, the primary caregiver to whom the sale was made. LARA could require this information to be submitted electronically.

Penalties

A licensee under the Medical Marihuana Facilities Licensing Act who willfully violates the reporting requirements described above is responsible for a state civil infraction and could be ordered to pay a civil fine of not more than $1,000.

A second or subsequent willful violation is a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $2,500, or both.

Confidentiality

The information in the system established by LARA is confidential and not subject to disclosure under the Freedom of Information Act. However, information could be disclosed in order to enforce the Michigan Medical Marihuana Act and the Medical Marihuana Facilities Licensing Act (House Bill 4209).

DETAILED SUMMARY OF HB 4210

House Bill 4210 amends the Michigan Medical Marihuana Act, MMMA (MCL 333.26423 et al.). This act was initiated by petition and approved by voters as Initiated Law 1 of 2008.

Goal of act and retroactivity

The bill specifies that it clarifies ambiguities in the law in accordance with the original intent of the people, as expressed in Section 2(b) of the MMMA. Further, the bill is curative and applies retroactively as to the following:

- Clarifying the quantities and forms of marihuana for which a person is protected from arrest.

- Precluding an interpretation of "weight" as aggregate weight.
- Excluding an added inactive substrate component of a preparation in determining the amount of marihuana, medical marihuana, or usable marihuana that constitutes an offense.

Retroactive application of the bill's amendments does not create a cause of action against a law enforcement officer or any other state or local governmental officer, employee, department, or agency that enforced the MMMA under a good-faith interpretation of its provisions at the time of enforcement.

Definitions

- Define "marihuana plant" as any plant of the species Cannabis sativa L.

- Define "plant" as any living organism that produces its own food through photosynthesis and has observable root formation or is in growth material.

- Change the terms "medical use" and "use of medical marihuana" to "medical use of marihuana" and revise the definition of "medical use" to include the extraction of marihuana and marihuana-infused products.

- Revise the definition of "usable marihuana" to include, in addition to dried leaves and flowers, the plant resin or extract of the marihuana plant. (The term does not include the seeds, stalks, or roots of the plant.)

- Define "marihuana-infused product" to mean a topical formulation, tincture, beverage, edible substance, or similar product containing any usable marihuana that is intended for human consumption in a manner other than smoke inhalation. Marihuana-infused products are not considered a food for purposes of the Food Law.

- Define "usable marihuana equivalent" as the amount of usable marihuana in a marihuana-infused product as calculated under the bill.

Per-patient possession limit

In order to qualify for protection from arrest, prosecution, or penalty for possessing marihuana, the MMMA sets a possession limit of 2.5 ounces of marihuana-per-patient.

Under the bill, the combined total of both usable marijuana equivalents and usable marihuana must be considered when determining if the per-patient possession limit is or is not exceeded. In determining usable marihuana equivalency, one ounce of usable marihuana is considered equivalent to:
(1) 16 ounces of marihuana-infused product if in a solid form.
(2) 7 grams if in a gaseous form.
(3) 36 fluid ounces if in a liquid form.

Marihuana-infused product

The MMMA provides criminal, civil, and administrative protections for certain conduct related to medical marihuana. The bill adds similar protections to a registered qualifying patient (hereinafter "patient") manufacturing a marihuana-infused product for personal use,

or a registered primary caregiver (hereinafter "caregiver") manufacturing for the use of the patient, will not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including, but not limited to, civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau.

However, the following are prohibited: (1) patient transferring a marihuana-infused product or marihuana to any individual; and (2) a caregiver transferring a marihuana-infused product to any individual who is not one of the caregiver's patients.

Immunity for transferring, purchasing, or selling to licensees

A patient or caregiver will not be subject to arrest, prosecution or penalty in any manner, or denied any right or privilege, including but not limited to, civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for any of the following:

- Transferring or purchasing marihuana in an amount authorized by the MMMA from a provisioning center licensed under the Medical Marihuana Facilities Licensing Act, MMFLA.
- Transferring or selling marihuana seeds or seedlings to a grower licensed under the MMFLA.
- Transferring marihuana for testing to and from a safety compliance facility licensed under the MMFLA.

Transporting or possessing marihuana-infused product in a motor vehicle

A patient or caregiver is prohibited from transporting or possessing a marihuana-infused product in or upon a motor vehicle except as follows:

- For a qualifying patient:
  - The product is in a sealed and labeled package carried in the trunk of the vehicle (or if there is no trunk, carried so as not to be readily accessible from the interior of the vehicle).
  - The label must state the weight of the marihuana-infused product in ounces, name of the manufacturer, date of manufacture, name of the person from whom the product was received, and date of receipt.

- For a primary caregiver:
  - The product is accompanied by an accurate marihuana transportation manifest and enclosed in a case carried in the trunk of the vehicle (or if no trunk, enclosed in a case and carried so as not to be readily accessible from the interior of the vehicle).
  - The manifest form must state the weight of each marihuana-infused product in ounces, the name and address of the manufacturer, date of manufacture, destination name and address, date and time of departure, estimated date and time of arrival, and, if applicable, name and address of the person from whom the product was received and date of receipt.

- For a primary caregiver, if the patient is his or her child, spouse, or parent:
  - The product is in a sealed and labeled package that is carried in the trunk of the vehicle (or carried so as not to be readily accessible from the interior of the vehicle if it does not have a trunk). The label must state the weight of

the product in ounces, name of the manufacturer, date of manufacture, name of the qualifying patient, and if applicable, name of the person from whom the marihuana-infused product was received and date of receipt.

For purposes of determining compliance with the 2.5 ounces quantity limitations, there is a rebuttable presumption that the weight of a marihuana-infused product listed on its package label or on a marihuana transportation manifest is accurate.

A qualifying patient or primary caregiver who violates the provisions regarding transport or possession of a marihuana-infused product in a motor vehicle will be responsible for a civil fine of not more than $250.

Miscellaneous provisions
The bill also will:

- Require the Department of Licensing and Regulatory Affairs (LARA) to verify to the database created in the Marihuana Tracking Act (House Bill 4827) whether a registry ID card is valid (this is identical to an existing provision regarding verifying card validity to law enforcement).

- Prohibit using butane extraction to separate plant resin from a marihuana plant:
  - In any public place.
  - In a motor vehicle.
  - Inside or within the curtilage of any residential structure in a manner that demonstrates a failure to exercise reasonable care or reckless disregard for the safety of others. ("Curtilage" typically refers to the grounds and buildings surrounding a home; e.g., a garage, barn, or garden that is reasonably near the home.)

- Prohibit the operation, navigation, or actual physical control of a snowmobile or off-road recreational vehicle while under the influence of marihuana; this is already in place for a motor vehicle, aircraft, or motorboat.

- Rename the *Michigan Medical Marihuana Fund* as the *Marihuana Registry Fund* and, for the fiscal year ending September 30, 2016, appropriate $8.5 million from the Fund to LARA for its initial costs of implementing the Medical Marihuana Facilities Licensing Act and the Marihuana Tracking Act.

FISCAL IMPACT:

House Bills 4209 and 4827

House Bills 4209 and 4827, as enacted, will have significant and likely positive fiscal impacts on the Department of Licensing and Regulatory Affairs (LARA) and on other units of state and local government, due to the creation of a regulatory regime for the medical marihuana market in Michigan. The bills will primarily affect LARA, since that department is largely responsible for the implementation of the bills' provisions, though the Departments of State Police (MSP), Attorney General, and Health and Human Services (DHHS) will also experience fiscal impacts from the bills. The bills will likely have

significant, though indeterminate, fiscal impacts on local units of government through the creation of new taxes and fees on medical marihuana facilities.

