

Department of Legislative Services
 Maryland General Assembly
 2019 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1123 (Delegate Fraser-Hidalgo, *et al.*)
 Environment and Transportation

Agriculture - Hemp Research and Production

This emergency bill establishes a regulatory framework for the commercial production of hemp in the State. Broadly, the bill (1) establishes a Hemp Farming Program in the Maryland Department of Agriculture (MDA); (2) establishes a Hemp Farming Fund to support the program, which consists of any license fees and other fees established by MDA under the new program; (3) requires MDA to develop and submit a plan for monitoring and regulating the production of hemp in the State to the U.S. Secretary of Agriculture; (4) prohibits the production of hemp outside the scope of the bill; (5) renames the Industrial Hemp Pilot Program to the Hemp Research Pilot Program; and (6) makes conforming changes to existing laws addressing hemp production in the State. MDA must adopt regulations to implement the bill.

Fiscal Summary

State Effect: General/special fund expenditures increase by \$434,400 in FY 2020; future years reflect ongoing costs. Special fund revenues increase, likely beginning at the end of FY 2020, from fees. It is assumed that State finances are not affected in FY 2019.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
SF Revenue	-	-	-	-	-
GF/SF Exp.	\$434,400	\$289,700	\$298,600	\$308,200	\$318,000
Net Effect	-/(-)	-/(-)	-/(-)	-/(-)	-/(-)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Legislative Intent

It is the intent of the General Assembly that (1) hemp be established as an agricultural commodity; (2) hemp produced in accordance with the bill be possessed in the State and sold, distributed, transported, marketed, manufactured, or processed in the State or outside the State; and (3) hemp produced outside the State in a state that authorizes the production of hemp may be sold, distributed, transported, marketed, manufactured, or processed in the State.

Hemp Farming Fund

The bill establishes a Hemp Farming Fund as a special fund administered by MDA. The fund consists of (1) revenues from license fees or other fees established by MDA under the Hemp Farming Program (discussed in more detail below); (2) money appropriated in the State budget to the fund; (3) interest earnings of the fund; and (4) any other money from any other source accepted for the benefit of the fund. The stated purpose of the fund is to defray the costs of administering and enforcing the Hemp Farming Program, and the fund may only be used for those purposes.

Hemp Farming Program

The bill establishes a Hemp Farming Program within MDA. The stated purpose of the program is to (1) promote the production of hemp in the State; (2) promote the commercial sale of hemp products in the State or outside the State; (3) facilitate the research of hemp and hemp products between institutions of higher education and the private sector; and (4) monitor and regulate the production of hemp in the State.

Plan for Monitoring and Regulating Hemp Production

MDA, in consultation with the Governor and the Attorney General, must establish a plan for monitoring and regulating the production of hemp in the State. The plan must include:

- a practice to maintain relevant information for at least three years regarding the land on which hemp is produced, including a legal description of the land;
- a procedure for testing the delta-9-tetrahydrocannabinol (THC) concentration levels of hemp produced in the State, as specified;

- a procedure for the effective disposal of plants and products derived from plants that violate the bill's requirements;
- a procedure to enforce the bill's requirements;
- a procedure for conducting annual inspections that include, at minimum, a random sample of hemp producers to verify that hemp is being produced in accordance with the bill's requirements;
- a procedure for submitting specified information to the Secretary of the U.S. Department of Agriculture; and
- a certification that the State has the resources and personnel to carry out the practices and procedures required under the plan.

The plan may include any other practice or procedure that is consistent with federal law. MDA must submit the plan to the Secretary of the U.S. Department of Agriculture for approval. If the Secretary does not approve the plan, MDA must amend the plan and resubmit it.

License Generally Required to Produce Hemp

MDA must establish a procedure for licensing the production of hemp in accordance with the plan and may set reasonable fees for the issuance and renewal of licenses and other services provided by the department. All fees collected must be deposited into the Hemp Farming Fund.

A person may not produce hemp in the State unless the person is licensed by MDA or the Secretary of the U.S. Department of Agriculture. This requirement does not apply to an institution of higher education or a person that produces hemp under the Hemp Research Pilot Program (renamed from the Industrial Hemp Pilot Program by the bill).

