

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 2/26/15
 LAST UPDATED 3/16/15 HB _____

SPONSOR SJC

SHORT TITLE Industrial Hemp Farming Act SB 94/SJCS/aSFC/aSFI#1

ANALYST Chavez

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		
	Unknown		Recurring	New Mexico Industrial Hemp Research and Development Fund

(Parenthesis () Indicate Revenue Decreases)

Relates to House Bill 357

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Department of Agriculture (NMDA)
 Regulation and Licensing Department (RLD)
 Department of Public Safety (DPS)

SUMMARY

Synopsis of SFI #1 Amendment

Senate Floor Amendment #1 strikes notwithstanding language from the bill, which would make the bill subject to other provisions of law. The amendment also strikes “production” from the section that allows a person who holds a license issued pursuant to the bill to grow industrial hemp. The amendment allows a licensee to grow hemp “for commercial or research and development purposes.” Finally, the amendment changes the amendment to the Controlled Substances Act by not applying the “cultivation,” rather than the “research and development,” of industrial hemp by qualified as Schedule 1 under the Act.

Synopsis of SFC Amendment

The Senate Finance Committee Amendment to the Committee Substitute for Senate Bill 94 clarifies appropriation language by stating that money in New Mexico Industrial Hemp Research and Development Fund established by this bill is “subject to appropriation by the Legislature.”

Previously the bill stated that money in the fund “is appropriated” to New Mexico State University (NMSU). The change clarifies that appropriations from the fund will be made by the Legislature.

Synopsis of Bill

The Senate Judiciary Committee substitute for Senate Bill 94 provides authorization for the New Mexico Department of Agriculture (NMDA) to provide for the growing of industrial hemp for research and development purposes including agricultural, agronomic, ecological, processing, sales and marketing research conducted by New Mexico department of agriculture (NMDA) or an institution of higher learning. The bill allows, upon passage of federal legislation to legalize hemp, for growing of industrial hemp by a person issued a license to grow industrial hemp for commercial production as well as research and development purposes.

The bill directs NMDA to adopt rules to carry out the provisions of the bill including requirements for licensure, training of law enforcement personnel, inspection, recordkeeping, and fees, which are not to exceed program costs and compliance processes. The bill creates the New Mexico Industrial Hemp Research and Development Fund. It also revises the definition of marijuana under the Controlled Substances Act to exclude industrial hemp as defined by the bill.

FISCAL IMPLICATIONS

This bill creates a new fund, the New Mexico Industrial Hemp Research and Development Fund, to be established by New Mexico State University (NMSU) to consist of fees collected by NMDA for administration of the industrial hemp research and development program, donations, grants, and income earned from investment of the fund and money otherwise accruing to the fund. NMDA would administer the fund, and money in the fund is subject to appropriation by the Legislature to NMDA to conduct related programs.

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.

NMDA notes they cannot predict the level of revenue expected from the fees at this time.

SIGNIFICANT ISSUES

RLD notes that according to the Controlled Substances Act, marijuana is a Schedule I controlled substance. This substitute bill proposes to exempt marijuana that is used in “research and development of industrial hemp by qualified entities pursuant to rules adopted by the New Mexico department of agriculture.” 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 concentration of no more than three-tenths percent on a dry weight basis.” RLD notes this proposed definition change will lower the concentration of delta-9-tetrahydrocannabinol allowed as compared to the original bill.

NMDA analysis notes that 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

THC levels. Industrial hemp as defined by the proposed act is by definition controlled and regulated by the U.S. Drug Enforcement Agency.

NMDA adds this version of the bill allows growing of industrial hemp in New Mexico for research and development in compliance with the 2014 Farm Bill Section 7606. It also extends the ability to grow industrial hem to other entities for research and development purposes at the time federal law is changed to allow other entities to grow industrial hemp.

RELATIONSHIP

House Bill 357 establishes the Industrial Hemp Farming Act and establishes policy regarding growing industrial hemp in New Mexico.

ADMINISTRATIVE ISSUES

NMDA notes 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.

NMDA also notes that laboratory facilities would need to construct separate secure areas for the storage and handling of industrial hemp seeds and plant samples for analysis.

TECHNICAL ISSUES

NMDA analysis from February 28th made the following suggested amendments:

The language on Page 3, Line 9, through Line 16, stating, “The New Mexico...authorized representative.” NMDA suggests the language be changed to, “The New Mexico Department of Agriculture shall, as authorized in 76-1-2, establish and publish a schedule of fees and collect those fees to recover the cost of services performed at the request of a person or firm. Fees imposed shall be just and equitable and shall not exceed the department's cost for performing the service.”

The language on page 20 line 6 only exempts hemp grown for research and development from being a Schedule I substance under the controlled substances act. The words “research and development” should be removed and replaced with “the legal growing” to allow the exemption to continue for growing of hemp beyond research and development when allowable by federal law. The SFI #1 amendment replaced “research and development” with “cultivation.”

Finally, NMDA adds that the language on Page 2, Line 21, currently allows a licensee to grow industrial hemp for commercial production, regardless of other laws due to the statement “Notwithstanding any other provision of law to the contrary”. NMDA suggests the language be changed to “When growing of industrial hemp for purposes other than research and development is authorized by federal law”. The SFI #1 amendment struck the notwithstanding language on page 2, lines 21 and 22 and also struck the term “production”.

OTHER SUBSTANTIVE ISSUES

NMDA notes that until legalized federally, a concern remains for the involvement of state staff in the handling, procession of, testing, or transportation of cannabis-based material, as a border state in which 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 through federal check points in the state and will need to consider this issue in the rule making process.

KC/bb/jc/aml/je