

LFC Requester:

Scott Sanchez

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

Analysis.nmlegis.gov

{Analysis must be uploaded as a PDF}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original **Amendment**
Correction **Substitute**

Date JAN 19 2023

Bill No: HB 55

Sponsor: Jimmy Mason, Randall T. Pettigrew, Harlan Vincent
Oral Fluid Drug Detection Pilot Project
Short Title: _____

Agency Name and Code 790 – Department of Public Safety
Number: _____
Person Writing Analysis: Robert Alguire, Major
Phone: 575-518-8788 **Email** Robertj.alguire@dps.nm.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
0.00	650.0	Nonrecurring	Cannabis Regulation

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
0.0	0.0	0.0		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	4 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	0.0	325.0	325.0	650.0	Nonrecurring	Cannabis Regulation

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

HB 55 creates the Oral Fluid Roadside Detection Pilot Project to test for the presence of drugs when a driver is stopped for suspicion of driving under the influence of intoxicating liquor or drugs. It also seeks to collect data to determine the magnitude of the problem of driving under the influence of drugs.

FISCAL IMPLICATIONS

The legislation carries a \$650,000 non-recurring appropriation from the Cannabis Regulation Fund maintained by the Regulation and Licensing Department (RLD) for expenditure in FY 2025 through FY 2028. Expenditures will be incurred for empaneling the expert panel required, and the purchase of necessary equipment and field supplies. The appropriation amount should be sufficient to carry out the intent of the legislation as drafted.

SIGNIFICANT ISSUES

There are still significant changes in our DWI law that would need to be changed to make this program successful.

Extended Arrest Time: The program puts an additional burden on the participating departments as any data collected will be an additional task and have minimal effect in aiding in successful prosecutions. This is due in part to our current limitations in obtaining search warrants for blood (unless voluntary provided). The time from a stop to an arrest is already lengthy and this would add an additional step in the process.

No Per Se Limit for Cannabis: There is no per se limit that has been scientifically proven to show cannabis impairment. This is due in part to the way cannabis is metabolized. Therefore, because there is no per se limit, the burden is on the prosecutor to show that the presence of cannabis is in fact the cause of the impairment. Furthermore, the oral fluid test would merely show the presence of cannabis, which is generally already known through observations like smell and visual evidence.

Other DWI Changes Are Needed: For this program to have success we will need to address our state's underlying issues (ie. blood draw search warrants for misdemeanor cases).

PERFORMANCE IMPLICATIONS

A true performance measure would not be able to be determined because the evidence provided likely would not be proven to correlate to impairment in court. While the pilot program would start providing information on the validity of the tests, we would not get a true account if they were successful until there is a per se limit.

ADMINISTRATIVE IMPLICATIONS

See performance implications.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Is the same as HB 275 from the 2023 Legislative Session.

TECHNICAL ISSUES

None identified.

OTHER SUBSTANTIVE ISSUES

None identified.

ALTERNATIVES

Legislation changes to DWI law.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

DPS is still in a position where the difficulty in obtaining convictions for drug impaired drivers is at an all-time high. This will continue until changes are made to the DWI related laws allowing for these oral tests.

AMENDMENTS

None