

Department of Legislative Services
 Maryland General Assembly
 2020 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 964 (Senator Hettleman)
 Education, Health, and Environmental Affairs

Agriculture - Hemp Research and Production - Prohibitions

This bill prohibits the Maryland Department of Agriculture (MDA) from (1) certifying and registering a site under the Hemp Research Pilot Program or (2) licensing a person to produce hemp under the Hemp Farming Program if the area where the hemp will be grown is located within two miles of a residential community with 10 or more residences.

Fiscal Summary

State Effect: General/special fund expenditures increase by \$49,811 in FY 2021 for staff; future years reflect annualization and termination of the contractual employee in FY 2023. Potential decrease in general/special fund revenues beginning in FY 2021.

| (in dollars) | FY 2021 | FY 2022 | FY 2023 | FY 2024 | FY 2025 |
|--------------|----------|----------|----------|---------|---------|
| GF/SF Rev. | (-) | (-) | (-) | (-) | (-) |
| GF/SF Exp. | \$49,800 | \$52,700 | \$11,000 | \$0 | \$0 |
| Net Effect | (-) | (-) | (-) | (-) | (-) |

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

Local Effect: The bill does not materially affect local finances or operations.

Small Business Effect: Meaningful.

Analysis

Current Law: Chapters 475 and 476 of 2018 established an Industrial Hemp Pilot Program in Maryland, which is administered by MDA. Chapter 228 of 2019 expanded upon the pilot program and established a regulatory framework for the commercial production of hemp in the State in conjunction with the federal changes from the

2018 Farm Bill, which is discussed below. Chapter 228 also renamed the Industrial Hemp Pilot Program to the Hemp Research Pilot Program.

Hemp Research Pilot Program

The stated purpose of the Hemp Research Pilot 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.

Among other requirements, regulations establish that a person who contracts with an institution to grow and cultivate industrial hemp in an outdoor field or an outdoor site must only grow hemp on land that is at least 1,000 feet from a school or public recreation area.

According to MDA, as of October 2019, there were 65 farms in the State that were producing hemp under the pilot program.

Hemp Farming Program

The stated purpose of the Hemp Farming 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. 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 (USDA). MDA, in consultation with the Governor and the Attorney General, must establish a plan to monitor and regulate the production of hemp in the State. MDA must submit the plan to the Secretary of USDA for approval. If the Secretary does not approve the plan, MDA must amend the plan and resubmit it.

Among other things, the plan must include (1) 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, (2) a procedure for testing the delta-9-tetrahydrocannabinol (THC) concentration levels of hemp produced in the State, as specified; and (3) 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.

USDA issued its interim final rule for the establishment of commercial hemp growing that was authorized under the 2018 U.S. Farm Bill in November 2019. MDA is working on draft regulations to implement Chapter 228. Currently, the Hemp Farming Program is not operational, and MDA advises that it will continue to operate hemp activities in the State exclusively under the jurisdiction of the Hemp Research Pilot Program until State and federal regulations are finalized.

Background: Hemp can be used in the production of a variety of consumer goods, including paper products, textiles, nutritional supplements and medicines, construction, and livestock feed. While grown commercially in the United States until after World War II, hemp became regulated along with marijuana and its cultivation was prohibited. Hemp and marijuana are different varieties of the same species of plant, *Cannabis sativa*. The distinction between a hemp plant and a cannabis plant is important because the federal Agriculture Improvement Act of 2018 (2018 Farm Bill) alters certain federal authority relating to the production and marketing of hemp and removes hemp from the federal Controlled Substances Act. Under the 2018 Farm Bill, cannabis plants and derivatives that contain no more than 0.3% THC on a dry weight basis are no longer controlled substances under federal law. The 2018 Farm Bill directed USDA to develop a program to review and approve plans submitted by each state, territory, and Indian tribal agency outlining their production of hemp for commercial uses.

