

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

SPONSOR Gentry **ORIGINAL DATE** 3/13/17
LAST UPDATED 3/15/17 **HB** 530/HLEDCS

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

ANALYST Dulany

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		
\$0.0	<\$67.6	\$67.6-\$82.0	Recurring	New Mexico 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	\$0.0	>\$67.6	>\$67.6	>\$135.2	Recurring	New Mexico Industrial Hemp Research and Development Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB 6/aSCONC/aSFI#1/aHAWC and HB 144, 154 & 280/HLEDCS

SOURCES OF INFORMATION

LFC Files
 New Mexico Department of Agriculture (NMDA)
 Attorney General's Office (AGO)
 Colorado Department of Agriculture
 Kentucky Department of Agriculture

SUMMARY

Synopsis of HLEDC Substitute

The House Labor and Economic Development Committee Substitute for House Bill 530 adds a new section to Chapter 76 NMSA 1978 to require NMDA to issue licenses to grow industrial

hemp, defined as the plant *Cannabis sativa* L. or any part of the plant containing a delta-9-tetrahydrocannabinol (THC) concentration of no more than three-tenths percent on a dry weight basis, for research and development purposes, including agricultural, agronomic, ecological, processing, sales, and marketing research. The bill requires the director of NMDA to adopt rules to establish and carry out the provisions of the bill, including requirements for licensure, training of law enforcement personnel, inspection, recordkeeping, fees (not to exceed program costs), and compliance processes. An institution of higher education or researcher that plans to grow industrial hemp seed or industrial hemp fiber must obtain a grower's license by submitting an application to NMDA.

An institution of higher education or researcher who holds a license may grow industrial hemp for research and development purposes, including agricultural, agronomic, ecological, processing, sales, and marketing research. The bill establishes the New Mexico industrial hemp research and development fund, which is to consist of fees collected, donations, grants, and income earned from investment of money in the fund.

Finally, HB 530/HLEDCS amends the Controlled Substances Act to specify the enumeration of marijuana as a Schedule I controlled substance does not apply to “the cultivation of industrial hemp by qualified entities pursuant to rules adopted by [NMDA]...”

FISCAL IMPLICATIONS

Information contained in this fiscal impact report comes from agency analysis of similar legislation.

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 NMDA establishes fee schedules and promulgates rules. Initial costs would likely need to be paid from other sources. NMDA closed out FY16 with \$1.6 million in fund balance.

SIGNIFICANT ISSUES

As noted 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.”

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 reports 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 AGO.

AGO states other limited research indicates 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.

Assuming NMDA is required to inspect higher education institutions and researchers to ensure compliance with the program, 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 tetrahydrocannabinol 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. 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.

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.

TD/jle