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FISCAL IMPACT REPORT

ORIGINAL DATE 02/27 /17

SPONSOR Ortiz y Pino LAST UPDATED _____ HB _____

SHORT TITLE Possession & Personal Use of Marijuana, CA SJR 19

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total			\$50-\$100.0	\$50-\$100.0	Nonrecurring	Election Fund
			See Narrative	See Narrative	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Relates to HB 89, HB 155, and SB 278

Responses Received From

Administrative Office of the Courts (AOC) (2016)
 Administrative Office of the District Attorneys (AODA)
 Department of Agriculture (NMDA)
 Department of Health (DOH) (2016)
 Department of Public Safety (DPS)
 Economic Development Department (EDD)
 Law Offices of the Public Defender (LOPD)
 Office of the Attorney General (OAG)
 Regulation & Licensing Department (RLD)
 Secretary of State (SOS)
 Taxation and Revenue Department (TRD) (2016)

SUMMARY

Synopsis of Joint Resolution

Senate Joint Resolution 6 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. This provision is not self-executing, but depends on implementing legislature regulating the use and taxation of marijuana to protect public health and safety. Any tax revenues are to be distributed to the general fund. The resolution is to be submitted for approval by the people of the state in the next general election (November 2018) or any special election called for that purpose.

FISCAL IMPLICATIONS

Section 1-16-13 NMSA 1978 requires the SOS to print the full text of each proposed constitutional amendment, in both Spanish and English, in an amount equal to 10 percent of the registered voters of the state. The SOS is constitutionally required to public the full text of each proposed constitutional amendment once a week for four weeks preceding the election in newspapers in every county in the state. LFC staff estimate each constitutional amendment may cost from fifty thousand dollars (\$50,000) to one hundred thousand dollars (\$100,000) in printing and advertising costs based on 2016 actual expenditures.

In its analysis of a similar resolution introduced in the 2016 session, DPS reported 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.

In its 2016 analysis of that similar resolution, AOC anticipated 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 was anticipated to be significantly less than the amount of cases currently processed under the prohibition of non-medical marijuana. Similar decreases were anticipated for AOD and PDD.

As reported by LOPD, a study of FY12-16 run by its IT staff found that public defenders were appointed in well over 2500 cases in which the statute criminalizing possession of marijuana or synthetic cannabinoids was the primary charge. The removal of criminal sanctions resulting from the adoption of implementing legislation following voter approval of the amendment for many of these cases could have a positive effect on the workload of the LOPD. To the extent this results in fewer trials, fewer resources would have to be allocated to the state's criminal justice system, including LOPD, the district attorneys, OAG, the courts, counties and possibly Department of Corrections.

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 for estimated operating budget impacts can be projected. However, HB 89 and SB 278 each contain 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 to be approximately \$7.7 million per year. Both bills would impose a 15 percent tax; based on its analysis of HB 89, TRD projects revenues between \$27.3 million and \$43.3 million in the first two years of implementation.

SIGNIFICANT ISSUES

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 19 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 further 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 EDD, AODA and OAG all stress in their analyses. As OAG advises, federal laws classify marijuana as a controlled substance and provide criminal penalties for its manufacture, distribution, possession or use. These federal criminal laws are enforced by federal government agencies that act independently of state and local government law enforcement agencies. As such, federal marijuana laws could still be enforced in New Mexico.

AODA also points out in its analysis that federal law criminalizes a number of activities that likely would be permitted under implementing legislation if SJR 19 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). 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.

AOC's 2016 analysis provided yet another factor that may be considered upon adoption of this constitutional amendment (and implementing legislation enacted): its potential to reduce caseloads in the courts even beyond the immediate effect of ending the prohibition of marijuana. Depending on legislative allocation of revenue generated from the taxation of marijuana and hemp, criminal conduct related to alcohol, drug and related mental health issues may be reduced, as well as reducing recidivism by providing resources for the state's substance abuse and mental health providers.