State Revenues: The bill establishes significant restrictions related to the siting of hemp farms under both the Hemp Research Pilot Program and the Hemp Farming Program. This may decrease the number of applicants and participants in those programs, which could result in a reduction in general/special fund revenues for MDA from associated fees. However, a reliable estimate of the magnitude of any such decrease cannot be determined at this time.

Current regulations establish a \$250 fee to certify/register each site used to grow or cultivate industrial hemp under the pilot program; these fees are deposited into the general fund. In addition, pursuant to Chapter 228, MDA is authorized to set reasonable fees for the issuance and renewal of licenses and other services provided by the department pursuant to the Hemp Farming Program once operational; all fees collected will be deposited into MDA's Hemp Farming Fund.

State Expenditures: MDA estimates that its expenditures increase by approximately \$165,000 in fiscal 2021 and by more than \$200,000 annually thereafter to hire 2.5 additional employees (1 full-time agronomist and 1 half-time agronomist to conduct inspections and 1 office secretary) to implement the bill's proximity restrictions. The

Department of Legislative Services (DLS) disagrees, primarily because (1) current law already requires inspections under the Hemp Farming Program and (2) current regulations already have some proximity restrictions related to growing hemp, as noted above.

Therefore, DLS advises that general/special fund expenditures for MDA increase by \$49,811 in fiscal 2021, which accounts for the bill’s October 1, 2020 effective date. This estimate reflects the cost of hiring one contractual agronomist to conduct site inspections as necessary to certify, register, and license hemp farms pursuant to the bill’s restrictions. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses, including travel. The information and assumptions used in calculating the estimate are stated below:

- although MDA is required to conduct inspections under the Hemp Farming Program, MDA must complete additional inspections during the initial application process as a result of the bill and may need to recertify sites already registered;
- 65 farms currently participate in the Hemp Research Pilot Program, but MDA likely receives additional applications once the Hemp Farming Program is operational pursuant to current law;
- MDA likely needs to recertify and register participants in the Hemp Research Pilot Program in light of the bill’s changes; and
- MDA cannot fully implement the bill’s requirements with existing budgeted staff.

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|---|-----------------|
| Contractual Position | 1 |
| Salary and Fringe Benefits | \$34,445 |
| Operating Expenses | <u>15,366</u> |
| Total FY 2021 State Expenditures | \$49,811 |

Future year expenditures reflect a full salary with annual increases and employee turnover, ongoing operating expenses, and termination of the contractual employee in fiscal 2023 after the initial license and certification/registration period is completed. This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State’s implementation of the federal Patient Protection and Affordable Care Act.

DLS notes that the fiscal and policy note for House Bill 1123 of 2019 (Chapter 228), which established the Hemp Farming Program, estimated that MDA needed 3.7 additional PINs to fully implement the State’s hemp programs under that bill. MDA advises that the department has not yet received additional funding to implement Chapter 228 but that the Governor’s proposed fiscal 2021 budget includes funding for two additional employees (one to handle registration/compliance and one to assist with testing). To the extent that

MDA does not receive the additional positions already assumed to be necessary under Chapter 228, additional staff may be needed to implement this bill.

Because the Hemp Farming Program has not been fully implemented, it is assumed that some level of general fund support is needed until fees are established and revenues are deposited into the Hemp Farming Fund.

Small Business Effect: The bill establishes significant restrictions to the siting of hemp farms under both the Hemp Research Pilot Program and the Hemp Farming Program. Many farms in the State are small businesses. The bill's changes could affect both current participants and future applicants/participants in the affected programs. Specifically, current participants may need to cease operations due to the bill's siting restrictions, which would have a significant negative impact and result in a loss of any related farm investments and future revenues from the sale of hemp.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 510 (Delegate Hettleman, *et al.*) - Environment and Transportation.

Information Source(s): Maryland Department of Agriculture; U.S. Department of Agriculture; Department of Legislative Services

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rh/lgc

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