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FISCAL IMPACT REPORT

SPONSOR Shendo **ORIGINAL DATE** 02/07/20 **LAST UPDATED** 02/15/20 **HB** _____
SHORT TITLE Tribe & Pueblo Medical Marijuana Agreements **SB** 271/aSf1#1/aHSEIC
ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
		Indeterminate	Indeterminate	Indeterminate	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB115/HB160, SB139

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Health (DOH)

Indian Affairs Department (IAD)

New Mexico Attorney General (NMAG)

SUMMARY

Synopsis of HSEIC Amendment

House State Government, Elections and Indian Affairs Committee amendment to SB271, as amended, strikes Senate Floor #1 Amendment. It reorders the language in that amendment to further clarify that (1) any assistance provided pursuant to an intergovernmental agreement authorized in this bill is for an Indian nation, tribe or pueblo's own medical cannabis program that is for that government's own members; and (2) compliance guidelines required in such an agreement relating to transportation or sale of medical cannabis by that government outside its boundaries must be for transport or sale to that government's members. The net effect of the two amendments appears to be the same.

DOH's comments on the first amendment, which is applicable to this amendment as well, that the scope of activity conducted by an Indian nation, tribe or pueblo under any agreement authorized by this bill would be much more limited because the new language prohibits sale or transfer of medical cannabis to any person who is not a member of the particular nation, tribe or pueblo. It should be noted, however, that if any such nonmember meets the requirements for a qualified patient under the existing DOH medical cannabis program, that person may participate

in that program.

Synopsis of SFI#1 Amendment

Senate Floor #1 amendment clarifies that: (1) any assistance provided pursuant to an intergovernmental agreement authorized in this bill is for an Indian nation, tribe or pueblo's own medical cannabis program that is for that government's own members; and (2) compliance guidelines required in such an agreement relating to transportation or sale of medical cannabis by that government outside its boundaries must be for transport or sale to that government's members.

Synopsis of Original Bill

Senate Bill 271 amends the Lynn and Erin Compassionate Use Act to authorize the DOH to enter into intergovernmental agreements with any sovereign nation, tribe or pueblo that elects to implement its own medical cannabis program.

Any intergovernmental agreement must identify assistance being requested from DOH by the nation, tribe or pueblo in implementing its own program and which DOH agrees to provide. Any agreement shall include guidelines for compliance with department rules or compliance with separate express provisions to govern the rights and responsibilities of the parties to the agreement when the nation, tribe or pueblo transports or sells medical cannabis outside the boundaries of that nation, tribe or pueblo.

The effective date of this legislation is July 1, 2020.

FISCAL IMPLICATIONS

DOH reports the bill will have a fiscal impact, although it is difficult to anticipate the exact costs. At a minimum, the bill would require new program rules, which would cost approximately \$4,000-\$12,000 in hearing costs. Additionally, LFC staff anticipates additional DOH staff time in negotiating an agreement as well as performing its responsibilities under such an agreement, so the total fiscal impact is indeterminate. Although the state receives some revenue from the state medical marijuana program, LFC staff assumes that any funds generated upon implementation of its own medical marijuana program by a nation, tribe or pueblo will remain with that nation, tribe or pueblo.

SIGNIFICANT ISSUES

As both IAD and NMAG advise, most nations, tribes, and pueblo communities reside on federal trust land where cannabis remains a schedule 1 narcotic that is subject to federal laws. While legal and jurisdictional complexities for these governments to access the state's medical cannabis program currently exist, communication and consultation with New Mexico's nations, tribes and pueblos in developing an intergovernmental agreement may help address affordability and accessibility issues, among others.

RELATIONSHIP

This bill relates to SB115/HB160, the Cannabis Regulation Act and SB139, Medical Marijuana

“Qualified Patient”.

OTHER SUBSTANTIVE ISSUES

IAD provides this background:

In 2018, the New Mexico legislature passed Senate Memorial 105 (SM105) to convene a task force to make recommendations to improve the medical cannabis program for New Mexicans addressing issues of affordability and accessibility. In the final report, the task force explicitly stated that “access to medical cannabis is not equal for all New Mexicans”, particularly those who live in New Mexico’s Indian Tribes, Nations, and Pueblos. Ultimately, the task force recommended for the state to explore an intergovernmental agreements with New Mexico Indian Nations, Tribes, and Pueblos to participate as licensed producers in the state’s medical cannabis program.

In 2019, Governor Michelle Lujan Grisham’s Work Group on Marijuana Legalization reiterated the support of intergovernmental agreements with the state’s Indian Tribes, Nations, and Pueblos to participate in the state’s medical cannabis program. Under Recommendation #3 in its final report, the work group stated that “drug prohibition laws have disproportionately affected communities of color as well as low-income and low-education communities”. More explicitly, the report called for New Mexico’s “state legislature [to] 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.”

This movement to include Native American Tribes in medical and recreational cannabis programs is not singular to New Mexico. In 2015, the National Congress of American Indians passed Resolution #SD-15-047 “Marijuana and Hemp Policy in Indian Country.” This resolution both affirmed Tribes’ inherent right to set local laws addressing marijuana and called on the U.S. government to consult Tribes as well as include them in current and future legislation addressing marijuana.

Since 2015, New Mexico’s Picuris Pueblo has had its own medical cannabis code, which mirrors that of the state’s.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

As IAD notes, members of New Mexico’s nations, tribes and pueblos will continue to be excluded from participating in the state’s medical marijuana program.

MD/sb