

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 5739-09
Bill No.: SS for SCS for HCS for HB 2034 with SA 1
Subject: Agriculture; Department of Agriculture; Business and Commerce; Drugs and Controlled Substances; Higher Education; Food; Highway Patrol; Liability
Type: Original
Date: May 3, 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 12 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

Oversight was unable to receive some of the agency responses in a timely manner due to the short fiscal note request time. Oversight has presented this fiscal note on the best current information that we have or on prior year information regarding a similar bill. Upon the receipt of agency responses, Oversight will review to determine if an updated fiscal note should be prepared and seek the necessary approval of the chairperson of the Joint Committee on Legislative Research to publish a new fiscal note.

In response to a previous version, officials from the **Department of Agriculture (AGR)** assumed 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.

FY 2019 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 (if sample analysis from a third party is not an available or viable option) 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 x 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 sites x 2 inspections per year x 10 hours per inspection x \$120 per inspection hour = \$240,000.
- Lab tests. 100 sites x 2 inspections per year x \$925 per lab test = \$185,000.

ASSUMPTION (continued)

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

The program will require two field staff positions for inspections (Inspectors each at \$36,924 annually), two administrative positions (each at \$33,276 annually) and one chemist position (at \$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.

In response to a previous version, officials from the **Department of Corrections (DOC)** assumed the following regarding this proposal:

In FY 2017, the number of new admissions for cannabis production totals 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 persons on probation and one person to incarceration. After January 1, 2017, cultivation of cannabis fell under statute 579.055-003, a class C felony.

ASSUMPTION (continued)

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 2.8 years until first release. The full impact occurs in FY 2024.

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 16 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

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

In response to a previous version, officials from the **Department of Health and Senior Services (DHSS)** assumed 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.

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.

ASSUMPTION (continued)

In response to the original version of the proposal, officials from the **Department of Public Safety - Missouri Highway Patrol (MHP)** assumed no fiscal impact. However, in response to the Senate Committee Substitute, the MHP submitted a late response reflecting the need for 9 additional Troopers and associated costs, totaling \$1,979,676 in FY 2019 and approximately \$1,500,000 per year thereafter. **Oversight** assumes with changes made to the Senate Substitute version, the MHP will not require additional FTE or incur additional expense.

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.

In response to a previous version, officials from the **Attorney General's Office (AGO)** assumed 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, Department of Mental Health and Office of the State Courts Administrator** each assume the proposal will have no fiscal impact on their respective organizations.

In response to a previous version, officials from the **Office of the State Treasurer** and the **Office of the State Public Defender** each assumed the proposal would have no fiscal impact on their respective organizations.

ASSUMPTION (continued)

In response to a previous version, officials from the **Greene County Sheriff's Department** assumed this proposal could have a fiscal impact of greater than \$100,000 in order to enforce all of the requirements included in the proposal.

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

In response to a previous version, officials from the **St. Louis County Police Department** stated officers would need to be trained over the new laws and regulations regarding industrial hemp, as well as the protocols on how to handle those types of cases. Officers would also need to be trained to identify industrial hemp in order to make sure they could correctly identify it compared to other substances. It is anticipated a one hour training course would be required for all officers employed by the St. Louis County Police Department.

At 890 commissioned police officers, it would cost approximately \$100 to develop a training course, plus require approximately 45 classes to retrain all officers. Officers average \$37.78 an hour, and if 20 attend each course, the total training costs would be (for a one hour course):
 $\$100 + (45 * 20 * 37.41 * 1) = \$33,769$.

The St. Louis County Police Department would be committed to not only training officers initially, but would do follow up training every year to make sure all officers employed by the Department were following the most up to date procedures. This would make a fiscal impact of \$33,769 annually, or \$101,307 over three years.

In response to a previous version, officials from the **Joplin Police Department** assumed this proposal would have a significant negative impact on their organization due to local jurisdiction complaints. It is assumed a local license will be required in order to maintain a business in a local jurisdiction.

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

Oversight assumes that local law enforcement agencies can absorb the training costs that could potentially be incurred due to this proposal.

