

HOUSE No. 4440

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, February 9, 2022.

The committee on Cannabis Policy to whom were referred the petition (accompanied by bill, House, No. 150) of Paul K. Frost relative to the siting of marijuana facilities, the petition (accompanied by bill, House, No. 151) of Danielle W. Gregoire and others relative to host community agreements, the petition (accompanied by bill, House, No. 158) of Daniel J. Hunt and Nick Collins for legislation to promote social equity and economic empowerment in the cannabis industry, the petition (accompanied by bill, House, No. 166) of Hannah Kane and others for legislation to establish a social equity and technical assistance trust fund to encourage and facilitate assistance to social equity applicants seeking to enter the cannabis industry, the petition (accompanied by bill, House, No. 169) of Doug Dawes relative to host agreements for marijuana establishments or medical marijuana treatment center licenses, the petition (accompanied by bill, House, No. 174) of David M. Rogers and others relative to agreements between marijuana establishments or medical marijuana treatment centers and host communities, the petition (accompanied by bill, House, No. 177) of David M. Rogers and others relative to establishing the Massachusetts cannabis social equity trust fund, the petition (accompanied by bill, House, No. 178) of Jon Santiago and others for legislation to establish a cannabis community empowerment fund to offer low- or no-interest loans to certain minority-owned businesses, the petition (accompanied by bill, House, No. 181) of Andres X. Vargas and others relative to ensuring transparency in host community agreements for marijuana establishments or medical marijuana treatment centers and the petition (accompanied by bill, House, No. 4133) of Patricia A. Duffy relative to the use of marijuana or marijuana products on the premises of where said products are sold, reports recommending that the accompanying bill (House, No. 4440) ought to pass.

For the committee,

DANIEL M. DONAHUE.

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**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act relative to social equity and host community agreements in the cannabis industry.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 1 of chapter 64N of the General Laws, as appearing in the 2020
2 Official Edition, is hereby amended by adding the following 2 subsections:-

3 (c) “Social equity business”, a marijuana establishment with at least 51 per cent majority
4 ownership of individuals who are eligible for the social equity program under section 22 of
5 chapter 94G or whose ownership is qualified as an economic empowerment priority applicant as
6 defined in 935 CMR 500.

7 (d) “Social equity program”, the program administered by the Massachusetts cannabis
8 control commission, pursuant to section 22 of chapter 94G, to provide training and technical
9 assistance to eligible applicants, potential applicants, and licensees from communities that have
10 previously been disproportionately harmed by marijuana prohibition and enforcement.

11 SECTION 2. Section 2 of said chapter 64N, as so appearing, is hereby amended by
12 inserting after the word “products”, in line 6, the following words:-

13 ; provided however, that 1 per cent of the 10.75 per cent of total sales price collected
14 from a marijuana retailer that is a social equity business, as defined in section 1, shall be
15 distributed to the city or town that hosts said social equity business, with the remaining 9.75 per
16 cent being distributed to the marijuana regulation fund as provided in section 14 of chapter 94G.

17 SECTION 3. Section 3 of Chapter 94G is hereby amended by striking subsection (b) and
18 inserting in place thereof the following:-

19 (b) The city council of a city and the board of selectmen or town council of a town shall,
20 upon the filing with the city or town clerk of a petition meeting the requirements of this
21 subsection and signed by not fewer than 10 per cent of the number of voters of such city or town
22 voting at the preceding biennial state election, request that the question of whether to allow, in
23 such city or town, the sale of marijuana and marijuana products for consumption on the premises
24 where sold be submitted to the voters of such city or town, shall cause the following question to
25 be placed on the ballot:

26 “Shall this [city or town] allow the sale of marijuana and marijuana products, as those
27 terms are defined in G.L. c.94G, §1, for consumption on the premises where sold, a summary of
28 which appears below?”

29 A fair and concise summary of the question shall be prepared by the city solicitor or town
30 counsel.

31 If a majority of the votes cast in the city or town are not in favor of allowing the
32 consumption of marijuana or marijuana products on the premises where sold, such city or town
33 shall not have authorized the consumption of marijuana and marijuana products on the premises
34 where sold.

35 The petition shall be on a form prepared by the secretary of the commonwealth, and shall
36 be submitted forthwith after filing to the board of registrars or election commissioners who shall
37 have seven days after receipt to certify the signatures of registered voters. Upon certification of
38 the signatures, the question shall be placed upon the ballot at the next occurring regular
39 municipal or state election, provided that the question may only appear on a municipal ballot for
40 an election to be held at least 35 days after certification. To have the question appear on the
41 biennial state election, the city or town clerk must provide notice, including the ballot question
42 and summary as prepared by the city solicitor or town counsel, to the secretary of the
43 commonwealth no later than the first Wednesday in August before that election.