LARA estimates that ongoing costs resulting from these bills will total approximately $21.1 million annually. The department estimates that there will be an additional $726,000 in one-time information technology costs associated with establishing a statewide marihuana monitoring system. The components of the department's "worst-case scenario" cost estimate are as follows (components do not sum to $21.1 million due to rounding):

- $13.2 million for the employment of 113.0 full-time equated employees (FTEs) who will handle application processing, licensing, and enforcement duties under the act. This estimate is based on staffing within the Licensing and Enforcement Divisions of the Michigan Liquor Control Commission (MLCC).
- $6.0 million for 34.0 FTEs in the MSP to assist with criminal enforcement activities. This estimate is based on the personnel required to provide enforcement assistance to the Michigan Gaming Control Board (MGCB).
- $550,000 for costs incurred by the Attorney General for legal and prosecutorial support.
- $1.5 million in miscellaneous costs, including: telecom and information technology support ($380,000); contractual services ($$350,000); travel ($250,000); equipment, supplies, and materials ($240,000); and other overhead expenses associated with initial development of the marihuana tracking IT system and other IT costs ($726,000).

The assumptions utilized to obtain the preceding estimates may not accurately reflect the regulatory environment that will develop in Michigan with respect to the medical marihuana market. As was previously mentioned, the cost estimate is a "worst-case scenario" estimate, representing a total cost that is likely higher than what will be incurred for the implementation of these bills. The estimated staffing figures for LARA are based on figures from the MLCC, causing this estimate to likely be overstated since the MLCC regulates a larger market (17,250 retail liquor stores) than the medical marihuana market. On the other hand, the quoted staffing figures for the Department of State Police are likely lower than the actual number that will be required for enforcement, since the nature of the department's responsibilities for policing gambling and marihuana are significantly different. There is also a possibility that the medical marihuana market may not bear the newly created regulatory costs, as medical marihuana users may choose to acquire marihuana from sources other than provisioning centers, since costs are likely to be lower at these alternative sources.

The acts authorize LARA to prescribe and impose license application fees for various classes of licensees, establish regulatory assessments, and collect fines and penalties described within the bill. House Bill 4209 enables the department, in consultation with the Medical Marihuana Licensing Board, to establish application fees and regulatory assessments, with revenues from these sources being deposited to the Marihuana Regulatory Fund. Application fees are intended to cover the department's costs of processing and investigating applications, but in the event that the costs of these activities exceed the collected application fees the applicant is responsible for paying the additional amount to the Board. The regulatory assessment is intended to offset the costs that will be experienced for administration, implementation, and enforcement of the various provisions

of House Bill 4209, and will be collected from licensed growers, processors, provisioning centers, and secure transporters. The total amount of the regulatory assessment includes the following components:

- Costs incurred by LARA for implementation, administration, and enforcement of House Bill 4209, except for expenses associated with application processing.
- Costs incurred the Department of Attorney General for medical-marihuana-related legal services.
- Costs incurred by the Department of State Police for medical-marihuana-related services.
- Costs incurred by the Department of Treasury for medical-marihuana-related services.
- Statutory allocation to the Department of Health and Human Services at a rate of 5% of the summed expenses of LARA (excluding application processing costs), the Department of Attorney General, the MSP, and the Department of Treasury; with the allocation being used for substance-abuse-related expenditures.
- $500,000 statutory allocation to LARA for the licensing of substance use disorder programs.
- Expenses related to the administering of standardized field sobriety tests.
- An amount sufficient to provide for the administrative costs to the Michigan Commission on Law Enforcement Standards (MCOLES).

The revenues from the application fees and regulatory assessment should be sufficient to cover the regulatory costs that will be incurred by LARA and other state departments. The Board also has the authority to impose civil fines of $5,000 against an individual and the greater of $10,000 or an amount equal to the daily gross receipts against a licensee for violations of the act (House Bill 4209), rules, or an order of the Board.

The monies collected from application fees and the regulatory assessment will be deposited into the Marihuana Regulatory Fund, which is to be expended (upon appropriation) only for the implementation, enforcement, and administration of the act. House Bill 4209 also establishes a 3% tax on medical marihuana provisioning centers' gross retail receipts. This tax, along with other fees and charges not deposited into the Marihuana Regulatory Fund, will be deposited into the Medical Marihuana Excise Fund. Excise fund monies are to be allocated, upon appropriation, as follows:

- 30% to counties in which a medical marihuana facility is located.
- 30% to the State – prior to September 30, 2017, for deposit into the General Fund; after October 1, 2017, for deposit info the First Responder Presumed Coverage Fund.
- 25% to municipalities in which a medical marihuana facility is located.
- 5% to county sheriffs in counties in which a medical marihuana facility is located.
- 5% to MCOLES for local law enforcement training.
- 5% to the Department of State Police.

Estimating the potential revenue from the 3% tax is problematic, as the market's response to the increased regulatory fees cannot be known at present. The State of Colorado has instituted a 2.9% sales tax on medical marihuana, which is comparable to the 3% tax

instituted on marihuana provisioning centers in Michigan. Direct comparison of the taxes in Michigan and Colorado requires an assumption that consumption habits and market characteristics will be the same in both states, which may not be true. Nonetheless, an estimate can be made of the scale of revenue that the State of Michigan can expect from a 3% provisioning center tax, assuming that the vast majority of medical marihuana users obtain their marihuana from a provisioning center.

According to the Colorado Department of Public Health and Environment, as of August 2016, Colorado had 102,830 current and active medical marihuana users. In FY 2015-16, Michigan had 204,018 registered medical marihuana patients, meaning the Michigan market for medical marihuana should be roughly twice the size of Colorado's. Revenues for the medical marihuana tax in Colorado were roughly $12.1 million in FY 15-16, as reported by the Colorado Department of Revenue. Considering the difference in the size of the population of medical marihuana users between the states, a reasonable estimate for the revenue Michigan can expect from its tax would be in the vicinity of $24 million per year.

It is possible that medical marihuana sales could be subjected to the state's sales tax, as only prescription drugs are exempted from the sales tax by Article IX Section 8 of the Michigan Constitution. If Michigan's market is likely to be twice the size of Colorado's market this would imply that the size of the market in Michigan should be somewhere around $837 million[1]. Revenues from a sales tax levied on medical marihuana could thus be expected to be around $50 million. It should be noted that Michigan's market is unlikely to be as large as Colorado's market when these taxes are first initiated, thus these revenue estimates represent approximate expectations after Michigan's market has developed. Initial tax collections are likely to be lower than the aforementioned estimates.

House Bill 4827 requires LARA to establish a statewide monitoring system for medical marihuana. The department has estimated the cost of establishing this system at $726,000. This cost will be covered by the $8.5 million appropriation made in FY 16 to the Marihuana Registry Fund by House Bill 4210.

House Bill 4209 will have a significant impact on local units of government, as it allows municipalities to determine whether medical marihuana facilities are permitted to operate within their jurisdictions and it allows municipalities to establish an annual, nonrefundable fee of not more than $5,000.00 on a licensee to defray administrative and enforcement costs associated with the operation of a marihuana facility. Local units of government will also be affected by the remittance of tax revenues from the Medical Marihuana Excise Fund, with revenues going to counties, municipalities, and county sheriffs.

Further, regarding fiscal implications for the Department of Attorney General, expenditures for the oversight of marihuana facilities, whether provided by State Police or by the Department of Attorney General, is to be covered by the annually adjusted regulatory assessment imposed on licensees in Sec. 603 of HB 4209. A previous "worst-case scenario" cost estimate from LARA estimated service costs to the attorney general to be $550,000.

[1] This estimate of Michigan's market size was obtained by using Colorado's medical marihuana tax receipts to determine the size of the Colorado medical marihuana market, then multiplying the market by two to account for Michigan's larger number of medical marihuana users.

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House Bill 4210 will have an indeterminate fiscal impact on the state and on local units of government. Depending on the number of people that would no longer be charged with a criminal or civil offense under the provisions of the bill, the bill would result in a decrease in costs for state prisons, local jails, and local court systems. A reduction in the number of prison sentences would result in reduced costs related to the state correctional system, and fewer individuals sentenced to jail or community supervision sanctions would result in reduced costs related to county jails and/or local misdemeanor probation supervision. Further, in the future, if there is a sufficient reduction in the number of people sentenced to prison, resulting in a significant decline in prison population, the Department of Corrections could potentially close housing units within facilities, or close an entire facility. The average cost of prison incarceration in a state facility is roughly $34,900 per prisoner per year, a figure that includes various fixed administrative and operational costs. State costs for parole and felony supervision average about $3,400 per supervised offender per year.

