

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI	NFI	Nonrecurring	N/A

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: None as of 1/18/19

Duplicates/Relates to Appropriation in the General Appropriation Act: None as of 1/18/19

SECTION III: NARRATIVE

BILL SUMMARY

Senate Bill 204 (SB204) enacts a new section of the Public School code that would allow the possession, storage and administration of medical cannabis in certain school settings. SB204 also amends a section of the Lynn and Erin Compassionate Use Act related to the administration of medical cannabis on school property.

FISCAL IMPLICATIONS

SB204 would require New Mexico Public Education Department (PED) staff to dedicate time to the promulgation of rules. District and charter schools would be required to develop new rules, policies or procedures that allow for the possession, storage and administration of medical cannabis at school. Districts and charter schools may have to purchase storage devices or facilities (e.g., locked cabinets, etc.) to support implementation of SB204. These new rules, policies or procedures may also warrant a legal consultation for the Local Education Agency (LEA) to ensure compliance with state and federal laws.

SIGNIFICANT ISSUES

The Lynn and Erin Compassionate Use Act allows for the medical use of cannabis in New Mexico. Currently, this act does not allow for the administration of medical cannabis on school property. Individuals certified to use medical cannabis are not relieved from the possibility of “criminal prosecution or civil penalty for possession or use of cannabis in a school bus or public vehicle” or “on school grounds or property.” SB204 would amend the Lynn and Erin Compassionate Use Act to remove the language cited above. Furthermore, SB204 would enact a new section of the Public School Code which would allow the possession, storage and administration of medical cannabis on school property. The changes proposed in SB204 would allow students who are certified to use medical cannabis the opportunity to remain on campus while receiving their medical cannabis treatment, reducing out-of-classroom time. SB204 states that local school boards and governing bodies of charter schools shall authorize parents and legal guardians or designated school personnel to possess, store and administer the medical cannabis. The definition of designated school personnel, in SB204, does not include eligibility criteria.

Sources: <https://nmhealth.org/publication/view/regulation/128/>

SB204 does acknowledge that the use of medical cannabis shall not be administered “in a manner that creates disruption to the educational environment or causes other students to be exposed to medical cannabis.” This statement in SB204 provides protection to the other students who are not prescribed medical cannabis. Although medical cannabis can help certain

individuals with specified health conditions, the Centers for Disease Control and Prevention (CDC) states “there are health risks associated with using marijuana regardless of how it is used.” Caution should be exercised and exposure to the substances in medical cannabis limited. SB204 states that the medical cannabis administered on school settings shall not be in an aerosol form nor can it be smoked. This would assist in limiting the exposure to the individuals to whom medical cannabis has been prescribed.

Source: <https://www.cdc.gov/marijuana/faqs/is-marijuana-medicine.html>

The American Academy of Pediatrics openly “opposes medical marijuana outside of the usual process by the Food and Drug Administration (FDA) to approve pharmaceutical products.” This is in an effort to limit the risks associated with the use of medical cannabis. However, the research process the FDA approval entails is often lengthy and the AAP does acknowledge that “some exceptions should be made for compassionate use in children with debilitating or life-limiting diseases.” The AAP does not specify specific health conditions in their statement.

Source: <https://www.aap.org/en-us/about-the-aap/aap-press-room/pages/American-Academy-of-Pediatrics-Reaffirms-Opposition-to-Legalizing-Marijuana-for-Recreational-or-Medical-Use.aspx>

SB204 does provide for certain exceptions that would allow a public school, charter school or district to refuse implementation of the provisions stated in SB204. First, the public school, charter school, or district would need to reasonably demonstrate that they would lose or have lost federal funding as a result of possessing, storing or administering medical cannabis on campus. Second, the public school, charter school or district must post its decision not to comply with the provisions of SB204 in a conspicuous location on their website. It is unclear who would review the districts statement and determine “reasonable” demonstration to allow this exception.