44 As an alternative to a local voter initiative petition, a city or town may, through an
45 ordinance or by-law, allow the consumption of marijuana or marijuana products on the premises
46 where sold. No local voter initiative shall be required if the sale of marijuana and marijuana
47 products for consumption on the premises is authorized by local law.

48 SECTION 4. Section 3 of chapter 94G of the General Laws, as so appearing, is hereby
49 amended by striking out subsection (d) and inserting in place thereof the following subsection:-

50 (d)(1) A marijuana establishment or a medical marijuana treatment center, as defined in
51 section 1 of chapter 94I, seeking to operate or continue to operate in a municipality which
52 permits such operation shall negotiate and execute an agreement with the host community setting
53 forth the conditions to have a marijuana establishment or medical marijuana treatment center
54 located within the host community which shall include, but not be limited to, all stipulations of
55 responsibilities between the host community and the marijuana establishment or medical
56 marijuana treatment center.

57 (2)(i) Notwithstanding any general or special law to the contrary, an agreement between a
58 marijuana establishment or a medical marijuana treatment center and a host community may
59 include a community impact fee for the host community; provided, however, that no agreement
60 shall include a community impact fee after the fifth year of operation of a marijuana
61 establishment or a medical marijuana treatment center; provided further, that the community
62 impact fee shall be reasonably related to the costs imposed upon the municipality in the
63 preceding year by the operation of the marijuana establishment or medical marijuana treatment
64 center, in addition to costs that would be created by a non-cannabis business entity, as
65 documented pursuant to subparagraph (iii), and shall not amount to more than 3 per cent of the
66 gross sales of the marijuana establishment or medical marijuana treatment center or be effective
67 for longer than a single 5-year term; provided further, that the 5-year term shall commence on
68 the date the marijuana establishment or medical marijuana treatment center is granted a final
69 license by the commission; and provided further, that a host community shall not mandate a
70 certain percentage of total sales as the community impact fee.

71 (ii) Notwithstanding any general or special law to the contrary, the community impact fee
72 shall encompass all payments and obligations, including, but not limited to, monetary payments,
73 in kind contributions and charitable contributions by the marijuana establishment or medical
74 marijuana treatment center to the municipality or any other organization pursuant to negotiations
75 with the host community; provided, that any payment of the community impact fee shall be due
76 annually to the host community, with the first payment occurring no sooner than upon the first
77 renewal by the commission of a final license to operate the marijuana establishment or medical
78 marijuana treatment center; provided, further, that any other contractual financial obligation that
79 is explicitly or implicitly a factor considered in or is a condition of an agreement shall not be

80 enforceable; and provided further, that nothing shall preclude a marijuana establishment or a
81 medical marijuana treatment center from voluntarily providing or require a marijuana
82 establishment or a medical marijuana treatment center to provide organizations with in-kind
83 contributions and charitable contributions after the execution of the host agreement.

84 (iii) Any cost to a city or town imposed by the operation of a marijuana establishment or
85 medical marijuana treatment center shall be documented by the city or town and transmitted to
86 the licensee not later than 1 month after the date of the annual renewal of a final license to
87 operate the marijuana establishment or medical marijuana treatment center, and shall be a public
88 record as defined by clause Twenty-sixth of section 7 of chapter 4.

89 (iv) A licensee may bring a breach of contract action against a city or town and recover
90 damages, attorneys' fees, and other costs associated with community impact fees, if the
91 information documented and transmitted by a city or town pursuant to clause (iii) is not
92 reasonably related to the actual costs imposed upon the city or town in the preceding year by the
93 operation of the marijuana establishment or medical marijuana treatment center. Any decision of
94 the commission relative to a hearing conducted pursuant to this clause shall be appealable to the
95 superior court in the county in which the municipality is located and the court shall renew the
96 decision de novo.

97 (3) The commission shall review each agreement required by this subsection prior to a
98 licensee's submission of a complete marijuana establishment license application; provided, that
99 the commission shall not approve a final license application unless the commission certifies that
100 the agreement complies with this section.

101 (4) Terms and conditions related to the community impact fee shall be severable from an
102 agreement. If a term or condition related to the community impact fee is struck by the
103 commission, all remaining provisions of the agreement shall remain in full force and effect. No
104 applicant, licensee or holder of a provisional or final certificate of registration shall be denied a
105 license, registration or renewal thereof by the commission on the sole basis of an agreement
106 containing an invalid term or condition related to the community impact fee.

