

LFC Requester: _____

**AGENCY BILL ANALYSIS
2017 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

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: SJR 19

Sponsor: Gerald Ortiz y Pino
Short Possession & Personal Use
Title: of Marijuana, CA

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)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(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: SJR 19 would add a new section to Article 20 of the New Mexico Constitution to make “Possession, and personal use of marijuana...lawful by persons twenty-one years of age and older,” but only if the legislature provides by law “for the production, processing, transportation, sale, taxation, and acceptable quantities and places of use of marijuana to protect public health and safety.”

FISCAL IMPLICATIONS

If passed, and adopted by the voters, the resolution would require creation of administrative procedures and the necessary employees to regulate the possession and use of marijuana, including production, processing, transportation, taxation and sales.

SIGNIFICANT ISSUES

SJR 19 is in direct 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. Sec. 812(a) and 21 U.S.C. Sec. 844(a). The supremacy clause, in Article VI of the United States Constitution, would override any contrary decision by the state. 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 it was in compliance with California’s law. Id.

President Obama and Attorney General Holder have—so far—declined to prosecute persons using medical marijuana, or persons using marijuana for recreational purposes in the four states that have legalized it under their states’ laws. However a different administration could take a different view and a new President will be elected in 2016, if and when this proposed amendment to the New Mexico Constitution is voted upon. Last February Deputy U.S. Attorney General James Cole issued guidelines for federal prosecution of marijuana crimes: preventing distribution to minors; preventing revenue from the sale of marijuana from going to criminal enterprises, gangs and cartels; preventing the diversion of marijuana from states where it is legal under state law in some form to other states; preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity; preventing violence and the use of firearms in the cultivation and distribution of marijuana; preventing the growing of

marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and, preventing marijuana possession and use on federal property.

The Attorneys General for the states of Nebraska and Oklahoma are preparing a suit against the state of Colorado. They are asserting that their states, as neighboring states to Colorado, are having to bear the costs associated with an increasing number of marijuana-related cases in their states while Colorado reaps the financial rewards, and that federal law must trump the Colorado state law permitting recreational use. No quantification in support of their claims of undue burden have been published yet, and one Oklahoma legislator is asking his AG to drop the case because of a concern that it may erode states' rights reserved to them under Amendment X to the U.S. Constitution.

The federal-state law conflict is having a direct effect on financial transaction in the states that have legalized marijuana. The Department of Justice issued a memorandum on that subject: "The provisions of the money laundering statutes, the unlicensed money remitter statute and the Bank Secrecy Act (BSA) remain in effect with respect to marijuana-related conduct. Financial transactions involving proceeds generated by marijuana-related conduct can form the basis for prosecution under the money laundering statutes (18 U.S.C. Secs. 1956 and 1957), the unlicensed money transmitter statute (18 U.S.C. Sec. 1960) and the BSA. Sections 1956 and 1957 of Title 18 make it a criminal offense to engage in certain financial and monetary transactions with the proceeds of a "specified unlawful activity," including proceeds from marijuana-related violations of the (Controlled Substances Act) CSA. Transactions by or through a money transmitting business involving funds "derived from" marijuana-related conduct can also serve as predicate for prosecution under 18 U.S.C. Sec. 1960. Additionally financial institutions that conduct transactions with money generated by marijuana-related conduct could face criminal liability for, among other things, failing to identify or report financial transactions that involved the proceeds of marijuana-related violations of the CSA. See, e.g., 31 U.S.C. Sec. 5318(g). Notably for these purposes, prosecution under these offenses based on transactions involving marijuana proceeds does not require an underlying marijuana-related conviction under federal or state law." At least one Colorado marijuana business has been charged with money laundering and an additional charge accuses as individual of attempting an illegal financial transaction by trying to deposit proceeds from a medical marijuana dispensary into a bank account. See, U.S. v. Hector Diaz, et al., 13-CR-00493 REB (D-Colo).

Banks and other financial institutions are wary of providing financial services to marijuana businesses so it has remained largely a cash only business, including employment payroll. That raises security and safety issues for the businesses and their employees. It is unclear how the businesses can pay the IRS required payments for Social Security, Medicare and income taxes. A similar problem may exist for employees who are paid in cash in trying to make their tax payments. The Internal Revenue Code provides that no deduction or credit may be allowed for any amount or credit on any trade or business if such trade or business consists of trafficking in a controlled substance (within the meaning of Schedules I and II of the Controlled Substances Act) which is prohibited by any federal law or any state law where the trade or business is done. See, Section 280E.

There are currently 23 states, including New Mexico, the District of Columbia and Guam that permit medical marijuana. See, e.g., Sec. 26-2B-1, et seq., NMSA. Reportedly, in the states that have legalized marijuana, many marijuana users are pursuing medical marijuana cards because it is cheaper to buy, especially where recreational marijuana is heavily taxed.

A 2013 national survey on drug use and health found 19.8 million people had used marijuana in the past month. The study also found that daily, or almost daily, use of marijuana (used on 20 or more days in the past month) had increased to 8.1 million persons from 5.1 million in 2005. SJR 2 provides that only persons 21 years old or older may lawfully possess and use marijuana. However if marijuana possession and use are made more accessible in New Mexico it is likely that it will become more available to persons under 21, including children under age 18. It is also likely that if marijuana usage increases, the number of persons driving a vehicle after ingesting marijuana, or even while using it, will also increase. There is currently no plain or specific limit for driving while under the influence of any drug. Instead, the current statute says, "it is unlawful for a persons who is under the influence of any drug to a degree that renders the person incapable of safely driving a vehicle to drive a vehicle within the state." See, Sec. 66-8-102(B), NMSA. The prosecution of those cases are challenging, especially when the driver is suspected, or proven, to being under the influence of poly-drug combination, or alcohol and drugs. Expert testimony requirements will increase and trials will probably be longer, more complicated and more expensive.

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