The costs of local incarceration in county jails and local misdemeanor probation supervision vary by jurisdiction. Increases or decreases in penal fine revenues impact funding for local libraries, which are the constitutionally designated recipients of those revenues. With establishment of a civil fine for improperly transporting marihuana-infused products, there could be an increase in civil fine revenue, which would impact the state's Justice System Fund (JSF). The JSF supports various justice-related endeavors in the judicial branch, and the Departments of State Police, Corrections, and Health and Human Services.

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MEDICAL MARIHUANA FACILITIES ACT AND MARIHUANA TRACKING ACT

House Bill 4209 (passed by the House as H-5)
Sponsor: Rep. Mike Callton, D.C.

House Bill 4210 (passed by the House as H-2)
Sponsor: Rep. Lisa Posthumus Lyons

House Bill 4827 (passed by the House as H-1)
Sponsor: Rep. Klint Kesto

Committee: Judiciary
Complete to 1-4-16

SUMMARY:

House Bill 4209 creates the Medical Marihuana Facilities Licensing Act to establish a licensing and regulation framework for medical marihuana growers, processors, secure transporters, provisioning centers, and safety compliance facilities. The regulatory framework created by the bill for marihuana draws on elements of the regulatory structure in place for alcohol under the Michigan Liquor Control Code and gaming under the Michigan Gaming Control and Revenue Act.

House Bill 4827 creates the Marihuana Tracking Act to require the establishment of a "seed-to-sale" system to track marihuana grown, processed, transferred, stored, or disposed of under the Medical Marihuana Facilities Licensing Act (House Bill 4209).

House Bills 4209 and 4827 are tie-barred to each other, meaning neither could take effect unless both are enacted.

House Bill 4210 amends the Michigan Medical Marihuana Act to, among other things, allow for the manufacture and use of marihuana-infused products by qualifying patients and manufacture and transfer of such products by primary caregivers to their patients.

All three bills would take effect 90 days after enactment.

BRIEF SUMMARY OF HB 4209:

The bill is tie-barred to the Marihuana Tracking Act (House Bill 4827). A brief summary of significant provisions of House Bill 4209 follows:

- A state operating license, renewed annually, would be required to operate as a grower, processor, provisioning center, secure transporter, or safety compliance facility. The application process for licensure requires written approval of the

applicant and of the marihuana facility location by the municipality (city, township, or village) in which the marihuana facility is to be located.

- A municipality could enact an ordinance to authorize one or more types of marihuana facilities, and limit the number of each type of facility, within its boundaries; charge an annual local licensing fee up to $5,000; and enact other ordinances related to marihuana facilities such as zoning ordinances.

- The Medical Marihuana Licensing Board would be created within the Department of Licensing and Regulatory Affairs (LARA). The Board would have general responsibility for implementing the act and all powers necessary and proper to fully and effectively implement and administer the act.

- Licensees, registered qualifying patients, and registered primary caregivers (hereinafter "patient" and "caregiver") would receive specified protection from criminal or civil prosecutions or sanctions ***if*** they were in compliance with the act. "A registered qualifying patient" would include a visiting qualifying patient.

- A tax rate of 3% would be imposed on the gross retail income of each provisioning center.

- Rather than annual renewal license fees, an annual regulatory assessment would be imposed on licensees to pay for medical-marihuana-related services or expenses of certain state agencies.

- Two new funds would be created to receive revenue from taxes, application fees, annual regulatory assessments, fines, and other charges.

- Rules would be required to be promulgated as specified in the bill, including the establishment of maximum THC levels for medical edibles sold at provisioning centers and daily purchasing limits by patients and caregivers to ensure compliance with the Michigan Medical Marihuana Act.

- Licensees would have to file annual financial statements, prepared by a certified public accountant, of their total operations.

- A Marihuana Advisory Panel would be created within LARA to make recommendations concerning rules and the administration of the act.

BRIEF SUMMARY OF HOUSE BILL 4827:

Briefly, the bill would:

- Require the system to track, among other things, lot and batch information throughout the chain of custody; all sales and refunds; plant, batch, and product destruction; inventory discrepancies; loss, theft, or diversion of products containing marihuana; and adverse patient responses.

- Require the system to track patient purchase limits and flag purchases in excess of authorized limits.
- Provide real-time access to the system to local law enforcement agencies, state agencies, and the Department of Licensing and Regulatory Affairs (LARA).
- Require operation of the system to comply with HIPAA and exempt information in the system from disclosure under FOIA.
- Require licensees under the proposed Medical Marihuana Facilities Licensing Act (House Bill 4209) to supply LARA with tracking or testing information regarding each plant, product, package, batch, test, sale, or recall in or from the licensee's possession or control. A provisioning center would have to include information identifying the patient to, or for whom, the sale was made and the primary caregiver, if applicable, to whom the sale was made.
- Create penalties for a licensee who willfully fails to comply with the reporting requirements: a civil infraction for a first offense and a misdemeanor penalty for a second or subsequent offense.

BRIEF SUMMARY OF HOUSE BILL 4210:

The bill would, among other things:

- Revise the definitions of "medical use" and "usable marihuana" to include products using extracts and plant resins (known as "edibles").
- Define "marihuana-infused product" and "usable marihuana equivalent."
- Provide immunity to a qualifying patient or caregiver from arrest or prosecution or penalty for certain conduct.
- Prohibit transporting or possessing a marihuana-infused product in a vehicle except as specified. Create a civil fine for a violation.
- Prohibit using butane to separate resin from a marihuana plant in a residential structure.
- Specify the bill is curative and the provisions retroactive.

DETAILED SUMMARY OF HB 4209

Legislative Findings/Emergency Rules

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.

[The emergency rule process, governed under MCL 24.248, eliminates some of the procedures (e.g., certain notice and participation procedures) and thus is much shorter than the traditional process. The emergency rule is effective on filing and remains in effect until a date fixed in the rule or six months after the date of its filing, whichever is earlier. The rule may be extended once for not more than six months.]

Part 1. General Provisions

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

"Marihuana" means that term as defined in Section 7106 of the Public Health Code.

"Marihuana-infused product" means 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.

"Person" means an individual, corporation, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, trust, or other legal entity.

"Processor" means a licensee that is a commercial facility located in the 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" means a licensee that is a commercial entity located in the state that purchases marihuana from a grower or processor and sells, supplies, or provides marihuana to patients, directly or through the patient's caregiver. The term includes any commercial property where marihuana is sold at retail to patients or caregivers. A noncommercial location used by a caregiver to assist a patient connected to the caregiver through LARA's marihuana registration process in accordance with the Michigan Medical Marihuana Act is not a provisioning center.

"Registered primary patient," which means a qualifying patient who has been issued a current registry identification card under the Michigan Medical Marihuana Act (MMMA), would be expanded to include a visiting qualifying patient as that term is defined in Section 3 of the MMMA.

"Safety compliance center" is a licensee that is a commercial entity that receives marihuana from a marihuana facility or a registered qualifying patient or registered primary caregiver, tests it for contaminants and for tetrahydrocannabinol and other cannabinoids, and returns it to the marihuana facility or a registered qualifying patient or registered primary caregiver with the test results.

"Secure transporter" means a licensee that is a commercial entity located in the state that stores, transfers, and transports marihuana between separate marihuana facilities for a fee.

"State operating license" or "license" means a license issued under the act that, except for mobile secure transporter licensees, allows the licensee to operate at a single site as **any** of the following, specified in the license: a grower, processor, secure transporter, provisioning center, safety compliance facility.

Part 2. Application of Other Laws

Licensees: In general, when engaging in certain protected activities, *a person granted a state operating license who is operating within the scope of the license, and the licensee's agents*, are not subject to criminal penalties regulating marihuana; state or local criminal or civil prosecution for marihuana-related offenses; certain searches or inspections; seizure of marihuana, real or personal property, or anything of value based on a marihuana-related offense; or license or other sanctions by a business, occupational, or professional licensing board or bureau based on a marihuana-related offense.

Protected activities include growing marihuana; purchasing, receiving, selling, transporting, or transferring marihuana from or to a licensee or its agent, a patient, or a caregiver; possessing, processing, or transporting marihuana; possessing or manufacturing marihuana paraphernalia for medical use; testing, infusing, extracting, altering, transferring, or studying marihuana; and receiving or providing compensation for products or services.

