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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 1/20/16  
**LAST UPDATED** 1/26/16    **HB** 148

**SPONSOR** Gomez

**SHORT TITLE** Industrial Hemp Research    **SB** \_\_\_\_\_

**ANALYST** Mulligan

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		
	Unknown	Unknown	Recurring	New Mexico Industrial Hemp Research and Development Fund

(Parenthesis ( ) Indicate Revenue Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		Unknown	Unknown	Unknown	Recurring	New Mexico Industrial Hemp Research and Development Fund and / or General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to  
 Companion to SB 3 – Research on Industrial Hemp

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

- Regulation and Licensing Department (RLD)
- New Mexico State University, Department of Agriculture (NMDA)
- Higher Education Department (HED)
- Department of Public Safety (DPS)
- Administrative Office of the Courts (AOC)

## **SUMMARY**

### Synopsis of Bill

The bill is sponsored by the House Economic Development and Rural Development Committee.

HB 148 would enact a new section of state law that would provide for a state program to license and regulate the growing of industrial hemp for research purposes. The bill is being proposed under federal law that allows for such a program and that exempts hemp from classification as a controlled substance under the federal Controlled Substances Act.

The bill would reside the regulatory responsibility for the program with New Mexico State University's Department of Agriculture (NMDA); authorize the NMDA to license growers of industrial hemp for research and development for agricultural, agronomic, ecological, processing, sales, and marketing purposes; and create the "New Mexico industrial hemp research and development fund." The bill would exempt industrial hemp from the New Mexico Controlled Substances Act, which provides criminal penalties for the possession and sale of certain drugs.

## **FISCAL IMPLICATIONS**

Funding for the program would be generated through licensing fees issued by NMSU consistent with rules issued for the program; it is unclear how many licenses would be issued, the cost of a license, and the total revenue that would be generated annually under this new proposed program. However, as NMSU points out, the amount of funding generated from licensing is highly unlikely to cover NMSU's costs related to operating the program.

Any funding necessary to support expenses of the program, whether from the General Fund or the Industrial Hemp Research and Development Fund would have to be appropriated by the Legislature.

## **SIGNIFICANT ISSUES**

The bill appears to achieve its stated objective "to bring New Mexico into compliance with federal law" by creating a program authorized by federal law that authorizes the growing of hemp under the purview of an institution of higher education for research and development purposes, and does not appear to conflict with federal law. See attached provisions of federal law (7 U.S. Code § 5940).

The governor vetoed Senate Bill 94, 2016 Session that was virtually identical to HB 148, citing law enforcement concerns and perceived conflicts with federal drug laws.

NMSU's Department of Agriculture indicates that they believe that the bill does not alleviate all concerns regarding the currently illegality of marijuana under federal law. It recommends that the issues be reviewed by the Attorney General prior to enactment of such a law. In addition, as the Department of Agriculture points out, the bill's provisions may be broader than the federal statute intends to permit. Specifically, the bill's provisions that authorize a licensee under the bill to grow industrial hemp for "commercial" purposes (Sec. 1 (E)) may run afoul of the federal statute by exceeding its intent and scope. The Higher Education Department indicates that

NMSU had previously objected to similar legislation on the grounds that handling industrial hemp would subject staff to federal prosecution under the Controlled Substances Act. NMSU also raises objections to the bill's requirement to collect licensing fees, fearing potential prosecution under money laundering statutes.

The Department of Public Safety indicates that the similarities between growing hemp and marijuana can create significant difficulties for law enforcement investigating drug crimes.

#### **ADMINISTRATIVE IMPLICATIONS**

The Administrative Office of the Courts (AOC) indicates that SB 3 does not implicate any reduction or increase in fiscal resources for the judicial branch.

#### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

HB 148 is related to SB 3, and is identical in construct, with the following exception: HB 148, unlike SB 3, does not include the phrase, “. . . and money in the fund is subject to appropriation by the legislature . . .”. However, the phrase may not be needed because, in the absence of statutory law that actually states that “money in the fund is appropriated to” an agency, all expenditures by public bodies require an appropriation by the Legislature.

#### **ALTERNATIVES**

The licensing functions contained in the bill could fall under another entity, such as the Regulation and Licensing Department.

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## 7 U.S. Code § 5940 - Legitimacy of industrial hemp research

### (a) In general

Notwithstanding the Controlled Substances Act (21 U.S.C. 801 et seq.), the Safe and Drug-Free Schools and Communities Act (20 U.S.C. 7101 et seq.), chapter 81 of title 41, or any other Federal law, an institution of higher education (as defined in section 1001 of title 20) or a State department of agriculture may grow or cultivate industrial hemp if—

- (1) the industrial hemp is grown or cultivated for purposes of research conducted under an agricultural pilot program or other agricultural or academic research; and
- (2) the growing or cultivating of industrial hemp is allowed under the laws of the State in which such institution of higher education or State department of agriculture is located and such research occurs.

### (b) Definitions In this section:

(1) Agricultural pilot program The term “agricultural pilot program” means a pilot program to study the growth, cultivation, or marketing of industrial hemp—

(A) in States that permit the growth or cultivation of industrial hemp under the laws of the State; and

(B) in a manner that—

- (i) ensures that only institutions of higher education and State departments of agriculture are used to grow or cultivate industrial hemp;
- (ii) requires that sites used for growing or cultivating industrial hemp in a State be certified by, and registered with, the State department of agriculture; and
- (iii) authorizes State departments of agriculture to promulgate regulations to carry out the pilot program in the States in accordance with the purposes of this section.

### (2) Industrial hemp

The term “industrial hemp” means the plant *Cannabis sativa* L. and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

### (3) State department of agriculture

The term “State department of agriculture” means the agency, commission, or department of a State government responsible for agriculture within the State.