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FISCAL IMPACT REPORT

SPONSOR Shendo ORIGINAL DATE 2/13/2017
LAST UPDATED 3/6/2017 HB _____

SHORT TITLE Medical Marijuana Tribal Agreements SB 345/aSPAC

ANALYST Chenier

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Unknown	Unknown	Unknown	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to Senate Bills 8, 177, and 371

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (OAG)
Indian Affairs Department (IAD)
Department of Health (DOH)

SUMMARY

Synopsis of SPAC Amendment

The Senate Public Affairs Committee amendment to Senate Bill 345 eliminates language requiring DOH to enter into intergovernmental agreements with New Mexico tribes and pueblos trying to implement medical cannabis programs and would allow for these agreements if needed.

Synopsis of Bill

Senate Bill 345 would allow the Department of Health to enter into an intergovernmental agreement with any sovereign Indian nation, tribe or pueblo in New Mexico that elects to implement the provisions of the medical cannabis program. The bill requires the intergovernmental agreement 1) provide for any assistance from the department that an Indian nation, tribe or pueblo may request in implementing its own medical cannabis program within their boundaries and 2) provide guidelines for compliance with department rules or separate express provisions that govern the rights and responsibilities of the Department and Indian nation, tribe or pueblo should they transport or sell medical cannabis outside of their boundaries.

FISCAL IMPLICATIONS

No fiscal implications noted.

SIGNIFICANT ISSUES

OAG stated that there appear to be no constitutional or major legal issues related to the bill. The State Tribal Collaboration Act Section 11-18-1 NMSA 1978 requires state agencies to “make a reasonable effort to collaborate with Indian nations, tribes or pueblos in the development and implementation of policies, agreements and programs of the state agency that directly affect American Indians or Alaska Natives.” It is unclear if making medical cannabis intergovernmental agreements optional instead of required infringes on this statute. The bill may want to specifically state that SB 345 does not run counter to the statute.

DOH stated that the growth and harvesting of cannabis in Indian Country raises complex cross-jurisdictional issues, including issues concerning the application and enforcement of Federal controlled substances laws. Those issues present unique enforcement issues for DOH with respect to regulation of production of medical cannabis on tribal and pueblo lands. In memoranda, U.S. Department of Justice officials have expressed that they will consult with tribal governments regarding tribal laws concerning the cultivation or use of marijuana, and that they will render enforcement decisions on a case-by-case basis. Thus, the ability of tribes and pueblos to produce and distribute cannabis is not entirely clear, and may depend upon the substance of whatever medical cannabis laws they propose to adopt. Currently, DOH does not have plans to license producers to grow cannabis on tribal or pueblo lands.

IAD stated that New Mexico has passed the Lynn and Erin Compassionate Use Act which permits qualified patients to possess and use medical cannabis for treatment of qualifying medical conditions. As written, this bill serves to incentivize production of cannabis on tribal land within New Mexico. The bill does not speak to regulation of cannabis growth or cannabis use within tribal communities. Incentivized cannabis growth in tribal communities may have a spill-over effect of increased access to cannabis in neighboring communities.

EC/jle/al/jle