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## FISCAL IMPACT REPORT

**SPONSOR** Ortiz y Pino                      **ORIGINAL DATE** 02/06/14  
**LAST UPDATED** \_\_\_\_\_ **HB** \_\_\_\_\_  
**SHORT TITLE** Marijuana Possession, Use & Regulation, CA                      **SJR** 10  
**ANALYST** Daly

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY14	FY15	FY16		
	(See Narrative)	(See Narrative)	Recurring	Federal Funds

(Parenthesis ( ) Indicate Revenue Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
		See Narrative	See Narrative	See Narrative	Recurring	General Fund
		>\$46.0		>\$46.0	Nonrecurring	Election Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HM 38

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Administrative Office of the District Attorneys (AODA)  
 Attorney General's Office (AGO)  
 Department of Health (DOH)  
 Department of Public Safety (DPS)  
 New Mexico Corrections Department (NMCD)  
 Public Defender Department (PDD)  
 Secretary of State (SOS)

**SUMMARY**

Synopsis of Bill

Senate Joint Resolution 10 proposes to amend the state constitution by adding a new section to allow for possession and personal use of marijuana for persons 21 years of age and older. Regulation of the production, processing, transportation, sale, acceptable quantities, and places of use and taxation is to be determined by the legislature. The resolution is to be submitted for approval by the people of the state in the next general election (this coming November).

**FISCAL IMPLICATIONS**

Under Section 1-16-13 NMSA 1978 and the NM constitution, the SOS is required to print samples of the text of each constitutional amendment, in both Spanish and English, in an amount equal to ten percent of the registered voters in the state. The SOS is also required to publish them once a week for four weeks preceding the election in newspapers in every county in the state. In 2012, the cost for the 2012 General Election ballots was \$46,000 per constitutional amendment. However, if the ballot size is greater than one page, front and back, it would increase the cost of conducting the general election. In addition to the cost of the ballot, there will be added time for processing voters to vote and would mean additional ballot printing systems would be required to avoid having lines at voting convenience centers.

DPS presumes, in the event this resolution is approved by voters and the production, sale and taxation of marijuana in New Mexico is legal, there would be reasonable time, place and manner restrictions on these activities. In such a situation, DPS assumes that various entities within the department, including the New Mexico State Police Division, the Motor Transportation Police Division and the Crime Laboratory, still would all be required to enforce various aspects of the new legal process. Based on these assumptions, DPS is unable to predict what cost increases it may experience.

Additionally, AGO advises that state and local agencies are recipients of various federal funds under mutual cooperation agreements with federal agencies to reduce drug trafficking and drug production in the United States. AGO expresses concern that the state could fall short of the requirements of certain grants between New Mexico and the U.S. Department of Justice, the U.S. Drug Enforcement Administration, the U.S. Department of Housing and Urban Development, and the Office of National Drug Control Policy, resulting in possible loss of revenue to the state.

**SIGNIFICANT ISSUES**

Many responding agencies call attention to the fact that production, sale and taxation of marijuana is contrary to federal law, as well as other issues that arise under this resolution. As AGO advises:

Currently, individuals who grow, transfer, manufacture, possess, or sell marijuana violate federal law. Those who do so without the required state licenses though the New Mexico Medical Cannabis Program (MCP) violate state laws. However, state penalties for marijuana offenses are not as severe as penalties for many other drug-related offenses. To date, state regulation of medical marijuana

establishments has generally been allowed to occur, although the federal government has ordered some businesses (mainly in California) to close.

Unless done in compliance with the MCP, it is a crime under both New Mexico and federal law to grow, distribute, or possess marijuana, or to involve a minor in a marijuana-related offense. Sentences for drug offenses depend on the law violated and the severity and circumstances of the crime. Generally, under state law these crimes are felonies; individuals who possess less than 8 ounces of marijuana may be convicted of only a misdemeanor. It is also a misdemeanor to make, possess, or deliver any paraphernalia used to grow, store, conceal, or use marijuana. Minors who grow, distribute, or possess marijuana can be prosecuted through juvenile court.

New Mexico criminalizes driving under the influence of intoxicating liquor or any drug. State law provides that every person who drives in New Mexico has consented to a test to find out whether he or she has alcohol or any drug in his or her breath or blood (commonly referred to as “implied consent”). The results of these tests can be used in criminal trials, and in proceedings to suspend, revoke or deny a driver’s license. The state can also suspend, revoke or deny the driver’s license of a person who refuses the test.

Federal law criminalizes growing, distributing, or possessing marijuana. It is also a federal crime to provide places for growing, distributing, or storing marijuana or to use a telephone to buy or sell marijuana. Federal law makes all of these crimes felonies except possessing marijuana, which is a misdemeanor. Federal law allows limited use of marijuana for medical research, but does not allow medicinal use of marijuana.

Similarly, AODA comments:

The supremacy clause of the United States Constitution would override any contrary decision by the state. President Obama and Attorney General Holder have—so far--declined to prosecute persons using medical marijuana pursuant to state law or to prosecute persons possessing and using marijuana for recreational purposes under the Colorado law which took effect this year. But the President and his Attorney General, or any subsequent administration, could reverse course and prosecute persons possessing marijuana for federal crimes despite language in the New Mexico constitution that permits possession and use of marijuana and authorizes regulation of such activities as the production, processing, transportation, sale and taxation of marijuana. Additionally, media reports suggest other federal laws, such as those governing banks and other financial institutions that prohibit the handling of funds derived from the sale of illegal substances, may create additional issues.