It is important to note that “long-term cannabis use can have permanent effects on the developing brains of adolescents and young adults” (CDC, 2018). The PED, school districts, and charter schools would need to approach the use of medical cannabis by youth cautiously, ensuring that clear and strong rules, policies and procedures are developed and implemented. However, there are many students who may benefit from the use of medical cannabis. Medical cannabis may manage a student’s symptoms so he or she can participate in the regular school day. Source: <https://www.cdc.gov/marijuana/nas/adolescents.html>

SB 204 provides that for those schools authorizing the possession, storage, and administration of medical cannabis, to qualified students, that those entities do so with certain conditions, including that a written treatment plan for the administration of the medical cannabis is agreed to and signed off by the principal or the principal's designee of the qualified student's school and the qualified student's parent or legal guardian. The provision may further clarify within the provisions what is intended as written treatment plan or provide a definition.

SB 204 provides that the school board may adopt certain policies providing for restrictions as to who may administer, establishing reasonable parameters regarding the administration and use of medical cannabis, and the school settings, and banning students from use, distribution, and sale if not otherwise provided for within the subsection. The provision may further clarify whether this would include a school nurse or other licensed health professional to administer, and whether those licensed individuals may elect to not administer to avoid any unintended impacts to their license due to any conflicting federal laws or policies.

SB 204 provides that these provisions shall not apply to a public school, charter school or school district if the entity reasonably demonstrates that it would lose, or has lost, federal funding as a

result of implementing the provisions of Subsection A of this section. The standard of “reasonably demonstrates” is vague, and may lead to a need for judicial interpretation or more definition may be provided within these provisions. Meeting the standard may also depend to an extent on a federal administration’s desire to prosecute or pursue these matters.

There may be instances when the parent may qualify under a prescription permitted by federal law which may be more expensive than other alternative, and the parent may choose those other alternatives. This provision may clarify further whether that is an intended consequence.

SB 204 provides that the term “school” means a public school or a charter school. There may be cases when students are transferred by a public school to a private school and the public school continues to provide services. The provisions may clarify further whether are any instances to which the requirements in the provisions are intended to apply to private schools.

PERFORMANCE IMPLICATIONS

None

ADMINISTRATIVE IMPLICATIONS

SB204 would require New Mexico Public Education Department (PED) staff to dedicate time to the promulgation of rules. District and charter schools would be required to develop new rules, policies or procedures that allow for the possession, storage and administration of medical cannabis at school. Districts and charter schools may have to purchase storage devices or facilities (e.g., locked cabinets, etc.) to support implementation of SB204. These new rules, policies or procedures may also warrant a legal consultation for the Local Education Agency (LEA) to ensure compliance with state and federal laws.

SB204 states that a written treatment plan must be “agreed to and signed by the principal or the principal’s designee of the qualified student’s school and the qualified student’s parent or legal guardian.” The parent is also responsible for submitting the written certification for use of medical cannabis and a written statement releasing the school and school personnel from liability to the local school board or charter school. The school board or governing body of the charter school must then review the documentation and adopt policies that would allow for the medical cannabis possession, storage, and administration.

SB 204 provides, with certain exceptions, that local school boards and the governing bodies of charter schools shall authorize by rule the possession, storage and administration of medical cannabis by parents and legal guardians, or by designated school personnel, to qualified students for use in school settings, with certain limitations described in the provisions. The provisions may clarify further whether the word rule is intended to mean rule under the State Rules Act, and whether this contemplates that local school boards and the governing bodies of charter schools must follow the process under the State Rules Act to pass such rules.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None as of 1/18/19

TECHNICAL ISSUES

None

OTHER SUBSTANTIVE ISSUES

As cannabis usage (including medical cannabis usage) remains illegal under federal law, federal

funding to those districts and charter schools that implement the provision of SB204 requiring storage and administration of medical cannabis by parents and legal guardians, or by designated school personnel to qualified students may be affected.

ALTERNATIVES

None

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If SB204 is not enacted, students will continue to leave campus to receive medical cannabis treatments.

AMENDMENTS

None