

LFC Requester:	
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AGENCY BILL ANALYSIS  
2017 REGULAR SESSION

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*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

Check all that apply:  
Original  Amendment   
Correction  Substitute

Date Feb. 7, 2017  
Bill No: HB 155

Sponsor: Deborah A. Armstrong  
Short Medical Cannabis Research  
Title: \_\_\_\_\_

Agency Code: 264  
Person Writing Gary Cade  
Phone: 505-507-7752 Email cadeabq@gmail.com

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY17	FY18		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	<b>FY17</b>	<b>FY18</b>	<b>FY19</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis:

HB 155 would transfer 10% of the funds collected by the medical cannabis fund to a newly created “cannabis research fund” along with any appropriations, income from investment of the fund and other money accruing to the fund, “to provide for research into the production, uses, effects and efficacy of medical cannabis.” It would also create a “cannabis research advisory council,” (one qualified patient, one licensed producer, one practitioner, one representative from a laboratory licensed to test medical cannabis, one representative of the health department and another individual chosen by the UNM health sciences chancellor) to advise on research relating to cannabis.

The bill would also protect a person conducting or assisting with research into medical marijuana from being, “subject to arrest or prosecution, penalized in any manner or denied any right or privilege for the production, possession, distribution or dispensing or cannabis, or purchase of cannabis from a licensed producer, if the researcher’s production, possession, distribution, dispensing or purchase of cannabis is solely for the purpose of research conducted pursuant to the Lynn and Eric Compassionate Use Act.”

**FISCAL IMPLICATIONS**

Unknown.

**SIGNIFICANT ISSUES**

HB 155 appears to conflict with federal law which classifies marijuana as a Schedule I controlled substance and makes it a crime to manufacture, distribute or possess marijuana. See, 21 U.S.C. Sec. 812(c) and 21 U.S.C. Sect. 812(a) and 21 U.S.C. Sect. 844(a). Distributing, possessing and using marijuana, even for medical purposes under California’s medical marijuana act, was held to be illegal under federal law, with the sole exception of federally approved research. *Gonzales v. Raich*, 545 U.S. 2195 (2005). Congress’ commerce clause authority includes the power to prohibit local cultivation and use of marijuana even if the cultivation and usage was in compliance with California’s medical marijuana law. Id. New Mexico has also classified marijuana as a Schedule I controlled substance, finding that it “has a high potential for abuse; and has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.” See, Sect. 30-31-5(A), NMSA 1978 and Sect. 30-31-6(E), NMSA 1978. Of course,

New Mexico has also adopted the Controlled Substances Therapeutic Research Act, See, Sect. 26-2A-1, et seq., NMSA 1978 and the Lynn and Eric Compassionate Use Act. See, Sect. 26-2B-1, et seq., NMSA 1978

In reliance on the state statutes, appellate courts in New Mexico have approved medical marijuana prescribed for injured workers and upheld their employer's duty to pay for that treatment, despite the contrary federal law. See, *Vialpando v. Ben's Automotive Services*, 2014-NMCA-084, cert. den. (2014); Accord, *Maez v. Riley Industrial*, 2015-NMCA-049 and *Lewis v. American General Media*, 2015-NMCA-090. The NM Court of Appeals determined that requiring the employers, and their workers' compensation insurers, to pay for medical marijuana did not violate federal law and federal policy—which they found to be ambiguous, but instead was required by the clear state policy as expressed by the Compassionate Use Act (Sect. 26-2B-1, *et seq.*, NMSA 1978). They relied, *inter alia*, upon the memoranda issued by the Deputy United States Attorney General giving guidelines to federal prosecutors after state ballot initiatives that legalize marijuana under state law and provide for the regulation of state marijuana production, processing and sale.

The *Lewis* decision also cited a special amendment or rider to the Consolidated and Further Appropriations Act, enacted December 16, 2014 to fund the federal government in FY2015, and quoted part of its language: "(N)one of the funds made available in this Act to the Department of Justice may be used with respect to the States of...Alabama...New Mexico (et al)...to prevent such States from implementing their own State laws that authorize the use distribution, possession or cultivation of medical marijuana." That rider, and a later enactment, have also been cited by a federal appeals court to affirm a lower court decision to prohibit the federal government, "from preventing implementation of those specific rules of State law that authorize the use, distribution, possession or cultivation of medical marijuana." *U. S. v. McIntosh*, 833 F.3d 1163 (9<sup>th</sup> Cir. Ct. App.) 2016

HB 155 has numerous references that indicate the research would deal with medical marijuana, and not any other potential uses for marijuana. If limited to medical research, it appears that the federal government would allow cannabis research and its included protections to proceed, especially if the research is federally approved. However, a new President and Congress took office in January 2017 so the guidelines and policy noted above, from the then deputy AG and in the appropriations rider, could be changed.

## **PERFORMANCE IMPLICATIONS**

## **ADMINISTRATIVE IMPLICATIONS**

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

## **TECHNICAL ISSUES**

The language discussing the cannabis research fund is confusing. It is unclear if the term "fund" always refers to the original medical cannabis fund, or if it is intended in later, non-specific recitations to refer to the cannabis research fund.

## **OTHER SUBSTANTIVE ISSUES**

## **ALTERNATIVES**

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo.

## **AMENDMENTS**