Oversight notes that this substitute adds a provision that includes a \$5,000 fine per day for

ASSUMPTION (continued)

growers or handlers that do not destroy an illegal industrial hemp crop within 15 days. It is unknown how many growers, if any, will be subjected to this fine. Oversight will not reflect any revenue from these fines.

Oversight also notes that the Department of Agriculture can use the funds in the Industrial Hemp Fund to reimburse the Department of Public Safety - Missouri Highway Patrol for any costs associated with the certification of the destruction of illegal industrial hemp crops.

<u>FISCAL IMPACT - State Government</u>	FY 2019 (10 Mo.)	FY 2020	FY 2021
INDUSTRIAL HEMP FUND			
<u>Revenue</u> - AGR - registration/permit fees, inspection fees and lab test fees	Up to \$1,006,100	Up to \$435,000	Up to \$435,000
<u>Costs</u> - AGR	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</u> - AGR	<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

This bill exempts industrial hemp, which is defined as *Cannabis sativa* L. containing no greater than 0.3% THC, from the definition of marijuana and the list of controlled substances. In addition, it is legal for any person who has received an industrial hemp license to grow, harvest, and cultivate industrial hemp.

The bill creates an industrial hemp agricultural pilot program to be implemented by the Department of Agriculture and specifies the requirements for an applicant of an industrial hemp registration and agricultural hemp seed production permit.

The department must issue a license or permit to an applicant who meets the statutory requirements and upon satisfactory completion of a fingerprint criminal history background check. Upon issuance of a license or permit, information regarding all license and permit holders must be forwarded to the State Highway Patrol.

An industrial hemp license or agricultural hemp seed production permit is nontransferable except to a spouse or child who otherwise meets the requirements for a license or permit; is valid for a three-year term unless revoked by the department; and may be renewed as determined by the department.

The department is also allowed to revoke or refuse to issue or renew an industrial hemp license or agricultural hemp seed production permit and to impose a civil penalty of not less than \$2,500 or more than \$50,000 for a violation of the requirements of the license or permit, department rules relating to growing or handling industrial hemp, the monitoring system, or a final order of the department that is specifically directed to the grower's or handler's industrial hemp operations or activities.

A registration or permit may not be issued to a person who in the five years preceding the application has been found guilty of a felony offense under any state or federal law regarding the possession, distribution, manufacturing, cultivation, or use of a controlled substance.

In addition, the department may revoke or refuse to issue or renew a license or permit for failing to comply with statute or for a violation of department rules regarding agricultural operations or activities other than industrial hemp growing or handling.

FISCAL DESCRIPTION (continued)

A person who grows industrial hemp without a valid industrial hemp license is subject to an administrative fine of \$500 and must obtain an industrial hemp license within 30 days. If the person obtains the license within 30 days, the fine is refunded.

If the person fails to obtain a license within 30 days, the person is fined \$1,000 per day until the person obtains a license or the crop is destroyed.

Every grower or handler must be subject to an industrial hemp plant monitoring system. The department may inspect a grower or handler to ensure compliance with statutes, department rules, the monitoring system, or a final department order directed to the grower's or handler's industrial hemp operations or activities.

The department may also inspect any industrial hemp crop during the crop's growth phase and take a representative composite sample for field analysis. Crop exceeding the allowable THC limits may be detained, seized, or embargoed.

The Department of Agriculture must develop standard identification documentation for industrial hemp and associated commodities. The department may assess growers and handlers a fee for developing the system.

An institution of higher education, in collaboration with the Department of Agriculture, may engage in the study of the growth, cultivation, or marketing of industrial hemp and seed. The Missouri Crop Improvement Association, in collaboration with the department, may establish and administer a certification program for agricultural hemp seed. The department may breed, plant, grow, cultivate, and harvest cannabis, and collect seeds from wild cannabis plants. The program is voluntary for growers of industrial hemp.

Currently, a food is considered adulterated if it meets certain criteria. This bill specifies that a food shall not be considered adulterated if it contains industrial hemp, or an industrial hemp commodity or product.

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 Central Missouri
Missouri State University
Missouri Western State University
St. Louis County Department of Justice Services
St. Technical College of Missouri
Greene County Sheriff's Department
St. Louis County Police Department
Missouri Western State University
University of Missouri
Springfield Police Department
Joplin Police Department

Ross Strobe



Acting Director
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