

**Department of Legislative Services**  
 Maryland General Assembly  
 2014 Session

**FISCAL AND POLICY NOTE**

House Bill 1010 (Delegate Dwyer)  
 Environmental Matters

**Agriculture - Production and Sale of Industrial Hemp**

This bill allows industrial hemp to be produced and sold in the State subject to regulation by the Maryland Department of Agriculture (MDA). The bill also prohibits specified State or local government involvement in the enforcement of federal laws, regulations, rules, or orders regulating industrial hemp in the State.

**Fiscal Summary**

**State Effect:** General fund expenditures increase by \$172,700 in FY 2015 to implement a program regulating the production and sale of industrial hemp. Future year expenditures reflect annualization and inflation. General fund revenues may increase annually due to collection of fees and penalties; however, the magnitude of any increase cannot be reliably estimated at this time. The impact of the bill’s prohibition on specified involvement in federal enforcement is unclear.

(in dollars)	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
GF Revenue	-	-	-	-	-
GF Expenditure	\$172,700	\$197,400	\$206,400	\$215,900	\$225,800
Net Effect	(\$172,700)	(\$197,400)	(\$206,400)	(\$215,900)	(\$225,800)

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

**Local Effect:** Potential impact on local government finances.

**Small Business Effect:** Potential meaningful.

## Analysis

**Bill Summary:** The bill allows a person to plant, grow, harvest, process, possess, sell, and buy industrial hemp in the State. “Industrial hemp” is defined as the *Cannabis sativa L.* plant species that contains 0.003% or less of the chemical tetrahydrocannabinol (THC). MDA must adopt regulations to implement the bill that include:

- procedures for the issuance, renewal, suspension, and revocation of a license to plant, grow, harvest, process, and sell industrial hemp;
- a schedule of application, licensing, and renewal fees, with application fees limited to no more than \$5,000 adjusted annually for inflation;
- license qualifications that are related to the planting, growing, harvesting, processing, and selling of industrial hemp; and
- the amount of a civil penalty for a violation of the bill.

State government units, political subdivisions of the State, State law enforcement officers, and State and local government employees acting in the employees’ official capacity may not contract with or provide assistance or material support to a federal agency or official for the enforcement of a federal law, regulation, rule, or order regulating industrial hemp within the State. The Attorney General may bring a suit against a political subdivision of the State for a violation of this prohibition, and if a court determines that it was an intentional violation, the State may not award a State grant to the political subdivision for the following fiscal year.

**Current Law:** Under the Maryland Controlled Dangerous Substances Act (MCDSA) and the federal Controlled Substances Act (CSA), marijuana and THC are controlled dangerous substances (“controlled substances,” under CSA). Under MCDSA, similar to the federal definition under CSA, “marijuana” is defined as (1) all parts of any plant of the genus *Cannabis*, whether or not the plant is growing; (2) the seeds of the plant; (3) the resin extracted from the plant; and (4) each compound, manufactured product, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin. “Marijuana,” however, does not include (1) the mature stalks of the plant; (2) fiber produced from the mature stalks; (3) oil or cake made from the seeds of the plant; (4) except for resin, any other compound, manufactured product, salt, derivative, mixture, or preparation of the mature stalks, fiber, oil, or cake; or (5) the sterilized seed of the plant that is incapable of germination.

Under MCDSA, a person must be registered by the Department of Health and Mental Hygiene (DHMH) in order to manufacture, distribute, or dispense a controlled dangerous substance in the State. The department may waive the registration requirement by regulation based on a finding that a waiver is consistent with public health and safety.

DHMH must register an applicant unless the department determines that the issuance of the registration is inconsistent with the public interest, based on specified considerations, including maintenance of effective controls against diversion of controlled dangerous substances into other than legitimate medical, scientific, or industrial channels. Registration with the U.S. Drug Enforcement Administration (DEA) is required under CSA and DEA regulations.

**Background:** The National Conference of State Legislatures (NCSL) indicates that nine states have laws to promote the growth and marketing of industrial hemp (California, Colorado, Kentucky, Maine, Montana, North Dakota, Oregon, Vermont, and West Virginia). According to NCSL, industrial hemp refers to *Cannabis* plants that contain low levels of the psychoactive chemical THC and can be used to make products including textiles, plastics, fuel, and food.

