

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 5338-01
Bill No.: HB 2038
Subject: Agriculture and Animals; Agriculture Department; Crimes and Punishment;
 Drugs and Controlled Substances
Type: Original
Date: February 1, 2016

Bill Summary: This proposal allows those licensed by the Department of Agriculture to grow and handle industrial hemp and creates the crime of unlicensed industrial hemp production.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
General Revenue	(\$60,000)	(\$5,330)	(\$5,463)
Total Estimated Net Effect on General Revenue	(\$60,000)	(\$5,330)	(\$5,463)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
AG Protection	(\$38,906)	(\$29,235)	(\$30,057)
Criminal Records	Less than \$100,000	Less than \$100,000	Less than \$100,000
Total Estimated Net Effect on Other State Funds	(Less than \$38,906)	(Less than \$29,235)	(Less than \$30,057)

Numbers within parentheses: () indicate costs or losses.
 This fiscal note contains 10 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
AG Protection	1 FTE	1 FTE	1 FTE
Total Estimated Net Effect on FTE	1 FTE	1 FTE	1 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 2017	FY 2018	FY 2019
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 similar proposal from 2015 (HB 830), officials at the **Department of Agriculture (AGR)** assumed the fee structure is based upon figures from the Oregon Department of Agriculture which recently implemented an industrial hemp program. Assumptions are for 15 licenses/permits.

Fees include:

195.608.3(5) allows for application fees for license and permits license/permit fees
 $\$150 * 15 =$ \$2,250

195.603.10 provides for inspection & testing

195.603.11 provides for reasonable fees

Estimated cost of 3 site inspections per year (8 hours per inspection X 3 inspections = 24 total hours per site * 15 sites @ \$92 per hour = \$33,120

Lab tests $\$350 * 15 =$ \$3,500

Total fees estimated: \$38,870

The program will require 1 field staff (Investigator at \$38,232) for inspections. Duties will include but not limited to: application review, verification of application information, travel to field locations, perform inspections of site for verification. The Investigator will be inspecting immediately after planting during growing season and after harvest/destruction. The Investigator will be collecting samples for testing, and will be responsible for transporting samples to the laboratory. The FTE will be responsible for appropriate documentation of the "hemp monitoring system", and be responsible for providing location documentation to appropriate authorities. AGR assumed the need for 1 Jeep Patriot Sport 4x4 at \$19,343 for use by the Investigator. In summary, AGR assumed an annual cost of approximately \$68,000 for the FTE, partially offset by revenues of \$38,870 as described above, all to the Agriculture Protection Fund.

ASSUMPTION (continued)

In response to a similar proposal from 2015 (HB 830), officials at the **Department of Public Safety's Missouri Highway Patrol (MHP)** stated the Missouri Department of Agriculture was not able to determine the number of industrial hemp growers and handlers that would require a background check upon the passage of this legislation. The cost for each background check processed is \$43.05. Twenty dollars for the state fingerprint check, \$14.75 for the federal check, and an \$8.30 charge for the electronic fingerprint option used through a third-party vendor ($\$20 + 14.75 + 8.30 = \43.05). Of this amount, the state retains the \$20 fee and \$2 of the federal charge of \$14.75 for a pass-thru fee. The \$8.30 charge is paid directly to the vendor at the time of application.

However, since the total number of growers and handlers is not known, the potential revenue received from the background checks is not able to be determined.

The MHP would develop an interface between the Patrol and the Department of Agriculture to receive this information and then development a database to store and retrieve the information. The work will be completed by the state's computerized criminal history vendor, Computer Projects of Illinois (CPI), because the systems affected are components of a commercial system bought by the Patrol. CPI estimated a total of 600 ($80 + 120 + 70 + 100 + 90 + 80 + 60$) hours of combined work @ \$100 per hour for a total price of \$60,000 ($600 \times \100) based on the following projections:

- 80 hours - Discovery and design
- 120 hours - Database modifications
- 70 hours - Store procedure codes
- 100 hours - Forms creation and redesign
- 90 hours - Switch routing and transactions
- 80 hours - Testing
- 60 hours - Project management
- 600 hours - Total

In addition, the MHP estimated an annual maintenance cost of \$5,200.

