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FISCAL IMPACT REPORT

ORIGINAL DATE 2/07/2020

SPONSOR Martinez, J. LAST UPDATED 2/11/2020 HB 334/aHCEDC

SHORT TITLE Cannabis Research Act SB _____

ANALYST Daly

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY20	FY21	FY22		
	Unknown	Unknown	Recurring	Cannabis Regulation Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Unknown	Unknown	Unknown	Recurring	General Fund (RLD)

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with HB160/SB115
Relates to HB169

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Attorney General (NMAG)
Department of Health (DOH)
Department of Public Safety (DPS)

No Response Received

Regulation and Licensing Department (RLD)

SUMMARY

Synopsis of HCEDC Amendments

House Commerce and Economic Development Committee amendments to House Bill 334:

- Revise the definition of cannabis to properly describe the method of measurement (post-decarboxylation);

- Authorize the Cannabis Control Division (CCD) of RLD to include accreditation requirements as it deems appropriate in its rules governing licensing of cannabis research laboratories under the bill;
- Require CCD to adopt a rule requiring licensed laboratories to include a structure designed for year-round growth and equipped to recycle carbon dioxide expelled in exhaust gases generated by natural gas boilers for use in growing crops;
- Strike the two-year residency requirement for initial and renewal licenses, as well as provisions governing demonstration of satisfaction of that requirement (as well as the requirements for a structure allowing for year-round growth, which is to be the subject of a CCD rule pursuant to these amendments); and
- Strike the provision authorizing writs of mandamus to compel CCD to perform its duties under the bill (the provision granting a person aggrieved by an action taken by CCD the right to a hearing remains).

DOH advises that research conducted pursuant to this Act could provide helpful information regarding dosages and strain types most beneficial for medical cannabis patients based on their individual medical conditions.

Synopsis of Original Bill

House Bill 334 enacts the Cannabis Research Act (Act), which authorizes the production, testing, manufacturing and transportation of cannabis products for research purposes by licensed cannabis research laboratories. The bill creates the Cannabis Control Division (Division) in the Regulation and Licensing Department (RLD) which must promulgate rules necessary to carry out its duties under the Act by January 1, 2021, including those related to licensing and otherwise regulating cannabis research laboratories. It creates the Cannabis Research Regulation Fund, administered by the Division, upon appropriation, to fund the Division's duties under the Act. The bill authorizes the imposition of fees on licensees and provides sanctions and penalties up to \$10 thousand for violation of the Act or any rule promulgated by the Division, although sanctions against post-secondary educational institutions are limited to suspension or revocation of a license. It allows a person to seek review of a licensing decision by the Division within 30 days, and any hearing on that matter must be conducted in accordance with the Uniform Licensing Act (ULA). HB334 allows local jurisdictions to adopt reasonable time, place and manner restrictions on activities under the Act, but prohibits an outright ban on them. It also exempts from Schedule I of the Controlled Substances Act (and from prosecution) marijuana (and tetrahydrocannabinols and their chemical derivatives) when used in a manner authorized by the Division's rules under the Act.

The effective date of this bill is July 1, 2020.

FISCAL IMPLICATIONS

This bill creates the new Cannabis Research Regulation Fund, which is subject to appropriation, but any balance at the end of a fiscal year does not revert to the general fund. RLD has not responded to LFC staff request for analysis, so the tables above show projected revenues as unknown, as well as any impact on RLD's operating budget, although costs related to rule promulgation, licensing activities, and other regulating functions assigned to the new division in RLD likely will increase costs to that agency.

SIGNIFICANT ISSUES

NMAG first comments that cannabis is still illegal under federal law. The federal government regulates drugs through the Controlled Substances Act (CSA) (21 U.S.C. § 811), (which does not recognize the difference between medical and recreational use of cannabis). NMAG points out that under 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 CSA, cannabis is classified as a Schedule I drug, which means that the federal government views cannabis as highly addictive and having no medical value. Further, NMAG reports that conflicts between federal and state rules have created a number of difficulties for states that have legalized cannabis use, including collecting taxes, increased risk of serious crime and the inability of an industry legal under state law to engage in banking and commerce.

Looking to the specifics of this bill, NMAG notes that growing cannabis requires water, and water rights are not addressed in the section of the bill that discusses the applicant's qualifications for licensure. See subsection 3(E). See, for example, the requirements imposed on an applicant for a commercial cannabis activity license in SB115, Section 8(C)(4)(b) and (c).

As to licensing the activities authorized under the Act, NMAG notes that there are no provisions for training prior to or upon licensure, nor to maintain a license once it is issued. Additionally, although licensure hearings must be conducted pursuant to the ULA, NMAG notes that HB334 does not make clear whether other provisions of the ULA, such as the requirement for a notice of contemplated action issued prior to hearing or the statute of limitations for initiating action against a licensee, are also applicable to licensing under this Act.

DPS notes that although conviction for an offense “substantially related” to the “qualifications, functions or duties of the applicant entity’s business” is disqualifying, a conviction for the “possession, use, manufacture, distribution or dispensing of” a controlled substance is excluded as an offense deemed substantially related. See, Section 3 (F)(2). DPS comments this means a felony conviction for possession, use, manufacture, distribution or dispensing of heroin, other opioids or methamphetamine would not be an automatic disqualifier. It should be noted, however, that that subsection goes on to require the related sentence, including any term of probation or parole, be completed before the conviction is to be considered not substantially related to the qualifications, functions or duties of an applicant for licensure, and shall not be the sole ground on which to deny a license. Further, that same provision is contained in SB115/HB160, governing licensure of commercial cannabis activity generally under the Cannabis Regulation Act. See Section 8(E)(2).

HB334 provides a six-month window in which the Division is to adopt rules to implement the Act. Given the rulemaking procedures that RLD must follow, that timeframe may not provide sufficient time for promulgation of rules.

ADMINISTRATIVE IMPLICATIONS

NMAG reports that it prosecutes, pursuant to the ULA, administrative violations on behalf of various RLD boards and commissions and those administratively attached to RLD. NMAG points out HB334 does not address which agency, it or RLD, is to prosecute administrative violations of the Cannabis Research Act.

CONFLICT, RELATIONSHIP

By imposing differing licensure requirements, HB334 may conflict with SB115/HB160, the Cannabis Regulation Act. This bill also relates to HB169, addressing water rights and usage for medical cannabis production.

MD/rl/al