



Legislative Briefing Marijuana Legalization

Friday, May 10, 2019, 12 Noon-12:45 PM

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AGENDA

- Current Status
- Need to Engage
- Overview of Legislation
- Questions

CURRENT STATUS

- [S-2703](#) & [A-4497](#) “New Jersey Cannabis Regulatory and Expungement Aid Modernization Act.”
- 2nd Reading in each house; pulled from floor votes on March 25. Assembly appears to have the needed 41 votes to pass.
- Not enough votes in the Senate: depending on who you ask, Senate is anywhere from 1-5 votes short.

CURRENT STATUS: NEXT STEPS?

- Plan A: Vote later this month and put on Governor's desk by end of month. Still a possibility, but increasingly unlikely.
- Plan B: Lacking votes to pass adult recreational legalization, Legislature could separate and fast track medical marijuana expansion, comparable to the current S-10. This could set up the full Legislature to circle back to adult use after November elections in "lame duck."
- Plan C: Governor Executive Order and administrative action to expand medical marijuana. This would not necessarily preclude Legislature to act, possibly lame duck.
- Plan ???: 2020 Statewide Ballot Referendum a possibility, but not the first choice. Preference would be to avoid 2019 referendum.

NEED TO ENGAGE

- Despite significant setbacks, adult use recreational legalization seems likely at some point; it may be a matter of when.
- As soon as the ink is dry, this becomes a local issue.
- Implemented on a municipality-by-municipality basis
- Municipalities must consider:
 - Opt in or Opt out--180 days to opt out or you opt-in by default.
 - Local Option Tax
 - Will you be able to offset your costs?
 - Municipal Land Use Law (MLUL) impacts?
 - Expungement



New Jersey State League of Municipalities



Cannabis Info Sheet (April 2019)

The Legislature is considering a bill (A-4497/S-2703) legalizing the adult recreational use of cannabis. The bill would create among other things four types of cannabis licenses, a \$42 per ounce tax on cannabis at the last point of sale before retail, and a newly established Cannabis Control Commission to oversee the issuance of licensing. Included in the conversation of legalization is expungement. While not taking a position on the issue of legalization itself, NJLM champions measures to facilitate municipal implementation of legalization if it were to become a reality.

Local Tax

1 Municipalities will be able to enact a local tax on recreational cannabis of 2% on growers and processors, 1% on wholesalers, and 3% on retailers on the receipts from each sale. The tax would be collected by the municipality.

Expungement

2 Cannabis-related offenses of up to 5 pounds will be expunged, with a two-tier process of expedited expungement system in place within 9 months of the effective date of the Act. Sentences of those currently incarcerated or on probation will be vacated. Either in Superior Court, where expungement filing fees will be waived and the state provides funding, or virtual expungement, which will prohibit consideration of past cannabis offenses, including applications for employment, state professional licenses etc.

Local Control

3 In addition to opt-out of commercial cannabis, municipalities will be able to enact regulations governing the time of operation, location, manner and the number of cannabis establishments. Municipalities will also be able to establish civil penalties for violation of such ordinances and regulations. Within 7 days of an application for licensing, the Cannabis Control Commission will notify the municipality. In turn the municipality determines and informs the State if the application complies with the local regulations.

Opting Out

4 Municipalities will have 180 days from the effective date of the Act to opt out of any or all license types by ordinance. Any existing ordinance prohibiting commercial cannabis sales or transactions will be null and void. After 5 years, municipalities must either pass the same ordinance again or amend it accordingly. It is our understanding and that if you opt-out within 180 days of the effective date of the Act, you may opt-in at a later date by ordinance.

Additional Information:

- NJLM Cannabis Legalization: www.njlm.org/cannabis
- Breaking Down the Cannabis Legislation
 - Local Cannabis Tax: www.njlm.org/cannabis1
 - Local Regulation: www.njlm.org/cannabis2
 - Expungement: www.njlm.org/cannabis3

OVERVIEW OF S2703, KEY DEFINITIONS

- Definitions (Section 3, page 14, lines 13-16)

- “Cannabis establishment”
 - a cannabis grower (cultivation facility),

 - a cannabis processor (production manufacturing facility),

 - a cannabis wholesaler, or

 - a cannabis retailer.