More than 4,500 additional background checks would have to be processed by the MHP to reach \$100,000 of income ($\$100,000 / \$22.00 = 4,545$ applicants). **Oversight** assumes MHP will not process that many background checks as a result of this proposal; therefore, Oversight will assume annual revenue collections into the Criminal Records Fund will total less than \$100,000.

ASSUMPTION (continued)

In response to a similar proposal from 2015 (HB 830), officials at the **Department of Corrections (DOC)** assumed this proposal creates similar offenses for growing unlicensed hemp as those for growing marijuana but removes industrial hemp from the list of controlled substances. It is assumed that the impact of the new statutes will be less illegal growing of marijuana. Only growing unlicensed hemp will be illegal.

In FY14 there were 15 new admissions for drug manufacturing and distributions involving marijuana but it is not known how much would have been classified as industrial hemp or would be grown by licensed growers. It is estimated that removing industrial hemp as a controlled substance will reduce new admissions by 1 Class B felony per year. The average time served for the class B offenses is 3 years and 5 years on parole.

The DOC assumed this legislation will result in long term cost avoidance. Potential cost avoidance due to this legislation would not be fully realized until the 5th year (FY2020) and will vary according to the population.

The DOC cost of incarceration is \$16.725 per day or an annual amount of \$6,105 per offender. The average cost of supervision is \$6.72 per offender per day or an annual cost of \$2,453.

This legislation could result in a cost avoidance of approximately \$3,043 in year one, \$7,450 in year two, \$11,399 in the year three, \$9,019, in year four, and \$6,538 in year 5 and beyond.

Oversight assumes these amounts are minimal and will not reflect the cost avoidances in the fiscal note.

Officials at the **Office of Attorney General** assume that any potential costs arising from this proposal can be absorbed with existing resources.

Officials at the **Office of the State Public Defender** and the **Office of Prosecution Services** each assume there is no fiscal impact to their respective organizations from this proposal.

In response to a similar proposal from 2015 (HB 830), officials at the **Department of Health and Senior Services, Department of Mental Health, the Office of the State Courts Administrator, and the Joint Committee on Administrative Rules** each assumed there is no fiscal impact to their respective organizations from this proposal.

ASSUMPTION (continued)

In response to a similar proposal from 2015 (HB 830), officials from the **Office of the Secretary of State (SOS)** stated 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 recognized that this is a small amount and did not expect that additional funding would be required to meet these costs. However, the SOS also recognized 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 reserved 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.

<u>FISCAL IMPACT - State Government</u>	FY 2017 (10 Mo.)	FY 2018	FY 2019
GENERAL REVENUE			
<u>Cost - MHP - computer interface between MHP and AGR</u>	<u>(\$60,000)</u>	<u>(\$5,330)</u>	<u>(\$5,463)</u>
ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND	<u>(\$60,000)</u>	<u>(\$5,330)</u>	<u>(\$5,463)</u>

<u>FISCAL IMPACT - State Government</u> (continued)	FY 2017 (10 Mo.)	FY 2018	FY 2019
AG PROTECTION FUND			
<u>Income</u> - AGR - license and inspection fees	\$38,870	\$38,870	\$38,870
<u>Costs</u> - AGR			
Personal Service (1 FTE)	(\$31,860)	(\$38,614)	(\$39,000)
Fringe Benefits	(\$16,569)	(\$20,081)	(\$20,282)
Expense & Equipment	(\$29,347)	(\$9,410)	(\$9,645)
<u>Total Costs</u> - AGR	<u>(\$77,776)</u>	<u>(\$68,105)</u>	<u>(\$68,927)</u>
FTE Change - AGR	1 FTE	1 FTE	1 FTE
ESTIMATED NET EFFECT TO THE AG PROTECTION FUND	<u>(\$38,906)</u>	<u>(\$29,235)</u>	<u>(\$30,057)</u>
Estimated Net FTE Change for the AG Protection Fund	1 FTE	1 FTE	1 FTE
CRIMINAL RECORDS FUND			
<u>Income</u> - MHP - background checks - state retains \$22 of the \$43.05 fee	Less than <u>\$100,000</u>	Less than <u>\$100,000</u>	Less than <u>\$100,000</u>
ESTIMATED NET EFFECT TO THE CRIMINAL RECORDS FUND	<u>Less than \$100,000</u>	<u>Less than \$100,000</u>	<u>Less than \$100,000</u>
FISCAL IMPACT - Local Government			
	FY 2017 (10 Mo.)	FY 2018	FY 2019
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

Small businesses that handle or process industrial hemp will need to comply with this proposal including obtaining necessary licenses and background checks.

