

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 1035 (Senator Hester)
Education, Health, and Environmental Affairs

Hemp Farming Program - Expansion - Processing Hemp

This bill expands the existing Hemp Farming Program under the Maryland Department of Agriculture (MDA) to include the promotion, monitoring, licensing, and regulation of the *processing* of hemp (in addition to the *production* of hemp, which is regulated under current law). In general, the bill applies existing provisions governing the regulation and enforcement of the production of hemp to the processing of hemp. Among other things, the bill expands the existing requirement for MDA, in consultation with the Governor and the Attorney General, to establish a plan for monitoring and regulating the production of hemp to also include the processing of hemp. Likewise, the bill expands the required contents of the plan to include the processing of hemp and requires MDA to establish a procedure for licensing the processing of hemp in accordance with the plan.

Fiscal Summary

State Effect: Special fund revenues increase beginning as early as FY 2021 from license/service fees from hemp processors. Minimal increase in general/special fund expenditures beginning in FY 2021 for MDA to regulate the processing of hemp.

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

Small Business Effect: Meaningful.

Analysis

Bill Summary: In order to process hemp in the State, a person must be licensed by MDA or the U.S. Department of Agriculture (USDA). Pursuant to current law, MDA is authorized to set reasonable fees for the issuance and renewal of such a license.

The required contents of MDA's Hemp Farming Program plan are expanded to address the processing of hemp. Among other things, the plan must include a procedure for annually inspecting hemp processors to verify that hemp is being processed in accordance with relevant State law.

The bill explicitly prohibits a person from (1) knowingly failing to comply with MDA's plan for monitoring and regulating the processing of hemp; (2) misrepresenting or failing to provide a legal description of the location at which hemp is processed; or (3) processing hemp without a valid license.

MDA must report a person that knowingly violates the bill's provisions to the Attorney General and the U.S. Attorney. If MDA determines that a person negligently violated the bill, MDA must require the person to correct the violation, as specified. If a person is found to have negligently violated the bill three times in a four-year period, the person may not process hemp in the State for a period of five years, as specified.

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 changes in the federal Agriculture Improvement Act of 2018 (2018 Farm Bill). Chapter 228 also renamed the Industrial Hemp Pilot Program to the Hemp Research 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. 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.

MDA is required to establish a procedure for licensing the production of hemp in accordance with the plan. A person may not produce hemp in the State unless the person is licensed by MDA or USDA. MDA is authorized to set reasonable fees for the issuance and renewal of licenses and other services MDA provides pursuant to the program. All such fees are deposited into the Hemp Farming Fund, a special fund administered by MDA.

A person may not knowingly (1) fail to comply with MDA's plan for monitoring and regulating the production of hemp; (2) misrepresent or fail to provide the legal description of the land on which hemp is produced; (3) produce hemp without a valid license; or (4) produce plants, or any part of a plant, that exceeds a THC concentration of 0.3% on a dry weight basis. MDA must report a person that knowingly violates these provisions to the Attorney General and the U.S. Attorney. If MDA determines that a person negligently violates these provisions, MDA must require the person to correct the violation, as specified. If a person is found by MDA to have negligently violated these provisions three times in a four-year period, the person may not produce hemp in the State for a period of five years, as specified.

USDA issued its interim final rule for the establishment of commercial hemp growing that was authorized under the 2018 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.

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

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 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: Special fund revenues to the Hemp Farming Fund increase beginning as early as fiscal 2021 from license and renewal fees from hemp processors and for any other fees charged for other services provided by MDA to hemp processors. Because MDA has not yet established fees under the Hemp Farming Program, the program is not yet operational, and the number of entities interested in becoming licensed hemp processors is unknown, a reliable estimate of the magnitude of the increase in fee revenues cannot be determined at this time.

State Expenditures: General/special fund expenditures for MDA increase minimally beginning in fiscal 2021 to expand the hemp regulatory program to include processors. Specifically, MDA anticipates additional costs for travel for program employees, vehicle operations, and the purchase of supplies. 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 fee revenues are deposited into the Hemp Farming Fund.

The Department of Legislative Services 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 positions 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.

Small Business Effect: Small businesses may become licensed as hemp processors under the bill; MDA anticipates that a number of hemp processors are likely small businesses. MDA advises that there is currently a shortage of hemp processors in the region and that the bill may encourage additional hemp processing in the State. Additionally, hemp growers may benefit from local processing options as a result of the bill.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

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

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