➤ **Four type of licenses:**

- 1) Grower (Class 1) - grows, cultivates or produces...may sell to other growers, processors, wholesaler or retailers but not consumers...can also be referred to as “cannabis cultivation facility.”
- 2) Processor (Class 2) - processes cannabis items by purchasing cannabis, manufacturing, preparing, and packaging cannabis items and selling to other processors, wholesalers, or retailers but not consumers...can also be referred to as “cannabis product manufacturing facility.”
- 3) Wholesale (Class 3) - sells cannabis items or paraphernalia for the purpose of resale to either wholesaler or retailer.
- 4) Retail (Class 4) - purchases cannabis from grower and cannabis items from processor or wholesaler and sells them to consumers from a retail store

OVERVIEW OF LEGISLATION

MAJOR PROVISIONS

- All references to marijuana are replaced with “cannabis.”
- Legalizes possession or use for ≥ 21 years of age for one ounce or less.
- Possession/use by those under 21 is illegal.
- Very general comment: Use in public is treated like smoking and alcohol.

OVERVIEW OF LEGISLATION

CANNABIS REGULATORY COMMISSION

SECTION 7, PAGE 14

5 Full-Time Member Commission
Chair, 2 members appointed by the Governor.

1 Member Appointed by Governor, upon
recommendation of Senate President.

1 Members Appointed by Governor, upon
recommendation of Assembly Speaker.

In, but not of, Department of Treasury.

OVERVIEW OF LEGISLATION

CANNABIS REGULATORY COMMISSION

- Regulate
 - Purchase, sale, production, processing, packaging, transportation, and delivery
 - Use for scientific, pharma, manufacturing, mechanical, industrial
 - Prohibit advertising that
 - Appeals to minors
 - Promotes excessive use
 - Promotes illegal behavior
- Grant, deny, suspend, cancel licenses
- Investigate and assist prosecution of violations.

OVERVIEW OF LEGISLATION

CANNABIS REGULATORY COMMISSION

Commission to include an Office of Minority, Disabled Veterans, and Women Cannabis Business Development (Section 9, page 22)

- Promote participation in industry for persons from socially and economically disadvantaged communities, including by prospective and existing minority-owned and women-owned businesses.

OVERVIEW OF LEGISLATION

CANNABIS REGULATORY COMMISSION

35% to be conditional licenses, includes any conditional license that was subsequently replaced with a full, annual license.

Issued only to applications which present ownership structure with “significantly involved person,” i.e., owns at least a 5% investment interest or is a member of a group who holds at least a 20% interest and would have controlling authority; must be a New Jersey Resident for at least 2 years.

At least 10% of each license type and at least 25% of overall number of licenses must be issued to “microbusinesses.”

OVERVIEW OF LEGISLATION

MICRO BUSINESSES

Section 3, Definitions page 8

- Licensed cannabis grower, processor, wholesale, or retailer
- That may only
 - employ no more than 10 employees
 - occupy no more than 2,500 square feet...for grower measured horizontal plane with no plant above 24 feet
 - possess no more than 1,000 plants per month
 - processor - processes no more than 1,000 pounds in dried form each month
 - wholesaler – acquire for resale 1,000 pounds in dried form, or any combination, each month
 - retail sale - acquire for retail sale no more than 1,000 pounds in dried form, or any combination thereof, each month

OVERVIEW OF LEGISLATION

SECTION 19, STATE TAXATION

- State Tax = \$42 per ounce collected by the State. This replaces existing sales tax.
- Medical Marijuana Exempted from all taxation.

OVERVIEW OF LEGISLATION

JUMP AHEAD TO SECTION 81

- Section 81 (page 169) creates “Cannabis Regulatory and Expungement Aid Modernization Fund” Subject to annual Appropriations Act
- “oversee the development, regulation and enforcement of activities associated with the personal use of cannabis...”
- *to... “defray costs, in an amount determined by the Legislature in the annual appropriations act or any other act, associated with the filing and review of applications for persons seeking expedited expungement relief...”*
- “...reimburse the expense incurred by any county or municipality for the training costs associated with the attendance and participation of a police officer....as a Drug Recognition Expert
- Also.... “to defray costs....associated with the filing and review of applications for person seeking expedited expungement relief pursuant to Section 47...”

OVERVIEW OF LEGISLATION

BACK TO SECTION 18 TAXATION

- Cannabis Grower cannot be on assessed Farmland.
- Prohibits any licenses from receiving:
 - State Economic Incentives
 - Local Economic Incentives
- Retail location can not be a certified seller within a Urban Enterprise Zone (UEZ).

