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FISCAL IMPACT REPORT

ORIGINAL DATE 1/27/17

SPONSOR Rehm LAST UPDATED _____ HB 102

SHORT TITLE Marijuana Tax Act SB _____

ANALYST Iglesias

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19	FY20	FY21		
\$0	\$4,500.0	\$5,400.0	\$6,200.0	\$7,100.0	Recurring	County Supported Medicaid Fund

Parenthesis () indicate revenue decreases

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Agency Affected
Total	\$3,007.0	\$0	\$0	\$3,007.0	Nonrecurring	Taxation and Revenue Department

Parenthesis () indicate expenditure decreases

Conflicts with HB89. Relates to SB6. Relates to SB8.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)

Attorney General's Office (AGO)

NM Department of Health (DOH)

SUMMARY

Synopsis of Bill

House Bill 102 creates the Marijuana Tax Act, which is comprised of six sections. The new act includes definitions, imposes an excise tax of \$25 per ounce of marijuana distributed, sets registration requirements for anyone producing or distributing marijuana in New Mexico, requires the retention of invoices of distribution for three years, and sets a penalty of not less than \$100 or more than \$1,000 for each violation for failing to register or retain invoices. The bill also adds a new section to the Tax Administration Act creating a distribution to the county-supported Medicaid fund in an amount equal to the net receipts attributable to the marijuana tax.

The effective date of this bill is July 1, 2017, and the distribution required by section 7 applies to receipts from the marijuana tax attributable to sales made on or after July 1, 2017.

FISCAL IMPLICATIONS

Since this bill does not attempt to legalize recreational use of marijuana in the state, the revenue estimate assumes the proposed \$25 per ounce tax only applies to medical marijuana sales. However, it should be noted that the Attorney General's Office (AGO) believes it is unclear whether this bill applies the distribution of medical cannabis (see significant issues).

Beginning with data for the last several years from the New Mexico Department of Health (DOH) on receipts by medical marijuana licensed non-profit producers, average prices paid, and volumes distributed free; estimates were made for the future number of ounces distributed in the medical marijuana market. The Taxation and Revenue Department (TRD) provided a revenue estimate by multiplying these amounts by the tax specified in the bill. The actual volume reported by DOH in FY15 was 80,000 ounces and in FY16 was 114,000 ounces. Beginning in FY18, the forecast of 181,000 ounces is multiplied by the \$25 per ounce tax rate to estimate revenue of \$4.5 million.

TRD indicates this new tax would also have a large impact on their Information Technology Division. Extensive GenTax programming, form development, auditor training, publications, and back-end systems for verifying invoices and revenue accounting would need to be developed. The estimate for implementing a new tax program (based on similar implementations in other states) is approximately 12 – 18 months at a cost of approximately \$3 million. These estimates are based on a similar implementation for the state of Colorado. Therefore, TRD asserts the effective date of July 1, 2017 is not feasible.

SIGNIFICANT ISSUES

Currently, the only entities that can lawfully sell cannabis in the state of New Mexico are licensed nonprofit medical cannabis producers (LNPPs). Therefore, assuming no other statutes change, the revenue estimates provided above assume the bill would place an excise tax on medical marijuana.

Although medical cannabis producers are state nonprofits, they pay gross receipts taxes. Based on average prices reported to DOH over the last several years, TRD states this bill would result in approximately an 8 percent tax, and would be on top of the gross receipts tax. Since this bill taxes all marijuana distributed, TRD states marijuana distributed free of charge (which is also tracked by DOH) would also be taxed.

However, it is important to note that according to the Attorney General's Office (AGO), it is unclear whether this act actually applies to the distribution of medical cannabis pursuant to the Controlled Substances Therapeutic Research Act or the Lynn and Erin Compassionate Use Act (see technical issues).

DOH anticipates any excise tax imposed on medical cannabis producers may ultimately be borne by qualified patients in the medical cannabis program in the form of increased costs of medical cannabis and medical cannabis products. The proposed tax rate would be about \$1.00 per gram of product purchased. According to DOH, enrollees typically purchase 56-74 grams per month.

According to DOH, patients in the Medical Cannabis program have debilitating medical conditions and a large portion of enrollees have stated they are on disability or other assistance. Assuming the provisions of this bill apply to medical marijuana, with an average purchase of about two ounces a month, patients would pay about an extra \$50 a month to get their medicine, or an additional \$600 a year.

TRD indicates, if the Cannabis Revenue and Freedom Act (HB-89) is also enacted, which seeks to legalize the manufacture and sale of marijuana for recreational use, then this bill would impose an additional tax on top of those imposed by HB-89. TRD notes the implementation of a per-ounce excise tax may be difficult as HB-89 allows many different types of products.

