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## FISCAL IMPACT REPORT

**LAST UPDATED** \_\_\_\_\_

**SPONSOR** Lujan/Sariñana/Cates/Jaramillo/Lara **ORIGINAL DATE** 2/23/23

**BILL**

**SHORT TITLE** Cannabis Seed-to-Sale Tracking System **NUMBER** House Bill 493

**ANALYST** Daly

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\* (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	\$520.0			\$520.0	Nonrecurring	General Fund
	At least \$725.5	At least \$725.5	At least \$725.5	\$2,176.5	Recurring	General Fund

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

### Sources of Information

LFC Files

Responses Received From  
Regulation and Licensing Department (RLD)

## SUMMARY

### Synopsis of House Bill 493

House Bill 493 amends the Cannabis Regulatory Act (CRA) to require:

- All cannabis, except that grown for personal use, and cannabis products to be tracked in a state-maintained system that tracks seed or immature plants until sale;
- Cannabis and cannabis recalls be included in the track and trace system;
- The cannabis control division (CCD) of RLD conduct at least two compliance checks at each cannabis retailer on an annual basis and at least one compliance check annually on all other cannabis establishments; and
- The CCD to post specified information related to cannabis industry compliance checks, actions and complaints, including anonymous tips, violations, enforcement activities, and supply chain activity on the CCD’s official website.

The effective date of this bill is July 1, 2023.

## FISCAL IMPLICATIONS

According to RLD, given the geographic size of New Mexico and the requirements to visit each retail location at least twice a year, and all other locations at least once a year, the CCD’s

compliance team would need to increase its number of full time equivalent (FTE) staff substantially, and rapidly. Currently, there are 723 licensed cannabis retail premises throughout the state with an additional 1,484 locations for all other premises licensed under the CRA. The mandates of HB493 would require the CCD to conduct approximately a minimum of 2,930 standard inspections at cannabis retail locations and an additional 1,484 inspections to cover all other CRA licensed locations.  $[(2 \times 723) + 1,484 = 2,930]$  However, RLD warns, in any given year the CCD may be conducting inspections at licensed premises that arise from complaints received by the CCD, as well as conducting follow-up inspections at locations where any violations or discrepancies are found (in order to insure the licensee's compliance with any corrective actions ordered), which means the actual number of compliance inspections that will be conducted by the CCD each year will significantly exceed the minimum number required by HB493.

In order to fulfill the inspection requirements imposed by HB493, RLD reports the CCD will require additional office space/workspace for additional CCD staff to be stationed on the Eastern side of the state in order permit the CCD to be able to timely and efficiently conduct inspections of the substantial number of CRA licensees in that area. RLD estimates that 13 additional FTE staff positions must be added to the CCD's compliance staff in order to fulfill the inspection duties mandated by HB493: 10 of those positions would be compliance officers, with an additional three investigators. The 10 compliance officers would be Compliance-O positions, at pay band 55. Assuming the midpoint of \$45,412 for each position, RLD estimates it would require an additional appropriation of \$454,120 for FY24 (recurring annually thereafter). The three investigators would be state investigators, at pay band 65. Assuming the midpoint of \$57,140 for each position, RLD would require an appropriation of \$171,420 in FY24 (recurring annually thereafter). Staffing costs for all 13 positions would total \$625,540 annually. In order to effectively carry out their job assignments, each compliance officer and investigator would need access to a vehicle to conduct their respective inspections and investigations, so in turn the Division estimates it needs an additional 13 vehicles, with the funding for the vehicle purchases in FY24, and funding for necessary vehicle operation/maintenance costs recurring annually.

For an office space of a size that would be needed to be obtained in the Eastern New Mexico area, the RLD estimates an annual cost of \$100 thousand.

To purchase the additional 13 vehicles in FY24, RLD estimates a one-time cost of \$520 thousand  $[13 \times \$40,000 = \$520,000]$ .

RLD notes that the dollar amounts reflected in the "Estimated Additional Operating Budget Impact" section, above, do not include the funding that would be necessary in the event the CCD is required to develop and maintain its own custom software track and trace system.

## **SIGNIFICANT ISSUES**

RLD reports:

The CCD currently utilizes a cannabis "seed to sale" track and trace system that captures much of the information required by this bill. The current track and trace system is a commercial application known as "BioTrack" that the RLD and the Department of Health have obtained from a commercial vendor under contract, with that system being operated and maintained by the commercial vendor. Working from the assumption that the

RLD/CCD will continue to be able to utilize a commercially available track and trace system if HB493 is enacted, there would need to be significant changes made to the system to ensure that all information proposed by HB493 is included in that system. The existing contract between the state and the track and trace system is set to expire at the end of calendar year 2023. To comply with the mandates of this bill by July 1, 2023, would require an amendment to the existing contract initially signed between the Department of Health’s Medical Cannabis Program and BioTrack.

It warns, however, that requirement that the CCD “shall develop and maintain a seed-to-sale tracking system”, as Section 2 of HB493 is currently worded, may be interpreted as a mandate that the tracking system would have to be developed as a custom software system that would be the property of the CCD/RLD/state (as opposed to a commercial software product that could be obtained under contract/license, as is the case with the BioTrack system). RLD reports this issue needs to be clarified in the bill:

As the cost to develop a custom software track and trace system would: (1) involve a substantial front-end cost to the RLD, likely in the millions of dollars; and (2) would require work to begin immediately upon HB493 being signed by the Governor so the RLD could prepare a request for proposals (RFP) for software development of a cannabis track and trace system.

## **PERFORMANCE IMPLICATIONS**

According to RLD, currently CCD conducts randomized inspections as well as licensee site-visits based primarily on complaints received. To meet the provisions of this bill, staffing will need to rapidly increase to ensure CDD can conduct all required inspections. Additionally, RLD reports CCD currently has a dashboard on its website tracking sales information across the state. The bill’s language would require the Division to expand that dashboard to include specific compliance related data. Given that CCD already has a basic infrastructure for a dashboard, importing compliance data should be relatively straightforward.

## **TECHNICAL ISSUES**

Page 3, lines 11-12: RLD suggests that to be consistent with the language of the CRA, which uses commonly accepted industry language, the phrase “black- and gray market” should be replaced with “illicit market”.

## **AMENDMENT**

RLD recommends that HB493 be amended to clarify whether the intent of HB493 allows RLD to purchase a commercially available cannabis track and trace system, or if the system must be customized for and owned by RLD. Further, RLD explains that if HB493 does require that the CCD “develop and maintain” its own custom cannabis track and trace system, even if the process for issuing an RFP began immediately, it is extremely unlikely that any workable new system could be developed and implemented by July 1, 2023. RLD requests language be incorporated into HB493 to permit CCD to utilize a commercial track and trace product until such time as a new custom software system could be designed, built, tested and rolled out for RLD use.

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