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FISCAL IMPACT REPORT

ORIGINAL DATE 2/2/22

SPONSOR STBTC LAST UPDATED 2/15/22 HB 100/STBTCS/aSJC/

SHORT TITLE Cannabis Regulation SB aSFI#1

ANALYST Dinces

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY22	FY23	FY24	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total			See Fiscal Implications			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation and Licensing Department (RLD)
 Environment Department (NMED)
 Office of the State Engineer (OSE)
 Department of Public Safety (DPS)
 Taxation and Revenue Department (TRD)

No Response Received From

Department of Health (DOH)

SUMMARY

Synopsis of SFI#1 Amendment

The Senate floor amendment to Senate Bill 100 (SB100) specifies in Section 6 page 36 that a license can be revoked if the licensee uses water to which they do not have a legal right and specifies that the state engineer will develop a guide regarding water rights and the legal use of water.

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to SB100 strikes the requirement that an applicant demonstrate a legal right to a commercial water supply or water rights from Section 26-2C-7 NMSA 1978. Additionally, the amendment allows for two nonvoting members to be appointed to the Cannabis Regulatory Advisory Committee, one who has ownership of a microbusiness and one who has an ownership interest in a licensed cannabis business.

Synopsis of Original Bill

The Senate Tax, Business and Transportation Committee Substitute for SB100 amends a number of sections in current law impacting cannabis sales, licensing, and regulation including: changes to Section 26-2C-1, *et seq* the Cannabis Regulation Act, Section 26-2B-3 NMSA 1978, the Tax Administration Act, Section 7-1-6.68 NMSA 1978, the Cannabis Tax Act, Section 7-42-4 NMSA 1978, and the Nonprofit Corporation Act, Section 53-8-48 NMSA 1978.

The proposed revisions include changes to the definitions of key terms, such as “Applicant,” “Licensee,” and “Cannabis Microbusiness.”

Beyond changes to definitions, the bill: specifies the process for criminal history background checks; establishes minimum training requirements and specific sales limitations; allows for a joint powers agreement between RLD and NMED regarding inspections; provides clarification regarding gross receipts sales tax; how a non-profit medical cannabis producer can convert its license to a for profit corporation; and increases the number of allowed cannabis plants for cannabis microbusinesses. This amendment also prohibits the sale or consumption of cannabis where liquor is also served and clarifies that, while a server under the age of 21 employed prior to the effective date of this legislation may be grandfathered in and continue employment, the server must be at least 18 years of age.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature. However there is a specification that DOH will transfer, except for administration of the medical cannabis program, regulation of the cannabis program to the cannabis control division (CCD) on June 29, 2021 (see technical issues).

FISCAL IMPLICATIONS

The specified training and criminal background check requirements may require additional staff and technical support, which would likely impact RLD operating expenses, however RLD did not quantify how much or if this would impact their operating budget. Additionally, as the Office of the State Engineer is required to ensure a facility has enough water rights to grow plants, they may need to recertify some businesses due to the increase in plants for microbusinesses. The cost of this has not been specified by the agency. Lastly, DPS will run criminal background checks for licensees, which may add to staff workload and therefore operational budget costs.

According to RLD, due to the increased plant count limit for producer microbusiness and integrated cannabis microbusinesses, the CCD will not collect plant fees for plants that would otherwise be subject to a plant fee if they were grown by a cannabis producer licensee. This amount is currently difficult to calculate given that the New Mexico cannabis market has not yet matured and it is unclear how many plants are needed to meet demand.

NMED states that the primary fiscal impact to NMED from SB100 would be NMED’s ability to enter into a joint powers agreement with RLD to ensure the health and safety of commercial facilities that produce edible or topical cannabis products. The funding NMED believes necessary for these additional duties was included in the executive budget recommendation.

