



October 16, 2019

Governor Michelle Lujan Grisham  
Office of the Governor  
Dear Governor Lujan Grisham,

I am pleased to present to you this executive summary from your Work Group on Marijuana Legalization.

You charged our group to make recommendations for legalization with four primary tenets: maintain and expand our robust medical cannabis program, install public safety protections to protect minors and identify and prosecute those who misuse legal cannabis, create strong testing and labeling, and provide equity and economic opportunity for every community, including those disproportionately impacted by prohibition drug policies.

We quickly found that no state had achieved those goals to our satisfaction. That provides New Mexico with a huge opportunity to learn from others as we build a system that truly works for all of New Mexico.

I am incredibly proud of the members of the work group you appointed. Over the course of the last hundred days, we identified 30 different issues to be studied, reviewed 101 pages of public policy research, answered 279 policy questions, held 30 hours of public meetings, and took in more than 200 pages of public written comment on our website.

The report we are submitting includes two parts: an executive summary of our top recommendations and an overview of the fees and licensing structure to support our recommendations, and a more detailed analysis of our deliberations and technical recommendations which we will submit to LCS bill drafters.

As you will see, we are recommending an entirely new model for building a recreational program. We intend to protect patient access and affordability with a "patient first" supply model. It requires licensees to build and maintain strong medical programs before entering the recreational market. We listened to concerns from law enforcement that officers need new training and tools to identify and investigate drugged driving and that New Mexico should tread lightly in adopting policies from other states that had unintentionally created stronger illicit markets. And we propose using new revenue to reinvest in low-income and communities of color, including access to new cannabis licenses and jobs that create new wealth.

Together, we believe the framework we are submitting is right for New Mexico. It is clear that we have both the necessary apprehension that goes with this venture, as well as the talent and capital to make this happen the right way. Done well, we will create more than 11,000 new jobs - more than education and mining combined - in communities statewide. And by giving local leaders the ability to regulate the time, place and manner of retail, we preserve important local control options so that Albuquerque and Roswell can develop with this industry on their own terms.

I also want to especially acknowledge the state departments, agencies, public groups and organizations that presented to our work group. We heard from the state's police and sheriff's associations, worker's compensation administration, health care professionals, patient advocates, family farmers, community colleges, and small business associations. We hosted a "seed to sale" tour of cannabis industry locations with local cannabis businesses, and some members of the group traveled to Colorado to visit with state regulators from 20 states during a national conference.

Respectfully submitted,

Albuquerque City Councilor  
Chairman



## OUR MEMBERS

- Albuquerque City Councilor Pat Davis, Chair
- State Sen. Cliff Pirtle, R-Roswell
- State Rep. Javier Martinez, D-Albuquerque
- Environment Secretary James Kenney
- Health Secretary Kathy Kunkel
- RLD Superintendent Marguerite Salazar
- Senior Economist James Girard of the Taxation and Revenue Department
- Matthew L. Garcia of the Office of the Governor
- Matt Baca of the Office of the Attorney General
- Medical cannabis patients Erin Armstrong & Heath Grider
- Doña Ana County Sheriff Kim Stewart
- Les Rubin of Picuris Pueblo
- Rachael Speegle of the Verdes Foundation
- Ryan Gomez of PurLife Management Group
- Jim Griffin of Everest Apothecary
- Emily Kaltenbach of the Drug Policy Alliance
- Shannon Jaramillo of Cannabis New Mexico Staffing
- Grace Phillips of the New Mexico Assoc. of Counties
- Lorin Saavedra of Southwest Capital Bank
- Construction industry representative Sam Baca
- Dr. Dan Duhigg, OD, Presbyterian Healthcare
- Richard Guay, United Food and Commercial Workers Union

## ADDITIONAL COMMENTS FROM

NM SHERIFF'S ASSOC., NM ASSOC OF CHIEFS OF POLICE, ACLU-NM, YOUNG WOMEN UNITED, ASSOC OF COMMERCE & INDUSTRY (ACI), NATURAL RX, NM MUNICIPAL LEAGUE, MOUNTAINTOP EXTRACTS, BANG INDUSTRIES, NM CANNABIS CHAMBER OF COMMERCE, NORTHERN NM COMMUNITY COLLEGE, CITY OF LAS CRUCES, NM CANNABIS PATIENT ALLIANCE, HARVEST FOUNDATION, NM WORKERS COMPENSATION ADMINISTRATION, KELLY O'DONNELL, OFFICE OF SUPT OF INSURANCE, LLANO FARMS (CURRY CO.)

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**“If you find a bill sheriffs, the ACLU, and defense attorneys can all live with, you should pass it. ”**

Sierra County Sheriff Glen Hamilton  
*Legislative liaison, NM Sheriff's Association,  
Sept. 25, 2019 presentation to Legalization Work Group*



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## THE MARKET FOR LEGALIZATION

In 2016, the Legislative Council Services estimated the market for legalized cannabis for proposed legislation. Since 2016, 5 additional states have become legalized states and the New Mexico's medical cannabis program has matured and expanded.

