

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 5165-07
Bill No.: HCS for SS for SCS for SB 547
Subject: Agriculture; Department of Agriculture; Business and Commerce; Drugs and Controlled Substances; Higher Education; Food; Liability
Type: Original
Date: April 16, 2018

Bill Summary: This proposal modifies provisions relating to industrial hemp.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
Total Estimated Net Effect on General Revenue	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
Industrial Hemp Fund	\$0	\$5,633	(\$106)
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$5,633	(\$106)

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 11 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
Industrial Hemp Fund	5 FTE	5 FTE	5 FTE
Total Estimated Net Effect on FTE	5 FTE	5 FTE	5 FTE

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Agriculture (AGR)** assume the proposal would expand the program currently authorized through §261.265.

The fee structure is based upon figures from the Kentucky Department of Agriculture, which recently implemented an industrial hemp program, adjusted to meet estimated program costs. Assumptions are for 100 registrations/permits.

§195.746.1 allows reasonable fees for administering sections 195.740 to 195.761. All fees estimated in this fiscal note will be subject to revision by the director based on the number of participants in the program.

FY2019 fees include:

In FY 2019 the director will set a Registration/Permit fee that will cover the \$600,000 cost of equipment needed for pesticide analysis and the \$406,100 program costs. A fee of up to \$120,000 per Registration/Permit may be charged to cover program costs. The Registration/Permit fee will be revised to cover program costs once the number of applicants is known and verified as willing and able to pay the shared cost. If less than five participants are verified, the needed equipment cannot be purchased.

Fees for subsequent years include:

- Registration/permit fees $\$300 \times 100$ entities = \$30,000 every 3 years, or \$10,000 per year.
- Estimated cost of 2 site inspections per year @ 10 hours per inspection. $100 \text{ sites} \times 2 \text{ inspections per year} \times 10 \text{ hours per inspection} \times \$120 \text{ per inspection hour} = \$240,000$.
- Lab tests. $100 \text{ sites} \times 2 \text{ inspections per year} \times \$925 \text{ per lab test} = \$185,000$.
- Total fees estimated: \$435,000.

Total annual fees estimated: \$1,006,100 for FY1 2019 and \$435,000 annually for subsequent fiscal years.

ASSUMPTION (continued)

The program will require two field staff positions for inspections (Inspectors each at \$36,924 annually), and two administrative positions (each at \$33,276 annually) and one chemist position (\$45,192 annually). Duties will include but are not limited to: application review; verification of application information; travel to field locations; performing inspections of sites for verification; inspecting during growing season and pre-harvest; collecting samples for testing; transporting samples to the laboratory; laboratory analysis; inspecting documentation of the "hemp monitoring system"; and providing location documentation to appropriate authorities.

In order to implement the requirements of the legislation, \$600,000 is required to purchase the LCMS Triple Quad laboratory equipment necessary for pesticide analysis.

Oversight will show a fiscal impact to the Industrial Hemp Fund for costs related to five additional staff persons, equipment and expenses net anticipated revenue for registration and permit applications, inspection fees, and lab tests.

Oversight notes that subsection 195.773.1 states that the Department of Agriculture should attempt to find a more cost efficient manner to test for pesticides, by looking to other states. Therefore, Oversight will reflect the cost and fee revenues from this proposal as "up to" AGR's estimates.

Officials from the **Department of Corrections (DOC)** assume the following regarding this proposal:

In FY 2017, the number of new admissions for cannabis production totaled 34 persons to probation and 6 persons to adult institutions with a class B felony (195.211-002 and NCIC designation of 3563).

It is unknown how many of these 40 offenders cultivated industrial hemp (varieties of Cannabis sativa with less than 0.3% THC concentration). It is estimated that decriminalizing and legalizing the growing of industrial hemp will decrease incarceration and probation by 10% per year; this equates to a total decrease of three person on probation and 1 person to incarceration. After January 1, 2017, cultivation of cannabis fell under statute 590.055-003, a class C felony. In FY 2017, the average sentence of probation for this class C felony was 4.3 years; the average sentence of incarceration was estimated at 6.9 years (with the inclusion of 120-day sentences) and the average time to first release is 2.8 years (not including 120-day sentences). The full impact occurs in FY 2025.

ASSUMPTION (continued)

If this proposal is enacted, the estimated impact to DOC is three less admissions to field probation and one less to incarceration per year beginning in FY 2019; the total impact is the decrease of 15 individuals on probation and 4 fewer to incarceration beginning in FY 2025.

If this impact statement has changed from statements submitted in previous years, it is because the DOC has changed the way probation and parole daily costs are calculated to more accurately reflect the way the Division of Probation and Parole is staffed across the entire state.

In December 2017, the DOC reevaluated the calculation used for computing the Probation and Parole (P&P) average daily cost of supervision and revised the cost calculation to be used for 2018 fiscal notes. The new calculation estimates the increase/decrease in caseloads at each Probation and Parole district due to the proposed legislative change. For the purposes of fiscal note calculations, the DOC averaged district caseloads across the state and came up with an average caseload of 51 offender cases per officer. The new calculation assumes that an increase/decrease of 51 cases in a district would result in a change in costs/cost avoidance equal to the cost of one FTE staff person in the district. Increases/decreases smaller than 51 offenders are assumed to be absorbable.