Prohibitions and Penalties

A person may not knowingly (1) produce hemp without a valid license; (2) fail to comply with the plan developed by MDA for monitoring and regulating the production of hemp; (3) misrepresent or fail to provide the legal description of land on which hemp is produced; or (4) produce plants, or any part of a plan, that exceeds a THC concentration of 0.3% on a dry weight basis.

MDA must report a person that knowingly violates the bill to the Attorney General and the U.S. Attorney General. If MDA determines that a person negligently violated the bill's requirements, MDA must require the person to correct the violation in a specified manner. If a person is found to have negligently violated the bill three times in a four-year period,

the person may not produce hemp in the State for the next five years, beginning on the date of the third violation.

Hemp Research Pilot Program

The bill renames the Industrial Hemp Pilot Program as the Hemp Research Pilot Program. MDA must amend any regulation, procedure, or application under the Hemp Research Pilot Program that is not consistent with the federal Controlled Substances Act (CSA) and any federal authorization to research or produce hemp.

Current Law/Background:

Maryland's Industrial Hemp Pilot Program

Chapters 475 and 476 of 2018 established an Industrial Hemp Pilot Program administered by MDA. The Acts also excluded industrial hemp from the definition of “marijuana” under criminal law provisions addressing controlled dangerous substances. The purpose of the program is to authorize and facilitate the research of industrial hemp and any aspect of growing, cultivating, harvesting, processing, manufacturing, transporting, marketing, or selling industrial hemp for agricultural, industrial, or commercial purposes.

MDA, or an institution of higher education that submits an application to MDA, may grow, cultivate, harvest, process, manufacture, transport, market, or sell industrial hemp under the program if the industrial hemp is grown or cultivated to further agricultural research or academic research purposes. To the extent necessary, MDA or an institution of higher education may contract with a person to grow or cultivate industrial hemp. MDA must certify and register a site that will be used to grow or cultivate industrial hemp and may charge a fee of up to \$250 to certify and register a site.

A person that grows or cultivates industrial hemp under the program may purchase or otherwise obtain seeds that produce plants that meet the definition of “industrial hemp” (defined as the plant *Cannabis sativa L.* and any part of such plant, whether growing or not, with a THC concentration that does not exceed 0.3% on a dry weight basis).

Required Verification of Industrial Hemp under the Program

A person that grows or cultivates industrial hemp under the pilot program must verify that the plants grown or cultivated by the person meet the definition of industrial hemp and must maintain, and make available for inspection, all records of verification at the site that is used to grow or cultivate industrial hemp. The verification must include documentation from (1) an independent testing laboratory registered by the Natalie M. LaPrade Medical Cannabis Commission to test cannabis and cannabis-containing products that are to be sold

in the State or (2) the institution of higher education that contracted with the person to grow or cultivate industrial hemp. An independent testing laboratory or an institution of higher education that provides verification documentation must conduct on-site inspections to perform the testing necessary for the verification. The frequency of the verification is determined by MDA or the institution of higher education that contracted with a person to grow or cultivate industrial hemp.

Additional Authorized Activities

Industrial hemp grown or cultivated under the program is an agricultural product that may be possessed in the State and sold, distributed, transported, marketed, or processed in the State or outside the State. In addition, industrial hemp grown, cultivated, and harvested in a state that authorizes the growth, cultivation, and harvesting of industrial hemp may be processed, manufactured, transported, marketed, or sold in the State under the program.

Regulations

MDA regulations implementing the pilot program went into effect January 28, 2019. Generally, the regulations restate the provisions under Chapters 475 and 476, including the requirement for the registration and certification of a site that will be used to grow or cultivate industrial hemp to further agricultural or academic research purposes.

U.S. Farm Bill Hemp Provisions

The federal Farm Bill is an omnibus piece of federal legislation covering agriculture, conservation, rural development, research, and food assistance, and is the primary legislation governing federal agricultural and food policy. The 2014 federal Farm Bill allowed an institution of higher education or a state department of agriculture to grow or cultivate industrial hemp, notwithstanding CSA and other federal laws. However, the growing or cultivation of industrial hemp was limited to research conducted under an agricultural pilot program or other agricultural or academic research and may be conducted only if allowed under the laws of the applicable state.