DPS advises it remains opposed to marijuana legalization for recreational use even if regulated. It warns that the danger to New Mexico's citizens emanating from a new category of legalized substances by which individuals could end up driving impaired cannot be overstated. This is particularly so because there is no simple means of testing for marijuana impairment. A breath test is only effective to detect alcohol. As AODA further explains, there is currently no plain or specific limit for driving while under the influence of any drug. Instead, the current statute says,

“it is unlawful for persons who are 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 Section 66 -8-102(B) NMSA 1978. The prosecution of those cases is challenging, especially when the driver is suspected, or proven, of being under the influence of poly-drug combination, or alcohol and drugs. Expert testimony requirements will increase and trials will probably be longer, more complicated and more expensive.

PERFORMANCE IMPLICATIONS

NMDA notes that currently it has regulatory authority which would apply to the growing and production of marijuana, and impose additional obligations by the department to ensure compliance through licensing, issuance of certificates, and/or inspection. This may include additional processing of license application for plant sales; inspection for plant pests and disease and issuance of phytosanitary certificates (relating to control of plant diseases in agricultural goods that cross borders); licensing and inspection for pesticide use and worker protection standard compliance; labeling, sale and inspection of seed; inspection of scales used for weighing product sold on a weight basis; and registration review and approval for pesticide, fertilizer or soil conditioner products utilized in marijuana production.

RELATIONSHIP

SJR 19 is related to HB 89 and SB 278, each of 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, as well as industrial hemp. It also relates to HB 155, which authorizes medical marijuana research, SB 258, which decreases marijuana penalties, and HB 102, which enacts the Marijuana Tax Act.

TECHNICAL ISSUES

OAG suggests it may be helpful to clarify that SJR 19 does not affect an individual’s right to produce, possess, and use marijuana for medical purposes as otherwise provided in state law.

OTHER SUBSTANTIVE ISSUES

In its analysis, AODA notes these other concerns. Banks and other financial institutions are wary of providing financial services to marijuana businesses so it has remained largely a cash only business, including employment payroll. That raises security and safety issues for the businesses and their employees. It is unclear how the businesses can pay the IRS required payments for Social Security, Medicare and income taxes. Similarly, it may be problematic for employees who are paid in cash to pay their taxes. The Internal Revenue Code provides no deduction or credit may be allowed for any amount or credit on any trade or business if such trade or business consists of trafficking in a controlled substance (within the meaning of Schedules I and II of the Controlled Substances Act) which is prohibited by any federal law or any state law where the trade or business is done.

Additionally, AODA notes that Attorneys General for the states of Nebraska and Oklahoma have asserted that their states, as neighbors of Colorado, have 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 prevails over 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 Attorney General to drop the case 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 marijuana legislation introduced in the 2016 session, reported 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 commented 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 presented 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 2016 analysis of then-pending legislation legalizing and regulating recreational marijuana, TRD suggested New Mexico can learn from other states, like Colorado, that have legalized marijuana. The Taxation and Revenue Department (TRD) references a published report “The Legalization of Marijuana in Colorado: The Impact” Vol. 2/August 2014. The impact study was targeted on 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.

Senate Joint Resolution 19 – Page 7

- 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 (tetrahydrocannabinol) potency has risen from an average of 3.96 percent in 1995 to an average of 12.33 percent in 2013.]

DPS provides this additional information:

In a report by the Rocky Mountain HIDTA Investigative Support Center, *The Legalization of Marijuana in Colorado: The Impact Volume 4* (September 2016), on pages 1 and 2, it was reported, among other things, in part that “[m]arijuana-related traffic deaths increased 48 percent in the three-year average since Colorado legalized recreational marijuana compared to the three-average (2010-2012) prior to legalization... During the same time, all traffic deaths increased 11 percent.” It was further reported that “[i]n 2009, Colorado marijuana-related traffic deaths involving operators testing positive for marijuana represented 10 percent of all traffic fatalities. By 2015, that number doubled to 21 percent.” The report noted that “Washington legalized recreational marijuana at the same time as Colorado.... [m]any of the same trends in Colorado related to legal marijuana also are occurring in Washington. These trends include: impaired driving, traffic fatalities, use among teens and exposure...”

MD/sb/jle