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FISCAL IMPACT REPORT

SPONSOR <u>Romero, A/Martínez, J</u>	LAST UPDATED <u>3/9/23</u>	ORIGINAL DATE <u>2/17/23</u>
SHORT TITLE <u>Cannabis Regulation Changes</u>	BILL NUMBER <u>House Bill 313/aHGEIC/aHJC/aHFI#1/aHFI#2</u>	ANALYST <u>Daly</u>

REVENUE* (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25		
\$30.0	\$40.0	\$50.0	Recurring	General Cannabis Regulatory Fund

Parentheses () indicate revenue decreases.
*Amounts reflect most recent version of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	\$200.0	\$0.0	\$0.0	\$200.0	Nonrecurring	General Fund
	\$257.0	\$257.0	\$257.0	\$771.0	Recurring	General Fund
Total	\$457.0	\$257.0	\$257.0	\$971.0		General Fund

Parentheses () indicate expenditure decreases.
*Amounts reflect most recent version of this legislation.

Sources of Information

LFC Files

Responses Received From

Department of Public Safety (DPS)
New Mexico Attorney General (NMAG)
Regulation and Licensing Department (RLD)

SUMMARY

Synopsis of HFI#2 Amendments to House Bill 313

The House Floor #2 amendments to House Bill 313 clarifies packaging requirements pertaining to child safety by requiring the packaging be opaque and not mimic a brand, design, name, logo, or coloring of a noncannabis consumer product traditionally marketed to children. Additionally, the amendments require packages and labels not use cartoons, symbols, or images (including images of celebrities or their likenesses) that are commonly used to market to minors.

Synopsis of HFI#1 Amendments to House Bill 313

The House Floor #1 amendment to House Bill 313:

- Directs the Cannabis Control Division (CCD) to promulgate rules allowing for the conversion of producer microbusiness and integrated cannabis establishment licenses to producer and vertically integrated cannabis establishment licenses prior to the original license's expiration;
- Directs CCD to prorate fees for licenses that are so converted and apply licensing fees that have already been paid to the prorated balance; and
- Limits the CCD's power to summarily suspend a license to only those situations when the licensee poses a threat to public health, safety or welfare.

Synopsis of HJC Amendments to House Bill 313

The House Judiciary Committee amendments to this bill revise the definition of “cannabis research laboratory” in the Cannabis Regulation Act to exempt such a facility from the plant limits imposed elsewhere in the act. The amendments also exempt these facilities from the additional \$50 annual fee per mature cannabis plant at the time of licensing or renewal.

Synopsis of HGEIC Amendments to House Bill 313

The House Government, Elections and Indian Affairs Committee amendments to HB313:

- Strike new language creating a cannabis nursery license and other provisions related to that license;
- Revise the total mature cannabis plant count for cannabis producer and integrated cannabis microbusinesses from 200 to one-tenth of that count as set by the CCD for large cannabis producers; and
- Strike Section 16(B)(5), which added a prohibition that appears to be duplicative of Section 16(A)(4).

Synopsis of Original House Bill 313

House Bill 313 amends the Cannabis Regulation Act (CRA), as amended by HGEIC:

- Language providing for a cannabis nursery license and provisions related to that license are stricken by the HGEIC amendment;
- The HGEIC amendments change the plant count limitation for cannabis producer and integrated cannabis microbusinesses from 200 to one-tenth of the count set by the CCD for large cannabis producers;
- Create an equity division within the cannabis control division (CCD) of RLD to oversee the social and economic equity initiatives of the CRA;
- Remove CCD from the requirements of the Uniform Licensing Act (ULA) and establish new powers, including summary suspension, and administrative hearing procedures on licensing matters;
- Remove fees for vertically integrated cannabis establishments;
- Limit the requirement that cannabis packaging be compostable and recyclable or made from recycled materials only when that is possible;

- Allow for forfeiture of seized cannabis and cannabis products for unlicensed activities under the Forfeiture Act;
- Bar synthesis of tetrahydrocannabinol except under stated conditions;
- Grant investigative authority and powers to CCD to enforce the CRA, including the power to issue subpoenas and exchange identification records and information with law enforcement agencies for official use only; and
- Allow CCD to request DPS provide investigatory and enforcement support.