FISCAL DESCRIPTION

This bill defines "industrial hemp" as all non-seed parts and varieties of the cannabis sativa plant that contain a crop-wide average tetrahydrocannabinol (THC) concentration that does not exceed .3% on a dry weight basis or any cannabis sativa seed that is part of a growing crop, retained by a grower for future planting or used for processing into or use as agricultural hemp seed but must not include industrial hemp commodities and products. Industrial hemp is excluded from the definition of marijuana.

It must be legal for any person who has a valid industrial hemp license to grow and cultivate industrial hemp.

The bill specifies that industrial hemp production, possession, and commerce in industrial hemp commodities and products must be permitted in the state and must be an agricultural product that is subject to regulation by the Department of Agriculture, including compliance with an industrial hemp plant monitoring system. Any grower and handler of industrial hemp must obtain a license from the department, and growers and handlers engaged in the production of agricultural hemp seed also must have an agricultural hemp seed production permit.

The department must issue a license or permit to any applicant who meets the license requirements and satisfactorily completes a fingerprint criminal history background check. A license or permit will not be issued to a person who received a suspended imposition of sentence for a felony offense in the five years before the application date or a person who at any time has been found guilty of a felony offense regarding the possession, distribution, manufacturing, cultivation, or use of a controlled substance; except that, the department may grant a license or permit if the person received a suspended imposition of sentence for a felony offense under state law based on possession or use of a controlled substance if the offense would not be considered a felony offense in the state on the date he or she applied for a license or permit. An industrial hemp license or agricultural hemp seed production permit is non-transferable, except under specific circumstances, and valid for a three-year term unless revoked by the department and may be renewed as determined by the department.

The department must make information that identifies sellers of agricultural hemp seed available to growers, and any seller of agricultural hemp seed must ensure that the seed complies with any standards established by the department. A grower may retain seed from each industrial hemp

FISCAL DESCRIPTION (continued)

crop to ensure a sufficient supply of seed for that grower for the following year. He or she cannot be required to obtain a permit in order to retain seed for future planting. Any seed retained by a grower for future planting cannot be sold or transferred and does not have to meet standards established by the department. Every grower or handler is subject to an industrial hemp plant monitoring system and must keep records as required by the department. Upon three days' notice, the department may require an inspection or audit during any normal business hours for the purpose of ensuring compliance. The department may also inspect any industrial hemp crop during the crop's growth phase and take a representative composite sample for field analysis. If a crop contains an average THC concentration exceeding .3% on a dry weight basis, the department may detain, seize, or embargo the crop.

The department may charge growers and handlers reasonable fees for the purpose of carrying out the duties of the department under the provisions of the bill.

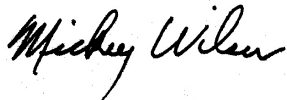
The department may revoke or refuse to issue or renew an industrial hemp license or agricultural hemp seed production permit and may impose a civil penalty, of at least \$2,500 but not more than \$50,000, for violation of a license or permit requirement, terms or conditions, department rules relating to growing or handling industrial hemp, any industrial hemp plant 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. The department may revoke or refuse to issue or renew an industrial hemp license or an agricultural hemp seed production permit for violation of any rule of the department that pertains to agricultural operations or activities other than industrial hemp growing or handling.

Any person growing industrial hemp without a valid industrial hemp license is subject to an administrative fine of \$500 and must obtain a valid license within 30 days. If the person applies for and receives a license within the 30-day period, the amount of the fine will be refunded in full. If the person fails to obtain a valid license within the 30-day period, the person will be fined \$1,000 per day until he or she obtains a license or the hemp crop is destroyed.

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 Health and Senior Services
Department of Mental Health
Department of Public Safety - Missouri Highway Patrol
Joint Committee on Administrative Rules
Office of Attorney General
Office of the Secretary of State
Office of the State Courts Administrator
Office of the State Public Defender



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