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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 1/30/17  
**LAST UPDATED** \_\_\_\_\_ **HB** 154

**SPONSOR** Little

**SHORT TITLE** Industrial Hemp Research & Development **SB** \_\_\_\_\_

**ANALYST** Daly

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		
	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
<b>Total</b>		NFI	NFI			

(Parenthesis ( ) Indicate Expenditure Decreases)

Conflicts with HB 144 and SB 6  
 Duplicates, to some extent, HB 166  
 Relates to HB 89

### SOURCES OF INFORMATION

LFC Files

### Responses Received From

Attorney General's Office (AGO)  
 New Mexico Department of Agriculture (NMDA)  
 Department of Public Safety (DPS)

## SUMMARY

### Synopsis of Bill

HB 154 creates an industrial hemp research and development program. It provides that the NMDA shall issue permits to institutions of higher education or persons to grow industrial hemp for the purpose of studying the growth, cultivation and marketing of industrial hemp. Industrial hemp is defined as cannabis sativa with a delta-9-tetrahydrocannabinol concentration of not more .3 percent. The bill requires the Regents of New Mexico State University (NMSU) to create the “New Mexico industrial hemp research and development fund.” Monies collected in the fund would be appropriated to NMSU for use by the NMDA in the administration of the industrial hemp research and development program. HB 154 confers rulemaking authority to NMSU to promulgate rules on behalf of NMDA to establish and carry out the industrial hemp and research program. Finally, the bill carves out an exception for industrial hemp from the enumeration of controlled substances in Section 30-31-6, NMSA 1978.

## FISCAL IMPLICATIONS

HB 154 should be referred to the House Appropriations and Finance Committee.

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 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) sets 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 NMDA establishes fee schedules and promulgates rules. Initial costs would likely need to be paid from other sources. NMDA closed out FY16 with \$2.7 million in fund balance.

## SIGNIFICANT ISSUES

NMDA provides this background:

Under the current United States 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. Historically, the United States drug enforcement agency (DEA) has been responsible for providing federal permits to growers for the cultivation of hemp, but has not done so except in rare cases for research plots, and since 1999, not even to those states legalizing hemp production.

The 2014 Farm Bill provides a new provision 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. Relevant hemp related elements within the 2014 Farm Bill include:

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

As to the provisions of HB 154 specifically, the AGO warns that HB 154 appears to conflict with this federal law:

While federal law permits States to grow or cultivate industrial hemp “for purposes of research,” States are required to “ensure[.]” that “only institutions of higher education and State departments of agriculture are used to grow or cultivate industrial hemp.” 7 U.S.C. § 5940. In contrast, under HB 154, in addition to authorizing grow permits for institutions of higher education, the legislation directs that NMDA “shall issue” such permits to “persons.” Thus, a federal preemption issue may exist.

NMDA adds these additional concerns to the discussion:

- Under this bill, NMDA is to conduct field inspections for the purpose of determining THC levels. It is anticipated that agency staff, researchers, and producers will, on occasion, handle plant material classified as marijuana (THC levels in excess of three-tenths percent) and therefore be subject to prosecution under the controlled substance act. NMDA believes that provisions are needed in this bill to protect those involved in legal hemp activities from possible state prosecution as a result of growing or possessing plant material with elevated THC levels (greater than three-tenths percent).
- The involvement of state staff in the handling and possession of, testing, or transportation of cannabis-based material creates a number of federal legal issues

in border states as well. NMDA staff are subject to searches at federally controlled customs and border protection check points, and subject to searches during current and future joint federal and state law enforcement activities. NMDA is concerned about the liability and legality associated with state employees transporting cannabis-based plant material with unknown levels of THC in possible violation of federal laws.

- Because HB 154 allows for hemp production beyond the legal intent of the federal hemp provision contained within the 2014 Farm Bill, verification will need to be obtained to ensure the legality of fees collected from hemp licensing activities. Under federal law (The Controlled Substances Act of 1970) cannabis in all forms is still classified as marijuana and is a Schedule I drug. Collection of monies associated with illegal drugs is money laundering. Banks have refused or are reluctant to provide any financial services of funds associated with activities related to marijuana and hemp production, even if legal under state law. There is a question whether these funds will require special handling or classification as the source may be from the sale of marijuana as defined under federal law.
- Section 1(B) states “Notwithstanding any other provision of law to the contrary, the New Mexico department of agriculture shall issue licenses pursuant to rules enacted under Subsection D of this section...” This section may be overreaching regarding a state agency’s ability to ignore federal law which may place state employees in ambiguous legal situations. Without appropriate memorandums of agreement with federal agencies, the possession of hemp, outside of those restrictions outlined in the 2014 Farm Bill, may also jeopardize federal grants received by state agencies and universities that have established drug-free stipulations.

Similarly, DPS comments that there are similarities between growing hemp and marijuana plants which could create difficulties for law enforcement in investigating drug crimes. It notes that the bill makes NMSU/NMDA responsible to provide training to law enforcement personnel, but the bill is not clear what training is to be provided, and whether that training will be consistent with other training law enforcement must undergo.

## **PERFORMANCE IMPLICATIONS**

Again, because of the similarities in growing hemp and marijuana plants, DPS foresees difficulties for law enforcement investigating drug crimes.

## **ADMINISTRATIVE IMPLICATIONS**

NMDA notes that the interplay between this bill, state and federal law, and NMSU and NMDA policies renders it insufficiently equipped to handle possible legal ramifications without support from the AGO.

## **CONFLICT, DUPLICATION, RELATIONSHIP**

HB 154 conflicts with HB 144 and SB 6, which also allow for the growing of hemp, but language in those bills providing for commercial development and participation by businesses in

the program is not included in HB 154. Section 2 of HB 154 duplicates HB 166 to the extent that they each amend the Controlled Substances Act (albeit in different sections) to exclude industrial hemp from its coverage. HB 154 also relates to certain provisions in HB 89.

### **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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