The HGEIC amendments revise HB313’s amendments to the Nonprofit Corporation Act to allow nonprofits organized for medical cannabis licensure under the Lynn and Erin Compassionate Use Act (LECUA) to convert into a for-profit corporation, subject to the provisions of Section 16(B)(4). The HGEIC amendments also strike what appears to be unnecessary language in Section 16(B)(5).

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

As to revenues, RLD anticipates a slight increase in year-over-year revenue of \$30 to \$40 thousand dollars due to the removal of the cap on vertically integrated business licenses. RLD does not anticipate any significant loss of revenue due to the increased plant count limits for microbusiness producers and integrated microbusinesses.

RLD does, however, anticipate a significant increase in expenditures under HB313 as amended. It estimates it will need an additional five FTEs, both to support the new equity bureau as well as the new administrative hearing and appeals process, for a total annual cost of \$257.3 thousand. In addition, RLD advises there will be the unavoidable costs that will result from changes to the Salesforce platform online electronic licensing system that is utilized by the RLD for all licensing actions under the CRA, as well as costs related amendments/enhancements to the contractual services for the cannabis plant tracking system/database (BioTrack) utilized for tracking all cannabis plants possessed by CRA licensees. RLD’s estimates for FY23 shown in the Operating Budget Impact table includes a one-time \$200K necessary to update and upgrade the Salesforce online licensing applications system to address the changes being made to Vertically Integrated Cannabis Establishment licenses and to Microbusiness Producer and Integrated Microbusiness license types, which work will need to take place before the end of FY23 so those systems are ready for license applications and renewals beginning July 1, 2023, for FY24. These costs may also include the updates/upgrades that must be made to the BioTrack seed-to-sale tracking system.

SIGNIFICANT ISSUES

RLD first expresses concern over Sections 4 and 10 of HB313, which removes licensing and disciplinary proceedings and actions under CRA out from under the requirements of the ULA, and providing a new set of procedures governing administrative proceedings. It comments that this change:

Seems to run contrary to the fundamental concept of having a “uniform” licensing act for our state. A question arises concerning the reasonable expectations of licensees, and the public at large, concerning how a state agency will handle issues like the appellate rights

of an individual who has been subjected to an agency action. Confusion regarding this subject will, perhaps, be understandable when different processes and procedures are adopted for individual divisions within one state department, such as the RLD. Further, it should be considered that the majority of the divisions of the RLD (as well as the more than thirty (30) boards and commissions administratively attached to the RLD) are required by law to operate under the terms of the ULA. This means that the large majority of the staff of the RLD are familiar with compliance with the ULA in regards to administrative actions such as the approval or denial of licensing applications, the imposition of disciplinary sanctions on licensees, etc. If a separate, distinct set of administrative procedures are created for the CRA/CCD, much of which does not follow the requirements of the ULA, one result of that change will be to make it more difficult to cross-train or utilize staff across the RLD's separate divisions in situations where there may be a particular "crunch" for one division or another on licensing matters, regulatory actions, etc.

RLD also asserts that Section 10 raises a matter of significant concern to RLD. That Section makes it unlawful to "synthesize any tetrahydrocannabinol without prior approval from the [CCD] and sufficient scientific evidence showing that synthesized tetrahydrocannabinol will not cause a significant threat to public health and safety." RLD comments:

No staff of the CCD (or other division of the RLD) has the training or expertise that would clearly be necessary to perform the detailed scientific analysis necessary to determine that any particular process or operation meets the standard necessary to conclude that "synthesized tetrahydrocannabinol will not cause a significant threat to public health and safety." This is simply not a function that the CCD is qualified to perform. Any such decision that might be made by the CCD on this topic would certainly expose the RLD, and the State of New Mexico as a whole, to claims for liability. At the least, if this provision of HB313 is enacted, it would become a virtual certainty that the CCD/RLD/State would be pulled into costly litigation on this subject.

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