In 2019, economist Kelly O'Donnell updated the 2016 study, incorporating new data from Colorado and other states, as well as new market and workforce data.

In August 2019, the Work Group invited O'Donnell to present on her market estimates for New Mexico's legalized cannabis market. A copy of the report is available on the [marijuanaworkgroup.com](http://marijuanaworkgroup.com) website.

**O'Donnell estimated that a mature legalized marijuana industry would create 11,000 new jobs** with opportunities in cultivation and farming, manufacturing, retail and business services. Once fully mature, the industry would be one of the state's top 15 employment sectors, larger than education and agriculture combined.

O'Donnell notes that tourism is also likely to increase, particularly in border communities adjacent to non-legalized states. Legalization will also cause a small increase in government jobs as regulatory functions are brought online.

**She also estimated that first-year sales would reach an estimated \$318 million, increasing to \$620 million by year five (stabilization).**

**These estimates are all in addition to the existing and growing medical cannabis sector.**

**Combined, a joint medical-adult use program is anticipated to include more than 13,000 jobs at all skill and income levels and mature to generate at least \$850,000,000 in annual sales which would generate almost \$100,000,000 in new revenue for state and local governments annually.**

| CURRENT MEDICAL CANNABIS PROGRAM                           | YEAR ONE (START UP)<br>RECREATION MARKET (EST).     | YEAR FIVE (STABILIZED)<br>RECREATION MARKET (EST).  |
|--|---|---|
| <b>78,000 PATIENTS</b><br>Estimated 100K - 120k by 2020-21 | <b>3X+ SIZE OF MEDICAL PROGRAM</b>                  | <b>6X+ SIZE OF CURRENT MEDICAL PROGRAM</b>          |
| <b>~38,000 PLANTS</b><br>Estimated 50k - 60k by 2020-21    | <b>115,000 PLANTS</b>                               | <b>200,000 PLANTS</b>                               |
| <b>\$106,000,000 SALES</b><br>2018                         | <b>\$318,000,000 SALES</b>                          | <b>\$620,000,000 SALES</b>                          |
| <b>\$130,000,000+ SALES</b><br>2019 est.                   | <b>\$63,000,000<br/>NEW STATE &amp; LOCAL TAXES</b> | <b>\$93,775,000<br/>NEW STATE &amp; LOCAL TAXES</b> |

In evaluating the fiscal and tax impacts of legalization, the Work Group adopted a conservative approach: a mid-point between 2016 and 2019 analyses. It should be noted, however, that sales in every legalized state have exceeded legislative estimates by the time the program opened to adult-use sales.

<sup>1</sup> See <https://marijuana.2020nm.com/resources/>



## **RECOMMENDATION 1: CLEAR LABELING & ROBUST TESTING FOR THC PRODUCTS**

**ISSUE:** In states that rolled out legalized cannabis without a strong testing program, users found that dosing was inconsistent (sometimes 10mg/dose, other times 20mg/dose, for example). This led to increased numbers of doctor and hospital visits. And, recent investigations of vaping illnesses seem to point to dangerous production practices in unregulated and illicit market products. Strong regulation with warning labels is necessary to differentiate between safe and illicit market products.

New Mexico has long maintained strong testing standards ensuring consistent dosing of THC and other cannabinoids. The State's rigorous testing regime should be maintained in an adult-use program. We recommend mandating food-grade testing for non-smokable THC products to ensure that components in edibles and other intake sources are also safe.

For a number of reasons, making THC-containing products easily identifiable is important for public safety, especially involving children. Every state requires some THC package warning, though many are visible only by close inspection. The work group recommends the adoption of consistent highly-visible markers (a bright red line on the edge of every package?) to make the identification of THC-containing products easy for parents, law enforcement and education professionals.

### **MAKING CANNABIS & CANNABIS PRODUCTS UNENTICING TO CHILDREN**

- Prohibit the use of minors, cartoon characters, etc. in advertising. No advertising on public TV/Radio or to mobile devices or in publications owned or targeting minors. Allow advertising only in markets/publications over 21.
- Fund a robust public education program aimed at children/teens (see CO) (we recommend more specific language in legislation specifically directing agencies to create youth-oriented education and prevention programs, in addition to responsible use programs for the general public)
- Require child-resistant packaging on all THC products.

