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FISCAL IMPACT REPORT

ORIGINAL DATE 02/02/16
LAST UPDATED 02/13/16 **HB** _____

SPONSOR Ortiz y Pino

SHORT TITLE Use & Tax of Marijuana & Revenue, CA **SB** SJR 5/aSRC/aSJC

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$104.0		\$104.0	Nonrecurring	Election Fund
			See Narrative	See Narrative	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 44, HB 75, HB 148, SB 3, and SJR 6.

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Administrative Office of the Courts (AOC)
- Attorney General’s Office (AGO)
- Administrative Office of the District Attorneys (AODA)
- Department of Agriculture (DOA)
- Department of Public Safety (DPS)
- Economic Development Department (EDD)
- Regulation & Licensing Department (RLD)
- Secretary of State (SOS)
- Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to Senate Joint Resolution 5 limits the period of time that possession and personal use of marijuana would be legal to be from January 1, 2018 through December 31, 2025 (if the proposed amendment is approved by the voters). It also removes language that “requires the enactment of law to regulate” activities related to that authorized possession and use, and replaces it with “if the legislature regulates” such activities.

The new language regarding implementing legislation appears to leave it up to the legislature whether to pass such legislation (which would then be subject to the governor signing it).

Synopsis of SRC Amendment

The Senate Rules Committee amendment to Senate Joint Resolution 5 expands the dedication of state revenues generated by production, processing, transportation, sale and taxation of marijuana and hemp to include public education.

Synopsis of Original Bill

Senate Joint Resolution 5 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 its taxation is to be determined by the legislature by enacting implementing legislation. Any state revenues generated by the activities authorized in that implementing legislation is dedicated to the state's Medicaid program or drug and alcohol rehabilitation programs. The resolution is to be submitted for approval by the people of the state in the next general election (November 2016).

FISCAL IMPLICATIONS

SOS estimates the cost of placing a constitutional amendment on the ballot to be \$104 thousand based on 2010 actual expenditures. This includes all necessary printing and publications. As the next general election is in November, 2016, these expenditures are shown in the operating impact table above for FY 17.

AOC anticipates that this amendment and implementing legislation would decrease caseloads in the courts. It would limit the prosecution for possession of marijuana to people under the age of twenty-one, and only amounts over any limits provided in the implementing legislation, by people twenty-one years of age or older. It would foreclose the prosecution of marijuana related paraphernalia by people twenty-one years of age or older. Depending on the enforcement of implementing legislation and commenced prosecutions, courts will incur costs of processing cases for violations of the law's provisions; however, the number of such cases is anticipated to be significantly less than the amount of cases currently processed under the prohibition of non-medical marijuana

DOA, in light of other proposed legislation (HB 75) that assigns it administrative and regulatory responsibilities for hemp production, expresses concern that the dedication of any state revenue generated from the production, processing, transportation, sale, taxation or other regulation of marijuana and hemp to fund the state's Medicaid program or drug and alcohol rehabilitation programs may result in an unfunded mandate for any agencies assigned taxing and other regulatory duties in any implementing legislation. It notes that it is ill-equipped to absorb the costs of administering any new hemp regulatory program without a new funding stream. Similarly, LFC has concerns that earmarking of funds limits the legislature's flexibility in establishing spending priorities. (SJR 6, which also amends the constitution to allow for possession and personal use of marijuana, does not contain such a dedication.)

DPS reports there are indeterminate fiscal implications to its budget assuming passage of the proposed constitutional amendment. If this language is approved by voters, then the production, sale and taxation of marijuana in New Mexico would be legal. It is presumed that there would be reasonable time, place and manner restrictions on these activities, and it is assumed that various entities within DPS, notably the New Mexico State Police Division, the Motor Transportation Police Division and the Crime Laboratory, would all be required to enforce various aspects of the new legal process.

Because the proposed amendment contains no parameters outlining the implementing legislation, including neither tax rates, nor directives as to a regulating agency, no meaningful anticipated revenue or estimated operating budget impacts can be projected. However, HB 75 contains a comprehensive regulatory and tax framework regarding recreational marijuana, which assigns RLD the task of regulating production, processing and wholesale and retail sales. RLD estimates its costs under that framework to be approximately \$7.7 million per year. On the revenue side, a legislatively commissioned study by the LFC in 2014 indicated that Colorado reported a total of \$34.8 million in marijuana tax, license and fee revenue during FY 14. TRD reports in its analysis of HB 75 that in FY 15, Colorado collected about \$70 million in marijuana tax revenue, nearly double the \$42 million collected from alcoholic beverages-related taxes. In addition, LFC's 2014 study indicated Washington reported \$3.8 million and about \$1 million in tax revenue in its first month of legalization and estimated two-year marijuana tax revenue will be around \$122.5 million in the 2015-2017 biennium.