The recently enacted federal Farm Bill (H.R. 2642, 113th Congress – Agricultural Act of 2014) allows an institution of higher education or a state department of agriculture to grow or cultivate industrial hemp. The growing or cultivation must be for purposes of research, including studying the growth, cultivation, or marketing of industrial hemp, and may only be conducted if growing or cultivation of industrial hemp is allowed under the laws of the applicable state.

In Maryland, Chapter 681 of 2000 established a pilot program to study the growth and marketing of industrial hemp in the State. MDA was charged with administering the program, in consultation with DEA and the Department of State Police. The program included a requirement that an individual register with DEA under the CSA registration requirement to manufacture a controlled substance. However, that hurdle was never cleared and the program was not fully implemented.

**State Expenditures:** General fund expenditures increase by \$172,662 in fiscal 2015, which accounts for the bill's October 1, 2014 effective date. This estimate reflects the cost of hiring an administrator, inspector, and part-time assistant Attorney General to implement a program regulating the production and sale of industrial hemp. Under the program, the administrator initially is responsible for conducting research and developing appropriate regulations, taking into account considerations associated with regulating a controlled substance, and subsequently overseeing the program. The inspector inspects licensed growing sites, ensures that samples are submitted to an appropriate testing facility, and looks for unlicensed sites. This estimate assumes that the licensee is responsible for the cost of testing samples. The assistant Attorney General assists with drafting the regulations, provides advice regarding the administration of the program, and handles litigation against any local government agencies or officials who violate the bill's prohibition against specified involvement in the enforcement of federal law regulating industrial hemp.

The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2.5
Salaries and Fringe Benefits	\$138,674
Vehicle	15,590
Operating Expenses	<u>18,398</u>
<b>Total FY 2015 State Expenditures</b>	<b>\$172,662</b>

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

This analysis does not account for any impact the bill may have on DHMH's resources if an industrial hemp licensee is required to register with DHMH and be subject to DHMH regulation as a manufacturer of a controlled dangerous substance.

It is assumed, for the purposes of this analysis, that local governments comply with the bill's prohibition against involvement in federal enforcement relating to industrial hemp and that State grants to local governments are not affected. However, the Department of Legislative Services (DLS) advises that it is unclear if the bill's prohibition against involvement by units of the State and State law enforcement officers in the enforcement of federal law regulating industrial hemp affects State operations or finances.

**State Revenues:** General fund revenues increase due to the collection of application, licensing, and renewal fees and any civil penalties imposed to the extent individuals are able to take advantage of the bill's authorization to produce and sell industrial hemp. Because the bill does not specify otherwise, this analysis assumes the revenues are deposited in the general fund. The amount of revenue generated depends largely on the fee amounts set in the regulations by MDA and the number of applicants and licensees. The amount of overall annual revenue generated from fees and civil penalties cannot be reliably estimated at this time.

This analysis does not account for any fee revenue generated if an industrial hemp licensee is required to register with DHMH as a manufacturer of a controlled dangerous substance.

As mentioned above, it is unclear if the bill's prohibition against involvement by units of the State and State law enforcement officers in the enforcement of federal law regulating industrial hemp affects State operations or finances.

**Local Fiscal Effect:** A small number of local governments contacted have indicated that the bill does not have a material fiscal impact. However, DLS advises that depending on how the prohibition against local government involvement in the enforcement of federal law regulating industrial hemp is interpreted, it appears possible that a local government that currently participates in and benefits from federal drug enforcement efforts in general (or would in the future) may be operationally, if not fiscally, impacted by the bill. For purposes of this analysis, it is assumed that local governments comply with the prohibition, and that State grants to local governments are not affected.

**Small Business Effect:** To the extent individuals or entities are able to take advantage of the bill's authorization to produce and sell industrial hemp, the bill has a positive small business impact. MDA advises that it is not aware of interest in growing industrial hemp from the farming community.

**Additional Comments:** This analysis assumes that growing industrial hemp, as defined in the bill as having a THC content of 0.003% or less, is feasible. DLS notes, however, that most references to industrial hemp refer to a THC content of 0.3% or less and the feasibility of growing industrial hemp with a THC content of 0.003% or less is not clear.

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### Additional Information

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Maryland Department of Agriculture, Department of State Police, Governor's Office of Crime Control and Prevention, Office of the Attorney General, Baltimore City, Howard County, cities of Bowie and Takoma Park, U.S. Drug Enforcement Administration, National Conference of State Legislatures, Department of Legislative Services

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