MAJOR LOCAL ISSUES

Section 21, page 54

- Permits municipalities to assess and collect local transfer tax
 - On sales by a **cannabis establishment.**
 - On cannabis or cannabis products sold.
 - ***Collected by the cannabis establishment and remitted to the CFO in a manner prescribed by the municipality.***
 - Local option tax can be assessed on any or all licensed establishments.

MAJOR LOCAL ISSUES

- All 4 licenses may be taxed by host municipality.
 - 2% on growth/cultivation (Class 1)
 - 2% on Processing (Class 2)
 - 1% Wholesaler (Class 3)
 - 3% Retail (Class 4)

- Municipality may...”*adopt an ordinance imposing a transfer tax on the sale of cannabis items by a cannabis establishment that is located in the municipality.*“

- “*A local tax ordinance...shall also include provision for imposing a user tax, at the equivalent transfer tax rates, on any concurrent license holder...operating more than one cannabis establishment.*”

OVERVIEW OF LEGISLATION

LOCAL REGULATIONS AND ORDINANCES

Section 22

- Permits municipal ordinance to govern:
 - Time
 - Location
 - Manner
 - Number of establishments
 - Civil penalties for municipal ordinance violations
- Previously adopted ordinances are null and void, must act again.
- Can prohibit operation of any one or more classes of establishments
 - Applies throughout the municipality (even if municipality is part of larger State planning areas)

OVERVIEW OF LEGISLATION

LOCAL REGULATIONS AND ORDINANCES

Section 22

- Municipal Opt-Out: 180 days from effective date of the Act.
- Miss 180 day deadline:
 - the growing, cultivating, processing, and selling are permitted uses in all industrial zones
 - retail sale a conditional use in commercial or retail zones, subject to the conditions of the local zoning ordinance or a variance
- 5 year timeframe
 - May opt-out of any or all
 - If you opt out, you can opt in any time.
 - Existing facilities grandfathered
 - Five-year intervals thereafter

OVERVIEW OF LEGISLATION

LOCAL REGULATIONS AND ORDINANCES

OPT OUT	Deadlines/Timeframe	Consideration/Reconsideration
	180 days to pass ordinance to opt out of any one or all class or classes of the business.	Can “opt in” at any time.
	After 5 years, need to act again, either to pass again the same ordinance or to amend accordingly.	

OVERVIEW OF LEGISLATION

LOCAL REGULATIONS AND ORDINANCES

OPT IN	Deadlines/Timeframe	Consideration/Reconsideration
	Take no action within 180 days of the Act	<p>Permitted Use in all industrial zones: growing, cultivating, processing and selling and reselling of cannabis and cannabis items by a grower, processor or wholesaler;</p> <p>Conditional Use in commercial or retail zones, subject to meeting conditions set forth in local zoning ordinance or upon granting of a variance: retails sales.</p>
		Cannot reconsider until 5 years, when municipality may choose to opt out of one or more licenses; existing license holders grandfathered.
	Nothing in bill prevents municipality opt in by ordinance; affirmative action may be preferred to assess local conditions and opinions.	

LOCAL ISSUE-PUBLIC PLACE

Section 57, page 143

“A municipality may enact an ordinance making it unlawful for any person who is of legal age and consumers, other than by smoking, a cannabis item available for lawful consumption...in any public place...other than school property...for which unlawful consumption is a disorderly person offense or alternatively as prohibited by the owner or person responsible for the operation of that public place.”

Section 61, amends NJSA 40:48-1.2

“A municipality may enact an ordinance making it unlawful for any person under the legal age who, without legal authority, knowingly possesses or knowingly consumes an alcoholic beverage or a cannabis item, other than by smoking, on private property.

LOCAL ISSUE

CONSUMPTION AREAS

Cannabis Consumption Area, Section 82, page 170.

