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FISCAL IMPACT REPORT

ORIGINAL DATE 2/17/15

SPONSOR Maestas LAST UPDATED _____ HB 357

SHORT TITLE Agricultural Hemp Act SB _____

ANALYST Chavez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY15 | FY16 | FY17 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|------|--------------------------------------|------|-------------------|---------------------------|---------------|
| Total | | Unknown (see fiscal implications) | | | | |

(Parenthesis () Indicate Expenditure Decreases)

Relates to Senate Bill 94

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Department of Agriculture (NMDA)

SUMMARY

Synopsis of Bill

House Bill 357 establishes the Industrial Hemp Farming Act. The Act establishes policy regarding growing industrial hemp in New Mexico, and deems industrial hemp and hemp seed to be agricultural products subject to regulation by the Department of Agriculture (NMDA). The bill authorizes industrial hemp production and possession and commerce in industrial hemp commodities in New Mexico. The bill also revises the definition of marijuana under the Controlled Substances Act to exclude industrial hemp as defined by the bill. The bill declares an emergency.

FISCAL IMPLICATIONS

This bill does not contain an appropriation. USDA notes this bill does not address fee setting to develop the infrastructure necessary to start and maintain a program, including additional staff and possible laboratory upgrades.

SIGNIFICANT ISSUES

The bill states that allowing industrial hemp production will provide farmers an opportunity to sell their products at a reasonable rate of return, and the possibilities of hemp as a food crop, fiber crop, and fuel crop. The bill adds that industrial hemp can play a useful role in crop rotation and as a drought-tolerant crop.

NMDA notes under the current U.S. drug policy, all cannabis varieties, including hemp, are considered Schedule I controlled substances under the Controlled Substances Act (CSA, 21 U.S.C. §§801 *et seq.*; Title 21 CFR Part 1308.11). Federal law is silent in regards to tetrahydrocannabinol (THC) levels. Industrial hemp as defined by the proposed act is by definition controlled and regulated by the United States (U.S.) Drug Enforcement Administration (DEA). The U.S. DEA would be responsible for providing federal permits to growers for the cultivation of hemp; but historically, has not done so except in rare cases for research plots, and not since 1999, even to those states since legalizing hemp production.

The 2014 Farm Bill does provide for hemp cultivation by an institution of higher education or a state department of agriculture if the growing of industrial hemp is allowed under the laws of that state, and it is grown for research purposed under a pilot or other research program which is defined to be:

- for the study of growth, cultivation, or marketing of hemp;
- conducted either by the institution of higher education or state department of agriculture;
- on sites which must be certified and registered with the state department of agriculture.

State departments of agriculture may promulgate rules for implementing a pilot program. The proposed act allows for hemp production in New Mexico beyond the intent of the hemp provision in the 2014 Farm Bill.

NMDA adds that as of September 2014, 19 states have a pilot or other research program for industrial hemp. Eight of those states have laws to allow the growth and marketing of industrial hemp.

NMDA notes the following issues for their agency:

The legislative intent as to the level and oversight for industrial hemp production which NMDA will need to undertake is unclear, as well as the authorities in terms of rule promulgation is unclear.

Section 4 of the bill states, “industrial hemp production and possession and commerce in industrial hemp commodities and products are authorized in New Mexico. Industrial hemp and agricultural hemp seed are deemed to be agricultural products that are subject to regulation by the department.” It is unclear as to the intent and how NMDA would be expected to regulate possession and commerce of hemp commodities and especially products. Clarification of these duties is needed.

The act makes no provisions for the routine inspection of production or research locations by any state agency for the purpose of ensuring compliance with the act. If field

inspection requirements are added to the act, specific training, additional secure areas and laboratory equipment and staff will be required by both agencies involved;

As written in the definition section and as understood by NMDA, conformation of THC levels, for the purpose of determining if a plant is classified as hemp or marijuana, can only be conducted on plants containing flowering tops. If this is the intent, research and production sites will not be able to be tested until flowering, regardless of the THC levels at pre-flowering stages;

Section 7 Emergency, states the bill would become effective immediately. An effective program will require procedure development, staff training, outreach and rulemaking, a process which will take time in order to be inclusive and transparent, it is unclear if immediate effect of the bill is attainable or feasible for the agencies involved.

ADMINISTRATIVE IMPLICATIONS

NMDA notes the bill promulgated as written would introduce a number of legal issues that NMDA's administration is insufficiently equipped to handle without support of the Attorney General's Office.

RELATIONSHIP

The Senate Conservation Committee substitute for Senate Bill 94 provides authorization for NMDA to adopt rules for research on industrial hemp and provides for the establishment of the Industrial Hemp Research and Development Fund.

TECHNICAL ISSUES

HB 357 proposes revision to Section 30-31-2, NMSA 1978, Item N., "marijuana" to exempt industrial hemp under the definition; however, conflict still exists under Section 30-31-6, NMSA 1978, which specifically identifies any material containing not only marijuana but any quantity of tetrahydrocannabinols (THC) as a Schedule 1 controlled substance, is prohibited under the other provisions of the Controlled Substances Act.

OTHER SUBSTANTIVE ISSUES

NMDA states that due to the variability of THC levels within cannabis cultivars, it is expected that agency staff, researchers, and producers will be, on occasion, handling plant material classified as marijuana and therefore subject to prosecution under the Controlled Substance Act. Based on intent, provisions will need to be included in the act to protect those involved in legal hemp production from prosecution based on handling plant material with elevated THC levels.

Although New Mexico is a state in which marijuana is included in their controlled substance act, NMDA notes there are several legal implications for the state in this bill regarding the involvement of state staff in the handling, procession of, testing, or transportation of cannabis-based material. NMDA adds the bill also creates legal issues for New Mexico as a border state, as agency staff may be subject to searches at federally-controlled check points. NMDA is concerned about the liability and legality associated with state employees transporting cannabis-based plant material with unknown levels of THC and possibly in violation of federal laws.