A person who owns or leases real property upon which a licensed facility is located, and who had no knowledge that the licensee violated the act, would be protected from certain marihuana-related criminal penalties, state or local civil or criminal prosecution based on a marihuana-related offense, seizure of real or person property based on a marihuana-related offense, and sanctions by a business or occupational or professional licensing board or bureau.

Any other state law that is inconsistent with the act would not apply to a marihuana facility operating in compliance with the act.

Patients and caregivers: A patient or caregiver would not be subject to criminal prosecution or sanctions for purchases of marihuana from a provisioning center *if* the quantity purchased is within the limits established under the Michigan Medical Marihuana Act (MMMA).

Further, the act would not limit the medical purpose defense provided in Section 8 of the MMMA to any prosecution involving marihuana.

Municipalities: A municipality could enact ordinances to authorize one or more types of marihuana facilities within its boundaries and could also limit the number of each type of facility. A facility could not be licensed unless an authorizing ordinance has been adopted.

The ordinance could establish an annual, nonrefundable licensing fee of not more than $5,000 to defray administrative and enforcement costs associated with the operation of a marihuana facility. Other ordinances relating to facilities, including zoning restrictions, could also be adopted. However, regulations that interfere or conflict with uniform statewide regulation of licensees could not be imposed.

Municipalities adopting authorizing ordinances must approve each applicant for a new state operating license before the Medical Marihuana Licensing Board can consider the

application. Information obtained by the municipality from an applicant for this purpose would be exempt from disclosure under the Freedom of Information Act.

Rules: LARA, in consultation with the Board, is required to promulgate rules and emergency rules as necessary to implement, administer, and enforce the act. The rules must ensure the safety, security, and integrity of the operation of marihuana facilities.

The rules must include, among other things, appropriate standards for facilities; minimum levels of insurance for licensees; establish testing standards; provide for the levy and collection of fines for violations of the act or rules; establish chain of custody standards and standards for waste disposal; establish procedures for securely and safely transporting marihuana between marihuana facilities; and establish labeling and packaging standards, procedures, and requirements for marihuana sold or transferred through provisioning centers (including a prohibition on labeling or packaging intended to appeal to or has the effect of appealing to minors), and marketing and advertising restrictions for marihuana products and facilities.

The rules must also establish daily purchasing limits at provisioning centers for patients and caregivers to ensure compliance with the Michigan Medical Marihuana Act. Further, the rules must establish the maximum tetrahydrocannabinol (THC) levels for marihuana-infused products sold of transferred through provisioning centers as well as restrictions on edible marihuana-infused products to prohibit shapes that would appeal to minors.

Part 3. Medical Marihuana Licensing Board

The Medical Marihuana Licensing Board is created within LARA and consists of five members who are residents of the state, appointed by the governor, not more than three of whom could be members of the same political party. One member must be appointed from a list of three nominees submitted by the Senate Majority Leader and one from three nominees submitted by the Speaker of the House. The chairperson would be appointed by the governor. Other than initial appointees, board members would serve for four years. Members would be reimbursed for all actual and necessary expenses and disbursements incurred in carrying out official duties. Board members could not hold any other public office for which they received compensation other than necessary travel or other incidental expenses.

The bill establishes qualifications and disqualifications for appointment, grants the governor authority to remove a member for neglect of duty or other just causes, requires the employment of an executive director and other personnel as necessary to assist the Board, and lists circumstances that would disqualify persons from appointment or employment and other restrictions on and responsibilities for Board members, the executive director, and employees similar to those in place for corresponding positions under the Michigan Gaming Control and Revenue Act. For example, the Board could not employ an individual if the individual's interest in a licensee or marihuana facility constituted a controlling interest in that licensee or facility.

The board has the power 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 act's licensing and regulation system for marihuana growth, processing, testing, and transporting. It is subject to the Administrative Procedures Act and its duties include, but are not limited to, the following:

- Granting or denying applications for a state operating license within a reasonable time.
- Conducting public meetings in accordance with the Open Meetings Act.
- Implementing and collecting the application fee and, in conjunction with the Department of Treasury, the tax and regulatory assessment described by the act.
- Providing for the levy and collection of fines for violations 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 purpose of certifying the revenue, receiving complaints from the public, or conducting investigations into the operation of a marihuana facility as considered necessary and proper to ensure compliance with the act and rules and to protect and promote the overall safety, security, and integrity of the operation of a marihuana facility.
- Reviewing and ruling on any complaint by a licensee regarding any investigative procedures of the state believed to be unnecessarily disruptive of marihuana facility operations. In order to prevail, a licensee must establish by a preponderance of the evidence that the procedures unreasonably disrupted its marihuana facility operations.
- Reviewing the patterns of marihuana transfers by licensees and making recommendations to the governor and the Legislature in a written annual report.

With some exceptions, all information, records, interviews, reports, statements, memoranda, or other data supplied to or used by the Board are subject to the Freedom of Information Act. For example, information in the statewide database of marihuana transactions would not be subject to FOIA, neither would information used by the Board for background investigations of applicants or licensees.

The Board also has the authority to investigate applicants for state operating licenses, determine license eligibility, and grant licenses, as well as investigate employees of licensees. The Board may seek and must receive the cooperation and assistance of the Department of State Police and Department of Attorney General in conducting background investigations of applicants and in fulfilling its responsibilities. It may investigate alleged violations of the act or rules and take appropriate disciplinary action against licensees. Under certain circumstances, and without a warrant or notice, the Board through its investigators, auditors, or state police may enter the premises of a licensee for specified purposes such as inspection and examination of the premises and inspect, examine, and audit relevant records and impound or seize records, etc., if the licensee fails to cooperate.

The Board is also authorized to conduct investigative and contested case hearings; issue subpoenas for the attendance of witnesses as well as for the production of books, ledgers, records and other pertinent documents; and administer oaths and affirmations. The executive director or a designee could also issue subpoenas and administer oaths and affirmations.

Certain conduct by Board members, employees, and licensees and applicants is prohibited, such as offering or taking bribes. A violation could result in expulsion from the board, termination from employment, or license sanctions as applicable.

Part 4. Licensing

A person may apply to the Board for state operating licenses in the categories of Class A, B, or C grower; processor; provisioning center; secure transporter; or safety compliance facility beginning 180 days after the bill's effective date. A license would be valid for one year. The application must be made under oath on a form provided by the Board and contain information as specified in the bill. Required information includes a description of the type of marihuana facility, written approval of the facility location from the municipality, certain criminal history information pertaining to the applicant, financial information, projected or actual gross receipts, and the identity of every person having a greater than one percent direct or indirect ownership interest in the applicant, among other things. The board would be required to use information provided on the application as a basis to conduct a thorough background investigation on the applicant.

The application must be accompanied by a nonrefundable application fee to defray costs associated with the background investigation conducted by the Board. LARA, in consultation with the Board, must set the amount of the application fee for each category and class of license by rule. If the costs of the investigation and processing the application exceed the application fee, the applicant must pay the additional amount to the Board. If a deficiency in an application is identified, the Board must provide the applicant with a reasonable period of time to correct the deficiency.

If the Board determines the applicant is qualified, it must issue a license to an applicant who submits a complete application and pays both the nonrefundable application fee and the regulatory assessment established for the first year of operation. The bill lists numerous disqualifying circumstances, such as a conviction within the past five years of a misdemeanor or a similar local ordinance involving a controlled substance, theft, dishonesty, or fraud.

The bill also lists circumstances and factors that the Board may consider in determining an applicant's eligibility for licensure, such as moral character and reputation, relevant criminal history, or bankruptcy filings within the past seven years.

An applicant must also submit a passport quality photograph and set of fingerprints for each person having a greater than one percent ownership interest in the facility or who is an officer, director, or managerial employee of the applicant.

Licensees must consent in writing to inspections, examinations, searches, and seizures that are permitted under the act and must provide a sample of handwriting, fingerprints, photographs, and information as authorized in the act or by rules.

A state operating license is issued only in the name of the true party of interest, and, except for mobile secure transporter licensees, allows the licensee to operate at a single site as a

grower, processor, secure transporter, provisioning center, or safety compliance facility. Board approval must be obtained before a license is transferred, sold, or purchased.