- Operated by cannabis retailer or alternative treatment center
- Requires both State and local endorsement; State may only endorse after written approval of municipality.
- May not be within 1,000 feet of boundary with an adjoining municipality that does not permit retail cannabis.
- Is either a
 - indoor...structurally enclosed...separate from retail or treatment center
 - Exterior structure...on same premise...separate or connected
- Purchase/obtained on site or brought in by consumer

LOCAL ISSUE IMPACT ZONES

- “Impact zone” define as:
 - Local governmental entity, in parts or entire,
 - Based on past criminal marijuana enterprises contributing to:
 - Higher concentrations of law enforcement activity
 - Unemployment
 - Poverty

LOCAL ISSUE

Impact Zones

- Only for municipalities with
 - Population 120,000 or more
- OR**
- Top 33% of marijuana or hashish related arrest (N.J.S.A. 2C:35-10)
- Crime index of 1,000 based on Uniformed Crime Report
- Top 15% of Average annual unemployment

LOCAL ISSUE IMPACT ZONES

- License applications will be scored based on point scale
- Criteria for applicant:
 - Existing collective bargaining agreement with a labor organization in NJ or elsewhere
 - Resides in an “impact zone”
 - Plans to employ employees who reside in an impact zone

OVERVIEW OF LEGISLATION EXPUNGEMENT AND THE COURTS

- Cannabis related offenses of up to 5 pounds will be expunged, with a system in place within 9 months of the effective date of the Act.
- Vacate sentences of those currently incarcerated or on probation.
- Filing fee for individuals will be waived; the State is to provide funding for the expedited expungement process.
- 2 tier expungement process:
 - Expedited expungement: apply to Superior Court to facilitate petitions for expungement.
 - Virtual expungement: clear past offenses by prohibiting consideration of past offenses for employment applications, state professional licenses, etc.

OVERVIEW OF S10 MEDICAL MARIJUANA

- S-10 would expand the current list of qualifying medical conditions making it possible for many more conditions to be eligible for treatment with cannabis. S-10 also gives the Commission the ability to expand this list of medical conditions as they see fit. (see, Section 3.)

- Most notably, for the first time, opioid use disorder would be eligible cannabis treatment, along with a host of other conditions including:
 - Seizures
 - Epilepsy
 - AIDs or HIV
 - Crohn's disease
 - Muscular dystrophy
 - Anxiety
 - Migraine
 - Tourette's
 - And many more.

OVERVIEW OF S10 MEDICAL MARIJUANA

- There would be four types of permits, each with different abilities:
 - Medical Cannabis Cultivator
 - Can possess, cultivate, deliver, transfer, transport supply, and sell medical cannabis to other cultivators, dispensaries, or treatment centers but not patients or caregivers.
 - Medical Cannabis Dispensary
 - Can purchase from and sell to all other permit holders and can possess, display, deliver, transfer, transport, distribute, supply, sell, and dispense medical cannabis to qualified patients and their caregivers.
 - Medical Cannabis Manufacturer
 - Can produce, manufacture, or otherwise create medical cannabis products and sell to other manufacturers and dispensaries but cannot cultivate nor can they sell to qualified patients or caregivers.
 - Medical Cannabis Treatment Center
 - This is a very broad permit and would allow the holder to operate as any of the other three types of permits

OVERVIEW OF S10 MEDICAL MARIJUANA

Land Use Implications

- “No health care facility shall be penalized or denied any benefit under State law solely for permitting or prohibiting the handling, administration, usage, or storage of medical cannabis, provided that facility's policies related to medical cannabis are consistent with all other facility policies concerning medication handling, administration, usage or storage.” Section 8. n.(1)
- This section could be interpreted as putting limitations on a municipality’s land use controls. Meaning, if an area is zoned with medical offices as a permitted use, then a medical cannabis dispensary could not be prohibited from operating there.

OVERVIEW OF S10 MEDICAL MARIJUANA

Land Use Implications

- “In no case shall a medical cannabis cultivator or clinical registrant operate or be located on land that is valued, assessed or taxed as an agricultural or horticultural use pursuant to the “Farmland Assessment Act...” Section 10. (5)(a)

OVERVIEW OF S10 MEDICAL MARIJUANA

Land Use Implications

- The permitting process for any medical cannabis permit application requires certain municipal approvals.
- First, the permit applicant is required to provide zoning approvals, as proven through a letter or affidavit from the municipal official that the planned location conforms with municipal zoning requirements.
- Second, the permit applicant needs to submit proof of “local support for the suitability of the location.” This can be demonstrated by a resolution adopted by the governing body.

Questions and Answers

MONITOR DEVELOPMENTS

Please monitor League alerts for any such developments.

- www.njlm.org
- Register for Cannabis Newsflash alerts at www.njlm.org/682/Stay-Connected
- League Cannabis ' Resource page at www.njlm.org/cannabis
- Friday Recap letters
- Town Crier Blog at njlmblog.wordpress.com
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THANK YOU!

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