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FISCAL IMPACT REPORT

SPONSOR Carraro DATE TYPED 2/21/05 HB _____

SHORT TITLE Prohibit Smoking In Jails & Schools SB 389/aSPAC

ANALYST Hanika-Ortiz

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	See Narrative		See Narrative	Recurring	

Relates to HB 354, Prohibit Smoking In Certain Areas

SOURCES OF INFORMATION

LFC Files
Responses Received From
 Public Defender Department (PDD)
 Corrections Department (CD)
 Department of Health (DOH)

SUMMARY

Synopsis of SPAC Amendment

The Senate Public Affairs Committee Amendment allows for the creation of designated smoking areas.

Synopsis of Original Bill

Senate Bill 389 enacts an Act making it a misdemeanor to smoke on the premises of any prison operated by the CD, and on the premises of any prison housing department inmates (such as the prisons operated by private companies in Hobbs and Santa Rosa, New Mexico), and on any public school campus. SB 389 provides a standard for signage and consequences for violators.

Significant Issues

The CD agree that smoking causes significant health problems and increases costs for inmates and employees who smoke, and inmates and employees exposed to “second-hand” smoke. Unless staff and visitors are also prohibited from smoking on the premises of any prison, the CD believes it will be more difficult to prevent the introduction of cigarettes or tobacco into prison as contraband.

DOH reports the Public Education Department (PED) adopted PED Regulation 94-2, Regulation on Tobacco Free School Districts. Although this regulation prohibits the use of tobacco products by students, staff, and visitors while in school buildings, on school property, and for students at school functions away from school property, enforcement of this regulation varies by school.

DOH further reports the CD attempted to implement a smoke-free policy in the New Mexico correctional facilities in August 2002. The New Mexico Department of Corrections policy would have made all public and private corrections facilities smoke-free. Plans to implement the policy were postponed due to implementation problems.

PERFORMANCE IMPLICATIONS

SB 389 supports DOH Strategic Plan Program Area I: Prevention and Disease Control. Strategic Direction: Improve the Health of New Mexicans; Objective 6: Prevent and control chronic disease.

The CD current policy prohibits smoking for prisoners and staff while on prison premises. SB 389 will make the current policy into law, and it will make it easier for the CD to enforce current policy.

FISCAL IMPLICATIONS

DOH anticipates SB 389 as possibly needing resources for the effective implementation and enforcement of this smoke-free policy.

CD report SB 389 may help reduce inmates and staff medical costs from smoking related illnesses, and/or inmates and staff medical costs from exposure to second hand smoke. SB 389 will eliminate litigation costs and expenses from lawsuits filed by inmates alleging that they are being forced to inhale second hand smoke while in prison.

ADMINISTRATIVE IMPLICATIONS

The PDD reports any additional litigation due to the new crime will be absorbed in the normal course of business.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB 354, prohibiting smoking in workplaces and public places.

TECHNICAL ISSUES

The PDD suggests required signage include a warning that smoking in certain areas is a crime, to distinguish it from "No Smoking" signs with no "bite".

DOH suggests SB 389 reference spit or chew tobacco, a form of tobacco, which has a significant health impact.

OTHER SUBSTANTIVE ISSUES

The DOH has the following comments:

- The primary purpose of enacting secondhand smoke (SHS) laws is to protect non-smokers from exposure to human carcinogens. SHS is classified as a Group A (Human) Carcinogen, which is a substance known to cause cancer in humans. There is no safe level of exposure for Group A toxins. Each year in the United States (US) over 53,000 people die as a result of SHS exposure, which makes it the third leading cause of preventable death in the US. It is estimated that SHS kills 220 to 390 non-smokers each year in New Mexico.
- The New Mexico Clean Indoor Air Act (1985) does not completely address indoor smoking in publicly and privately operated correctional facilities, and school campuses. The proposed smoking restrictions in SB 389 would protect the health and well being of visitors, inmates, staff, and students of corrections facilities or public school campuses.
- Long-term health problems caused by SHS exposure include lung cancer, heart disease, bronchitis, pneumonia, and eye and nasal irritation in adults. Children are particularly susceptible to the harmful effects of secondhand smoke; they have higher rates of colds, asthma and other respiratory ailments.
- The health impacts of smoking and SHS are particularly important concerns in correctional institutions. While the prevalence of smoking in the general population is approximately 23%, the prevalence among incarcerated persons in the United States may exceed 80%. Based on the current evidence, heart disease and lung cancer are the leading causes of death among long-term prisoners.
- Benefits to smoke-free policies include protecting non-smoking guards and inmates from exposure to SHS, fewer false smoke alarms, elimination of potential fire hazards, and reduced building maintenance. Banning smoking may lead to increased tension among inmates and guards as well as increased contraband trafficking.

ALTERNATIVES

The DOH suggests considering alternatives to criminal prosecution for violations of smoke-free policies. Alternatives could include cessation options for students and allowing correctional institutions to determine appropriate punishments for violation of smoke-free policies.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

According to the DOH, inmates, detainees, students, clients, staff, and visitors will continue to be exposed to SHS, putting them at risk for developing the numerous health problems associated with SHS exposure.

POSSIBLE QUESTIONS

- Are there smoking cessation assistance programs for new inmates?
- Will there be designated outside areas that allow smoking?
- What are other state prison systems policies?
- Will signage be available in Spanish?