

Department of Legislative Services
 Maryland General Assembly
 2020 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 574 (Delegate Cardin, *et al.*)
 Environment and Transportation

Agriculture - License to Produce Hemp - Limitation

This bill (1) removes the authority for a person to obtain approval to produce hemp under the State’s Hemp Farming Program from the U.S. Department of Agriculture (USDA) and (2) prohibits the Maryland Department of Agriculture (MDA) from issuing a license to a person to produce hemp under the program if MDA determines that the land subject to the license application is located within 25 feet of a property or properties with three or more individual residences, *unless* the applicant agrees to produce hemp in an indoor facility that exhausts its fumes, as specified.

Fiscal Summary

State Effect: General/special fund expenditures increase by \$49,800 in FY 2021 for staff; future years reflect annualization and termination of the contractual employee in FY 2023. Potential decrease in special fund revenues beginning in FY 2021.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
SF Revenue	(-)	(-)	(-)	(-)	(-)
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

Bill Summary: In making a determination regarding the proximity to residences for the purposes of evaluating a license application under the bill, MDA must (1) evaluate the land subject to a license application as a whole, without regard to a specific area where the applicant plans to produce hemp and (2) consider an individual residence on the land subject to a license application as counting toward the limitation.

The exhaust system to exhaust fumes to the outside of an indoor facility must be equipped with an approved purifying apparatus that adequately reduces all odors.

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 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 the Hemp Farming Program. This likely decreases the number of applicants

and participants in this program, which results in a reduction in 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. 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.

This analysis assumes that the Hemp Farming Program is operational by the time the bill takes effect.

State Expenditures: MDA estimates that its expenditures increase by approximately \$210,500 in fiscal 2021 and by more than \$240,000 annually thereafter to hire three additional employees (two agronomists and one office secretary) to implement the bill's proximity restriction and conduct related inspections. The Department of Legislative Services (DLS) disagrees, primarily because (1) current law already requires inspections under the Hemp Farming Program and (2) current regulations relating to the pilot program 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 license hemp farms pursuant to the bill's restriction. 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
- MDA cannot fully implement the bill's requirements with existing budgeted staff.

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 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 personal identification numbers 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.

This analysis assumes that the Hemp Farming Program is operational by the time the bill takes effect.

Small Business Effect: The bill establishes significant restrictions to the siting of hemp farms under the Hemp Farming Program. Many farms in the State are small businesses. In addition to affecting future applicants to the Hemp Farming Program, the bill may affect current participants in the Hemp Research Pilot Program, since some farms participating in the pilot program likely plan to participate in the Hemp Farming Program once the program is operational. Under the bill, applicants under the Hemp Farming Program must either find a location that meets the bill's proximity restriction or build an indoor facility with a qualifying exhaust system. This likely has a significant negative operational and/or cost impact on any farms that wish to participate in the program.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

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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