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FISCAL IMPACT REPORT

SPONSOR HLEDC **ORIGINAL DATE** 1/24/17 **CS/144,154 &**
LAST UPDATED 3/01/17 **HB** 280/HLEDCS/aSJC

SHORT TITLE Industrial Hemp Research Rules **SB** _____

ANALYST Dulany

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY17	FY18		
See Fiscal Implications	See Fiscal Implications	Recurring	NM industrial hemp research and development fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		
See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	Recurring	NM industrial hemp research and development fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	Recurring	NM industrial hemp research and development fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB 6/aSCONC/aHAWC, HB 89, & HB 166

SOURCES OF INFORMATION

LFC Files

Colorado Department of Agriculture

Kentucky Department of Agriculture

Responses Received From

New Mexico Department of Agriculture (NMDA)

Attorney General’s Office (AGO)

Responses Not Received From

Department of Public Safety (DPS)

SUMMARY

Synopsis of Senate Judiciary Committee Amendment

The Senate Judiciary Committee amendment makes a technical correction to the short title by removing the clause “MAKING AN APPROPRIATION.”

Synopsis of Bill

The House Labor and Economic Development Committee Substitute for House Bills 144, 154 & 280 adds a new section to statute requiring NMDA to institute and administer an industrial hemp research and development program to allow persons and institutions of higher education to grow industrial hemp for the purpose of studying the growth, cultivation, and marketing of industrial hemp in New Mexico or any other purpose allowed by federal regulation or law. The bill defines “industrial hemp” as the plant *Cannabis sativa* L. and any part of the plant, whether growing or not, containing a delta-9-tetrahydrocannabinol (THC) concentration of no more than 0.3 percent on a dry weight basis. The New Mexico State University (NMSU) Board of Regents is to promulgate rules to establish and carry out the program.

The bill creates the New Mexico industrial hemp research and development fund, which consists of revenue collected by NMDA in administration of the program and any donations, grants, and income earned from investment of the fund.

The committee substitute specifies the enumeration of marijuana in the Controlled Substances Act does not apply to industrial hemp, pursuant to rules promulgated by the NMSU Board of Regents on behalf of NMDA.

FISCAL IMPLICATIONS

The HLEDC substitute allows NMDA to impose compliance or participation fees, granted that the fees do not exceed administrative costs. NMDA reports it cannot predict the level of revenue expected from fees, but it believes it will be insufficient to fully enact and adequately maintain the provisions of the bill without compromising activities within existing regulatory programs.

Although the level of participation is indeterminate at this time, examples from other states may provide insight into potential revenues. The Kentucky Department of Agriculture (KDA) set a schedule of fees differentiating hemp growers from hemp processors, along with an application fee:

- Application fee: \$50
- Annual processor or handler fee:
 - \$400 for small processors and handlers
 - \$1,000 for large processors
- Grower fee: \$350

Other fees apply, such as site modification fees (\$500) and a post-harvest retest, product THC test, or pesticide residue test fee (\$150). The program experienced 166 participants in 2016, 24 of which were processors and handlers. Depending on whether the 24 processors were small processors or large processors, annual base revenues to KDA's industrial hemp research pilot program could range from \$67.6 thousand to \$82 thousand. Revenues could be higher depending on site modifications and post-harvest retests.

Revenues from fees for the program would likely require a ramp-up period as NMSU establishes fee schedules and promulgates rules. Initial costs would likely need to be paid from other sources. NMDA closed out FY16 with a \$1.6 million operating fund balance.

SIGNIFICANT ISSUES

As noted previously by AGO and NMDA, the federal Agricultural Act of 2014 provides:

“...an institution of higher education...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.”

AGO indicates changes between the original version of HB 144 and the HLED/CS substitute offset some of the concerns AGO previously expressed related to conformity to federal law. These changes noted by AGO are (1) the elimination of provisions allowing for cultivation of hemp for commercial purposes and (2) shifting responsibility for the program to the NMSU Board of Regents rather than NMDA. AGO states the ability to issue permits to “persons,” however, may still be inconsistent with the federal law noted above. KDA appears to address this issue by establishing licensees under its pilot program as agents of KDA.