107 (5) An agreement required by this subsection may be waived at the discretion of the host
108 community; provided, however, that the host community shall submit to the commission a
109 written waiver executed by the host community and the marijuana establishment or medical
110 marijuana treatment center.

111 (6) Notwithstanding any general or special law to the contrary, all host communities shall
112 establish procedures and policies to promote and encourage full participation in the regulated
113 marijuana industry by people from communities that have previously been disproportionately
114 harmed by marijuana prohibition and enforcement and to positively impact those communities;
115 provided, that the commission shall, pursuant to subsection (a1/2) of section 4 this chapter,
116 establish a minimum acceptable standard for such procedures and policies. If a municipality does
117 not establish procedures or policies and fails to provide documentation and notice to the
118 commission under this section by or before July 1, 2023, the host community shall deposit the
119 community impact fees received from the marijuana establishment or medical marijuana
120 treatment center operating within its community into the Cannabis Social Equity Trust Fund
121 established in subsection (c) of section 14 until such policies and procedures are implemented.

122 (7) If a licensee submits a petition to the commission and demonstrates that a host
123 community has not provided the documentation and notice or implemented the policies and
124 procedures required by paragraph (6), a social equity program participant or an economic
125 empowerment priority applicant may petition the commission to consider the application without
126 verifying compliance with this subsection or paragraph (1) of subsection (b) of section 5. The
127 commission may act on the application in accordance with subsection (a) of section 5; provided
128 that the commission verifies with the municipality that the applicant is in compliance with local
129 zoning laws and the host community agreement requirement or receives written documentation
130 of a waiver prior to granting the applicant their final license.

131 (8) The commission shall promulgate rules and regulations necessary to carry out this
132 subsection, including but not limited to paragraph (6).

133 SECTION 5. Subsection (a) of section 4 of said chapter 94G, as so appearing, is hereby
134 amended by striking out clauses (xxvii) and (xxviii) and inserting in place thereof the following
135 6 clauses:-

136 (xxvii) monitor any federal activity regarding marijuana;

137 (xxviii) adopt, amend or repeal regulations for the implementation, administration and
138 enforcement of this chapter;

139 (xxix) review and certify host community agreements pursuant to paragraph (3) of
140 subsection (d) of section 3;

141 (xxx) regulate and enforce all host community agreements described in section 3;

142 (xxxi) approve procedures and policies enacted by municipalities to promote and
143 encourage full participation in the regulated marijuana industry during negotiations of host
144 community agreements with social equity program participants and economic empowerment
145 priority applicants, including a minimum acceptable standard for said policies; and

146 (xxxii) prioritize social equity program participants and economic empowerment priority
147 applicants and any other class of applicants the commission deems eligible for expedited review
148 during an evaluation of applications.

149 SECTION 6. Subsection (a 1/2) of said section 4 of said chapter 94G, as so appearing, is
150 hereby amended by striking out clauses (xxxiii) and (xxxiv) and inserting in place thereof the
151 following 6 clauses:-

152 (xxxiii) requirements that prohibit marijuana product manufacturers from altering or
153 utilizing commercially-manufactured food products when manufacturing marijuana products
154 unless the food product was commercially manufactured specifically for use by the marijuana
155 product manufacturer to infuse with marijuana; provided, however, that a commercially-
156 manufactured food product may be used as an ingredient in a marijuana product if: (i) it is used
157 in a way that renders it unrecognizable as the commercial food product in the marijuana product;
158 and (ii) there is no statement or advertisement indicating that the marijuana product contains the
159 commercially-manufactured food product;

160 (xxxiv) energy and environmental standards for licensure and licensure renewal of
161 marijuana establishments licensed as a marijuana cultivator or marijuana product manufacturer;

162 (xxxv) criteria for allowing marijuana establishments and medical marijuana treatment
163 centers to satisfy their positive impact plan requirement for licensure in part by donating a
164 percentage of their revenue to the Cannabis Social Equity Trust Fund;

165 (xxxvi) requirements and procedures for host community agreements, including without
166 limitation criteria for calculating community impact fees, consistent with subsection (d) of
167 section 3;

168 (xxxvii) criteria for reviewing and certifying host community agreements and community
169 impact fees; and

170 (xxxviii) requirements for procedures and policies enacted by municipalities to promote
171 and encourage full participation in the regulated marijuana industry during negotiations of host
172 community agreements with social equity program participants and economic empowerment
173 priority applicants; provided, that the commission shall promulgate advisory guidelines and best
174 practices for municipalities, including but not limited to a minimum acceptable standard for said
175 policies.

