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FISCAL IMPACT REPORT

ORIGINAL DATE 2/18/19
LAST UPDATED 3/10/19 **HB** 581/aHAWC/aSJC

SPONSOR Lente

SHORT TITLE Hemp Manufacturing Act **SB** _____

ANALYST Daly

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		
	\$25.0	\$100.0	Recurring	Food Sanitation Fund (NMED)
	\$10.0	\$10.0	Recurring	Hemp Research and Development Fund (NMSU/NMDA)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$72.0	\$405.0	\$640.0	\$1,117.0	Recurring	Food Sanitation Fund (NMED)
		Unknown	Unknown	Unknown	Recurring	Hemp Research and Development Fund (NMSU/NMDA)

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 566, HB 63

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Department of Agriculture (NMDA)
- Environment Department (NMED)
- Department of Public Safety (DPS)
- Indian Affairs Department (IAD)
- New Mexico Attorney General (NMAG)

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to House Bill 581, as amended, strikes the Section 7(E) penalty provision added by the HAWC amendment and replaces it with a different penalty provision that makes transporting hemp or hemp-related material without a harvest certificate a petty misdemeanor, subject to a fine of \$500. The amendment also adds subsection (F) allowing law enforcement to seize, for up to five days, product over eight ounces that appears to be hemp that is in the possession of a person suspected of violating subsection (E) to allow the agency to identify it. A new subsection (G) provides a definition of harvest certificate to mean a document authorized by rules promulgated under this Act for use during transport.

Synopsis of HAWC Amendment

The House Agriculture and Water Resources Committee amendment to House Bill 581 expands the scope of NMED's rulemaking authority to include rules requiring and providing a process for the use as well as disposal of hemp-derived material containing THC levels of more than .3 percent. The amendment also adds as Section 7(E) a criminal penalty provision for failure to have within one's immediate possession a certificate, license, permit or other document required by rules adopted under the Act during transportation of hemp or hemp-derived products. The classification of the offense (i.e. petty misdemeanor, misdemeanor or the particular degree of felony) is based upon possession of the same amount of marijuana as identified in the relevant section of the Controlled Substances Act. The amendment also revises the title of the bill to include reference to that penalty provision.

Synopsis of Original Bill

House Bill 581 enacts the Hemp Manufacturing Act, which assigns licensing and other regulatory duties to NMDA related to unprocessed hemp testing laboratories, hemp harvesters, and hemp research breeders. NMED is charged with permitting and otherwise regulating hemp manufacturers (including extractors, and manufacturers that produce products intended for human consumption). Within the regulatory framework established by the Act, the bill:

- 1) allows for and regulates the possession and use of hemp derived products that contain THC concentrations of not more than .3 percent in manufacturing;
- 2) allows for and regulates hemp plant breeders to use plants that contain THC concentrations of not more than .3 percent;
- 3) regulates the storage and disposal of accumulated THC at levels that may be greater than .3 percent;
- 4) provides oversight to ensure finished food products containing hemp are manufactured within sanitary guidelines and that they do not exceed .3 percent THC; and
- 5) recognizes tribal entities' authority to develop their own regulation of the production of hemp on their lands and outlines hemp agreement opportunities between those entities and the state.

HB581 also amends the Controlled Substances Act to exempt hemp consistent with the purposes

stated in the Act (allowing THC concentrations of up to 5 percent in Section 10(E)(3)), as well as amending and repealing sections of existing law in a manner consistent with the Act.

The bill carries an effective date of July 1, 2019.

FISCAL IMPLICATIONS

Revenues

The maximum permitting fee established in HB 581 for hemp manufacturing permits by NMED is the lesser of \$1 thousand or the cost of administration, and all fees collected must be deposited in the food service sanitation fund. NMED estimates an initial permit fee of \$500. NMED estimates a minimum of 50 permits being issued in FY20, and 200 permits in FY21, as reflected in the revenue table. It also predicts growth to over 600 permits beyond FY21. A similar fee structure is established for hemp breeders and testing laboratories, both to be licensed by NMSU/NMDA; there is no language in the bill setting fee caps or guidelines for harvest certificates to be issued by NMDA. All fees collected by NMDA are to be deposited in the hemp research and development fund, as shown in the revenue table using revenue figures provided by NMDA without further explanation of the basis for those figures.

Operating Budget Impact

NMED estimates the budget cost in FY 19 for in-house start-up activities, including hiring staff, conducting research and initiating the rule-making process, before the bill's effective date will be \$72 thousand. Within the initial year following enactment NMED estimates the costs to be approximately \$430K for the hiring of staff; operational costs associated with hiring new staff; development of regulations, policies, and forms; training; IT database upgrades; and outreach. Recurring cost in following years are estimated to be approximately \$740K per year for permitting, inspections, and training of industry, along with hiring, operating costs, and training of staff. The operating budget table reflects these costs minus the permitting fees anticipated by NMED.

