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FISCAL IMPACT REPORT

SPONSOR Townsend/Ezzell **ORIGINAL DATE** 2/16/16
LAST UPDATED _____ **HB** 326

SHORT TITLE Local Approval of Medical Cannabis Locations **SB** _____

ANALYST Chilton

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Relates to SM 38, SJR 5, SJR 6, HB 75, HB 195, HB 281, SB 235, and SB 245

SOURCES OF INFORMATION

LFC Files

Responses Received From
 Department of Health (DOH)

Responses Not Received From
 Association of Counties
 Municipal League

SUMMARY

Synopsis of Bill

HB 326, Local Approval of Medical Cannabis Locations, specifies that the governing body of a municipality or county is to be asked to approve or disapprove of all locations of medical cannabis production within their area of jurisdiction.

The city council, or its equivalent, would be sent a certified letter by the secretary of the Department of Health stating DOH's intent to issue a license to produce medical marijuana. If the proposed location is to be outside the boundaries of a municipality, the notice would be sent to the county commission.

Within 45 days of receipt of the notice, the council or commission is required to hold a meeting to discuss the proposed medical marijuana production location, after published and, if possible, website, notice to the public has been given.

The council or commission may approve the location; it may disapprove the location if it is prohibited by the laws of New Mexico (within 300 feet of a church, school or daycare center), if it would violate a zoning ordinance, or if the proposed location would be detrimental to the public health, safety or morals of the residents of the area.

FISCAL IMPLICATIONS

There is no appropriation associated with this bill, but DOH believes that the bill would likely result in litigation against DOH when DOH was forced to deny a producer permit according to this statute. DOH states that “If a local governing body were to disapprove a medical cannabis producer’s location based on “moral” grounds, for example, DOH (as well as the local governing body) might be subjected to monetary damages for Constitutional violations.”

SIGNIFICANT ISSUES

Marijuana has received considerable notice in recent years for a variety of medicinal uses, including for cancer, intractable vomiting, severe pain, glaucoma, and epilepsy. In 2007, the New Mexico Legislature passed the Lynn and Erin Compassionate Use Act (NMSA 1978 Section 26-2B) to permit medical marijuana use for certain conditions and to establish a regulatory structure for its production, distribution, and use.

Despite its widespread use for medicinal purposes 23 states (as of January 2016), the District of Columbia and Guam, a 2014 review of research into its use concluded the following:

Cannabis has been used to treat disease since ancient times. $\Delta 9$ -THC is the major psychoactive ingredient and cannabidiol (CBD) is the major non-psychoactive ingredient in cannabis. Cannabis and $\Delta 9$ -THC are anticonvulsant in most animal models but can be proconvulsant in some healthy animals. Psychotropic effects of $\Delta 9$ -THC limit tolerability. CBD is anticonvulsant in many acute animal models but there is limited data in chronic models. The antiepileptic mechanisms of CBD are not known, but may include effects on the equilibrative nucleoside transporter; the orphan G-protein-coupled receptor GPR55; the transient receptor potential of melastatin type 8 channel; the 5-HT_{1a} receptor; the $\alpha 3$ and $\alpha 1$ glycine receptors; and the transient receptor potential of ankyrin type 1 channel. CBD has neuroprotective and anti-inflammatory effects. CBD appears to be well tolerated in humans but small and methodologically limited studies of CBD in human epilepsy have been inconclusive. More recent anecdotal reports of high-ratio CBD: $\Delta 9$ -THC medical marijuana have claimed efficacy, but studies were not controlled.

CBD bears investigation in epilepsy and other neuropsychiatric disorders, including anxiety, schizophrenia, addiction and neonatal hypoxic-ischemic encephalopathy. However, we lack data from well-powered double-blind randomized, controlled studies on the efficacy of pure CBD for any disorder. (Devinsky O, Cilio M et al. *Epilepsia*. 2014 June ; 55(6): 791–802.)

There appears to be consensus that marijuana and its derivatives cause short and longer term impairments. An Australian review of those effects published this year (Broyd SJ, van Hell HH et al., Biological Psychiatry, published online January, 2016 at http://ac.els-cdn.com/libproxy.unm.edu/S0006322315010379/1-s2.0-S0006322315010379-main.pdf?_tid=2347e282-d4d3-11e5-9e6a-00000aacb35d&acdnat=1455644080_4d3dfa10ec5eb6d2a90c0e243c35dc04), concludes that “Verbal learning and memory and attention are most consistently impaired by acute and chronic exposure to cannabis. Psychomotor function is most affected during acute intoxication, with some evidence for persistence in chronic users and after cessation of use. Impaired verbal memory, attention, and some executive functions may persist after prolonged abstinence, but persistence or recovery across all cognitive domains remains underresearched. Associations between poorer performance and a range of cannabis use parameters, including a younger age of onset, are frequently reported.”

ADMINISTRATIVE IMPLICATIONS

DOH notes that it would be required to institute a process of notification of the local governing bodies when a local producer was to be licensed. The time-limit requirements for notification, publication of notice, holding a meeting, and transmittal of results of the meeting to DOH might, in DOH’s view, “have implications for the timelines in which producers are able to begin producing and harvesting medical cannabis, insofar as it would impose additional steps in the licensing process.”

RELATIONSHIP to other bills having to do with cannabis:

SJR5 and SJR6, which propose constitutional amendments to legalize and tax recreational cannabis,

SM 38, which proposes guidelines to avoid prejudice against users of medical cannabis,

HB 75 (ruled non-germane for this session), which would set up regulatory means of dealing with marijuana.

HB 195 and SB 245 (duplicate bills), which would exempt insurers and employers from responsibility to pay for medical marijuana for injured workers, and

HB 281, which would allow for research into the safety and effectiveness of medical marijuana,

SB 235, which would charge the Department of Public Safety with setting up procedures for guaranteeing the safety of financial transactions having to do with medical marijuana.

TECHNICAL ISSUES

DOH expresses the following concerns regarding the legislation as written:

- 1) It specifies that the Secretary of DOH would make location determinations when in fact that occurs only with initial approval. Thereafter, decisions are made by the Medical marijuana Program Manager.
- 2) DOH states that local governing already have the power to deny permits that are not in keeping with zoning or other ordinances,
- 3) The bill specifies that DOH must approve alternate locations to that initially proposed, but states that those alternates may not meet DOH specifications
- 4) The bill does not make clear its relation to current licensure procedures, which may allow medical cannabis at other locations, including public places or patients’ homes.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

DOH would continue to approve locations for production of medical marijuana, which would not be subject to the disgression of municipal or county governing bodies.

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