License renewal. Licenses would be renewable annually. Except as otherwise provided in the bill, the Board would be required to renew a license **if all** of the following requirements were met:

- The renewal application is made on a form provided by the Board that requires information prescribed in rules.
- The application is received by the Board on or before the expiration date of the current license.
- The regulatory assessment is paid (payment of an annual regulatory assessment replaces the annual renewal fee typical of state licenses).
- The licensee meets any other renewal requirements set forth in rules.

LARA must notify the licensee by mail or email advising of the time, procedure, and regulatory assessment under Section 603 of the bill. However, failure to receive notice under this provision would not relieve the licensee of the responsibility to renew the license.

If not submitted by the current license's expiration date, the license could be renewed within the following 60 days 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 days after the license expired **if** the license were renewed by the end of that 60-day period. The Board would retain authority to impose sanctions on a licensee whose license has expired.

Further, in making a decision on an application for renewal, the Board is required to consider any specific written input it receives from an individual or entity within the local unit of government in which the renewal applicant is located.

License sanctions. Failure to transfer, sell, or otherwise convey an interest of more than one percent in a license without Board approval is grounds for suspension or revocation of the license, or any other sanction considered appropriate by the Board.

If an applicant or licensee fails to comply with the act or rules, fails to comply with the Marihuana Tracking Act (HB 4827), no longer meets the eligibility requirements for a license, or fails to provide information as requested by the Board to assist in any investigation, inquiry, or Board hearing, then the board may suspend, deny, revoke, or restrict the license.

The Board may suspend, revoke, or restrict a license and require the removal of a licensee or an employee for a violation of the act, rules, the Marihuana Tracking Act, or any local ordinance.

Each violation of the act, rules, or an order of the Board may result in the imposition of civil fines up to $5,000 against an individual and up to $10,000 or an amount equal to the daily gross receipts, whichever is greater, against a licensee.

The Board must comply with the Administrative Procedures Act when imposing a license sanction, fine, or penalty. A license could be suspended without notice or hearing if the safety or health of patrons or employees is jeopardized by continuing a marihuana facility's operation. If a license is suspended without notice or hearing, a prompt post-suspension hearing must be held to determine if the suspension should remain in effect. If the licensee does not make satisfactory progress toward abating the hazard, the Board may revoke the license or approve a transfer or sale of the license. In addition, the bill provides for hearings, upon request, for license denials and for any party aggrieved by an action of the Board imposing a license sanction or fine or failing to renew a license.

Employees: A licensee must conduct a background check of a prospective employee before the person is hired. Written permission must be obtained from the Board before hiring a person who has a pending charge or conviction within the past five years for a controlled substance-related felony.

(Note: The bill does not specify if this would be a fingerprint or name-based background check. If a name-based check through ICHAT, the state's Internet Criminal History Access Tool, only the public criminal history record information maintained by the Michigan State Police would be accessible. The following information would not be included: federal, tribal, traffic, or juvenile records; local misdemeanors; and criminal history from other states.)

Part 5. Licensees

The license categories are as follows:

Grower License: The license authorizes the grower to grow not more than the following number of plants under the indicated license class:

- Class A–500 plants.
- Class B–1,000 plants.
- Class C–1,500 plants.

A grower license authorizes sales of marihuana seeds or seedlings only to a grower by means of a secure transporter and the purchase of marihuana seeds or seedlings only from a grower, patient, or caregiver. The sale of marihuana, other than seeds or seedlings, can be made only to a processor or provisioning center. Other than transferring marihuana to and from a safety compliance facility for testing or to or from a processor or provisioning center located within the same marihuana facility, a grower could only transfer marihuana by means of secure transporter.

The license applicant and each investor in the grower could not have a greater than 10 percent interest in a secure transporter or a safety compliance facility. In addition, a grower would have to comply with the following requirements:

- Until December 31, 2021, have a minimum of two years' experience as a registered primary caregiver or have an active employee with that experience.

- While holding a license as a grower, not be a registered primary caregiver and not employ an individual who is simultaneously a registered primary caregiver.
- Enter each transfer of marihuana into the state's database for marihuana tracking, as provided in the Marihuana Tracking Act (House Bill 4827).

Processor License: The license authorizes purchase of marihuana only from a grower and sale of processed marihuana or marihuana-infused products only to a provisioning center. Other than transferring 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, a processor could only transfer marihuana by means of secure transporter.

The applicant for a processor license and each investor in the processor could not have a greater than 10 percent interest in a secure transporter or a safety compliance facility. In addition, a processor would have to comply with the following requirements:

- Until December 31, 2021, have a minimum of two years' experience as a registered primary caregiver or have an active employee with such experience.
- While holding a license as a processor, not be a registered primary caregiver and not employ an individual who is simultaneously a registered primary caregiver.
- Enter each transfer of marihuana into the state's database for marihuana tracking, as provided in the Marihuana Tracking Act (House Bill 4827).

Secure Transporter License: This license authorizes the licensee to store and transport marihuana and money associated with the purchase or sale of marihuana between separate marihuana facilities for a fee upon request of a person with legal custody of that marihuana or money.

The applicant for a secure transporter license and each investor with a greater than 10 percent interest in the secure transporter could not have a greater than 10 percent interest in a grower, processor, provisioning center, or a safety compliance facility. Each transfer of marihuana must be entered into the state's database for marihuana tracking, as provided in the Marihuana Tracking Act.

Provisioning Center License: The license authorizes the purchase and transfer of marihuana only from a grower or processor, and sale and transfer to only a registered qualifying patient or registered primary caregiver. All transfers of marihuana to a provisioning center from a separate marihuana facility must be by means of a secure transporter. The license also authorizes the transfer of marihuana to or from a safety compliance facility for testing.

To be eligible for a provisioning center license, an applicant and each investor in the provisioning center could not have more than a 10 percent interest in a secure transporter or safety compliance facility. Further, a provisioning center would have to comply with the following requirements:

- Sell or transfer marihuana to a patient or caregiver only after it has been tested and bears the label required for retail sale.

- Enter each transfer of marihuana into the state's database for marihuana tracking as provided in the Marihuana Tracking Act (proposed by House Bill 4827).

In addition, the bill prohibits alcoholic beverages from being sold or distributed on the premises of a provisioning center.

Safety Compliance Facility License: The license authorizes the facility to receive, test, and return marihuana. The facility must be accredited by an entity approved by the Board by one year after the date the license is issued. The Board may grant a variance from this requirement upon a finding that the variance is 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 percent interest in the safety compliance facility, could not have a greater than 10 percent interest in a grower, secure transporter, processor, or provisioning center.

A safety compliance facility would have to comply with the following requirements:

- Perform tests to certify that marihuana is reasonably free of chemical residues such as fungicides and insecticides.
- Use validated test methods to determine levels of tetrahydrocannabinol, tetrahydrocannabinol acid, cannabidiol, and cannabidiol acid.
- Perform tests that determine whether the marihuana complies with the standards established by LARA for microbial and mycotoxin contents.
- Perform other tests necessary to determine compliance with any other good manufacturing practices as prescribed in rules.
- Enter each transfer of marihuana into the state's database for marihuana tracking under the Marihuana Tracking Act, along with test results.

Part 6. Taxes and Fees

A tax would be imposed on each provisioning center at the rate of 3 percent of the provisioning center's gross retail income. If a law authorizing the recreational or non-medical use of marihuana in the state is enacted, Section 601 imposing this tax cease to apply beginning 90 days after that law's effective date.

Taxes imposed under this provision would be administered by the Department of Treasury, and in case of a conflict with the Revenue Act (Public Act 122 of 1941), the provisions of the Medical Marihuana Facilities Licensing Act would prevail.

Medical Marihuana Excise Fund: The fund would be created in the state treasury. Except for the license application fee, the annual regulatory assessment, and any local licensing fees, all money collected under the 3 percent tax described above and all other fees, fines, and charges imposed under the act must be deposited in the Fund.

All interest and earnings from Fund investments would be credited to the Fund and money remaining in the Fund at the close of a fiscal year must remain in the Fund and not lapse to the General Fund. LARA would be the administrator of the Fund for auditing purposes.

