

Massachusetts Senate Passes Bill To Grow, Diversify Cannabis Sector

By Colin A. Young
State House News Service

Wide-ranging marijuana legislation that targets some of the most persistent issues that activists, regulators, businesses and municipalities have said are holding Massachusetts back from realizing the full potential of the 2016 legalization law cleared the Senate unanimously Thursday afternoon with senators pitching it as both an economic development and racial justice bill.

The bill (S 2801) would put tighter restrictions and enhanced oversight on the host community agreements marijuana businesses are required to enter into with their host communities, make grants and loans available through a new Cannabis Social Equity Trust Fund to participants in the Cannabis Control Commission's social equity (SE) program or economic empowerment (EE) priority applicants, and create a method for cities and towns to authorize the on-site cannabis consumption establishments that are already authorized under the CCC's regulations.

"By clarifying the requirements of the host community agreements, making financial investments to increase social equity and allowing for the full implementation of the cannabis industry through permitting social consumption authorization, I am confident that this legislation aids in the continued growth of a competitive and equitable commercial marijuana industry here in the commonwealth of Massachusetts," Senate Ways and Means Committee Chairman Michael Rodrigues said as he introduced the bill on the floor.

The Legislature has long maintained a mostly hands-off approach to marijuana policy. Lawmakers passed up their opportunities to act before voters approved decriminalization in 2008, medical marijuana in 2012 and adult legalization in 2016, but then delayed and rewrote significant portions of the 2016 ballot law legalizing marijuana. Aside from a bill that the House passed in early 2020 with provisions similar to the Senate bill, the Legislature has largely avoided cannabis issues since 2017.

Sen. Sonia Chang-Diaz, who chairs the Cannabis Policy Committee for the Senate, said the bill that sailed through her committee without opposition seeks to remedy “long-standing problems with long-identified solutions.”

“If you talk to advocates, to policy experts, to the Cannabis Control Commission, you will find near-universal agreement. They will tell you ... that the costs of entry into the industry are too high and that there is a severe lack of access to capital in this industry. It typically requires one to one and a half million dollars in liquidity to open a new cannabis retail shop or three to five million for a manufacturing facility,” Chang-Diaz said. She added, “So when you need that kind of cash on hand in order to get into the business, in order to get your foot in the door, it’s no surprise that despite our best intentions, the industry has remained predominantly white and predominantly in already wealthy hands.”

Chang-Diaz likened the marijuana bill to other steps the Senate has taken to confront racial injustice, like passing criminal justice and policing reform laws, recognizing Juneteenth as a holiday and last week’s vote to ban discrimination based on natural and protective hairstyles in workplaces, schools and public spaces.

“Tackling our gaping racial wealth divide is the next front in this work toward pursuing racial justice in our state,” she

said. The Jamaica Plain Democrat added, “So we know that if we are serious about the work of racial justice, we have to tackle this racial wealth divide. And that is why I’m so proud that we are taking up this bill today because this bill is a racial wealth gap bill.”

Massachusetts was the first state in the country to mandate that equity and inclusion be part of its legal cannabis framework and was the first to launch programs specifically designed to assist entrepreneurs and businesses from communities disproportionately harmed by the decades of marijuana prohibition.

But more than three years since the first legal sale here, just 6 percent of the licenses issued for the cannabis industry have gone to SE program participants or EE priority applicants, the Joint Committee on Cannabis Policy said when it released its draft of the legislation. Out of more than 1,000 applications submitted to the CCC as of November, just 232 came from SE or EE applicants.

The bill would make grants and loans, including no-interest loans and forgivable loans, available to participants in the Cannabis Control Commission’s social equity (SE) program or economic empowerment (EE) priority applicants through a Cannabis Social Equity Trust Fund. Each year, the fund would get 10 percent of the money in the Marijuana Regulation Fund, which is where revenue brought in by the state’s marijuana excise tax, application and licensing fees, and industry penalties is deposited.

For fiscal year 2021, a 10 percent share of just the cannabis excise revenue (\$112.37 million) would have worked out to about \$11.24 million for the trust fund. Rodrigues estimated that the 10 percent share for fiscal year 2023 would work out to about \$18 million while Chang-Diaz forecasted a range of between \$15 million and \$18 million for FY 2023.

More than two years ago, the CCC approved regulations that paved the way for social consumption establishments where adults could buy marijuana and use it in a social setting. But the agency said the pilot program it designed for up to 12 communities “would not be able to begin without a change in state law or the passage of legislation that will first allow cities and towns to authorize social consumption in their communities.”

The Senate bill would allow communities to opt-in to allowing social consumption businesses within their borders via local ordinance in addition to making a change necessary for cities or towns to use the existing local referendum avenue to green light marijuana cafes. The Senate rejected an amendment from Minority Leader Bruce Tarr that would have eliminated the ordinance option and required the decision to go before voters.

“Permitting this to go through the local political process, this decisionmaking to go through the local political process the same as all other town ordinances do, will both save municipal resources needed to execute a ballot question and avoid delays resulting from having to wait months or years until the next election cycle in some cases, while also maintaining accountability to the voters,” Chang-Diaz said.

Discussion of social consumption sites has typically led to talk of road safety and senators offered a handful of amendments meant to put driving while impaired by marijuana on an equal footing as driving while drunk. Most of those amendments were either withdrawn or rejected, but the Senate did adopt a Tarr amendment that would create a special commission on drugged driving to monitor and report on the development of technology related to the reliable testing of marijuana impairment in drivers.

“While I would have hoped that we would have taken action to make some statutory changes in this bill, the commission that

is set up by this particular amendment sets the foundation for us to be able to move forward and make those changes in the future based on additional information and the insight of experts,” Tarr said. He cited data released by the National Highway Traffic Safety Administration in February estimating a 15.5 percent increase in roadway fatalities in Massachusetts over the first nine months of 2021 compared to the same period in 2020 from 258 to 298.

On the issue of host community agreements (HCAs), the bill would direct the CCC to “review and approve host community agreements” and also to “regulate and enforce all host community agreements.” The CCC could only approve applications for provisional licensure or renewal if it has certified that the HCA is in compliance.

The bill would also more specifically define what can and cannot be included in the contracts, and would codify a municipality’s right to waive the requirement to have an HCA as a handful have already done. Through the adoption of an amendment from Sen. John Velis, the bill would also require the CCC to develop a model HCA that communities can use as a template to ensure their agreements are in line with what the CCC would approve.

HCAs have given businesses, prospective businesses and regulators fits basically since the CCC began licensing businesses here. Entrepreneurs, lawyers, lobbyists and regulators have pointed to stories about cities and towns demanding more from businesses than state laws allow, up to 3 percent of gross sales. The CCC began wrestling with the issue in 2018, determined it lacked the authority to intervene or reject an application based on the HCA and voted in January 2019 to formally request that the Legislature give it that authority.

The bill that the Senate passed Thursday has good odds of being in the mix as lawmakers send bills to the governor’s

desk in the coming months; House Speaker Ron Mariano's office has said addressing many of the same issues is a priority for him.

"If the legislation is to pass, I want to thank the House as well for their consideration they'll give to this legislation," CCC Chairman Steven Hoffman said Thursday morning before the Senate debate began.