In instances where the proposed legislation would only affect a specific caseload, such as sex offenders, the DOC will use the average caseload figure for that specific type of offender to calculate cost increases/decreases.

The DOC cost of incarceration is \$17,003 per day or an annual cost of \$6,206 per offender. The DOC cost of probation or parole is determined by the number of P&P Officer II positions that would be needed to cover the new caseload.

The DOC would assume this legislation will result in long term cost avoidance as indicated in the chart below.

ASSUMPTION (continued)

	fewer to prison	Cost per year	Total Savings for prison	fewer offenders to Probation & Parole	Savings for fewer P&P officers	Grand Total of Savings to DOC
Year 1	1	(\$6,206)	(\$5,172)	3	\$0	(\$5,172)
Year 2	2	(\$6,206)	(\$12,660)	6	\$0	(\$12,660)
Year 3	3	(\$6,206)	(\$19,370)	9	\$0	(\$19,370)
Year 4	4	(\$6,206)	(\$26,343)	12	\$0	(\$26,343)
Year 5	4	(\$6,206)	(\$26,870)	14	\$0	(\$26,870)
Year 6	4	(\$6,206)	(\$27,408)	15	\$0	(\$27,408)
Year 7	4	(\$6,206)	(\$27,956)	15	\$0	(\$27,956)
Year 8	4	(\$6,206)	\$28,515	15	\$0	(\$28,515)
Year 9	4	(\$6,206)	(\$29,085)	15	\$0	(\$29,085)
Year 10	4	(\$6,206)	(\$29,667)	15	\$0	(\$29,667)

Oversight assumes the estimated savings to the DOC to not be material, and have not reflected the savings in the fiscal note.

Officials from the **Department of Health and Senior Services (DHSS)** assume this proposal does not require DHSS to issue any licenses or conduct inspections to ensure the safety of industrial hemp infused food products. However, sections 196.010 through 196.298, RSMo gives DHSS responsibility for the regulation of food to include such duties as ensuring food safety, sanitation, and proper labeling, etc. Therefore, DHSS would have responsibility to assure that facilities manufacturing foods containing industrial hemp and industrial hemp products are regulated the same as other food manufacturers.

Due to the broad parameters of this proposal it is difficult to determine how many food manufacturing facilities would be established. States that have legalized retail marijuana have seen significant demand for edible marijuana products; therefore it is assumed that there would be the same demand for industrial hemp edible products. For the purposes of this fiscal note, DHSS estimates that there will be at least 300 food manufacturing facilities that will be established as a result of this proposal. In order to properly inspect these manufacturing facilities, DHSS would require a minimum of two additional Environmental Public Health Specialist IV staff (\$44,352, A27, Step G). The Environmental Public Health Specialist IV positions would begin August 1, 2018.

ASSUMPTION (continued)

Oversight assumes that industrial hemp is already being used in products, including food, in Missouri; however, it is not allowed to be cultivated. Therefore, Oversight assumes DHSS will not incur material additional inspection duties and will not need additional staff.

Officials from the **Office of the Secretary of State (SOS)** assume many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the SOS for Administrative Rules is less than \$2,500. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, the SOS also recognizes that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what the office can sustain with the core budget. Therefore, the SOS reserves the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process.

Officials from the **Attorney General's Office (AGO)** assume that any potential costs arising from this proposal can be absorbed with existing resources. AGO may seek additional appropriations if there is a significant increase in litigation.

Officials from the **Joint Committee on Administrative Rules** state that the proposal is not anticipated to cause a fiscal impact to their agency beyond its current appropriation.

Officials from the **Department of Higher Education, Office of the State Treasurer, Department of Mental Health, Office of the State Courts Administrator and Office of the State Public Defender** each assume the proposal will have no fiscal impact on their respective organizations.

In response to a previous version, officials from the **Department of Public Safety - Missouri Highway Patrol** assumed the proposal would have no fiscal impact on their organization.

ASSUMPTION (continued)

Officials from the **St. Louis County Department of Justice Services, Springfield Police Department, Missouri State University, State Technical College of Missouri and Missouri Western State University** each assume the proposal will have no fiscal impact on their respective organizations.

In response to a previous version, officials from the **University of Central Missouri, University of Missouri and Joplin Police Department** each assumed the proposal would have no fiscal impact on their respective organizations.

This proposal may increase Total State Revenues.