Money in the Fund would be allocated, upon appropriation, as follows:

- 30 percent to the municipalities in which a marihuana facility is located, allocated in proportion to the number of marihuana facilities within the municipality.
- 40 percent to the counties in which a marihuana facility is located, allocated in proportion to the number of marihuana facilities within the county.
- 5 percent to the sheriffs of the counties in which a marihuana facility is located, allocated in proportion to the number of marihuana facilities within the county. Money allocated under this subdivision must be used exclusively to support county sheriffs and shall be in addition to and not a replacement for any other funding received by the county sheriffs.
- 25 percent to the state to be deposited in the state General Fund.

Regulatory Assessment: A regulatory assessment would be imposed on certain licensees. All of the following must be included in establishing the total amount of the regulatory assessment established under this provision (Section 603):

- LARA's costs to implement, administer, and enforce the act (except for the costs to process and investigate applications for an initial license, which is supported by its own fee structure).
- Expenses of medical-marihuana-related legal services provided by the attorney general.
- Expenses of medical-marihuana services provided to LARA by the Department of State Police.
- $500,000 to be allocated to LARA expenditures for licensing substance use disorder programs.
- An amount equal to 5 percent of the sum of the amounts provided for under the above allocations to be allocated to the Department of Health and Human Services for marihuana-related expenditures including, but not limited to, substance use disorder prevention, education, and treatment programs.

The regulatory assessment is in addition to the initial license application fees, the 3 percent excise tax on provisioning centers, and any local licensing fees. It will be collected annually from licensed growers, processors, provisioning centers, and secure transporters. The regulatory assessment for a Class A grower license (no more than 500 plants) could not exceed $10,000.

Beginning in the first year that marihuana facilities are authorized to operate in the state, and annually thereafter, LARA (in consultation with the Board), would be required to establish the total regulatory assessment at an amount that is estimated to be sufficient to cover the actual costs and support the expenditures listed above.

Further, on or before the date a licensee begins operating and annually thereafter, each grower, processor, provisioning center, and secure transporter must pay to the state treasurer an amount determined by LARA to reasonably reflect the licensee's share of the total regulatory assessment established in the preceding provision. (Presumably this would

mean that larger businesses would bear the greater burden of the regulatory assessment since they may require more oversight than would a smaller operation.)

Marihuana Regulatory Fund. The MRF would be created in the state treasury, with the state treasurer as the administrator for auditing purposes. Revenue collected under the annual regulatory assessment and the initial license application fee must be deposited in the MRF. Fund interest and earnings from investments would be credited to the MRF and money in the Fund at the close of the fiscal year would remain in the Fund and not lapse to the General Fund. Money from the MRF would be expended upon appropriation, and only for implementing, administering, and enforcing the act.

FY 2016 Appropriation. The bill requires an appropriation to LARA from the Marihuana Regulatory Fund for the fiscal year ending September 30, 2016, of $8.5 million for funding LARA's and the Board's operations in implementing, administering, and enforcing the act.

Part 7. Reports

By 30 days after the end of each state fiscal year, each licensee must transmit to the Board and to the municipality compiled financial statements of the licensee's total operations. The financial statements must be compiled by a state-licensed certified public accountant (CPA) in a manner and form prescribed by the Board. The licensee would bear the cost of compensation for the CPA.

The Board must submit a report to the governor and the chairs of the legislative committees that govern issues related to marihuana facilities covering the previous year, and include in the report an account of the Board actions, its financial position, results of operation under the act, and any recommendations for legislation that the Board considers advisable. This report must be included as part of an annual report that must be prepared for the governor and legislature and submitted by April 15 of each year. This annual report would include recommendations by the Board, a statement of receipts and disbursements by the Board, actions taken by the Board, and any additional information and recommendations that the Board considers appropriate or that the governor requests.

Part 8. Marihuana Advisory Panel

The Marihuana Advisory Panel would be created within LARA. The 15-member panel would include the director of the Department of State Police, director of the Department of Health and Human Services, director of LARA, the attorney general, and the director of the Michigan Department of Agriculture and Rural Development, or their designees. The rest of the membership would be appointed by the governor as follows:

- One registered medical marihuana patient or medical marihuana primary caregiver.
- One representative of growers.
- One representative of provisioning centers.
- One representative of safety compliance facilities.
- One representative of townships.
- One representative of cities and villages.
- One representative of counties.

- One representative of sheriffs.
- One representative of local police.
- One state-licensed physician.

The bill would establish the process for appointments and filling vacancies, and how often the panel would meet. The panel would be subject to the Open Meetings Act and the Freedom of Information Act. Panel members would serve without compensation but could be reimbursed for actual and necessary expenses.

The panel would make recommendations to the Board concerning promulgation of rules, and as requested by the Board or LARA, administration of the new act. State departments and agencies must cooperate with the panel and upon request, provide it with meeting space and other resources to assist it in the performance of its duties.

DETAILED SUMMARY OF HB 4827

House Bill 4827 requires the Department of Licensing and Regulatory Affairs (LARA) to establish, maintain, and utilize a system to track marihuana that is grown, processed, transferred, stored, or disposed of under the Medical Marihuana Facilities Licensing Act (House Bill 4209). This could be accomplished either directly or by contract. The system would be operated in compliance with the federal Health Insurance Portability and Accountability Act (HIPAA).

System Platform*:* The bill requires the system to be hosted on a platform that allows dynamic allocation of resources, data redundancy, and recovery from a natural disaster within hours.

System Capabilities: All of the following capabilities would be required:

- Tracking all plants, products, packages, patient and primary caregiver purchase totals, waste, transfers, conversions, sales, and returns that, if practicable, are linked to unique ID numbers.
- Tracking lot and batch information, as well as all products, conversions, and derivatives, throughout the entire chain of custody.
- Tracking plant, batch, and product destruction.
- Tracking transportation of product.
- Performing complete batch recall tracking that clearly identifies certain details specified in the bill relating to the specific batch subject to the recall; e.g., sold product, product available for sale, and product being processed into another form.
- Reporting and tracking loss, theft, or diversion of products containing marihuana; all inventory discrepancies; adverse patient responses or dose-related efficacy issues; and all sales and refunds.
- Tracking patient purchase limits and flagging purchases in excess of authorized limits.
- Receiving electronically submitted information required to be reported under the bill.

- Receiving testing results electronically from a safety compliance facility via a secured application program interface into the system and directly linking the testing results to each applicable source batch and sample.
- Flagging test results having characteristics indicating that they may have been altered.
- Providing information to cross-check that product sales are made to a qualified patient or designated primary caregiver and that the product received the required testing.
- Providing real-time access to information in the database to LARA, local law enforcement agencies, and state agencies.
- Providing LARA with real-time analytics regarding key performance indicators such as total daily sales, total plants in production, total plants destroyed, and total inventory adjustments.

Supplying Information to the System: Persons licensed under the Medical Marihuana Facilities Licensing Act (House Bill 4209) would be required to supply LARA with the relevant tracking or testing information in the form required by the department regarding each plant, product, package, batch, test, transfer, conversion, sale, recall, or disposition of marihuana in or from the person's possession or control. A provisioning center would be required to include information identifying the patient to whom or for whom the sale was made and, if applicable, the primary caregiver to whom the sale was made. LARA could require this information to be submitted electronically.

Penalties: A licensee under the Medical Marihuana Facilities Licensing Act who willfully violates the reporting requirements described above would be responsible for a state civil infraction and could be ordered to pay a civil fine of not more than $1,000.

A second or subsequent willful violation would be a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $2,500, or both.

Confidentiality: The information in the system established by LARA would be confidential and not subject to disclosure under the Freedom of Information Act. However, information could be disclosed in order to enforce the Michigan Medical Marihuana Act and the Medical Marihuana Facilities Licensing Act (House Bill 4209).

DETAILED SUMMARY OF HB 4210

House Bill 4210 would amend the Michigan Medical Marihuana Act (MMMA) to do the following (MCL 333.26423 et al.).

