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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/03/21  
 SPONSOR Lente LAST UPDATED 02/21/21 HB 88/aHAWC  
 SHORT TITLE Finished Hemp Product Sales SB \_\_\_\_\_  
 ANALYST Wan

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY21	FY22	FY23		
	\$90.0	\$120.0	Recurring	Environmental Health Fund

(Parenthesis ( ) Indicate Revenue Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		\$500.0	\$512.0	\$1,012.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)

Environment Department (NMED)

### SUMMARY

#### Synopsis of HAWC Amendment

The House Agriculture and Water Resources Committee amendment to House Bill 88 changes the definitions of “hemp” and “hemp finished product” to account for potential changes in federal law that may increase the allowable THC concentration of hemp and hemp products to exceed 0.3 percent, as is currently defined in statute. In the definition of “hemp extract,” the amendment strikes “human ingestion or inhalation” to ensure hemp extract is not considered a hemp finished product.

The amendment also adds a new section to Section 76-24-8 NMSA 1978 exempting the manufacturing or use of hemp seed or hemp seed derivatives for products intended for human food

from that section of the Hemp Manufacturing Act. Rather, manufacturers of these products will be regulated under the Food Service and Sanitation Act, Sections 25-1-1 to 25-1-15 NMSA 1978, and the New Mexico Food Act, Sections 25-2-1 to 25-2-20 NMSA 1978, because the U.S. Food and Drug Administration considers hemp seed an approved ingredient.

The amendment provides further clarification on the transportation of hemp extract and hemp finished products for personal use. The language inserted exempts individuals transporting hemp extract or hemp finished products for personal use from the provisions of the Food Service Sanitation Act and the New Mexico Food Act.

### Synopsis of Original Bill

House Bill 88 would amend and create a new section of Chapter 76, Article 24 NMSA 1978 (the Hemp Manufacturing Act) to require the Environmental Improvement Board (EIB) to promulgate rules regarding the distribution and sale of hemp finished products, which, under the bill's amended definition, are products "intended for retail sale for human ingestion or inhalation and [contain] hemp or hemp extracts that [have] a [delta-9-tetrahydrocannabinol (THC)] concentration of not more than three-tenths percent." The rules will be enforced by the Environment Department (NMED) and must include minimum standards for product safety, product description, THC concentration, storage requirements, and recordkeeping.

HB88 establishes that a violation of the EIB's rules pursuant to the Hemp Manufacturing Act is a petty misdemeanor and creates authority for NMED to respond to a violation or threat of violation with a compliance order, civil penalty, or civil action in district court. An individual who is issued a compliance order may request a hearing with NMED within 30 days. Under the bill, NMED's compliance order authority may include suspension or revocation of a permit issued by the agency and a penalty of no more than \$5,000 per day. HB88 requires the revenue from penalties to be deposited in the general fund for credit to the current school fund.

HB88 changes the maximum fee the EIB can set for hemp manufacturing permits under Section 76-24-8 NMSA 1978 from \$1,000 to \$2,000.

HB88 amends certain definitions in the Hemp Manufacturing Act and adds definitions for "hemp distributor" and "hemp retailer."

The effective date of this bill is July 1, 2021.

### **FISCAL IMPLICATIONS**

The Administrative Office of the Courts (AOC) states that any potential fiscal impact on the judiciary "would be proportional to the enforcement of this law and commenced prosecutions and/or civil actions, including appeals from administrative decisions."

NMED reports that the bill's directives would require an additional 5 FTE at an annual cost of \$500 thousand "to provide technical expertise, training, compliance assistance, inspection, and compliance assurance capabilities." NMED expects annual permit fee revenue resulting from HB 88 to be approximately \$110 thousand, on average.

### **SIGNIFICANT ISSUES**

NMED was tasked with implementing certain provisions of the Hemp Manufacturing Act of 2019. The agency reports HB88 is a direct response to challenges and questions presented in the course of enforcing the existing law. Currently, NMED only has authority over hemp manufacturing that occurs in New Mexico, which the agency says means that hemp products manufactured out-of-state and sold in New Mexico are not subject to the same standards as products manufactured in-state. HB88 requires the EIB to adopt rules governing the sale of all hemp products in New Mexico to ensure products that come from other states meet NMED’s safety standards, such as a THC concentration limit. In addition to protecting public health, the agency states these provisions will level the playing field between in-state and out-of-state manufacturers in the hemp industry, thus supporting New Mexico-based businesses.

NMED states the bill’s change to the definition of “hemp finished product” allows the EIB to regulate hemp products intended for ingestion or inhalation and amendments to other definitions clarify that hemp products used in textiles and building materials are not covered by the EIB’s regulatory authority.

### **ADMINISTRATIVE IMPLICATIONS**

HB88 would require NMED to develop rule changes and new rules related to hemp sales, permit fees, and penalties and to petition the EIB to adopt those rules. According to the agency, this would entail conducting public information hearings to inform industry of proposed changes, receive feedback, and incorporate changes into the proposed rules prior to submission to the EIB.

NMED reports that to implement the Hemp Manufacturing Act, staff had to be reassigned from food manufacturing permitting and inspection duties to develop and implement hemp rules. NMED states HB88 will require this reassignment of staff to continue unless additional funding for new FTE is provided. The agency further states that shifting staff from the Food Program to the Hemp Program limits NMED’s ability to inspect manufactured food facilities and jeopardizes federal grant funding.

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