### **PREVENTING CONTAMINANTS & UNSAFE PRODUCTS**

- No cannabis or cannabis-infused product may be sold without certification from an NMED-licensed facility testing for dosing and contaminants (just like food products) (consistent with HB356 & SB577)

### **MAKE THC PRODUCTS EASILY IDENTIFIABLE for parents, health, education & law enforcement personnel**

- Require conspicuous and consistent warning labeling (developed by regulation) to make THC-product identification easy for the public and law enforcement. (Enhances language from HB356 & SB577)

### **FLEXIBLE regulation to allow regulators to test for new contaminants as science evolves**

- Legislation should require testing for THC and other cannabinoid profile dosing, heavy metals, volatile chemicals, pesticides, and other contaminants. Since science changes so quickly in this area, the specific items to be monitored should be left to regulators. (Consistent with HB356 & SB577)

### **PREVENT the promotion of any health claims**

- Similar to FDA prohibitions on health statements for supplements (stronger language than HB356 & SB577 which prohibited only "unproven" health claims. Without FDA testing, policing "unproven" will be problematic for the state).



## **RECOMMENDATION 2: INVEST IN LAW ENFORCEMENT PROGRAMS EARLY; AVOID CREATING “ILLICIT MARKET” COMMUNITIES**

**ISSUE:** New Mexico’s Association of Chiefs of Police and Sheriff’s Association both expressed that they believe the legalization of cannabis is a “when, not if” question. Having spoken to colleagues in other states, they expressed a desire to help craft legalization legislation in order to alleviate the burden law enforcement elsewhere has felt.

Law enforcement was adamant that “opt-out” communities and “home grow” are huge law enforcement challenges in other states. Law enforcement in opt-out communities are forced to police the untaxed sale of an otherwise legal substance, and crimes associated with illicit market drug sales today are exaggerated where access to legal cannabis is most accessible from illegal sellers. Similarly, home grows can be easily abused if it is unregulated. LE supports delaying home grow.

While data is not clear on whether legalizing cannabis increases drugged driving (data was not tracked consistently in other states before legalization), everyone agrees that some drivers already use cannabis and drive. MI, CO, CA and others have begun pilot-testing a roadside oral swab test (similar to a roadside breath test) to help officers quickly determine if intoxicating substances are present in the saliva of an impaired driver. Coupled with Advanced Roadside Impaired Driving Enforcement (ARIDE) training for officers statewide, new cannabis revenue can be used to give every agency the tools to identify any drugged driver, not just MJ users.

### **“OPT-OUT” COMMUNITIES BECOME ILLICIT MARKETS OVERNIGHT**

- Prevent “illicit market” and “legal market” communities by prohibiting opt-out but do allow local communities to regulate the time, place and manner of sales through local zoning and permitting that do not conflict with State adult-use cannabis laws.. (NEW re: no opt-out, local zoning consistent with HB356 & SB577)

### **LAW ENFORCEMENT NEED ADDITIONAL TRAINING/RESOURCES TO IDENTIFY AND ADDRESS PERSONS WHO USE LEGAL CANNABIS AND OTHER SUBSTANCES AND DRIVE**

- Use new revenue to train every law enforcement officer in drugged driving roadside impairment detection (ARIDE). Provide funds for each agency to develop their own strategies to address law enforcement concerns, even if they don’t relate to cannabis. (Enhanced from HB356) (see Law Enforcement Funds in Funds & Fees)

### **PROVIDE CLEARER GUIDANCE FOR LAW ENFORCEMENT TO IDENTIFY & ENFORCE DRUGGED DRIVING**

- Allow for the presence of substances identified by non-intrusive tests (oral swab) and evidence of impairment to satisfy misdemeanor DWI-drugged driving standards (no blood test for misdemeanor cases).

### **FUND A PILOT PROGRAM TO TEST AND IMPLEMENT ROADSIDE IMPLIED CONSENT ORAL FLUID TESTING FOR THE PRESENCE OF DRUGS IN SUSPECTED DWI CASES.**

### **PERSONAL PRODUCTION (“HOME GROW”) HAS BEEN DIFFICULT TO SAFELY REGULATE IN OTHER STATES**

- Do not allow home grow for adult-use(maintain for medical); or, if allowed, phase it in or strictly license it during the early years of an adult-use program.
- Decriminalize the grow of six or fewer plants (consistent with possession of cannabis) to remove felony criminal implications for low-level personal production.



## **RECOMMENDATION 3: CREATING SOCIAL EQUITY AND ECONOMIC OPPORTUNITY**

**ISSUE:** Drug prohibition laws have disproportionately affected communities of color as well as low-income and low-education communities.

Equity has been an after-thought in every legalized state, but New Mexico has the opportunity to start right by using new cannabis revenue to expand or expedite programs in housing, job training, and education that help underprivileged communities while also opening new cannabis business to new management. The Work Group recognized that impoverished and impacted communities are spread across the state, and many small and family-owned farms, manufacturers and co-packers could enter the market if the barriers to entry were not too high.

Additionally, federal rules prohibit cannabis-based businesses from accessing traditional capital (opening a cannabis business requires \$500,000 to more than \$1M in cash). Other states have seen small local businesses gobbled up or priced out by industrial conglomerates. Other states also lack data on the diversity of ownership and workforce in the cannabis industry. The Work Group sought to diversify licensing to prevent monopolization and to fund a study determining the current demographics of industry ownership and workforce, and monitor trends regularly to inform job training fund disbursements. New Mexico's pueblos, nations, and tribes should also be included in the new industry.