SIGNIFICANT ISSUES

In its analysis of HB 75, AODA reports that a 2013 national survey on drug use and health found 19.8 million people had used marijuana in the past month. The study also found that daily, or almost daily, use of marijuana (used on 20 or more days in the past month) had increased to 8.1 million persons from 5.1 million in 2005. SJR 6 allows only persons 21 years old or older to lawfully possess and use marijuana. AODA warns that if marijuana possession and use are made more accessible in New Mexico, it is likely that it will become more available to persons under 21, including children under age 18. It notes that there are currently 23 states, including New Mexico, the District of Columbia and Guam that permit medical marijuana. See, e.g., Sec. 26-2B-1, et seq., NMSA 1978. AODA furthers reports that in the states that have legalized marijuana, many marijuana users are pursuing medical marijuana cards because it is cheaper to buy, especially where recreational marijuana is heavily taxed.

More generally, production, sale, use and taxation of marijuana are still contrary to federal law, as both AODA and AGO stress in their analyses of HB 75. As AGO advises, legalization of recreational marijuana: would create tension, if not outright conflict, between New Mexico law and federal drug law. The federal government regulates marijuana (and cannabis products) through the Controlled Substances Act, 21 U.S.C. § 811 *et seq.* Under current federal law, cannabis is treated like every other controlled substance, such as cocaine and heroin. The federal government places every controlled substance in a schedule, in principle according to its relative potential for abuse and medicinal value. Under the federal Controlled Substances Act, cannabis is classified as a Schedule I drug, which means that the federal government views cannabis as highly addictive and having no medical value.

Additionally, SJR 5 would also make hemp legal in New Mexico. As AGO explains, hemp is a commonly used term for high-growing industrial varieties of the cannabis plant and its products, which include fiber, oil, and seed. Hemp is refined into products such as hemp seed foods, hemp oil, wax, resin, rope, cloth, pulp, paper, and fuel. But hemp also appears on the federal list of controlled substances. Efforts in Congress to remove hemp from regulation have not progressed towards passage (except for certain research on and development as to industrial hemp, as noted in the FIRs on HB 148 and SB 3).

AGO also points out in its HB 75 analysis that federal law criminalizes a number of activities that likely would be permitted under implementing legislation if SJR 5 is approved by New Mexico voters. For example, federal law prohibits the distribution, possession with intent to distribute and manufacture of marijuana or its derivatives (21 U.S.C. §§ 841, 960, 962); simple possession of marijuana (21 U.S.C. § 844); and the establishment of manufacturing operations, i.e. opening, maintaining, financing or making available a place for unlawful manufacture, distribution or use of controlled substances (21 U.S.C. § 856). In its HB 75 analysis, AODA opines that the supremacy clause (Article VI of the United States Constitution) would override any contrary decision by the state. It advises that distributing, possessing and using marijuana, even for medical purposes under California’s medical marijuana act, was held to be illegal under federal law, with the sole exception of federally approved research. *Gonzales v. Raich*, 545 U.S. 2195 (2005). There, the Court held that Congress’ commerce clause authority includes the power to prohibit local cultivation and use of marijuana even if it was in compliance with California’s law. Id.

Given these federal proscriptions, AODA’s HB 75 analysis (citing a United States Department of Justice memorandum dated August 29, 2013 from Deputy AG James M. Cole) discusses guidelines issued by that department for determination of priorities for federal prosecution of marijuana crimes: preventing distribution to minors; preventing revenue from the sale of marijuana from going to criminal enterprises, gangs and cartels; preventing the diversion of marijuana from states where it is legal under state law in some form to other states; preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity; preventing violence and the use of firearms in the cultivation and distribution of marijuana; preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and, preventing marijuana possession and use on federal property.

