F I S C A L I M P A C T R E P O R T

		ORIGINAL DATE	01/27/10		
SPONSOR	Sapien	**LAST UPDATED**		**HB**	
SHORT TITLE	Medical Marijuana Tax Act			**SB**	56
				ANALYST	Gutierrez

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY10	**FY11**	**FY12**		
	$1,194.0	$1,254.0	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to SB57

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		$770.0	$45.0	$815.0	Recurring	TRD

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)
Department of Health (DOH)
New Mexico Health Policy Commission (HPC)

SUMMARY

Synopsis of Bill

Senate Bill 56 creates the Medical Marijuana Tax Act and imposes an excise tax rate of 25 percent of the product value of the medical marijuana. This bill also imposes penalties of not less than $100 or more than $1,000 (for each violation) upon any person distributing medical marijuana who willfully fails to register with the department or retain invoices. This bill also amends Section 7-1-2 NMSA 1978 adding the medical marijuana tax act to those taxes administered and enforced by the Tax Administration Act.

The effective date of this bill's provisions is July 1, 2010.

FISCAL IMPLICATIONS

According to the Department of Health (DOH), there are currently 1,048 patients actively licensed to use medical marijuana in New Mexico. Of those that are active, 321 individuals have a license to produce for themselves. According to a report from ProCon.org ("Marijuana vs. Marinol: Estimated Average Patient Costs"), the average yearly patient cost for medical marijuana is $6,256. This estimate assumes the number of patients enrolled in the program grows by 5 percent a year and 31 percent of the patients grow their own product at home.

TRD:

> This estimate could be too high because it is based on an assumption that the demand for medical marijuana is price inelastic. Price inelasticity has been observed with other medically necessary drugs such as insulin; however, while there might not be a substitute for medical marijuana, there are substitute sources for medical marijuana where this new tax would not be applied. Most patients with the physical ability or resources available to grow their own medical marijuana may already do so; however, a price increase of 25% could push more of the non-growing patients to grow their own or to turn to the black market.

SIGNIFICANT ISSUES

According to the U.S. Drug Enforcement Administration (DEA), marinol is a pharmaceutical product which has been found to relieve the nausea and vomiting associated with chemotherapy for cancer patients and to assist with loss of appetite with AIDS patients. DEA also state that Marinol is a prescription "medical marijuana". Because this bill gives other drugs used to treat the same symptoms as medical marijuana a tax advantage, this bill reduces economic efficiency.

ADMINISTRATIVE IMPLICATIONS

TRD:

> The bill creates a new tax program that will require new tax forms, instructions, audit procedures, changes to GenTax, and the processing of payments and reports. Recurring costs for processing a new tax program will require 1/2 to 1 FTE at a cost of $45,000 per FTE. This impact assumes few taxpayers initially. The costs are anticipated to be low in initial years, but are expected to increase as more producers come into the market and additional automation of the returns and payments is required. Advertising and taxpayer education will need to be coordinated through the Department of Health. Adding a completely new tax program to the GenTax system will have a moderate IT impact of 720 hours as follows:
>
> 1) Changes to the pipeline for E-DCR and Wausau capture for the new tax program - 320 hours
> 2) Changes to configuration for the new tax program – 160 hours
> 3) Changes to revenue accounting – 80 hours
> 4) Changes to TAP and NMWebFile – 160 hours

See the table on page one for the estimated additional operating budget impact.

RELATIONSHIP

This bill relates to SB57 which excludes medical marijuana from the 501(c)(3) gross receipts exemption and it excludes medical marijuana from the definition of prescription drugs.

TECHNICAL ISSUES

TRD:

If this bill is read with the Lynn and Erin Compassionate Use Act (NMSA 1978, § 26-2B-1 et seq.), then a producer is a licensed producer under that act. It appears under the Compassionate Use Act and rules, there are two kinds of licensed producers: a qualified patient who can only grow enough marijuana for the patient's personal use and a non-profit entity that grows and distributes to qualified patients or the qualified patient's primary caregiver who are given registration cards. Regulation 7.34.4.8 NMAC.

However, the definition of "producer" in the bill is not the same as "licensed producer" in the Compassionate Use Act. In the Compassionate Use Act, a licensed producer is one who is qualified to "produce, possess, distribute and dispense cannabis." NMSA 1978, § 26-2B-3D. In the bill, a producer is one who produces or distributes medical marijuana. So there could be multiple producers under the bill from the growth of the marijuana to the dispensing to a qualified patient. However, only the "production" is taxed. "Production" is not defined in either the bill or the Compassionate Use Act. Using the dictionary definition, production is the act of producing. Produce means to bring into being or to bring forth – obviously the step before distribution. It appears that the tax is not imposed on the distribution, and only on the production, but is based on the value of the product established by the proceeds received when distributed.

Section 8 establishes a date for the applicability of a distribution of the receipts in "Section 7," but Section 7 only makes the act subject to the Tax Administration Act. It is not clear what distribution Section 8 is referring to. Furthermore, it makes the bill applicable to receipts from "sales" on or after July 1, 2010, but the tax is not clearly imposed on sales. The tax is based on the value of the product which is established by "proceeds from the distribution." Proceeds is not defined in the bill. The dictionary definition is "the money or profit derived from a sale, business venture, etc."

OTHER SUBSTANTIVE ISSUES

TRD:

The bill only requires records to be retained for 3 years, but the Department can audit back up to 7 years.

BLG/svb

The Legislative Finance Committee has adopted the following principles to guide responsible and effective tax policy decisions:

1. ***Adequacy:*** *revenue should be adequate to fund government services.*
2. ***Efficiency:*** *tax base should be as broad as possible to minimize rates and the structure should minimize economic distortion and avoid excessive reliance on any single tax.*
3. ***Equity****: taxes should be fairly applied across similarly situated taxpayers and across taxpayers with different income levels.*
4. ***Simplicity****: taxes should be as simple as possible to encourage compliance and minimize administrative and audit costs.*
5. ***Accountability/Transparency:*** *Deductions, credits and exemptions should be easy to monitor and evaluate and be subject to periodic review.*

More information about the LFC tax policy principles will soon be available on the LFC website at www.nmlegis.gov/lcs/lfc