### **HOW DO WE USE NEW CANNABIS REVENUE TO HELP REBUILD COMMUNITIES DISPROPORTIONATELY IMPACTED BY OLDER DRUG PROHIBITION POLICIES?**

- Dedicate new revenue to a fund helping communities and small businesses access capital needed to start and grow NM-based businesses (consistent with HB356) (\$1.2 M, Year 1)<sup>2</sup>
- Dedicate new revenue to funds to support housing, job training, and education programs statewide (similar to HB356)<sup>3</sup>

### **HOW DO WE ENSURE THAT LOW-INCOME, DECLINING AND COMMUNITIES OF COLOR STATEWIDE SHARE IN THE OPPORTUNITIES AVAILABLE FROM THIS NEW MULTI-MILLION DOLLAR INDUSTRY OVER THE LONG TERM?**

#### **HOW DO WE ENSURE EQUITY IN THE NEW MARKETPLACE (RACIAL, ECONOMIC, GENDER, GEOGRAPHIC, ETC.)?**

- Allow persons with previous controlled substance convictions to participate as licensees and/or workers if they are otherwise eligible. Automatically expunge cannabis possession convictions (when technically feasible) (consistent with HB356)
- Keep licensing fees low & allow for "micro business" licenses. These allow small family farms and entrepreneurs to enter the market with lower capital costs. (fees should not be set by statute, but language limiting licensing fees to the cost of regulation and/or with "no more than \$500/mo. unless necessary to meet the cost of regulation")
- Study the demographics and geographic diversity of the existing cannabis industry workforce and licensees and in future years to monitor equity.
- Create standardized certifications/training programs that are accessible for free (or subsidized by cannabis revenue) through community colleges to ensure that zip code or income is not a barrier to accessing industry skills.

### **THE STATE LEGISLATURE SHOULD AFFIRM SUPPORT FOR NEW MEXICO PUEBLOS, NATIONS AND TRIBES TO ENACT MEDICAL CANNABIS PROGRAMS WITHIN THEIR TERRITORIES AND AUTHORIZE THE STATE TO ENTER INTO CANNABIS INTERGOVERNMENTAL AGREEMENTS WITH SOVEREIGN GOVERNMENTS.**

<sup>2</sup> See Cannabis Venture Fund, New Funds

<sup>3</sup> See DOH Health & Safety Funds, New Funds





## RECOMMENDATION 4: MAINTAIN & ENHANCE A ROBUST MEDICAL CANNABIS PROGRAM

**ISSUE: Avoiding program roll-off.** New Mexico's medical cannabis program currently supports more than 78,000 patients with estimates projecting 100,000+ patients by 2021. How do we incentivize patients and licensed medical cannabis producers to stay in the program and prevent drop-off of patients from the medical program?

**ISSUE: Access to medical cannabis.** Many rural communities currently don't have access to medical cannabis. How could a growing adult-use market help expand access to underserved communities?

**ISSUE: Affordability and Accessibility of medical products.** Medical cannabis is not covered by insurance (incl. Medicaid or Medicare) so out-of-pocket costs are significant, especially for high-need patients. Producers also report that they have a hard time identifying patients truly in need of discounts. How can we subsidize the costs? Patients rely on products that may not yield high-profits for producers. How do we incentivize producers to maintain product diversity and quality?

### PUTTING PATIENTS FIRST

We recommend adopting a totally new model for joint medical-adult use programs: Patient First. *No other state has a model like this.*

- Licensees will serve both medical and adult-use markets. (consistent with HB356 and SB577)
- Cultivator and retail licensees must reserve a percentage of plants/products for medical patients (as determined by DOH) BEFORE obtaining an adult-use license. The amount available for patients will grow proportionately with the growth of the adult-use program (new)
- If a cannabis supply runs short, licensees must serve medical patients before adult-use users. (new)
- Unused medical plants/products can be converted to adult use with DOH approval if a licensee can demonstrate that all medical needs are met. (new)

### LOWER PATIENT & PRODUCER COSTS FOR THE MEDICAL PROGRAM

New adult-use cannabis revenue (a per-plant fee on every adult-use cannabis plant grown) should completely subsidize the cost for both medical producers and patients. A percentage of each adult-use plant grown will be allocated to cover regulation of medical program AND create a low-income patient subsidy fund (akin to a "medical cannabis Medicaid" program). This helps retailers identify those who are in need of discounts and provides a financial mechanism to support retailers who serve low-income patients.

- Eliminate the tax on medical cannabis products, consistent with other medicine. This reduces the cost of medical cannabis, on average, 7% statewide. Clarify state law so that non-profit LNPPs are not subject to federal 280E tax restrictions. (consistent with HB356)
- Create a **\$2,700,000 Low-Income Patient Subsidy Fund** to assist those who qualify for public assistance with accessing medical cannabis products (expanded and specified beyond HB356 broad language).