According to NMDA, historically the US Drug Enforcement Agency (DEA) has been responsible for providing federal permits to growers for cultivation of hemp but has not done so except in rare cases for research plots. NMDA states DEA has not issued such permits since 1999, even to those states legalizing hemp production.

AGO previously noted at least 30 states have passed legislation related to industrial hemp. Generally, according to AGO, states have taken three approaches: (1) establish industrial hemp research or pilot programs; (2) authorize studies of the industrial hemp industry; or (3) establish commercial industrial hemp programs. It appears some states' laws establishing commercial industrial hemp programs require a change in federal law or waivers from DEA before those programs can be implemented in the state.

At least 16 states have legalized industrial hemp production for commercial purposes and 20 have passed laws allowing research and pilot programs. Seven states – Colorado, Kentucky, Maryland, Minnesota, North Dakota, Rhode Island, and Virginia – have approved creation of both pilot or research programs and commercial programs. According to AGO, many of the states that have legalized hemp cultivation for commercial purposes specify the state does not allow for violation of federal law. States including California, Indiana, Kentucky, Minnesota, Montana, and Virginia have established a framework for regulating commercial hemp but still consider hemp illegal outside research programs unless federal law changes, according to a previous agency analysis from AGO.

AGO stated in previous analysis that in order to protect growers from criminal prosecution, some states provide an affirmative defense for cannabis possession and cultivation charges under controlled substances law for licensed individuals. States may also require licensees to obtain controlled substances registration from DEA for the affirmative defense to apply.

NMDA states “it is [the department’s] interpretation that the legislative intent is for the agency to conduct field inspections for the purpose of determining THC levels.” NMDA reports several concerns regarding departmental inspectors’ liability when handling hemp samples. First, NMDA anticipates agency staff will handle plant material classified as marijuana (materials with THC levels above the 0.3 percent threshold). NMDA notes concerns that this would subject NMDA staff to prosecution under the Controlled Substance Act. It is unclear whether law enforcement would pursue such charges. The department asserts provisions are needed in this act to protect those involved in legal hemp activities from possible state prosecution. NMDA analysis further anticipates challenges in handling, testing, and taking possession and transportation of cannabis-based material in the border area, particularly with regard to federally controlled customs and border patrol check points.

The Colorado Department of Agriculture (CDA) purports more than half of all industrial hemp production in the U.S. in 2016 was in Colorado. As of November 2016, CDA had inspected over 6,000 acres of outdoor hemp production space and 434 thousand square feet of indoor space. Of 197 compliance samples collected by CDA, 150, or about 75 percent, of the samples met compliance standards of less-than-0.3 percent THC levels. To help growers comply with the legal THC limits of hemp, CDA is working with growers to provide seeds of hemp variants known to be below the 0.3 percent threshold.

RELATIONSHIP

HB 144, 154 & 280/HLED/CS relates to certain provisions in SB 6/aSCONC/aHAWC, HB 89, and HB 166.

OTHER SUBSTANTIVE ISSUES

According to KDA, Industrial hemp is a variety of *Cannabis sativa* and is of the same plant species as marijuana. However, hemp is genetically different and distinguished by its use and chemical makeup. Industrial hemp refers to cannabis varieties that are primarily grown as an agricultural crop. Hemp plants are relatively low in tetrahydrocannabinol, marijuana's primary psychoactive chemical. THC levels for hemp generally are less than 1 percent.

KDA indicates the hemp global market consists of an estimated 25 thousand products. An estimated 55.7 thousand metric tons of industrial hemp is produced each year, 70 percent of which is produced in China, Russia, and South Korea. Canada had 38.8 thousand licensed acres of industrial hemp in 2011, according to KDA. Canadian exports of hemp seed and hemp products were estimated at more than \$10 million, most of which went to the U.S. Industry estimates indicate U.S. retail sales of hemp-based products may exceed \$300 million per year.

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