<u>FISCAL IMPACT - State Government</u>	FY 2019 (10 Mo.)	FY 2020	FY 2021
INDUSTRIAL HEMP FUND			
<u>Revenue - AGR - registration/permit fees, inspection fees and lab test fees</u>	Up to \$1,006,100	Up to \$435,000	Up to \$435,000
<u>Costs - AGR</u>	Up to....	Up to....	Up to....
Personal Services	(\$154,660)	(\$187,448)	(\$189,322)
Fringe Benefits	(\$90,884)	(\$109,612)	(\$110,169)
Lab Tests	(\$41,667)	(\$51,250)	(\$52,531)
Equipment and Expense	(\$68,889)	(\$19,557)	(\$20,046)
IT system	(\$600,000)	\$0	\$0
IT system maintenance	<u>(\$50,000)</u>	<u>(\$61,500)</u>	<u>(\$63,038)</u>
<u>Total Costs - AGR</u>	<u>(\$1,006,100)</u>	<u>(\$429,367)</u>	<u>(\$435,106)</u>
FTE Change - AGR	5 FTE	5 FTE	5 FTE
ESTIMATED NET EFFECT ON THE INDUSTRIAL HEMP FUND	<u>\$0</u>	<u>\$5,633</u>	<u>(\$106)</u>
Estimated Net FTE Change on the Industrial Hemp Fund	5 FTE	5 FTE	5 FTE

<u>FISCAL IMPACT - Local Government</u>	FY 2019 (10 Mo.)	FY 2020	FY 2021
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

Currently, marijuana and marihuana are considered Schedule I drugs for purposes of the Comprehensive Drug Control Act. This act defines industrial hemp, and exempts industrial hemp from the Comprehensive Drug Control Act.

This act creates an industrial hemp agricultural pilot program to be implemented by the Department of Agriculture to study the growth, cultivation, and marketing of industrial hemp.

Under this act, growers and handlers of industrial hemp are required to obtain a registration, and growers and handlers of agricultural hemp seed are required to obtain a permit, from the Department of Agriculture. An application for an industrial hemp registration or agricultural hemp seed production permit shall be accompanied by an application fee and shall include certain information as set forth in this act. Upon fulfilling the application requirements and a satisfactory fingerprint criminal history background check, the Department shall issue a registration or permit. All information relating to registration and permit holders shall be forwarded to the Missouri State Highway Patrol. Any registration or permit is nontransferable except to certain family members, is valid for 3 years, and is renewable.

Under this act, the Department may revoke, refuse to issue, or refuse to renew an industrial hemp registration or agricultural hemp seed production permit, and may impose a civil penalty of not less than \$2,500 and not more than \$50,000 for violating registration or permit requirements, Department rules, industrial hemp plant monitoring system requirements, or certain Department of Agriculture orders. A registration or permit shall not be issued to any person that has been found guilty of any felony offense under any state or federal law regarding a controlled substance within the previous 5 years.

Under this act, any person growing industrial hemp who does not have a valid registration shall be subject to an administrative fine of \$500 and shall have 30 days to obtain such registration. If such person receives such registration within 30 days, he or she shall have their fine refunded in full.

FISCAL DESCRIPTION (continued)

However, if such person fails to obtain such registration within 30 days, he or she shall be fined \$1,000 per day until such registration is obtained, or their crop may be destroyed by the Department of Agriculture after 30 additional days.

Under this act, any grower may retain seed from each industrial hemp crop to ensure a sufficient supply of seed for that grower for the following year without the requirement to obtain a hemp seed production permit. Such seed shall not be sold or transferred, and does not have to meet hemp seed standards established by the Department of Agriculture.

Each grower and handler shall be subject to an industrial hemp plant monitoring system and shall keep certain records as required by the Department of Agriculture. Upon 3 days notice, the Department may require an inspection or audit for purposes of ensuring compliance with industrial hemp laws, regulations, permit requirements, monitoring system requirements, and Department orders.

Additionally, this act allows the Department to inspect any industrial hemp crop during the crop's growth phase. If such crop contains an average THC concentration exceeding 0.3%, or the maximum amount allowed under federal law, the Department may detain or seize the crop.

This act requires the Department of Agriculture to develop standard identification documentation for industrial hemp and associated commodities. The Department may assess growers and handlers registered under this act a fee for developing such system. All fees assessed to growers and handlers shall be deposited in the Industrial Hemp Fund created under this act, which shall be used by the Department of Agriculture for administration purposes.

Further, this act allows an institution of higher education, in collaboration with the Department of Agriculture, to engage in the study of the growth, cultivation, or marketing of industrial hemp and seed. This act also allows the Missouri Crop Improvement Association, in collaboration with the Department, to establish and administer a certification program for agricultural hemp seed. Under the program, the Department may breed, plant, grow, cultivate, and harvest cannabis, and collect seeds from wild cannabis plants. Such program shall be voluntary for growers of industrial hemp.

Currently, a food is considered adulterated if it meets certain criteria. Under this act, a food shall not be considered adulterated if it contains industrial hemp, or an industrial hemp commodity or product.

FISCAL DESCRIPTION (continued)

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Agriculture
Department of Corrections
Department of Public Safety - Missouri Highway Patrol
Office of the State Treasurer
Department of Higher Education
Attorney General's Office
Office of the Secretary of State
Joint Committee on Administrative Rules
Department of Mental Health
Department of Health and Senior Services
Office of the State Courts Administrator
Office of the State Public Defender
University of Missouri
University of Central Missouri
State Technical College of Missouri
Missouri State University
Missouri Western State University
St. Louis County Department of Justice Services
Joplin Police Department
Springfield Police Department

Ross Strope



Acting Director
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