### EXPANDING ACCESS TO MEDICAL PRODUCTS

- All licensees will serve both medical and adult-use users. Instead of making recreation-only dispensaries, every producer and dispensary will supply both medical and adult-use clients. (Consistent with HB356)
- Subsidies will help patients access high-cost, low-profit products from manufacturers and retailers (new)



## RECOMMENDATION 5: LOCAL CONTROL, EMPLOYMENT ISSUES & OTHER STICKY WIDGETS

**ISSUE: Local control.** *"What's right for Albuquerque may not be right for Roswell."* Counties and municipalities across New Mexico have different attitudes towards legalized cannabis, economic development, and community values. While we recommend not allowing "opting-out" of sales outright, local communities should not be prohibited from implementing time, manner and place restrictions (not do not conflict with the State cannabis legislation act) to match community values.

**ISSUE: Employment.** Though most employers do not exercise it, New Mexico currently allows employers to enact "morals clauses" regulating off-duty conduct by employees. While policy goals of normalizing cannabis use require protecting legal users from adverse employment action, doing so requires the creation of a special class of protected workers on par with sex, race and sexual orientation, along with an infrastructure to evaluate and adjudicate claims of discrimination. Additionally, employers who must comply with federal Drug-Free Workplace laws (including many healthcare employers, national labs and federal contractors) need the ability to prevent off-duty cannabis use consistent with federal law.

### **ALLOW COUNTIES AND MUNICIPALITIES TO ENACT LOCAL TIME, MANNER & PLACE RESTRICTIONS (ZONING, LICENSING)**

- No locality can prohibit a business based on participation in the legal cannabis industry, but they can reasonably limit density and operating times consistent with neighborhood uses. (enhanced from HB356, SB577)
- Maintain buffer zones between cannabis sales and churches, schools and childcare centers. (consistent w HB356/SB577)

### **ALLOCATE A PORTION OF NEW REVENUE TO LOCAL COMMUNITIES TO APPLY TO LOCAL PROGRAMS**

- Give communities the authority to allocate those new funds however they see fit, protecting local control.

### **HOW DO EMPLOYERS NAVIGATE OFF-DUTY USE OF CANNABIS?**

- Treat legal cannabis like alcohol for workplace issues. NM Employers may already prohibit or restrict off-duty use and may test for impairment with reasonable suspicion or when involving workplace accidents. (differs from HB356. Consistent with SB577). By default, this includes safety-sensitive employers and employers who must comply with federal drug-free workplace laws (national labs & some federal contractors) (consistent with HB356)
- Employers electing to prohibit off-duty use must provide notice to employees in writing and during hiring. (new)
- Law enforcement officers are not allowed to use cannabis and carry firearms. Similar prohibitions apply to federally-certified persons (DOT drivers, FAA workers, etc.) (consistent with HB356 & SB577)

### **WORKERS' COMPENSATION ADMINISTRATION WOULD CONTINUE TO APPLY REBUTTABLE FEDERAL IMPAIRMENT STANDARDS WHEN EVALUATING ACCIDENTS INVOLVING CANNABIS (no legislation required)**

- NMWCA currently uses the rebuttable federal NMDOT standard for evaluating workplace accidents involving cannabis<sup>4</sup>. NMWCA presented to the Work Group that they would apply similar standards for adult-use use (the worker would have to demonstrate that they used with a sufficient buffer to ensure non-intoxication by work hours).

### **REQUIRE CANNABIS INDUSTRIES EMPLOYERS OF CERTAIN SIZE TO IMPLEMENT LABOR PEACE AGREEMENTS**

<sup>4</sup> Where marijuana is present and a worker can show that use was consistent with off-duty legal medical cannabis use, and that the use did not create on-duty impairment, WCA does not reduce benefits.



## LICENSING & FEES

The Work Group endorsed a recommendation that the cannabis program should not be dependent on the general fund. As such, our proposal generates 100% of the cost of regulation (including management of the medical cannabis program) from licensing and per-plant fees. All new tax revenue goes to programs determined by the governor, legislature and local governing bodies.

### LICENSING

The Work Group recommends maintaining the current license distinctions in our medical cannabis program.

- Licensees will serve both medical and adult-use markets (no "rec. only" license)
- Types 1-4 can be vertically integrated
  - *The legislature should consider limiting vertical licensing to just 2 types by one owner/operator (aka, Producer/Retailer, or Producer/Manufacturer) to prevent monopolization of the industry.*
- Fees remain low, ensuring that low-income and small family-owned businesses can access the industry.