According to RLD and TRD: Proposed revisions clarify how cannabis sales are recorded for the purposes of tracking and dispersing excise taxes. For the Cannabis Excise Tax to be properly assessed, the location of the sale is of critical importance. The proposed revisions align the cannabis excise tax with GRT taxes and provide a clear method to determine the locality where the tax is to be levied.

OSE may need additional staff time or resources to develop the guide for water providers and cannabis licensees regarding the legal use of water and water rights, however according to OSE this would be minimal.

SIGNIFICANT ISSUES

The substitute adds a time limit of December 1, 2023 to allow for non-profit corporations that were incorporated to qualify for a medical producer license to convert under a specific procedure including filing new articles with the Secretary of State.

According to OSE: Increasing plant production limits from no more than 200 total mature cannabis plants to 1,000 plants at any one time would increase that microbusiness facility's consumptive water use by fivefold.

The Senate floor amendment will likely address OSE's concern that licensees may not have valid water rights. As OSE stated in response to the SJC amendment, over the last five months, OSE reviewed between 40-45 proposals from RLD for Cannabis validity checks and to verify that the water right is configured correctly. Fewer than 15 percent of the submitted proposals had valid water rights configured correctly for the intended use. Developing a guide and having the license be revocable may lead to more legal use of water.

NMED points out that NMED and RLD entering into a joint powers agreement to clarify duties for each agency associated with health and safety of adult-use cannabis edible and topical manufacturers and products. RLD has responsibilities in the Cannabis Control Act and NMED has responsibilities through the Occupational Health and Safety Act and the Food Act. The JPA will maximize administrative efficiencies as both agencies carry out their duties and create clarity and regulatory certainty for industry, while avoiding duplicative regulatory oversight.

ADMINISTRATIVE IMPLICATIONS

According to RLD: The CCD will be able to determine its regulatory and administrative relationship in tandem with NMED, allowing each agency to focus efforts on their respective responsibilities and expertise through a joint powers agreement. Additionally, the CCD will be able to collect fees related to the administration of the adult-use and medical cannabis markets as well as fees related to training and education programs. RLD did not specify, but these fees may offset any increase in administrative burden caused by training and background checks.

NMED points out the specific JPA authority in SB100 authorizes RLD and NMED to enter into an agreement that creates administrative efficiencies related to common duties for health and safety of adult-use cannabis edible and topical products. In addition, the JPA authority positions RLD and NMED to provide regulatory certainty and clarity for the industry

According to DPS: The proposed amendment to Section 26-2C-3 H (page 24), and proposed amendments to Section 26-2C-7 J. and K., (pages 39-41) should resolve the issue concerning background checks of applicants for licensure under the Cannabis Regulation Act articulated by the FBI. The FBI described some of the original language as insufficient to "identify the specific category of applicants/licensees falling within its purview, thereby avoiding overbreadth." (*See* Public Law 92-544, 28 C.F.R. Section 20.33(a)(3) and (b) and 50.12(a)). Thus, the statutory change is may be necessary for licensees to undergo the statutorily required background checks.

The amendments authorize DPS rather than CCD to run the fingerprint background checks and share pertinent info with CCD. If passed, the language will be forwarded to the FBI – Criminal Justice Access Integrity Unit to confirm if it will suffice for ORI assignment / approval. However, this cannot be done until the legislation is passed.

ALTERNATIVES

If RLD provides OSE with notice of all applicants to cultivate cannabis, that will assist OSE in policing illegal water use by such applicants.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

According to RLD, OSE, and NMED: There are some consequences that would occur if SB100 was not enacted, including:

- (1) Without changes to the criminal history screening requirements, the CCD will be unable to conduct criminal history screenings that access nationwide criminal history data as intended by the language of the Act;
- (2) Without changes to prohibitions on holding an alcohol and cannabis license, those applicants who have ownership interests in bars, restaurants and other establishments that sell alcohol may be barred from licensure; and
- (3) Lack of jurisdictional clarity on inspections between RLD and NMED could lead to uncertainty regarding regulation and inspection of edibles or topical cannabis.

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