NMDA expresses concern that the funding provided under the fee-based program contemplated by HB581 will be insufficient to cover its costs associated with licensing, applicant reviews, testing, and repeated inspections to ensure compliance, but has provided no estimates as to those costs, which are shown on the operating budget impact table as unknown.

SIGNIFICANT ISSUES

NMED explains hemp-containing products are currently being marketed and sold throughout New Mexico and the United States, often without appropriate regulatory oversight to ensure the proper and safe production and transportation of the products. This puts consumers at risk of unknowingly consuming hemp-containing products that may be injurious to their health. Further, NMED reports hemp-containing food products are currently defined as adulterated under federal law and in the absence of a state law establishing they are not adulterated, these products produced and/or sold in New Mexico are considered adulterated. HB 581 establishes the authority and framework for NMED to have regulatory authority to create rules to define standards for safe processing of hemp and production of hemp-containing products, so that those

products are not deemed adulterated. HB 581 also grants authority to NMED to permit and inspect producers to ensure the standards are met.

Additionally, NMED advises that in 2017 legislation was enacted and chaptered into law as Chapter 140. That law granted NMDA the authority to develop a hemp program and promulgate rules for the administration of that program, which would complement federal law. Existing law also grants persons and institutions of higher education the ability to apply for a hemp production license through NMDA. In December 2018, Title 21, Chapter 20, Part 2 (Hemp Cultivation Rule) became effective and established rules to grow hemp and establish testing processes in New Mexico. While Chapter 140 and the Hemp Cultivation Rule authorize the growing of hemp in New Mexico, neither authorize the transportation or processing of hemp after growing. That gap is addressed in HB 581.

However, NMED points out HB 581 does not address the production and sale of non-food related items, such as topically applied products and dietary supplements, which are regulated by the federal Food and Drug Administration.

IAD provides this background regarding the production of hemp and hemp products on tribal lands:

The federal Agriculture Improvement Act of 2018 not only changed federal policy regarding hemp as an agricultural product, but includes the removal of hemp from the federal class 1 designation. The Agriculture Improvement Act of 2018 provides an administrative mechanism for American Indian tribes to assume primary regulatory authority over the production of industrial hemp and hemp products, including cannabitol or CBD, on tribal lands. The U.S. Department of Agriculture will require tribes to develop and submit a comprehensive plan for monitoring and regulating hemp production on tribal land.

DPS advises there are similarities in the physical appearance of hemp and marijuana which would prevent definitive identification by law enforcement without laboratory testing. New Mexico State Police is informed that most marijuana prosecutions in Kentucky, which has had a pilot program authorized since 2014, identification of the THC content is being required because many defendants now raise a “hemp defense.” DPS suggests that the difficulties posed could be significantly lessened if the bill contained a provision that failure to carry the required harvest certificate and manifest during transport of hemp results in criminal penalties at the same level of severity as possession of that amount of marijuana.

PERFORMANCE IMPLICATIONS

NMED states that without the additional staffing described in the Fiscal Implications section, NMED will be unable to maintain conformance with federal requirements for current federal funding of the Food Program. Additionally, NMED will have to petition the New Mexico Environmental Improvement Board to promulgate rules to implement this bill.

RELATIONSHIP

NMDA reports that Section 5’s provisions regarding hemp breeders appears to duplicate the intent stated in HB566—Hemp Research.

NMAG notes this bill is related to HB63, which appropriates \$100 thousand from the general fund to the regents of NMSU to study how to develop the production and sale of industrial hemp in New Mexico.

OTHER SUBSTANTIVE ISSUES

IAD also advises that HB581:

provides an opportunity for sovereign Indian nations, tribes or pueblos to enter into cooperative or joint powers agreements that seek the state's assistance in developing hemp production plan, production regulation, testing, or hemp-derived materials. However, in order for the state to provide assistance, studies like those provided for in HB63 should include Indian nations, tribes and pueblos as part of the research for the current status of hemp in New Mexico, and related infrastructure, down-stream industries, and supply chain strategies.

NMED advises HB581 conflicts with the Federal Food, Drug and Cosmetic Act (FD&C Act) which considers hemp-derived material in food to be an adulterant. Further, food containing hemp-derived material would not be allowed to be distributed in interstate commerce under section 301(II) of the FD&C Act.

AMENDMENTS

DPS provides this suggested amendment:

At Section 7, p. 10, line 5, add the following subsection:

E. Failure to have in a person's immediate possession the harvest certificate and manifest required during transportation of hemp shall be a petty misdemeanor, misdemeanor or felony based upon possession of the same amounts of marijuana as identified in NMSA 1978, §30-31-23.

MD/al/sb/al