

LFC Requester:	
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**AGENCY BILL ANALYSIS
2018 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 Jan. 18, 2018
Bill No: HM5

Sponsor: Bill McCamley
Short Title: Federal Law to Protect Medical Cannabis

Agency Code: 264
Person Writing Gail MacQuesten
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY18	FY19		
0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY18	FY19	FY20		
0	0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	0	0	0	0	n/a	n/a

(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:

HM5 resolves that a formal request be made to the New Mexico congressional delegation to create new legislation protecting medicinal cannabis users in New Mexico from the threat of being sent to federal prison.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

There are no fiscal implications for the district attorneys.

SIGNIFICANT ISSUES

Marijuana use is illegal under federal law, while New Mexico has legalized the use of cannabis for medical purposes since 2007 under the Lynn and Erin Compassionate Use Act. As described in HM5, until recently the Department of Justice has refrained from enforcing federal cannabis laws in states that have legalized its use. However, in January 2018, United States Attorney General Jeff Sessions reinstated a policy of enforcing the federal marijuana laws in states that have legalized its use. To protect the over forty thousand patients in this state who use medicinal cannabis, HB5 requests that New Mexico’s congressional delegation create new legislation protecting medicinal cannabis users.

Marijuana is illegal under the federal Controlled Substances Act, which creates a comprehensive, closed regulatory regime criminalizing the unauthorized manufacture, distribution, dispensing, and possession of substances classified in any of the Act’s five schedules. Marijuana is classified under Schedule 1, which carries the most severe restrictions on access and use. According to the Controlled Substances Act, a Schedule 1 drug “has a high potential for abuse...has no currently accepted medical use in treatment in the United States [and] there is a lack of accepted safety for use of the drug or other substance under medical supervision.” 21 U.S.C. 812(b)(1).

Since the enactment of the Controlled Substances Act, however, a number of states have legalized marijuana for medicinal or recreational purposes. This has set up a potential conflict

between federal and state law.

The United States Supreme Court held that Congress' authority under the Commerce Clause includes the power to prohibit the local cultivation and use of marijuana – even where that cultivation and use is completely intrastate and is in compliance with state law. See *Gonzales v. Raich*, 545 U.S. 1 (2005). See also *Gonzales v. Oregon*, 546 U.S. 243 (2006).

For a detailed discussion of the legal implications, see the 2012 report prepared by the Congressional Research Service, “Medical Marijuana: The Supremacy Clause, federalism, and the Interplay Between State and Federal Laws.” <https://fas.org/sgp/crs/misc/R42398.fdf>.

PERFORMANCE IMPLICATIONS

There are no performance implications for the district attorneys; state district attorneys do not enforce federal law.

ADMINISTRATIVE IMPLICATIONS

See Performance Implications, above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None noted.

TECHNICAL ISSUES

None noted.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

None proposed.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The New Mexico house of representatives will not send a formal request to the New Mexico congressional delegation to create new legislation protecting medical marijuana users in New Mexico.

AMENDMENTS

None proposed.