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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/4/2020

SPONSOR Lente LAST UPDATED \_\_\_\_\_ HB 214

SHORT TITLE Regulation of Finished Hemp Product Sales SB \_\_\_\_\_

ANALYST Hawker

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY20	FY21	FY22		
	\$50.0	\$50.0	Recurring	Hemp Service Sanitation Fund

(Parenthesis ( ) Indicate Revenue Decreases)

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

	FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	\$77.0	\$307.0	\$307.0	\$691.0	Recurring	Hemp Service Sanitation Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Public Safety (DPS)  
 Environment Department (NMED)  
 Indian Affairs Department (IAD)  
 New Mexico Attorney General (NMAG)  
 New Mexico Department of Agriculture (NMDA)

### SUMMARY

#### Synopsis of Bill

House Bill 214 adds sections to and amends sections of the Hemp Manufacturing Act.

Section 1: adds a new section to the Hemp Manufacturing Act,

- Requires the Environmental Improvement Board (EIB) to promulgate regulations regarding the distribution and sale of hemp finished products in New Mexico. The regulations must include minimum standards for product safety, description, THC

concentration, storage requirements and recordkeeping.

- NMED is responsible for enforcing the hemp regulations issued by the EIB.
- Hemp distributors and hemp retailers shall not provide hemp products that do not meet the standards established in regulation.

Section 2: adds a penalty section to the Hemp Manufacturing Act.

- A person who violates a regulation adopted by the EIB pursuant to the Hemp Manufacturing Act is guilty of a petty misdemeanor.
- This section does not apply to any regulation for which a criminal penalty is otherwise provided.
- Remedies are provided which may include suspension or revocation of any permit and a penalty not to exceed \$5 thousand per violation per day.
- Any collected penalty payments are to be deposited into the general fund, crediting the current school fund.

Section 3: amends definitions in the Hemp Manufacturing Act.

- The definition for “hemp derived materials” is deleted, the definition of “hemp extract” is amended to include “extracts derived from Cannabis sativa L containing THC in any concentration through any activity authorized pursuant to the Hemp Manufacturing Act”. Also added to the definition is the clarification that hemp extracts are intended for human ingestion or inhalation.
- As appropriate throughout the definition section, “hemp derived materials” is deleted and replaced with “hemp extract”
- “Hemp finished product” is amended to read “a hemp product that is intended for retail sale for human ingestion or inhalation and containing hemp or hemp extracts that has a THC concentration of not more than three-tenths percent.
- “Hemp distributor” is added, meaning a person that provides hemp finished products to other business entities.
- The definition for “intermediate hemp-derived product” is deleted.
- “Hemp retailer” is defined as a person that provides hemp finished products directly to consumers.

Section 4: amends 76-24-8 NMSA 1978, creating the hemp service sanitation fund.

- The hemp service sanitation fund consists of appropriations, gifts, grants, donations and fees collected by NMED pursuant to this section.
- NMED will administer the fund for the purpose of paying the costs of administering regulations promulgated by EIB to carry out the provisions of the Act.
- Any unexpended or unencumbered balance or income earned remaining at the end of the fiscal year shall not revert to the general fund.

Section 4 also includes technical language clean up.

Section 5: amends 76-24-9 NMSA 1978, the transportation of hemp, providing for technical language clean up and establishing the transportation of hemp extract without a manifest constitutes a petty misdemeanor.

Section 6: amends 76-24-10 NMSA 1978, providing for technical language clean up.

Section 7: establishes the effective date of this bill, July 1, 2020.

Terms are amended for consistency throughout the bill, such as changing “hemp-derived material” to “hemp extract” or “hemp finished products”

### **FISCAL IMPLICATIONS**

NMED estimates meeting the requirements in HB214 will require three additional FTEs in the Environmental Health Bureau to provide technical expertise, training, compliance assistance, inspection and compliance assurance capabilities. NMED estimates the cost of the three FTEs to be \$307 thousand. NMED estimates it will collect approximately \$50 thousand annually in fees from the issuance of permits pursuant to the Hemp Manufacturing Act. Per NMED, no other federal grant or special revenue fund balance within NMED can legally fund the FTEs needed to work on the hemp program.

NMAG provides legal counsel to the EIB. NMAG attorney resources will likely be needed to assist with the adoption of new rules required by HB214.

This bill creates a new fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

### **SIGNIFICANT ISSUES**

NMED’s states the department’s experience in implementing the Hemp Manufacturing Act led to the provisions contained in HB214 which are intended to improve the safety of hemp products sold in New Mexico while providing for growth in the hemp industry. This bill allows EIB to establish rules to ensure out-of-state hemp products, such as CBD infused honey, manufactured out-of-state and sold in New Mexico meet New Mexico standards. Currently out-of-state manufacturers who provide products sold in New Mexico are not held to the same standards as New Mexico manufacturers. NMED states the provisions in HB214 will allow NMED to remove unsafe hemp products from sale and assess penalties for manufacturers, distributors, and retailers that violate the Act.

According to NMED, by changing the definition of “hemp finished product” EIB can adopt rules that regulate hemp products intended for ingestion or inhalation. Replacing the terms “intermediate hemp derived product” with ‘hemp extract’ and ‘hemp finished product; ‘clarifies that EIB does not adopt rules regulating hemp products used in textiles and building materials, such as hempcrete.

Per NMED the lack of appropriation accompanying the passage of the Hemp Manufacturing Act in the 2019 Legislative Session resulted in the loss of \$67 thousand in federal grant funding as NMED reassigned staff to develop and implement hemp rules at the expense of other duties. Due to the limited funding available to support the Act, NMED states either additional federal funds will be lost due to NMED redirecting staff time or the hemp program will not have timely or effective license review or inspections.

This bill creates the hemp service sanitation fund. Currently all hemp license fees go into the food service sanitation fund. The bill clarifies the funds in the hemp service sanitation fund are to be used to cover the cost of administering the requirements of the Act.

HB214 changes the rulemaking body from NMED to EIB. The EIB is the deliberative body that historically considers rules for NMED relating to food and food-like products.

#### **ADMINISTRATIVE IMPLICATIONS**

NMED states “(w)ithout additional resources, NMED will continue to use existing staff from the Food Program, resulting in loss of federal grant funding, increased risks to public health from unregulated out-of-state hemp products, and NMED not being able to meet LFC performance measures.”

#### **OTHER SUBSTANTIVE ISSUES**

IAD, referring to the interim report on *Hemp and the Tribal Regulation of Hemp* issued by the Indian Affairs Committee, states “the report highlighted several challenges including the need for tribes to coordinate and cooperate with both federal and state governments in promulgating regulations regarding how it engages in the hemp industry.”

The Act specifies that tribes, pueblos and nations develop their own plans for regulating the production of hemp on tribal lands. Such plans must comply with the Federal Agriculture Improvement Act of 2018.

#### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

NMED will not have rules addressing out-of-state products, allowing out-of-state products to continue to be distributed and sold at retail facilities without meeting New Mexico standards. The EIB could consider regulations governing the use of hemp products including building products and textiles.

**VKH/rl**