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FISCAL IMPACT REPORT

ORIGINAL DATE 02/21/13

SPONSOR Ortiz y Pino LAST UPDATED _____ HB _____

SHORT TITLE Study Legal Marijuana Economy SJM 31

ANALYST Pahl

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	See Fiscal Implications				Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of District Attorneys (AODA)
 Attorney General's Office (AGO)
 Economic Development Department (EDD)
 Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

Senate Joint Memorial 31 (SJM 31) requests the Economic Development Department (EDD) convene a working group to study the budgetary implications of legalizing and taxing marijuana.

FISCAL IMPLICATIONS

The EDD noted there is no appropriation with this bill and the study could be costly. Because the responsibility of writing the report will fall to the EDD, they believe they will need to commit staff time and one administrative FTE to the project. There may also be travel costs required in order to solicit the input of community stakeholders statewide.

There will be a minimal cost to the other agencies participating in the study for travel and other costs associated with the study. The exact amount is not known.

According to the EDD, any research, information gathering or outside expert assistance will be funded by the participants in the working group or outside groups.

SIGNIFICANT ISSUES

States such as Washington and Colorado have recently legalized marijuana, and others have considered its legalization. The study proposed by SJM 31 would provide the New Mexico legislature with the budgetary impacts corresponding with legalization. Such budgetary implications include revenue from new taxes and fees, the costs of regulation, and the potential cost-savings to the state's criminal justice system.

The working group is to consist of the Secretaries of the EDD, Department of Public Safety (DPS), Taxation and Revenue Department (TRD), Department of Finance and Administration (DFA), and the New Mexico Corrections Department (NMCD); plus the Director of the New Mexico Association of Counties (NMAC), the Chief Public Defender, the Director of the Administrative Office of District Attorneys (AODA), the President of the University of New Mexico, and the Director of the Administrative Office of the Courts (AOC).

The EDD is to report the working group's findings to the LFC and other appropriate interim legislative committees by November 1, 2013.

The study proposed by SJM 31 is to look at "budgetary implications." The study is not designed to consider legal, social, societal and health implications of marijuana legalization. The EDD believes the working group reflects the narrow focus of the study. However, the EDD notes that SJM 31 recognizes the importance of the legal, social, societal and health implications of marijuana legalization because it makes assertions regarding those issues, but does not make those issues part of its requested study.

The Attorney General's Office (AGO) and the TRD noted that resources expended on doing this study may not be well spent because of federal regulations surrounding marijuana. Specifically, the TRD stated state agencies should not use resources on the study proposed in SJM 31 until federal laws and policies allow cultivation and use of marijuana in New Mexico. However, the TRD did indicate that there were no legal issues with respect to forming the committee proposed by SJM 31 or the report it would repair and present. A legal analysis from the AGO is presented in the *other substantive issues* section.

ADMINISTRATIVE IMPLICATIONS

According to the AOC, some administrative resources will be used by the AOC and the other participating agencies to complete this study.

The EDD will have to assign an administrative FTE to organize meetings and communicate as needed to members of the working group, as well as the stakeholders and interested parties.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 465 calls for decreasing marijuana possession penalties.

OTHER SUBSTANTIVE ISSUES

Recognizing that the legislation only proposes the creation of a working group, the AGO offered the following legal analysis of marijuana legalization:

In the preamble, the SJM 31 states that the tenth amendment to the United States constitution "allows states...to remove all state law penalties for all commercial marijuana activity."

However, the question of whether the tenth amendment provides states with such authority is an unresolved legal question. In fact, under the federal Controlled Substances Act, which trumps New Mexico law pursuant to the supremacy clause of the U.S. constitution, see U.S. Const. art. VI, cl. 2, the possession, manufacture, importation, and use of marijuana are prohibited within the United States. 21 U.S.C. §§ 812, 841-844.

Under the tenth amendment, “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” U.S. Const. amend. X. The tenth amendment has been advanced as a basis for invalidating federal regulation of controlled substances, particularly marijuana. See United States v. Oakland Cannabis Buyers Group, 532 U.S. 483, 494 (2001). However, the United States Supreme Court has declined to take up the issue, even when it was raised by a party to the Oakland Cannabis Buyers Group case. Rather, when faced with a challenge to the validity of California’s medical marijuana law in another case, the Court concluded that marijuana regulation through the Controlled Substances Act was constitutional under the Commerce Clause of the U.S. constitution, see Gonzales v. Raich, 545 U.S. 1, 22 (2005), which affords the U.S. Congress the broad power to “regulate [c]ommerce among the several states.” U.S. Const. art. I, § 8, cl. 3. Thus the Supreme Court – which is the ultimate arbiter with respect to constitutional questions - has demonstrated a lack of desire to address the tenth amendment question and has utilized the Commerce Clause to shield the Controlled Substances Act from constitutional attack.

In order for legalization of marijuana to be lawful in New Mexico under the tenth amendment, a federal court with jurisdiction over New Mexico must make an explicit ruling to that effect, expressly invalidating the Controlled Substances Act. Until the courts take that measure (or Congress changes the Controlled Substances Act, legalizing marijuana), any legalization of marijuana in New Mexico will likely be held to be in violation of federal law.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The legislature will be without a budgetary analysis on the legalization of marijuana.

MMP/blm:svb