ADMINISTRATIVE IMPLICATIONS

According to TRD, the bill will have a moderate impact to the Financial Distribution Bureau (FDB). FDB will create new funds and distributions within the necessary state systems. FDB will also verify modifications made to the GenTax system. New forms for the new tax will be required, and revised forms for business registration will also be required. Given these tasks, TRD states the effective date of July 1, 2017 is not feasible.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill conflicts with HB 89 (Cannabis Revenue and Freedom Act) since both proposed bills would enact an excise tax on the distribution of marijuana. This bill proposes an excise tax of \$25 per ounce of marijuana distributed, while HB 89 would impose a 15 percent excise tax on the marijuana product sold.

According to AGO, it is unclear whether this bill would apply to SB 6 (Industrial Hemp Research Rules) if both bills passed since the definition of marijuana in this bill does not seem to include industrial hemp.

AGO, it does not appear that this bill conflicts with SB 8 (Medical Marijuana Changes) since it is unclear whether this bill, as proposed, would tax medical marijuana (see technical issues).

TECHNICAL ISSUES

DOH indicates the bill would impose a tax on the sale of marijuana, but does not address, in the definition of “marijuana” or elsewhere, the sale of products derived from marijuana, such as concentrates, tinctures and edible products.

According to AGO, the definition of marijuana in the proposed act is vague. For example, it is unclear whether the definition includes marijuana extracts, marijuana derivatives or industrial hemp. As a comparison, marijuana is defined in the Controlled Substance Act, NMSA 1978, § 30-31-2, as follows:

. . . all parts of the plant cannabis, including any and all varieties, species and subspecies of the genus Cannabis, whether growing or not, the seeds thereof and every compound, manufacture, salt, derivative, mixture or preparation of the plant or its seeds. It does not include the mature stalks of the plant, hashish, tetrahydrocannabinols extracted or isolated from marijuana, fiber produced from the stalks, oil or cake made from the seeds of the plant,

any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake, or the sterilized seed of the plant that is incapable of germination

Cannabis, on the other hand, is defined by the Department of Health in regulation, NMAC 7.34.4.7(J), as:

all parts of the plant, cannabis sativa, and cannabis indica, whether growing or not and the resin extracted from any part of the plant.

AGO further points out the proposed act does not address the fact that the possession of marijuana, or cannabis, in New Mexico is illegal pursuant to NMSA 1978, § 30-31-6 and § 30-31-23, in addition to federal law (see amendments).

TRD also offers out there is no explicit provision made in the bill to enforce the collection of the tax, only to enforce registration and retention of records. Since the bill refers to the Taxation and Revenue Department (TRD), Section 7-1-2(D) would appear to grant TRD authority to administer the bill in accordance with the audit, collection, protest, and other administrative procedures in the Tax Administration Act.

OTHER SUBSTANTIVE ISSUES

The bill as proposed may have tax pyramiding issues. DOH points out this bill would tax the “distribution” of cannabis, rather than the sale of cannabis to consumers. Thus, the distribution of cannabis to a manufacturer of cannabis derived products for creation of such products would ostensibly require that the product be taxed by weight upon distribution to the manufacturer, and then again at the time of sale to qualified patients (assuming that such products are subject to the tax). Likewise, distribution of cannabis to an approved laboratory for testing purposes could require that the product be taxed again.

A special report published by the non-partisan Tax Foundation in May 2016¹ states, “tax rates on final retail sales have proven the most workable form of taxation” for marijuana. The report indicates states have encountered difficulties with other types of taxation (such as a per ounce tax similar to the one proposed in this bill, taxing at the processor or producer level, or taxing products by their level of THC), including issues with tax pyramiding and practical implementation of the tax given the varied types of marijuana products.

AMENDMENTS

According to AGO, it may be necessary to amend the Controlled Substances Therapeutic Research Act, the Lynn and Erin Compassionate Use Act, and the Controlled Substance Act in order to effectuate this legislation. AGO further states:

Standing alone, and with the current laws prohibiting the distribution of recreational marijuana, it seems as though the passage of this proposed act is illegal. If this proposed act is intended to tax currently legal marijuana (i.e. medical cannabis), the bill needs to be amended to make clear that the distribution of currently legal cannabis will be taxed with the passage of this bill.

¹ Tax Foundation, “Marijuana Legalization and Taxes: Lessons from Other States from Colorado and Washington,” Special Report No. 331, May 2016.

Does the bill meet the Legislative Finance Committee tax policy principles?

1. **Adequacy:** Revenue should be adequate to fund needed government services.
2. **Efficiency:** Tax base should be as broad as possible and avoid excess reliance on one tax.
3. **Equity:** Different taxpayers should be treated fairly.
4. **Simplicity:** Collection should be simple and easily understood.
5. **Accountability:** Preferences should be easy to monitor and evaluate

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