**Create a new "Integrated Micro Business** (based on HB356 equity provisions)

- "Brew Pub" or "Farm Store"-model
- Small single-site individual cultivator, manufacturer, and retailer
- Limited to one location
- Allows entrepreneurs to enter the market without large capital requirements. Helps diversify license opportunities.

|   | LICENSE TYPE     | FEE                      |
|---|------------------|--------------------------|
| 1 | MANUFACTURER     | \$500 mo./<br>\$6000/yr. |
| 2 | RETAILER         | \$500 mo./<br>\$6000/yr. |
| 3 | CULTIVATOR       | \$500 mo./<br>\$6000/yr. |
|   | MICRO-CULTIVATOR |                          |
| 4 | COURIER          | \$500 mo./<br>\$6000/yr. |
| 5 | TESTING LAB      | \$500 mo./<br>\$6000/yr. |

### FEES

Guiding principles for licensing fees:

- **Fees must cover 100% of the cost of regulation - not dependent on the general fund.**
- Fund robust compliance and inspection, not just licensing.
- Keep licensing low enough to allow entry for small and family businesses.

To accomplish these goals, we propose establishing two different fee structures for licensed operators.

**The Work Group did not endorse a specific licensing structure, feeling that that is best left to regulation.**

But, in order to model fees and revenue allocations, we considered a hybrid fee/plant-count model based on the existing medical program licensing.

**Traditional licensing fee:** \$500/mo. (\$6,000 year per license)

- Every license fee is equal. This provides equitable, low-cost entry to the market.

**Per-Plant fee** (\$100 per adult-use plant)

- Consistent with the average per-plant cost for existing LNPPs.
- **38%** allocated to DOH and law enforcement programs
- **62%** allocated for regulatory licensing and enforcement costs at RLD, TRD, DOH & DPS

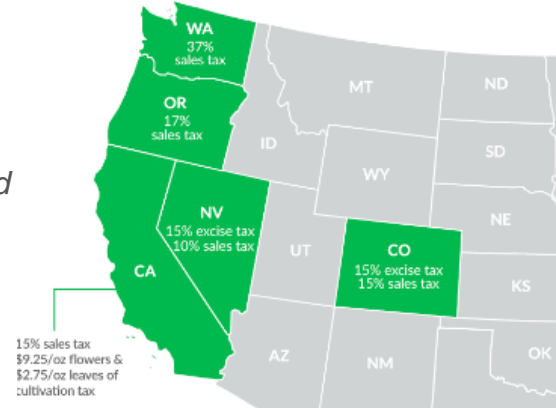
| MARIJUANA BUSINESS LICENSE FEES  |  |
|--|--|
| \$12.1M  |  |
| <b>LICENSEE FEES</b>   | <b>PER PLANT FEE</b>   |
| \$500 mo.<br>(\$6000 yr).  | \$100 / plant.   |
| Every license fee is equal. This provides equitable, low-cost entry to the market. | Equal to current per plant average paid by producers.<br>Fee funds DOH programs/medical program (38%) and other regulation (62%) |



## TAX RATES

“Colorado, Washington, and Oregon have all taken steps to reduce their marijuana tax rates, with Alaska considering it, after initial rates of 30 percent or more did not reduce the illicit market sufficiently. More recent ballot initiative proposals across the country propose rates between 10 and 25 percent.”

-Tax Foundation, 2016



**Consistent with tax goals outlined in HB356, the Work Group recommends keeping total tax rates below 20% and set a framework that would create an average tax rate of 17%**

Higher tax rates provide an incentive for illicit market sellers to provide unregulated products at significant cost savings for buyers. A 15-20% tax rate covers the state’s needs and is a reasonable cost for consumers to guarantee product safety and social goals. There are additional public health benefits of not undertaxing the products at the expense of health and safety.

Since regulation costs are covered 100% by license fees and per-plant fees, all new tax revenue can be dedicated to state and local programs as determined by the governor, legislature and local governing bodies.

Recommended tax rates include:

- **State Excise Tax: 5%** (\$15.9M, Yr. 1)
- **State Gross Receipts Tax: 5.125%** (\$16.3M, Yr. 1)
- **Local Excise Tax (each county/city): 5%** (\$15.9M, Yr. 1)
- **Local Gross Receipts Tax: 2%** (average statewide): (\$6.6M, Yr. 1) (adult-use only)

**COMBINED, the statewide average tax rate would be 17%, and either slightly lower/higher based on local GRT rates.**

In year one, it is estimated that these tax rates would generate **\$54,500,000** in new revenue for state and local programs. Estimates show that these revenues could double with a mature market (Year 5).

