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## FISCAL IMPACT REPORT

**SPONSOR** McSorley **ORIGINAL DATE** 1/14/2016 **LAST UPDATED** 1/26/2016 **HB** \_\_\_\_\_

**SHORT TITLE** Research on Industrial Hemp **SB** 3

**ANALYST** Mulligan

### REVENUE (dollars in thousands)

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

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to Appropriation in the General Appropriation Act

- Relates to HB2, Section 4J, Higher Education, appropriation to the New Mexico State University

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts  
 Regulation and Licensing Department  
 Higher Education Department  
 New Mexico State University  
 Department of Public Safety

### SUMMARY

#### Synopsis of Bill

SB 3 would create an industrial hemp research program at 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. The bill was introduced on behalf of the interim Water and Natural Resources and the Courts, Corrections and Justice committees.

## **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.

Money generated by the program and deposited in the fund would be subject to appropriation by the Legislature in future fiscal years.

## **SIGNIFICANT ISSUES**

The bill duplicates the final version of SB 94 from the 2015 session, for the same purpose, that was vetoed. Unlike the proposed legislation from the 2015 session, however, SB 3 has committee sponsorship from two interim committees: the Water and Natural Resources Committee and the Courts, Corrections and Justice Committee.

In her veto message, the Governor cited conflicts with the federal Controlled Substances Act; the similarities between growing hemp and marijuana and resulting challenges for law enforcement; and a wide range of purposes cited for allowing the growing of hemp under the program. SB 3 contains the same provisions of the vetoed act.

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. In addition, AOC points out that 7 U.S.C. Section 5940, passed by Congress and signed by the President in 2014, is the federal statute that allows for the cultivation of hemp specifically for research purposes by institutions of higher education when authorized by state law. Specifically, subsection (a) states that growth of “industrial hemp” for the purposes of agricultural research is excepted from the federal Controlled Substances Act other federal criminal provisions if state law authorizes such a program through a university or state department of agriculture. AOC also notes that SB3 defines industrial hemp exactly as the federal statute does, and that the bill appears to achieve its stated purpose “to bring New Mexico into compliance with federal law” by providing state statutes authorizing the growing of hemp for research purposes.

However, as New Mexico State University’s 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 licensing functions contained in the bill may be better handled by another entity, such as the Regulation and Licensing Department.

**TECHNICAL ISSUES**

The bill creates a fund at New Mexico State University; the usual practice is to create funds at the DFA level that would be administered by various entities, including NMSU.

MM/jo/jle