

LFC Requester:	
----------------	--

AGENCY BILL ANALYSIS  
2017 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)

and

[DFA@STATE.NM.US](mailto:DFA@STATE.NM.US)

*{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. 8, 2017  
Bill No: HB 334

Sponsor: James G. Townsend, et al  
Short Local Approval of Medical  
Title: Marijuana Locations

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 334 would establish a time-specific procedure to require a local government (municipality or county) to hold a public hearing to consider a proposed location for a new license for a medical marijuana producer to use before that site could be approved by the secretary of the state health department (“secretary”). If the governing body did not approve of the location proposed by the secretary, based on three specific criteria for rejection, they would be required to identify available and alternative locations within its jurisdiction that the secretary and governing body would approve. The secretary would be required to notify the producer of the disapproval and offer of alternative site(s), and the producer would be forced to accept the location selected by the local government or not have their license approved. Failure by the governing body to act within 30 days after a public hearing on the proposed marijuana producer’s location would be deemed an approval of the site initially proposed. If the producer failed to accept the alternative location within 30 days of their notification by the secretary their license would be disapproved.

#### **FISCAL IMPLICATIONS**

Unknown.

#### **SIGNIFICANT ISSUES**

HB 334 lists the criteria that the governing body can use to require the secretary to reject a proposed new medical marijuana producer license in their jurisdiction: “(1) the proposed location is within an area where the sale of cannabis is prohibited by the laws of New Mexico; (2) the proposed location would be in violation of a zoning or other ordinance of the governing body; or (3) the proposed location would be detrimental to the public health, safety or morals of the residents of the municipality or county.” The third criteria does not provide specific guidance on how it should be applied. Even if a local government disapproves a location initially proposed, it would still be required by the bill to, “identify available and appropriate locations within its jurisdictions that the secretary of health and the governing body would approve.” A potential licensee whose application was denied might challenge being forced to accept an alternative location, or none at all. The governing body would probably need to make detailed and objective findings that explain how the location initially requested would be detrimental to public, health, safety or morals but an alternative location, chosen by the governing body, would not be. A dissatisfied producer might also challenge a rejection if a zoning or other ordinance appears to favor a business, group or individual without sufficient justification for the distinction.

As drafted, HB 334 requires a local governing body that disapproves the location for a new medical marijuana producer proposed by the secretary to notify the secretary within 30 day and identify available and appropriate locations within its jurisdiction that it would approve and that are acceptable to the secretary. It further requires the proposed licensee to accept a proposed alternative within 30 days of the governing body's disapproval. Unless the secretary has included a list of acceptable alternatives in their initial notification to a local government that they are considering issuance of a new producer's license, it seems like it will be hard for all parties to reach an agreement within the 30-day deadline.

It is possible that the governing body could propose an alternative location but the secretary could ask for another one; since virtually all governing bodies of local governments are part-time, they might not be able to timely prepare their response, and possibly identify another location, to the secretary's reply to their notification that the secretary's initial location had been rejected. It's possible that the local government could offer multiple alternative locations and but the secretary did not approve of any. The potential producer would also likely want or need additional time, after the local government and the secretary agreed on an alternative location, to do certain due diligence about an alternative site (e.g. consider availability of utilities, transportation access, parking, purchase or rental cost for the proposed location and conclude related negotiations, etc.) before the producer could decide whether to also accept the alternative. And if the potential producer wanted a location suggested as an alternative by the local government but the secretary would not approve it, litigation might also ensue on that basis.

## **PERFORMANCE IMPLICATIONS**

## **ADMINISTRATIVE IMPLICATIONS**

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

## **TECHNICAL ISSUES**

## **OTHER SUBSTANTIVE ISSUES**

## **ALTERNATIVES**

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

Status quo.

## **AMENDMENTS**