| TAX RATE                        |                              |
|---------------------------------|------------------------------|
| <b>17%</b><br>Average Statewide | 5% STATE CANNABIS EXCISE TAX |
|                                 | 5.125% STATE GRT             |
|                                 | 5% LOCAL EXCISE TAX          |
|                                 | 2% LOCAL GRT                 |

| YEAR ONE<br>ANTICIPATED RECREATIONAL MARKET                            |  |   |   |
|--|--|---|---|
| \$54,500,000   |  |   |   |
| STATE EXCISE TAX   | STATE GRT  | LOCAL EXCISE TAX  | LOCAL GRT   |
| \$15,900,000   | \$16,300,000   | \$15,900,000  | \$6,600,000   |
| Used for:<br>● Regulation<br>● State DOH programs<br>● Law enforcement | Used for:<br>General fund programs<br><br>Determined by:<br>The governor & legislature | Used for:<br>Local programs<br><br>Determined by:<br>Local county or municipality | Used for:<br>Local programs<br><br>Determined by:<br>Local county or municipality |



## REVENUE ALLOCATIONS & NEW FUNDS

### LICENSE FEES AND PER-PLANT FEES

License fees (estimated at \$500/mo. Or \$6000/yr.) would generate \$12.1 million for regulation and medical cannabis programs.

### MARIJUANA BUSINESS LICENSE FEES \$12.1M

#### LICENSEE FEES

**\$500 mo.**  
(\$6000 yr).

Every license fee is equal. This provides equitable, low-cost entry to the market.



#### PER PLANT FEE

**\$100 / plant.**

Equal to current per plant average paid by producers.

Allocations  
**38% DOH & PUBLIC HEALTH**  
**62% REGULATION COSTS**

### STATE EXCISE TAX ALLOCATIONS

*For more detail, see "New Funds"*

Since regulation costs are covered by licensing, excise taxes paid by adult-use consumers (we recommend that medical cannabis be tax-free) can be used to achieve social government goals identified by the governor, legislature, and local governing bodies.

### NEW STATE EXCISE TAX (\$15.9M)

|                     |             |   |
|---------------------|-------------|---|
| \$1,000 Per officer | \$5,100,000 | <b>LAW ENFORCEMENT - \$1,000 per officer/yr.</b><br>Training & Equipment (local discretion)                             |
| 45%                 | \$7,155,000 | <b>DOH PROGRAMS</b><br>Public health & prevention programs (incl DWI education)   |
| 15%                 | \$2,385,000 | <b>CANNABIS BUSINESS VENTURE FUND</b><br>State economic development fund to support job training, new business start up |
| 8%                  | \$1,270,000 | <b>REVERTED TO GENERAL FUND</b><br>Or available for other cannabis-program uses   |

From approximately \$12.7M generated in Year 1, we propose:

- **\$5.1 Million for law enforcement programs.** Allocated as \$1,000 per officer (5,100) similar to Law Enforcement Protection Fund (LEPF)
- **45% for \*NEW\* DOH programs.** Including public health & prevention programs, DWI prevention. It also includes funds to support housing, job training, and education programs statewide. To be determined by DOH based on data and recommendations from the new DOH Health & Safety Advisory Board monitoring social impacts of legalization.
- **15% for the Cannabis Venture Fund.** State economic development to provide capital for low-income cannabis business operators.
- **8% reverted to the general fund.**

### LOCAL GOVERNMENT REVENUE

A 4% local excise tax would generate \$12.7 million in new local revenue to be allocated by local governments.

Local GRT on adult-use cannabis sales also increases local GRT disbursements by an estimated \$6.6M in year one.

### IMPACT ON THE GENERAL FUND

**The Work Group's tax recommendations would generate an estimated \$16.297 Million to the general fund in Year 1,** with \$1.27M of new excise tax reverted to the general fund (if not allocated to other uses by the governor and legislature).

However, removing the tax on medical cannabis would lower state general fund revenues by approximately \$2.8M. **Net new, this proposal would add \$14.8M new to the general fund in Year 1, growing to \$35 million by Year 5.**



## REVENUE ALLOCATIONS & NEW FUNDS

### MAINTAINING A ROBUST MEDICAL CANNABIS PROGRAM

| PROGRAM or FUND                                       | DEPT | SOURCE                           | AMOUNT      |
|---|------|----------------------------------|-------------|
| DOH Medical Patient Application, Registry, Management | DOH  | Per-Plant Fee                    | \$1,400,000 |
| Low-Income Patient Subsidy Fund                       | DOH  | Per-Plant Fee & State Excise Tax | \$3,900,000 |

### LAW ENFORCEMENT PROGRAMS

| PROGRAM or FUND                                | DEPT | SOURCE           | AMOUNT      |
|--|------|------------------|-------------|
| Law Enforcement Support Fund (\$1,000/officer) | DPS  | State Excise Tax | \$5,100,000 |

### ROBUST TESTING & LABELING

| PROGRAM or FUND       | DEPT | SOURCE                     | AMOUNT      |
|-----------------------|------|----------------------------|-------------|
| NMED Safety & Testing | NMED | Licensing & Per Plant Fees | \$1,100,000 |

### EQUITY & ECONOMIC OPPORTUNITY

| PROGRAM or FUND                      | DEPT    | SOURCE           | AMOUNT      |
|--------------------------------------|---------|------------------|-------------|
| Cannabis Venture Fund                | EDD (?) | State Excise Tax | \$2,385,000 |
| Cannabis Community Reinvestment Fund | DOH     | State Excise Tax | \$6,000,000 |

### OTHER REGULATION

| PROGRAM or FUND             | DEPT | SOURCE                     | AMOUNT      |
|-----------------------------|------|----------------------------|-------------|
| Regulation & Licensing Dept | RLD  | Licensing & Per Plant Fees | \$4,200,000 |
| Taxation & Revenue Dept     | TRD  | Licensing                  | \$787,000   |



## NEW FUNDS

The Work Group's recommendations - incorporating tax and fund recommendations from HB356 (2019) along with new purposes recommended by the group - would add an estimated \$48 million in new tax revenue to state and local government.