In addition, AODA reports that the Cole memorandum advises: “The Department’s guidance in this memorandum rests on its expectation that states and local governments that have enacted laws authorizing marijuana-related conduct will implement strong and effective regulatory and enforcements systems that will address the threats those state laws could pose to public safety, public health, and other law enforcement interests.” The Cole memo concluded that “(N)othing herein precludes investigation or prosecution, even in the absence of any one of the factors listed above, in particular circumstances where investigation and prosecution otherwise serves an important federal interest.”

AOC notes that, in addition to ending the complete prohibition of non-medical marijuana, this amendment provides that revenues from the taxation of marijuana and hemp be dedicated for the state’s Medicaid program or drug and alcohol rehabilitation programs. This dedication could further reduce caseloads by decreasing the amount of alcohol, drug, and related mental health crimes, including but not limited to DWIs, domestic violence, and burglary offenses. It could

also help reduce recidivism of offenders with alcohol, drug, and related mental health issues, by providing courts with more treatment options and resources for offenders sentenced to probation and parole.

RELATIONSHIP

This resolution is related to SJR 6, which proposes to similarly 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 (subject to implementing legislation), but does not contain the additional provision dedicating any state revenue generated from activities authorized in implementing legislation for the Medicaid program or drug and alcohol rehabilitation programs. SJR 5 also is related to HB 75, which establishes a comprehensive regulatory framework allowing for the legal production, processing, sale (to persons 21 years of age and older) and taxation of marijuana and marijuana products, and industrial hemp. This resolution relates to SB 3 and HB 148, which provide for research on industrial hemp. Finally, it may relate to HB 44, which prohibits driving with certain amounts of controlled substances or metabolites in the blood.

OTHER SUBSTANTIVE ISSUES

In its HB 75 analysis, AODA notes these other concerns. It reports that the United States District Court for New Mexico has determined that it could not force an insurance company to pay for medical marijuana prescribed for treatment of injuries sustained in an accident because it was contrary to federal law and federal policy. See, *Hemphill v. Liberty Mutual Ins. Co.* (2013). AODA also comments that the federal-state law conflict has had a direct effect on financial transactions in states that have legalized marijuana.

The financial transactions involving proceeds generated by marijuana-related conduct can form the basis for prosecution under the money laundering statutes (18 U.S.C. Secs. 1956 and 1957), the unlicensed money transmitter statute (18 U.S.C. Sec. 1960) and the BSA. Sections 1956 and 1957 of Title 18 make it a criminal offense to engage in certain financial and monetary transactions with the proceeds of a “specified unlawful activity,” including proceeds from marijuana-related violations of the (Controlled Substances Act) CSA. Transactions by or through a money transmitting business involving funds “derived from” marijuana-related conduct can also serve as predicate for prosecution under 18 U.S.C. Sec. 1960. Additionally financial institutions that conduct transactions with money generated by marijuana-related conduct could face criminal liability for, among other things, failing to identify or report financial transactions that involved the proceeds of marijuana-related violations of the CSA. See, e.g., 31 U.S.C. Sec. 5318(g). Notably for these purposes, prosecution under these offenses based on transactions involving marijuana proceeds does not require an underlying marijuana-related conviction under federal or state law.” At least one Colorado marijuana business has been charged with money laundering and an additional charge accuses as individual of attempting an illegal financial transaction by trying to deposit proceeds from a medical marijuana dispensary into a bank account. See, *U.S. v. Hector Diaz, et al.*, 13-CR-00493 REB (D-Colo).

On February 14, 2014 Deputy AG Cole issued a second memorandum to all United States Attorneys regarding marijuana related financial crimes. He noted that provisions of the money laundering statutes, the unlicensed money transmitter statute, and the Bank Secrecy Act remain in effect with respect to marijuana-related conduct. He said that in

deciding “whether to charge individuals or institutions with any of these offenses based on marijuana-related violations of the CSA (Controlled Substances Act, 21 U.S.C. Sect. 801, et seq.), prosecutors should apply the eight enforcement priorities described in the August 29 guidance “if a financial institution or individual offers services to a marijuana-related business whose activities do not implicate any of the eight priority factors, prosecution for these offenses may not be appropriate.” Cole reiterated that the memo was just a guide to exercise of investigative and prosecutorial discretion and “...does not alter in any way the Department’s authority to enforce federal, including federal laws relating to marijuana, regardless of state law.”