The 2018 federal Farm Bill (H.R. 2 – Agriculture Improvement Act of 2018) allows a state to be the primary regulatory authority over the production of hemp in the state if the state submits a qualifying plan to the U.S. Secretary of Agriculture under which the state plans to monitor and regulate the production of hemp. Further, the 2018 Farm Bill expands authorized uses and cultivation of hemp and allows the transfer of hemp-derived products across state lines for commercial or other purposes. A qualifying state plan to monitor and regulate the production of hemp must include licensing provisions, among other required content, and must be approved by the U.S. Secretary of Agriculture.

Hemp is defined as the plant *Cannabis sativa L.* and any part that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3% on a dry weight basis.

State Revenues: MDA is authorized to set reasonable fees for the issuance and renewal of licenses and other services provided under the Hemp Farming Program. Thus, special fund revenues to the new Hemp Farming Fund increase, likely beginning at the end of fiscal 2020 at the earliest, depending on when the program begins licensing hemp producers and testing hemp samples. A reliable estimate of any increase in special fund revenues is unknown since it depends on the level of interest in the program, the amount of any license, testing, or other fees established by the department, and the number of samples that are tested on an annual basis. Until a plan is approved and implemented, these variables are unknown. However, MDA advises it plans to establish a fee of \$80 per sample of hemp tested. *For illustrative purposes only*, if the program receives 50 samples per week, special fund revenues from testing fees alone could total \$208,000 annually.

Because a reliable estimate of the increase in special fund revenues cannot be made at this time, the extent to which fee revenue will cover program costs (discussed below) is unknown.

State Expenditures: General/special fund expenditures increase by \$434,398 in fiscal 2020, which assumes an implementation date of July 1, 2019. It is assumed that no costs are incurred in fiscal 2019, despite the fact that the bill is an emergency measure.

This estimate reflects the cost of hiring three full-time, permanent staff (one agronomist, one chemist supervisor, and one chemist); one half-time, permanent agronomist; and one part-time permanent administrative assistant to (1) establish a plan for monitoring and regulating the production of hemp in the State and submit the plan to the U.S. Secretary of Agriculture; (2) license hemp producers; (3) maintain a database of licensed hemp producers and provide this information to the U.S. Secretary of Agriculture; (4) collect and monitor required field information and conduct inspections; (5) gather and test hemp samples; and (6) generally implement and oversee the expanded production of hemp under the Hemp Farming Program. It includes salaries, fringe benefits, one-time start-up costs (including a drone and a vehicle), and ongoing operating expenses. The estimate also includes a one-time cost to purchase a dedicated high-performance liquid chromatography (HPLC) machine to analyze hemp samples. The information and assumptions used in calculating the estimate are stated below:

- the new program established under the bill significantly expands the existing Industrial Hemp Pilot Program;

- although MDA cannot begin licensing hemp producers in the State until the U.S. Secretary of Agriculture approves Maryland’s hemp production plan, developing the plan requires significant effort and a full complement of new staff must be hired to develop the plan and begin to implement the program;
- a robust program is developed in the State; and
- the State chemist is responsible for testing the THC concentration levels of hemp produced in the State.

Positions	3.7
Salaries and Fringe Benefits	\$264,635
HPLC Machine Purchase	95,000
Other Operating Expenses	<u>74,763</u>
Total FY 2020 State Expenditures	\$434,398

Future year expenditures reflect salaries with annual increases and employee turnover and ongoing operating expenses, including testing supplies.

As noted above, it is likely that no special funds are available to support the program until the end of fiscal 2020 at the earliest. Thus, it is assumed that some level of general fund support is needed until fees are established and revenues are deposited into the fund. In the first year, it is possible that all of MDA’s costs need to be supported with general funds. As the program is implemented and licensing and other fees are collected, the need for general funds decreases.

Small Business Effect: The bill establishes a meaningful opportunity for small businesses to get involved in the production and possibly the processing of hemp. Under the program, hemp can be grown in Maryland and legally shipped in interstate commerce, which significantly expands potential business opportunities. Montgomery County notes that farmers in the county have expressed significant interest in growing and producing hemp.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Kent, Montgomery, and Worcester counties; Maryland Association of Counties; City of Westminster; Maryland Municipal League; Town of Leonardtown; Governor’s Office; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender;

University System of Maryland; Morgan State University; Maryland Department of Agriculture; Department of Public Safety and Correctional Services; Department of State Police; The Brookings Institute; Department of Legislative Services

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mag/lgc

Analysis by: Kathleen P. Kennedy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510