- Consistent with our principles that the cannabis program should not be dependent on the general fund, the proposed licensing and tax schedule covers 100% of regulatory costs, including the medical program management, through fees on licensees and plants. Taxes are dedicated to social programs.

While some states have allocated those funds to general fund projects, we see that the public (including those who may not support full legalization) have a strong preference for new cannabis revenue to enhance underfunded programs, including education, health, and preventions.

Guided by the Governor's directives to achieve strong public safety policies, maintain and expand a robust medical cannabis program, provide for strong testing, and create a true equity program, we believe these new funds are necessary and feasible to accomplish those goals.

### LOW-INCOME MEDICAL PATIENT SUBSIDY PROGRAM

- \$3.9 MILLION annual revolving funds (Year 1, estimated to grow to \$7 million by Year 5).
- Provides subsidies for low-income and high-user patients needing assistance in obtaining medical cannabis

### LAW ENFORCEMENT SUPPORT FUND

- \$5.1 MILLION annual allocations (funded as \$1,000 per officer. NM currently has 5,100 sworn officers)
- Similar to the LEPF, agencies receive their allocations annually to be used for locally directed law enforcement purposes, including training, equipment or operations/overtime to combat local issues.
- Importantly, this fund does not have to be used to address cannabis issues. Local jurisdictions can use new cannabis funds to combat other local issues not adequately addressed with existing funding.

### DOH ADVISORY BOARD GRANTS FUND (COMMUNITY REINVESTMENT FUND)

- \$6 MILLION annual allocations (increasing to \$11 million by Year 5)
- New funding for public health & prevention programs, including DWI prevention and legalization research through universities, and social impact funding for housing, job training, etc.. Allocations will be determined by DOH based on data and recommendations from the new DOH Health & Safety Advisory Board monitoring social impacts of legalization.
- Funds could go to state agencies, subdivisions, universities, local communities or non-profits.

### CANNABIS VENTURE IMPACT FUND

- \$2.4 MILLION annual allocations (revolving fund based on loan repayment) (increasing to \$5 million by Year 5)
- New funding to assist low-income and small family-owned businesses access capital on a short-term basis to start cannabis-based businesses.
- Funds to seed community college cannabis industry training programs.

<sup>5</sup> See cannabis Policy Survey, Drug Policy Alliance/Research & Polling (2016), <http://www.drugpolicy.org/sites/default/files/documents/cannabis-Policy-Survey.pdf>



## PENALTIES

Each of the previous New Mexico bill's we studied (HB356 and SB577) included sections adjusting penalties for current criminal drug violations, as well as establishing new ones for those who abuse the adult-use opportunity.

The Work Group recommends the following new or adjusted criminal penalties for cannabis.

### **Penalties for violation of adult-use Cannabis laws**

The Work Group determined that maintaining felony options for improperly transferring legal cannabis between persons is counter to the intent of adult-use cannabis laws. However, there is a concern about persons who will abuse the system and provide cannabis to teenagers. For this reason, the Work Group's recommendations centered on two key principles: removing felony punishment from crimes involving cannabis, and creating "escalating" misdemeanor offenses for violations.

"Escalating misdemeanors" are those with low penalties for a first offense and greater penalties for second and subsequent offenses. The goal is to create a case where an offender's actions can be evaluated for diversion or probation, which includes education about the dangers of violating cannabis laws.

- Escalating penalties from a low-level misdemeanor to a high-fine misdemeanor for repeat offenses.  
Goal: Educating adults about the dangers of providing cannabis to minors, gain compliance from first offenders, and add punishment for repeat offenders.

Some violations to consider for this concept:

- Providing cannabis to a minor (first offense)
- Consuming cannabis in a vehicle (new offense)
- Selling cannabis to another (unlicensed sales) (first-offense)

As noted in recommendations on equity and opportunity, the group applauds the legislature for making expungement for marijuana crimes and other offenses during the 2019 legislative session. The Work Group unanimously endorsed a recommendation to make automatic expungement a state policy goal for the future.

A more comprehensive evaluation of these recommendations should be undertaken with the legislature in consultation with policy experts, public health experts, juvenile justice leaders, courts, prosecutors and defense attorneys.