That same day, the United States Department of Treasury Financial Crimes Enforcement Network (“FinCEN”) also issued its own guidance to financial institutions seeking to provide services to marijuana-related businesses. It created a three-tiered system for filing Suspicious Activity Reports (“SARs”) based on the institution’s reasonable belief as to whether the marijuana-related business implicates one of the Cole memo priorities: Marijuana Limited—business does not implicate a Cole memo priority; Marijuana Priority—business does implicate a Cole memo priority; and Marijuana Termination—bank has terminated the relationship. The requirement to file an SAR was specifically stated to continue unaffected, regardless of any state law that legalizes marijuana-related activity.

Additionally, AODA’s HB 75 analysis comments that Attorneys General for the states of Nebraska and Oklahoma have asserted that their states, as neighbors of Colorado, are having to bear the costs associated with an increasing number of marijuana-related cases now occurring in their states while Colorado reaps the financial rewards, and that federal law must trump the Colorado state law permitting recreational use. No quantification in support of their claims of undue burden have been published yet, and one Oklahoma legislator is asking its AG not to pursue a lawsuit because of a concern that it may erode states’ rights reserved to them under Amendment X to the U.S. Constitution.

DOH, in its analysis of HB 75, reports these health-related concerns related to marijuana:

Marijuana is not a benign substance. A number of negative consequences of marijuana use are known despite the Federal restrictions on marijuana that have limited research into the effects (either positive or negative). Among them:

- **Addiction/Dependence:** The lifetime risk of dependence is about 9 percent of marijuana users. While this is lower than the risks for nicotine, heroin, cocaine, and alcohol, it is not negligible (Bostwick, 2012). Addiction/Dependence also entails a withdrawal syndrome (Greydanus, et al, 2013, Bostwick, 2012).
- Research studies have noted that cannabis users “demonstrate important deficits in prospective memory and executive functioning that exist beyond acute cannabis intoxication” (Greydanus, et al, 2013). This appears to be a relatively subtle effect.
- Chronic use of cannabis is associated with increased rates of psychosis. Frequent cannabis use doubles the risk for schizophrenia and psychotic symptoms (Greydanus, et al, 2013). The question of whether cannabis causes psychosis remains unresolved, but there is some evidence that it worsens the course of psychotic illness (Bostwick, 2012).

- The risk of motor vehicle crashes involving death or injury is about two times as high for drivers under the influence of marijuana than for sober drivers. Tests used in the field for the detection of impaired drivers may not be precise enough to detect marijuana (Greydanus, et al, 2013).

Further, DOH comments that many of the ill effects of marijuana are magnified for adolescent users. The average age for beginning marijuana use is around 18 years of age. Dependence and psychosis are much more common among users who begin in their teens, especially the early teens (Bostwick, 2012). Research has shown permanent changes in the brains of persistent users who began use in their early teens (Greydanus, et al, 2013, Bostwick, 2012). Dependence seems quite rare in users who began after age 25.

DOH also presents these observations from two states that have legalized marijuana:

- Most teens who enter substance abuse treatment programs in Washington State report that marijuana is the main or only drug they use (Washington State Tobacco, Alcohol and Other Drug Trends Report, 2012). Colorado and Washington have seen increases in emergency department visits from children accidentally consuming THC-laced products since their laws legalizing marijuana went into effect.

(http://www.oregonlive.com/opinion/index.ssf/2014/11/legal_pot_will_boost_traffic_a.html)

- In Colorado, marijuana-related exposures for children five and under have increased 268 percent from 2006-2009 to 2010-2013, triple the national rate, according to the Rocky Mountain High Intensity Drug Trafficking Area (HIDTA) Partnership. In Colorado, use of marijuana among 12-17 year-olds is 39 percent higher, and use of marijuana among 18-25 year-olds is 42 percent higher than the national rate for adolescents of the same age.

