

**Department of Legislative Services**  
 Maryland General Assembly  
 2018 Session

**FISCAL AND POLICY NOTE**  
**Third Reader - Revised**

House Bill 698 (Delegate Fraser-Hidalgo, *et al.*)  
 Environment and Transportation Education, Health, and Environmental Affairs

**Agriculture - Industrial Hemp Pilot Program - Establishment**

This bill establishes an Industrial Hemp Pilot Program administered by the Maryland Department of Agriculture (MDA). It also excludes industrial hemp from the definition of “marijuana” under criminal law provisions addressing controlled dangerous substances. **The bill takes effect July 1, 2018.**

**Fiscal Summary**

**State Effect:** General fund expenditures increase by \$117,600 in FY 2019. Future year expenditures reflect ongoing costs. General fund revenues increase minimally.

(in dollars)	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
GF Revenue	-	-	-	-	-
GF Expenditure	\$117,600	\$75,100	\$77,100	\$79,600	\$82,200
Net Effect	(\$117,600)	(\$75,100)	(\$77,100)	(\$79,600)	(\$82,200)

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

**Local Effect:** None.

**Small Business Effect:** Potential meaningful.

## Analysis

### Bill Summary:

#### *The Pilot Program, In General*

The bill establishes an Industrial Hemp Pilot Program, the purpose of which 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 delta-9-tetrahydrocannabinol (THC) concentration that does not exceed 0.3% on a dry weight basis).

MDA or an institution of higher education may collect and publish data and research on industrial hemp.

MDA must adopt regulations to implement the pilot program.

#### *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.

#### *Repeal of Earlier Laws*

The bill (1) repeals the provisions of Chapter 105 of 2016, with the exception of definitions enacted under it, including the definition of “industrial hemp” and (2) modifies the definition of “institution of higher education” under that Act. The bill also repeals the provisions of Chapter 456 of 2015, with the exception of a provision that excludes industrial hemp from the definition of “marijuana” under criminal law provisions addressing controlled dangerous substances; this change makes that provision take effect, since it was previously subject to a contingency (which is repealed by the bill).

#### **Current Law:**

##### *Industrial Hemp for Agricultural or Academic Research Purposes*

Pursuant to Chapter 105 of 2016, MDA or an institution of higher education may grow or cultivate industrial hemp if the industrial hemp is grown or cultivated for agricultural research or academic research purposes. A site used by MDA or an institution of higher education to grow or cultivate industrial hemp must be certified by and registered with MDA. The department may adopt implementing regulations. (The bill replaces these provisions.)

##### *Legalization of Industrial Hemp*

Chapter 456 of 2015, which is contingent on specified federal law taking effect, authorizes a person to plant, grow, harvest, possess, process, sell, or buy industrial hemp in the State, provided that a person registers with MDA before planting or growing industrial hemp. Chapter 456 also excludes industrial hemp from the definition of marijuana under criminal law provisions addressing controlled dangerous substances. The law is contingent on the taking effect of the federal Industrial Hemp Farming Act of 2015 or another federal law that delegates authority over industrial hemp to the states or authorizes a person to plant, grow, harvest, possess, process, sell, and buy industrial hemp.

### *Definition of Marijuana (as a Controlled Dangerous Substance)*

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 Maryland Department of Health (MDH) in order to manufacture, distribute, or dispense a controlled dangerous substance in the State. MDH may waive the registration requirement by regulation based on a finding that a waiver is consistent with public health and safety. MDH 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:**

#### *Limited Federal Authorization/Legalization*

The federal Farm Bill (Agricultural Act of 2014, Pub. L. No. 113-79) allows an institution of higher education or a state department of agriculture to grow or cultivate industrial hemp, notwithstanding CSA and other federal laws. The growing or cultivation must be for purposes of research conducted under an agricultural pilot program or other agricultural or academic research and may only be conducted if the growing or cultivation of industrial hemp is allowed under the laws of the applicable state.