176 SECTION 7. Subsection (b) of section 14 of said chapter 94G, as so appearing, is hereby
177 amended by inserting, in line 15, after the word "132B", the following words:-

178 ; provided, however, that 20 per cent of the fund shall be transferred to the Cannabis
179 Social Equity Trust Fund established in subsection (c).

180 SECTION 8. Said section 14 of said chapter 94G, as so appearing, is hereby further
181 amended by adding the following subsection:-

182 (c)(1) There shall be established and set up on the books of the commonwealth a
183 Cannabis Social Equity Trust Fund, for the purpose of making grants and loans, including no-
184 interest loans and forgivable loans, to social equity program participants and economic
185 empowerment priority applicants to encourage the full participation of entrepreneurs from
186 communities that have been disproportionately harmed by marijuana prohibition and
187 enforcement. The fund shall be administered by the executive office of housing and economic
188 development, through the Cannabis Social Equity Trust Fund board established in paragraph (3).
189 Monies remaining in this fund at the end of any fiscal year shall not revert to the General Fund.

190 (2) The executive office of housing and economic development, in consultation with the
191 commission, shall promulgate regulations governing the structure and administration of the fund.
192 The fund shall consist of revenues collected by the commonwealth including: (i) funds
193 transferred pursuant to subsection (b); and (ii) any funds from private sources such as gifts,
194 grants and donations. The regulations shall include, but not be limited to, requirements for
195 businesses to apply to receive a grant or loan and regulations pertaining to marijuana
196 establishments or medical marijuana treatment centers that default on their loans as defined by
197 the Board and a process by which a license is sold as a result of a licensee's default on a loan.

198 (3) There shall be a Cannabis Social Equity Trust Fund board consisting of individuals
199 from and with experience advocating on behalf of communities that have been disproportionately
200 harmed by marijuana prohibition and enforcement. The board shall be comprised entirely of
201 individuals from communities that have previously been disproportionately harmed by marijuana
202 prohibition and enforcement and shall consist of: 1 person appointed by the governor with a
203 background in the cannabis industry, who shall serve as chair; 1 person appointed by the
204 treasurer and receiver-general with a background in the finance industry or commercial lending

205 industry; 1 person appointed by the attorney general with a background in business development
206 or entrepreneurship; 1 person appointed by the senate president with relevant experience; and 1
207 person appointed by the speaker of the house of representatives with relevant experience. Board
208 members shall serve 2-year terms; provided, however, that at the end of a term a board member
209 may be reappointed once by their appointing authority; provided further, that any absence in a
210 seat on the board shall be filled by the appropriate appointing authority within 60 days. The
211 appointing authority may remove a board member who was appointed by that appointing
212 authority for cause. Before removal, the board member shall be provided with a written
213 statement of the reason for removal and an opportunity to be heard. The board shall make
214 recommendations to the executive office of housing and economic development on regulations
215 for the Cannabis Social Equity Trust Fund and the criteria for making loans and grant funds
216 available. The board shall be responsible for the selection of individual fund recipients, award
217 values, and conditions. Board members may, at the discretion of the secretary of housing and
218 economic development, receive stipends in compensation for their time and service under section
219 4 of chapter 7. Board members may be employed by another business that does not conflict with
220 the duties of their office.

221 SECTION 9. Said chapter 94G of the General Laws is hereby amended by adding the
222 following section:-

223 Section 22. The commission shall administer a social equity program, consistent with
224 regulations promulgated pursuant to subsection (a^{1/2})(iv) of section 4, to encourage and enable
225 full participation in the marijuana industry by people from communities that have previously
226 been disproportionately harmed by marijuana prohibition and enforcement and to positively
227 impact those communities. The program shall offer technical assistance and training to

228 entrepreneurs certified as economic empowerment priority applicants and other criteria
229 determined by the commission. The commission may promulgate regulations necessary for the
230 implementation of this section.

231 SECTION 10. Section 22 of Chapter 270 of the General Laws is hereby amended by
232 inserting after the definition of “lodging home” the following new definition:-

233 ““Licensed marijuana social consumption establishment”, a facility or venue approved by
234 the Cannabis Control Commission for sale of marijuana for consumption on the premises.”

235 and in subsection (c) by inserting after paragraph (5) the following new paragraph:-

236 (5½) “A licensed marijuana social consumption establishment.”.

237 SECTION 11. The cannabis control commission shall establish a safe harbor period
238 during which host communities, marijuana establishments and medical marijuana treatment
239 centers shall renegotiate in good faith any existing host community agreement that is out of
240 compliance with this act, to bring terms into compliance with chapter 94G of the General Laws.
241 No party shall be permitted to bring suit for breach of contract or any other issue related to the
242 negotiation or implementation of a host community agreement during this period.

