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FISCAL IMPACT REPORT

SPONSOR Shendo ORIGINAL DATE 1/25/19
LAST UPDATED _____ HB _____
SHORT TITLE Medical Cannabis and Indian Nations SB 299/ec
ANALYST Chenier

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$6.0-\$14.0			\$6.0-\$14.0	Nonrecurring	Medical Cannabis

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Health (DOH)

Indian Affairs Department (IAD)

SUMMARY

Synopsis of Bill

Senate Bill 299 adds a new section to the Lynn and Erin Compassionate Care Act to authorize DOH to enter into intergovernmental agreements with “any sovereign Indian nation, tribe or pueblo located in New Mexico that elects to implement the provisions of the medical cannabis program”. The bill would allow DOH to provide any assistance to Indian nations, tribes, or pueblos they may request in implementing their own medical cannabis programs and guidelines on implementation. The bill includes an emergency clause.

FISCAL IMPLICATIONS

DOH said the bill would have a fiscal impact on DOH if adopted, although it is difficult to anticipate the extent to which it would impact the agency. At a minimum, the bill would require new program rules, which would cost approximately \$6 thousand to \$14 thousand in hearing costs.

SIGNIFICANT ISSUES

DOH provided the following:

The Lynn and Erin Compassionate Use Act established the Medical Cannabis Program in New Mexico in 2007, and required DOH to administer the program. The statute was adopted pursuant to the state’s Constitutional police powers to regulate the health and welfare of its citizens. The Act does not currently reference American Indian tribes, pueblos and nations.

DOH’s rules governing the program allows DOH to license nonprofit NM corporations to produce and distribute cannabis to qualified patients and primary caregivers enrolled in the program. Historically, DOH has selected nonprofit medical cannabis producers using a competitive application process. DOH limited the number of licensed producers to 35 and no producers are licensed on tribal land.

The bill poses legal and logistical concerns for DOH with references to American Indian tribes, pueblos, and nations as “electing to implement the provisions of the medical cannabis program” established pursuant to the Act, but it is unclear what “implementation” means in this context. The Act does not reserve any administrative function of the medical cannabis program to the American Indian tribes, pueblos, and nations. The bill is ambiguous regarding how such governmental bodies would “implement” the medical cannabis program, and what their authority and functions would be in relationship to those of DOH.

The bill suggests that American Indian tribes, pueblos, and nations would be growing medical cannabis on tribal or pueblo land and transporting and selling the cannabis outside the boundaries of tribes and pueblos. The medical cannabis program conflicts with U.S. controlled substances laws that identify cannabis as a Schedule I controlled substance. The commercial transport of cannabis across tribal boundaries would raise additional concerns regarding federal jurisdiction. Although American Indian tribes, pueblos, and nations are deemed sovereign under U.S. laws, Congress has the authority to legislate on tribal issues, and frequently does so. With respect to criminal law enforcement as well, federal law enforcement officials typically have a greater presence on tribal land, and crimes committed on tribal land are routinely prosecuted in federal courts. DOH is also concerned that such activity may be deemed to conflict with the exercise of police powers upon which the program is predicated.

IAD provided the following:

In 2018, the New Mexico legislature passed Senate Memorial 105 to convene a task force to make recommendations to improve the medical cannabis program for New Mexicans addressing issues of affordability and accessibility. The task force recommended for the state to explore an intergovernmental agreement with New Mexico Indian nations, tribes, and pueblos to participate as licensed producers in the state’s medical cannabis program. Most Indian nations, tribes, and pueblos communities reside on Federal trust land where cannabis remains a schedule 1 narcotic that is subject to federal laws. The jurisdictional complexity for Indian nations, tribes, and pueblo to access State’s medical cannabis program may currently exist, however communication and consultation with tribes towards an intergovernmental agreement may help to address the affordability and accessibility issues.