In August 2016, the U.S. Department of Agriculture, with the concurrence of DEA and the U.S. Food and Drug Administration, published a *Statement of Principles on Industrial Hemp* in the *Federal Register* to inform the public of how federal law applies to activities associated with industrial hemp that is grown and cultivated in accordance with the Agricultural Act of 2014. The statement clarifies that federal law continues to restrict hemp-related activities to the extent that the activities have not been legalized under the Agricultural Act of 2014. The statement focuses on the authorized agricultural pilot

programs, indicating that growth and cultivation of industrial hemp may only take place in accordance with an agricultural pilot program, and that the program must provide for state registration and certification of sites used for growing or cultivation of industrial hemp. In addition, the authorization of agricultural pilot programs does not alter other applicable federal requirements, such as requirements under CSA applicable to the manufacture, distribution, or dispensing of drug products containing controlled substances.

The Industrial Hemp Farming Act of 2015 (S. 134 and H.R. 525, 114<sup>th</sup> Congress), referenced in Chapter 456 of 2015, generally would have excluded industrial hemp from the definition of marijuana under CSA and deemed *Cannabis sativa L.* to meet the definition of industrial hemp, and fall within the exclusion, if it was grown or processed for purposes of making industrial hemp in accordance with state law. Both S. 134 and H.R. 525 were introduced and referred to committee in January 2015 but were not acted on further.

#### *Other States*

The National Conference of State Legislatures indicates that at least 27 states have passed laws creating or allowing for the establishment of industrial hemp research or pilot programs.

#### *Implementation of Chapter 105 of 2016*

MDA proposed implementing regulations for Chapter 105 of 2016 in July 2017, but the regulations were withdrawn in September 2017.

#### **State Fiscal Effect:**

##### *Program Administration*

General fund expenditures increase by \$117,583 in fiscal 2019, which accounts for the bill's July 1, 2018 effective date. This estimate reflects the cost of hiring an agronomist within MDA to manage (1) certification and registration of sites that will be used to grow or cultivate industrial hemp; (2) ongoing outreach to and oversight of those sites; and (3) any other necessary aspects of the pilot program outside of contracted growing and cultivation. Existing staff cannot absorb these additional responsibilities. The estimate includes a salary, fringe benefits, one-time start-up costs, and ongoing expenses and assumes a relatively robust pilot program, with multiple sites certified and registered.

Position	1
Salary and Fringe Benefits	\$65,768
Vehicle	27,000
Other Operating Expenses	<u>24,815</u>
<b>Total FY 2019 State Expenditures</b>	<b>\$117,583</b>

Future year expenditures reflect annual increases in the salary and employee turnover and ongoing operating expenses.

*Fee Revenues*

General fund revenues increase minimally due to collection of the fee of up to \$250 MDA is authorized to charge to certify and register a site that will be used to grow or cultivate industrial hemp.

*Industrial Hemp Production Costs and Sales Revenues*

It is assumed, for the purposes of this fiscal and policy note, that MDA and any participating institutions of higher education serve largely in a facilitative role under the pilot program and do not bear the production costs, or retain the revenues from any sales, of the industrial hemp (instead assigning the costs and revenues to those contracted with to grow and cultivate the industrial hemp).

**Small Business Effect:** To the extent individuals and entities are able to contract with MDA or an institution of higher education to grow and cultivate industrial hemp, the bill may have a positive effect on small businesses.

**Additional Information**

**Prior Introductions:** None.

**Cross File:** None designated. However, SB 1201 (Senator Conway – Education, Health, and Environmental Affairs) is essentially identical.

**Information Source(s):** Maryland Department of Agriculture; Maryland Department of Health; Baltimore City Community College; Morgan State University; University System of Maryland; St. Mary’s College of Maryland; Judiciary (Administrative Office of the Courts); National Conference of State Legislatures; Department of Legislative Services

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