243 The commission shall review all host community agreements that have received their
244 final license and commenced operations as of the effective date of this act and strike any
245 provision of a host community agreement that is not in compliance with subsection (d) of section
246 3 of said chapter 94G. Following the review, each host community that is not in compliance
247 shall, in a timely manner and subject to the safe harbor period provisions established by the
248 commission, renegotiate the host community agreement with the marijuana establishment or

249 medical marijuana treatment center; provided, that the 5-year term during which a host
250 community may receive a community impact fee pursuant to paragraph (2)(i) of subsection (d) of
251 section 3 of said chapter 94G shall commence on the date the marijuana establishment or
252 medical marijuana treatment center was first granted a final license by the commission. On
253 receipt of notice from the municipality and the applicant or licensee that a renegotiated
254 agreement has been executed, the commission shall review and certify the renegotiated
255 agreement pursuant to paragraph (3) of said subsection (d) of said section 3 of said chapter 94G.

256 After the safe harbor period, if a host community and marijuana establishment or medical
257 marijuana treatment center that has received its final license and commenced operations, but
258 whose host community agreement has not been certified by the commission, do not successfully
259 renegotiate the host community agreement, the marijuana establishment or medical marijuana
260 treatment may do either or both of the following: (1) bring suit against the host community for
261 breach of contract and recovery of reasonable attorney's fees; (2) relocate to a new city or town
262 and receive expedited review of their application by the commission; provided, that once the
263 marijuana establishment or medical marijuana treatment center enters into a host community
264 agreement with the new city or town and the agreement is certified by the commission, pursuant
265 to paragraph (3) of said subsection (d) of said section 3 of said chapter 94G, the commission
266 shall reissue the final license in a timely manner.

267 After the safe harbor period, if a host community and marijuana establishment or medical
268 marijuana treatment center whose host community agreement was found by the commission to
269 be out of compliance with the provisions of section 3 of chapter 94G do not successfully
270 renegotiate the host community agreement , the host community who has an executed host
271 community agreement with a marijuana establishment or medical marijuana treatment center

272 who has commenced operations may: (1) bring suit against the marijuana establishment or
273 medical marijuana treatment center for breach of contract; or (2) negotiate a new host
274 community agreement with another marijuana establishment or medical marijuana treatment
275 center and receive expedited review of that application by the commission; provided, that once
276 the host community enters into a new host community agreement with a marijuana establishment
277 or medical marijuana treatment center, and the agreement is certified by the commission
278 pursuant to paragraph (3) of said subsection (d) of said section 3 of said chapter 94G, the
279 commission shall reissue the final license in a timely manner.

280 If a host community and a marijuana establishment or medical marijuana treatment center
281 that has not commenced operations as of the effective date of this act but that have executed a
282 host community agreement, either party may petition the cannabis control commission to review
283 the host community agreement, during the safe harbor period, for compliance with subsection (d)
284 of section 3 of chapter 94G, and the commission may strike any provision that is not in
285 compliance. Following the petitioned review by a host community, marijuana establishment, or
286 medical marijuana treatment center, each host community whose terms were found to be not in
287 compliance shall, in a timely manner, renegotiate in good faith the host community agreement
288 with the marijuana establishment or medical marijuana treatment center; provided, that the 5-
289 year term during which a host community may receive a community impact fee pursuant to
290 paragraph (2)(i) of subsection (d) of section 3 of said chapter 94G shall commence on the date
291 the marijuana establishment or medical marijuana treatment center was first granted a final
292 license by the commission. On receipt of notice from the municipality and the applicant or
293 licensee that a renegotiated agreement has been executed, the commission shall review and

294 certify the renegotiated agreement pursuant to paragraph (3) of said subsection (d) of said section
295 3 of said chapter 94G.

296 The commission shall, pursuant to section 3 of chapter 94G, review the host community
297 agreements of all new applications received after the effective date of this act.

298 SECTION 12. The comptroller shall transfer \$10 million dollars from the General Fund
299 to the Cannabis Social Equity Trust Fund, established in section 14(c)(1) of chapter 94G, no later
300 than 60 days after the effective date of this act.

301 SECTION 13. Initial appointments to the Cannabis Social Equity Trust Fund board
302 established in section 14 of chapter 94G of the General Laws shall be made not later than 60
303 days after the effective date of this act.

304 SECTION 14. The cannabis control commission shall update all regulations to reflect the
305 changes in this act.

306 SECTION 15. Section 4 of this act shall take effect as of December 15, 2016.