Goal of act and retroactivity: The bill specifies that it clarifies ambiguities in the law in accordance with the original intent of the people, as expressed in Section 2(b) of the MMMA. Further, the bill states that it is curative and applies retroactively as to the following:

- Clarifying the quantities and forms of marihuana for which a person is protected from arrest.
- Precluding an interpretation of "weight" as aggregate weight.

- Excluding an added inactive substrate component of a preparation in determining the amount of marihuana, medical marihuana, or usable marihuana that constitutes an offense.

Definitions.

- Change the term "medical use" to "medical use of marihuana" and revise the definition to include the extraction of marihuana and marihuana-infused products.

- Revise the definition of "usable marihuana" to include, in addition to dried leaves and flowers, the plant resin or extract of the marihuana plant. (The term does not include the seeds, stalks, or roots of the plant.)

- Define "marihuana-infused product" to mean a topical formulation, tincture, beverage, edible substance, or similar product containing any usable marihuana that is intended for human consumption in a manner other than smoke inhalation. Marihuana-infused products would not be considered a food for purposes of the Food Law.

- Define "usable marihuana equivalent" as the amount of usable marihuana in a marihuana-infused product as calculated under Section 4(c). Section 4(c) provides that in determining usable marihuana equivalency, one ounce of usable marihuana would be considered equivalent to (a) 16 ounces of marihuana-infused product if in a solid form; (b) 7 grams if in a gaseous form; and (c) 36 fluid ounces if in a liquid form.

  The MMMA sets a 2.5 ounces of marihuana-per patient possession limit. In determining whether a patient or primary caregiver did not exceed the per-patient possession limit, the combined total of both usable marijuana equivalents and usable marihuana would have to be considered.

Marihuana-infused product: A registered qualifying patient who was manufacturing a marihuana-infused product for personal use, or a registered primary caregiver manufacturing for the use of his or her qualifying patient, would not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including, but not limited to, civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau.

The following would be prohibited:

- A qualifying patient transferring a marihuana-infused product to any individual.
- A primary caregiver transferring a marihuana-infused product to any individual who is not one of the caregiver's qualifying patients.

Immunity for transferring, purchasing, or selling to licensees under House Bill 4209.

IF the Medical Marihuana Facilities Licensing Act (House Bill 4209) is enacted into law, a registered qualifying patient or registered primary caregiver would not be subject to arrest, prosecution or penalty in any manner, or denied any right or privilege, including but not limited to, civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for any of the following:

- Transferring or purchasing marihuana in an amount authorized by the MMMA from a provisioning center licensed under the Medical Marihuana Facilities Licensing Act (House Bill 4209).
- Transferring or selling marihuana seeds or seedlings to a grower licensed under the Medical Marihuana Facilities Licensing Act (House Bill 4209).
- Transferring marihuana for testing to and from a safety compliance facility licensed under the Medical Marihuana Facilities Licensing Act.

Transporting or possessing marihuana-infused product in a motor vehicle. A qualifying patient or primary caregiver would be prohibited from transporting or possessing a marihuana-infused product in or upon a motor vehicle except as follows:

- For a qualifying patient:
  - The product is in a sealed and labeled package carried in the trunk of the vehicle (or if there is no trunk, carried so as not to be readily accessible from the interior of the vehicle).
  - The label must state the weight of the marihuana-infused product in ounces, name of the manufacturer, date of manufacture, name of the person from whom the product was received, and date of receipt.

- For a primary caregiver:
  - The product is accompanied by an accurate marihuana transportation manifest and enclosed in a case carried in the trunk of the vehicle (or if no trunk, enclosed in a case and carried so as not to be readily accessible from the interior of the vehicle).
  - The manifest form must state the weight of each marihuana-infused product in ounces, name and address of the manufacturer, date of manufacture, destination name and address, date and time of departure, estimated date and time of arrival, and, if applicable, name and address of the person from whom the product was received and date of receipt.

The bill would not prohibit a caregiver from transporting or possessing a marihuana-infused product in or upon a motor vehicle for the use of the caregiver's own child, spouse, or parent who is a qualifying patient if the marihuana-infused product is in a sealed and labeled package that is carried in the trunk of the vehicle (or carried so as not to be readily accessible from the interior of the vehicle if it does not have a trunk). The label must state the weight of the product in ounces, name of the manufacturer, date of manufacture, name of the qualifying patient, and if applicable, name of the person from whom the marihuana-infused product was received and date of receipt.

For purposes of determining compliance with quantity limitations, there is a rebuttable presumption that the weight of a marihuana-infused product listed on its package label or on a marihuana transportation manifest is accurate.

A qualifying patient or primary caregiver who violates the provisions regarding transport or possession of a marihuana-infused product in a motor vehicle would be responsible for a civil fine of not more than $250.

Miscellaneous provisions: The bill also would:

- Prohibit using butane extraction inside a residential structure to separate plant resin from a marihuana plant.

- Prohibit the operation, navigation, or actual physical control of a snowmobile or off-road recreational vehicle while under the influence of marihuana.

- Replace the term "use of medical marihuana" with "medical use of marihuana."

- Rename the *Michigan Medical Marihuana Fund* as the *Marihuana Registry Fund*.

FISCAL IMPACT:

House Bills 4209 (H-5) and 4827 (H-1), as passed by the House, would have a fiscal impact on the state government to the extent that the bills would establish a regulatory regime for the medical marihuana market implemented, administered, and enforced by LARA (with support from the Departments of Attorney General, Health and Human Services, and State Police) and would authorize LARA to prescribe and impose licensure application fees, regulatory assessments, and fines and penalties. The bills would also have a fiscal impact on local units of government to the extent that municipalities opt to permit marihuana facilities to operate within their jurisdiction, establish and enforce additional regulatory provisions, and levy initial licensure application fees of up to $5,000 per annum. Lastly, the bills could have a fiscal impact on the state and local units of government to the extent that the excise tax on marihuana purchased by provisioning centers generates revenue that would be distributed to municipalities, counties, sheriffs, and the state's General Fund.

The bills would grant LARA the authority to prescribe annual licensure application fees for, and charge amounts in excess of the fees to, (aspirant) marihuana facilities to offset the costs of processing applications and investigating applicants for state operating licenses.

Similarly, the bills would authorize LARA to establish and annually adjust an annual regulatory assessment levied on marihuana facilities to offset the regulatory and enforcement costs of LARA; the expenses of the Departments of Attorney General and State Police related to medical marihuana; and statutory allocations to the Department of Health and Human Services for marihuana-related expenditures (e.g., substance use disorder prevention, education, and treatment programs) and LARA for the licensing of substance abuse facilities (a.k.a. substance use disorder programs) pursuant to Part 62 of the Public Health Code of 1978.[1]

[1] According to information provided by the State Budget Office during the FY 2015-16 budget development, there were approximately 1,275 licensed substance use disorder programs operating in the state. Historically and currently through the end of FY 2014-15, entities licensed to provide substance use disorder programs did not pay licensure fees to support the costs of inspecting and otherwise regulating substance use disorder programs. Such costs were borne by the existing resources of the department, which were insufficient to support full compliance with statutorily required inspections. As recommended by the Governor, the Legislature passed 2015 PA 104, which amended the Public Health Code of 1978 to establish a $500 annual licensure fee for substance use disorder programs and reduce the frequency of periodic inspections. At the time that the amendments were under deliberation by the Legislature,

Consequently, the revenues generated by the application fees and regulatory assessment would likely be sufficient to adequately offset LARA's costs to implement, administer, and enforce its duties under the bills.