(The Legalization of Marijuana in Colorado: The Impact – Volume 3, January 2016, available at <http://www.rmhidta.org>)

Finally, DOH reports marijuana legalization would likely increase use among teens who already use marijuana, according to data from a survey of U.S. high school students. Nearly two-thirds of teens who reported using marijuana at least once in their lifetime said that legalizing the drug would make them more likely to use it. In addition, more than three-fourths of heavy marijuana users reported that legalizing the drug would make them more likely to use it. And sixteen percent of teens who reported that they had never used marijuana agreed that they would be more likely to use marijuana if it were legal. (*Adapted by CESAR from The Partnership for a Drug-Free America and the MetLife Foundation, The Partnership Attitude Tracking Study (PATS): Teens and Parents, 2013*)

<http://www.ibhinc.org/pdfs/CESARFAX2226TeensReportedUseofMarijuanaIfLegal.pdf>)

In its HB 75 analysis, TRD asserts that legislation legalizing marijuana could have both positive and negative impacts to the state. Since it is not legal under the current law, TRD suggests New Mexico can learn from other states that have legalized marijuana like Colorado. It calls attention to a published report “The Legalization of Marijuana in Colorado: The Impact” Vol. 2/August 2014, an impact study that targeted the following areas: impaired driving, youth marijuana use, adult marijuana use, Emergency room admissions, marijuana-related exposure cases, and

diversion of Colorado marijuana outside the state. The following observations were the results of the study prior to and during the creation of the marijuana industry in Colorado:

Impaired Driving:

- The majority of driving-under-the-influence-of-drugs arrests involve marijuana and 25 to 40 percent were marijuana alone.
- Toxicology reports with positive marijuana results for driving under the influence have increased 16 percent from 2011 to 2013.
- Traffic fatalities involving operators testing positive for marijuana have increased 100 percent from 2007 to 2012.

Youth Marijuana use:

- In 2012, 10.47 percent of youth ages 12 to 17 were considered current marijuana users compared to 7.55 percent nationally. Colorado, ranked 4th in the nation, was 39 percent higher than the national average.
- Drug-related suspensions/expulsions increased 32 percent from school years 2008/2009 through 2012/2013. The vast majority were for marijuana violations.

Adult Marijuana Use:

- In 2012, 26.81 percent of college age students (ages 18 – 25 years) were considered current marijuana users compared to 18.89 percent nationally. Colorado, ranked third in the nation, was 42 percent higher than the national average.
- In 2012, 7.63 percent of adults ages 26 and over were considered current marijuana users compared to 5.05 percent nationally. Colorado, ranked seventh in the nation, was 51 percent higher than the national average.
- In 2013, 48.4 percent of Denver adult arrestees tested positive for marijuana, a 16 percent increase from 2008.

Emergency Room Marijuana Admission:

- From 2011 through 2013, there was a 57 percent increase in marijuana-related emergency room visits.
- Hospitalizations related to marijuana have increased 82 percent from 2008 to 2013.
- In 2012, the City of Denver rate for marijuana-related emergency visits was 45 percent higher than the rate in the state of Colorado.

Marijuana-Related Exposure:

- Marijuana-related exposures for children ages 0 to 5 on average have increased 268 percent from 2006–2009 to 2010-2013.
- Colorado’s rate of marijuana-related exposures is triple the national average.

Treatment:

- Over the last nine years, the top three drugs involved in treatment admissions have been alcohol, marijuana and amphetamines.

Diversion of Colorado Marijuana:

- Highway interdiction seizures of Colorado marijuana destined to 40 other states increased 397 percent from 2008 to 2013.
- The average pounds of Colorado marijuana seized, destined for other states, increased 33.5 percent from 2005 to 2008 compared to 2009 to 2013.

Diversion by Parcel:

- U.S. Mail parcel interceptions, with Colorado marijuana destined for 33 other states, increased 1,280 percent from 2010 to 2013.
- U.S. Mail pounds of Colorado marijuana seized, destined for 33 other states, increased 762 percent from 2010 to 2013.

THC Extraction Labs:

- In 2013, there were 12 THC extraction lab explosions and in the first half of 2014 the amount more than doubled.
- In 2013, there were 18 injuries from THC extraction labs and in the first half of 2014 there were 27 injuries.

Related Data:

- Overall, crime in Denver increased 6.7 percent from the first six months of 2013 to the first six months of 2014.
- The number of pets poisoned from ingesting marijuana has increased four-fold in the past six years.
- Colorado estimates for annual revenue from the sale of recreational marijuana varies from \$65 million (.6 percent of all expected general fund revenue) to \$118 million (1.2 percent of all expected general fund revenue).
- The majority of counties and cities in Colorado have banned recreational marijuana businesses.
- THC or (tetrahydrocannabinol) potency has risen from an average of 3.96 percent in 1995 to an average of 12.33 percent in 2013.]

ALTERNATIVES

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

MD/al/jo