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FISCAL IMPACT REPORT

SPONSOR Townsend/Ezzell/ **ORIGINAL DATE** 02/15/17
Wooley **LAST UPDATED** _____ **HB** 334

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

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

Related to HB 89, HB 348, SB 8, SB 177, SB 278 and SB 345

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Department of Health (DOH)
 Office of the Attorney General (OAG)

SUMMARY

Synopsis of Bill

House Bill 334 requires local government approval of the location proposed in an application for a medical marijuana producer’s license in the Medical Cannabis Program (MPC) administered by the Department of Health (DOH). On and after July 1, 2017, the Secretary of DOH must notify the governing body of the local government of an intent to approve the issuance of a new producer’s license at an address within that body’s jurisdiction. (The bill contains an exemption for personal production by a qualified patient.)

Within 45 days after receipt of that notice, the governing body must hold a public hearing on the question of approval of the proposed location. The body must publish print notice of the hearing twice, the first being at least 30 days prior to the hearing date, as well as publishing the notice on the body’s website, if it has one. That body must also send the notice, by certified mail, to the license applicant. The notice shall include the date, time and place of the hearing; the name and

address of the applicant; the secretary’s intent to approve; the proposed location; and other information required by the secretary. The hearing may be conducted by a hearing officer, and a record made of the proceeding.

The governing body may disapprove the location for the license if the location:

- 1) is within an area where the sale of cannabis is prohibited by state law;
- 2) would violate a zoning or other ordinance of the governing body; or
- 3) would be detrimental to the public health, safety or morals of the residents of the municipality or county.

The governing body must approve or disapprove the proposed location within 30 days of the hearing, and notify the secretary of its decision. Absent such notice, the secretary may give final approval to issuance of the license. Upon notice the governing body approves the proposed location, the secretary shall issue the license.

If the governing body disapproves the location, it shall notify the secretary of its reasons for disapproval within that 30 day period and identify available and appropriate alternate locations within its jurisdiction that it would approve for the license. It also must submit a copy of the minutes of the hearing.

The applicant for license may within 30 days of the governing body’s notice accept an alternate location identified by the governing body, and the secretary shall approve the license. If the applicant does not accept an alternate location, the secretary must disapprove the license.

FISCAL IMPLICATIONS

DOH does not anticipate any fiscal impact.

SIGNIFICANT ISSUES

HB 334 tracks, to a large extent, the procedure for local governing body approval of the issuance of a liquor license. See Section 60-6B-4 NMSA 1978. It does not, however, include a provision for judicial review of a disapproval of the location proposed in an application for license like that contained in existing liquor licensing law. See Section 60-6B-2(Q). Both DOH and OAG express concerns that legal challenges will be made upon a disapproval of location (and likely a license) by a local government. Inclusion of language granting judicial review of a disapproval of a licensee’s proposed location would provide an appropriate mechanism for resolution of any such challenge.

If a governing body disapproves a proposed location, Section 2(B) requires it to identify available and appropriate locations that it “and the secretary” would approve. In Section 2(H), there is orphan language referring to alternate locations “that are acceptable to the secretary.” (See page 4, lines 21-22) There is no procedure delineated for approval by the secretary of an alternate location, and Subsection (I) in fact requires the secretary approve a license for an alternate location if the proposed licensee accepts that location. As drafted, the secretary’s role in approving an alternate location is at best unclear.

DOH calls attention to several provisions in this bill that are inconsistent with the current structure and operation of the medical cannabis program:

- The definition of “licensed provider” in the governing law includes those that “produce, possess, distribute and dispense” cannabis. Section 26-2B-3(D) NMSA 1978. As DOH explains, the bill repeatedly refers to issuing a license to a producer for a given location, but there are many components to production: grow locations, distribution locations, facilities for manufacturing of cannabis-derived products, labs and couriers. Each of these entities and activities may have cannabis at its location. The bill is unclear if all of them are subject to HB 334’s approval process, or if it only applies to locations where cannabis is grown;
- Existing licensed producers may submit amendments to open new distribution locations or move to a new grow location; it is unclear if these types of changes would require local government approval under the bill; and
- Non-profit medical cannabis producers may be authorized under their licensure to distribute medical cannabis to enrolled patients at locations other than storefronts; again, it is unclear what effect the bill would have on the ability of producers to distribute at other locations, such as in public places or at a patient’s residence.

DOH also notes that the application review and selection process for licensed producers is very time consuming due to the Department’s efforts to ensure those selected for licensure have the best interest of patients in mind and can truly offer safe access to safe medicine. HB334 extends that time frame by adding on a minimum of 75 days to the process (45 days for the notifications and hearing and 30 days for the local governing body to decide and advise the Department). DOH asserts this delay would place a financial burden on applicants who likely would have to pay rent on a location they are unsure if they will ever be able to use. It also impacts the timelines in which producers begin producing and harvesting medical cannabis.

The approval process in HB 334 may potentially impact medical cannabis patients in rural communities. DOH reports its program has received feedback from various sources regarding the licensing process for producers. Rural communities tend to express more concerns about producers being located in their jurisdictions. If these rural communities were to decide to unduly restrict acceptable locations, it could potentially limit patient access to medical cannabis.

RELATIONSHIP

- HB 89 Cannabis Revenue & Freedom Act
- Cannabis Revenue & Freedom Act
- HB 348 Medical Marijuana Tribal Agreements
- SB 8 Medical Marijuana Changes
- SB177 Medical Marijuana Changes
- SB 278 Cannabis Revenue & Freedom Act
- SB 345 Medical Marijuana Tribal Agreements

TECHNICAL ISSUES

Section 2(H) should require the governing body to send a copy of the notice of disapproval to the applicant, as well, if Subsection (I), allowing the applicant 30 days to accept an alternate location, is to be effective.

DOH notes that Subsection (J) refers to transfer of a license (page 5, line 10), but producer licenses are not transferable under DOH rule. See 7.34.4.8 (S) NMAC.

OTHER SUBSTANTIVE ISSUES

DOH points out the bill permits a local governing body to disapprove a location that would be in violation of a zoning ordinance; local governing bodies already hold that power. Likewise, the bill allows the local governing body to disapprove a location that is not in accord with state law, but DOH already holds that authority, as the statutory licensing entity. Department regulations currently require all licensed producer, manufacturer, and lab applicants comply with all applicable local ordinances, including but not limited to zoning, occupancy, licensing, and building codes. A local business license is required before MCP approves a new location. See 7.34.4.19 (L), 7.34.4.13 (A)(1) and 7.34.4.16(E) NMAC. DOH regulations also bar medical marijuana facilities from being within 300 feet of a school, church, or day care. See 7.34.4.19(C)(2) NMAC.

MD/al