LARA has estimated that the costs associated with the bills would total approximately $21.1 million annually with $726,000 in one-time information technology expenses. This estimate utilizes a "worst-case scenario" which assumes that:

- LARA would employ 113.0 FTEs for the licensing and enforcement duties under the bills at an annual cost of $13.3 million. This assumption is based on the personnel employed by the Licensing and Enforcement Divisions of the Michigan Liquor Control Commission (LCC) to oversee approximately 17,250 retail liquor licensees.
- The Department of State Police (MSP) would provide 34.0 FTEs for criminal enforcement activities related to medical marihuana at an annual cost of $6.0 million. This assumption is based on the personnel employed by the MSP to provide criminal enforcement activities for the Michigan Casino Gaming Board (MGCB).
- The Department of Attorney General (AG) would provide 4.0 FTEs for legal and prosecutorial support related to medical marihuana at an annual cost of $500,000.
- Remaining annual costs consist of telecom and information technology support ($380,000); contractual services ($350,000); travel ($250,000); equipment, supplies, and materials ($240,000); as well as one-time costs for development and implementation of the marihuana tracking information technology system ($500,000) and initial purchases of information technology equipment ($226,000).[2]

As mentioned above, the bills would authorize LARA to prescribe application fees and adjust the regulatory assessment to generate sufficient revenues to adequately offset the costs of implementing, administering, and enforcing the bills. However, LARA seems to have based its estimates of these costs on assumptions that appear to anticipate the legalization and regulation of marihuana for recreational use. Although the costs estimated by LARA could be appropriate, and potentially accurate, for a scenario in which the recreational use of marihuana is legalized, they do not seem strictly applicable to the provisions of the bills.

According to a statistical report prepared by the Bureau of Health Care Services, there were 147,421 qualifying medical marihuana patients at the close of FY 2013-14; these patients currently either grow their own marihuana or obtain it from their primary caregivers pursuant to the Michigan Medical Marihuana Act of 2008 and could continue to do so irrespective of whether the bills is enacted into law. If the costs estimated above were divided equally amongst medical marihuana patients, assuming that all patients opt to purchase marihuana from provisioning centers, which would certainly not be the case, the average amount ultimately incurred by each patient would be approximately $143 per year.

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the department stated that revenue generated by the new licensure fee (approximately $637,500 annually) would be sufficient to offset the costs of inspecting and otherwise regulating substance use disorder programs.

[2] The costs of developing, implementing, operating, and maintaining the marihuana tracking system would ultimately be dependent on the technical specifications and applications of the system; whether the system is provided by the Department of Technology, Management, and Budget (DTMB) or procured via contact a third-party vendor (e.g. Bio-Tech Medical Software, Inc., MJ Freeway Business Solutions, Franwell); and, if the latter, on the outcome of a competitive RFP process.

This amount would be in addition to the existing application fees for registry identification cards and the effects on marihuana prices of the costs of statutory testing and transportation requirements, wholesale and retail markups by marihuana facilities, and the 3.0% excise tax on retail sales. There is a possibility that the medical marihuana market envisioned under the bills would not bear the regulatory costs as estimated by LARA, as medical marihuana patients could opt to continue to produce marihuana or procure it from caregivers or on the black market rather than pay potentially higher prices charged by provisioning centers.

The amount of revenue that would be generated by the 3.0% excise tax imposed on the gross retail income of provision centers and distributed to local units of government (45.0% to counties, of which 5.0% would be earmarked for sheriffs' offices, and 30.0% to municipalities) and the state's General Fund (25.0%) is currently unknown and is dependent upon the numerous interrelated and dynamic factors affecting both the licit and illicit markets for marihuana, and whether the market envisioned under the bills could bear the regulatory costs estimated by LARA.

House Bill 4210 adds a civil fine for violations pertaining to the unlawful transport of marihuana-infused products in a motor vehicle. House Bill 4827 adds new misdemeanors offense and civil infractions. Misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. Misdemeanor fines and civil infraction fines are constitutionally dedicated to public libraries.

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Paul B.A. Holland

Farmacy

Distinguished Council member, 1/15/2017

The Farmacy is a medical marijuana dispensary that is looking to locate a facility in Whitewater Twp. The Farmacy is a licensed dispensary that specializes in the medical side of cannabis. We have a great reputation in the area and have patients that travel from as far away as Houghton/Hancock (the Keweenaw Peninsula in the U.P.). The owner/operator Mark Dragovich has been in the industry since its inception and has developed several innovative products designed to alleviate symptoms and cure many diseases with an organic cannabis solution.

The Farmacy is seeking approval from the twp. of Whitewater to locate to 7960 M72 E, Williamsburg, MI 49690.

The industry has undergone several changes approved overwhelmingly by the Michigan Senate and are described as follows:

House Bill 4209 (Public act 281) created the Medical Marihuana Facilities Licensing Act to license and regulate the growth, processing, transport and provisioning of medical marihuana.
Approved by the house 88-22.

House Bill 4210 (Public Act 282) amends the voter-initiated Michigan Medical Marihuana Act to allow for the manufacture and use of marihuana infused products by qualified patients.
Approved by the house 93-12

House Bill 4827 (Public Act 283) Creates the Marihuana Tracking Act and a seed-t-sale tracking system to track all medical marihuana.
Approved by the house 85-20.

HB 4209 is the bill that legalizes dispensaries and is the bill we will deal with here. It is written in the bill that the provisioning center impose a 3% sales tax on all Marihuana and Marihuana infused products. This tax revenue goes directly to the municipality in which the center is located. With municipalities struggling to balance budgets the Medical Marihuana industry provides a new opportunity to infuse much needed capital into budgets.

The Farmacy is in a unique position to locate to Whitewater Township. Unlike a new un-tested company, the Farmacy is an established dispensary with a loyal clientele. In our first two years in operation The Farmacy had net sales of $750,000 with the new House Bill that would translate into $22,500 in tax revenue for the township. Our projected revenue for 2017 is $1,000,000 a potential $30,000 in tax revenue for the township. The projected growth rate typically for the industry is 30% annually, we have seen 40% in 2 consecutive years and anticipate that to continue at a steady growth rate for 3-5 years. As seen in other states that have similar laws, municipalities are reaping the rewards of a new, thriving industry and putting the money back into the community. In addition to the tax revenue you will be providing safe access to innovative holistic medicine that is assisting local

Background:

Mark Dragovich is the owner/operator of the Farmacy he is a Navy Veteran and has been working in the Medical Marihuana industry for 8 years. From 2009-2014 as a farmer and caregiver, Mark traveled the area to other provisioning centers supplying them with products and consulting on innovative ways to use them. It was during this time that he developed methods of treating his patients, which suffer from conditions such as cancer, PTSD, psoriasis, chronic pain, migraines, cerebral palsy and intestinal disorders. As research and development continued, Marks innovative approach to Marihuana using it to treat areas specifically instead of just smoking it resonated with Farmacy patients. Whether it is concentrates, topicals, edibles or traditional herb, new products were designed and new strains grown and produced specifically for their medicinal benefits.

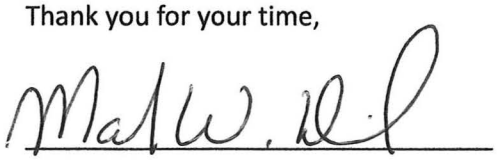
As Marks knowledge and product base grew he began to travel the area to other centers to expand his business. It was during that time he noticed how un-professional the establishments were. Few had people working with any knowledge of the medicinal side of the industry, it seemed that most were of a recreational nature. Knowledge of this industry does not come easy, there is little research or studies available to the general public on the benefits of Marihuana. Mark worked with patients to develop products and following up to determine the results was the key to understanding the plants true potential. So in 2014, with an entrepreneur spirit Mark formed the Farmacy. Since then the Farmacy has established itself as a leader in the industry. Mark has written articles on how baby boomers among others could benefit from the use of cannabis, and how to start a treatment program. Marihuana is not for everybody, some people need to have an advisor to work with during their treatment, and that's where the Farmacy excels. Farmacy staff is a group of trained professionals that assist in the dosages and act as ongoing consultants for the patients using the Farmacy.

As a company the Farmacy has done more than its share for area residents with regards to philanthropy. The Fife Lake Food pantry has had several donations during the year to assist with feeding efforts in the community. A sock drive collected over 750 pairs of socks for area kids. A coat drive last year netted over 200 coats for area children and the homeless veteran population in and around Fife Lake. In addition, the Fife Lake fireworks have been sponsored every year the Farmacy has operated.

In closing I would like to summarize what the Farmacy brings to Whitewater Township.

1.) An established business with a proven track record.
2.) An estimated tax revenue estimated at $30,000 and growing up to $120,000 in 3-5 years.
3.) Safe access to marihuana for township residents.
4.) Occupied space on the M-72 corridor.
5.) A company that participates in community philanthropy.

Thank you for your time,



Mark W. Dragovich Owner/Operator

231.944.6447

References available upon request