AODA also predicts an increase in the number of persons who use marijuana and operate a motor vehicle. There is currently no plain or specific limit for driving while under the influence of any drug, including marijuana, AODA advises. Instead, the current statute declares “It is unlawful for a person who is under the influence of any drug to a degree that renders the person incapable of safely driving a vehicle to drive a vehicle within the state.” See Sec. 66-8-102(B) NMSA 1978. Prosecution of DWI cases involving drugs are challenging, AODA reports,

especially when a driver is suspected, or even proven, of being under the influence of poly-drug combinations, or of alcohol and drugs like marijuana. Expert testimony requirements will increase and trials will probably be longer, more complicated and more expensive.

DOH reports that the impact of legalizing marijuana possession and personal use on its Medical Cannabis Program (MCP) is unknown. DOH created the MCP following the passage of The Lynn and Erin Compassionate Use Act, which became effective on July 1, 2007. The purpose of that Act is to allow the beneficial use of medical cannabis in a regulated system for alleviating symptoms caused by debilitating medical conditions and their medical treatments. The MCP has grown over the past 6 years and currently has over 10,600 active patients. The program is governed by comprehensive rules based on the Act that establish its policies, procedures, and requirements. Should this amendment become law, DOH anticipates that the MCP and its underlying act may require revision.

### **PERFORMANCE IMPLICATIONS**

Both AOC and PDD suggest that the number of criminal prosecutions may decline, although AOC anticipates that there could be litigation on various issues stemming from this amendment. PDD reports that in FY 13, it handled 221 cases state-wide in which the primary concern were charges brought under existing law criminalizing possession of, distribution of and trafficking in marijuana.

### **ADMINISTRATIVE IMPLICATIONS**

AOC anticipates some changes may be needed for drug courts and other treatment modalities.

### **RELATIONSHIP**

HM 38, which directs LFC to study the effects in Colorado and Washington of marijuana legalization in five specified areas, relates to this resolution.

### **OTHER SUBSTANTIVE ISSUES**

AODA notes that under current New Mexico law, marijuana is considered either a Schedule I controlled substance, i.e. "...has a high potential for abuse; and has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision," or a Schedule II controlled substance: "has a high potential for abuse...has a currently accepted medical use in treatment in the United States or currently accepted medical use with severe restrictions; and the abuse of the substances may lead to severe psychic or physical dependence." See, Sec. 30-31-5, NMSA 1978; Sec. 30-31-6 (C)(10), NMSA 1978; and, Sec. 30-31-7(e-f), NMSA 1978. Cf., 21 USC Sec. 812(c)(10), Marijuana is a Schedule I controlled substance.

AGO provides this pro and con listing:

#### **Arguments For**

1. It is preferable for adults who choose to use marijuana to grow it themselves or purchase it from licensed businesses that are required to follow health and safety

standards, rather than purchasing products of unknown origin from individuals involved in the underground market. A regulated market will provide a safer environment for adults who purchase marijuana and, by requiring age verification, will restrict underage access to marijuana. The measure could also add sales tax revenue and may add job opportunities to the state economy.

2. The adoption of this amendment will send a message to the federal government and other states that marijuana should be legal and regulated. Adults should have the choice to use marijuana, just as they have that choice with other substances such as alcohol and tobacco.
3. The amendment would free law enforcement resources to focus on violent crime, as well as decreasing the overcrowding in our jails, and could provide additional tax revenue for New Mexico.

#### Arguments Against

1. Even if the amendment is adopted, the possession, manufacture, and sale of marijuana remain illegal under current federal law, so the adoption of the measure may expose New Mexico consumers, businesses, and governments to federal criminal charges and other risks. People who invest time and money to open marijuana establishments have no protections against federal seizure of their money and property.
2. Like alcohol, in some studies marijuana has been shown to impair users' coordination and reasoning. Because more people are likely to use marijuana, the number of those who drive while under the influence of or while impaired by the drug may increase. However, it is worth noting that there is no evidence demonstrating that legalization will actually increase the overall consumption of marijuana by the state's citizens nor is there evidence demonstrating that users will drive impaired at rate higher than our state is currently experiencing.
3. An amendment cannot direct any vote cast by a legislator, or determine what legislative enactments a governor may choose to veto. This amendment asks voters to direct the legislature to construct a regulatory structure for the sale of marijuana, but does not specify any details about what the regulations will entail. Furthermore, because the provisions of the amendment will be in the state constitution and not in the state statutes, where most other controlled substance laws and regulations appear, there may be unintended consequences that cannot be easily remedied.
4. By permitting marijuana use, the measure could create conflicts with existing employment, housing and other policies that ban the possession and use of illegal drugs.

#### **ALTERNATIVES**

DPS suggests as an alternative to inclusion of this amendment on the ballot that an interim committee or an interim study group consider the larger structural questions that arise relative to legalized marijuana.