

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 562 (Senators Hettleman and West)
 Education, Health, and Environmental Affairs

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 \$84,400 in FY 2022; future years reflect annualization. Potential decrease in special fund revenues beginning in FY 2022.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
SF Revenue	(-)	(-)	(-)	(-)	(-)
GF/SF Exp.	\$84,400	\$66,800	\$68,700	\$71,100	\$73,600
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:

Federal and State Regulatory Action Related to Industrial Hemp, Broadly

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% delta-9 tetrahydrocannabinol (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.

Chapters 475 and 476 of 2018 established an Industrial Hemp Pilot Program in Maryland that 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. USDA published guidance on state hemp farming plans at the end of calendar 2019. MDA promulgated regulations in late 2020 that brought the State into compliance with the 2018 Farm Bill and established industrial hemp as an agricultural commodity, as discussed below.

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.

As mentioned above, MDA published regulations to implement Chapter 228 in fall 2020, and the regulations went into effect November 1, 2020. Among other things, the regulations

authorize MDA to conduct both annual and unannounced inspections and to collect samples of hemp. An application to grow hemp under the Hemp Farming Program must contain certain specified information, including siting location, a legal description, and GPS coordinates for the land where the hemp operation is proposed. Applications must also specify whether the hemp will be grown indoors or outdoors. Applicants must also provide documentation showing the applicant has a legal right to cultivate hemp on the land and the legal authority to grant MDA access for inspections and sampling. Growers must reapply for licensure annually.

The regulations require MDA to conduct annual inspections of, at a minimum, a random sample of licensed growers and collect regulatory samples of hemp to verify that hemp is being produced in accordance with State law. Additionally, if MDA has reason to believe that a program violation is occurring, the department is authorized to conduct additional regulatory inspections as MDA deems appropriate.

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.

MDA is authorized to set reasonable fees for the issuance and renewal of licenses and other services provided by the department, and the regulations published in November 2020 established (1) a \$50 annual application fee; (2) a \$500 annual license fee; (3) a \$500 fee for each additional location that is owned or controlled by a grower with a different mailing address; (4) a \$250 fee for each time MDA samples and tests “official samples” for THC; and (5) a \$250 site modification fee if the GPS coordinates in an application are changed. All fees collected are deposited into MDA’s Hemp Farming Fund.

State Expenditures: MDA estimates that its expenditures increase by approximately \$209,000 in fiscal 2022, and by more than \$185,000 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; (2) applicants to the Hemp Farming Program must provide specific descriptions of the future site of the growing operation; and (3) current regulations relating to the pilot program already have some proximity restrictions related to growing hemp.

Therefore, DLS advises that general/special fund expenditures for MDA increase by \$84,387 in fiscal 2022, which accounts for the bill’s October 1, 2021 effective date. This estimate reflects the cost of hiring one 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, including the purchase of a vehicle, 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, these inspections only need to be of a random sample of licensed growers, not all licensed farms;
- because regulations require growers to reapply annually, and because individual residences could be built after the initial approval of a license, the bill creates the need for additional ongoing inspections and evaluations of whether there are any nearby residences that trigger the bill’s restriction; and
- MDA cannot fully implement the bill’s requirements with existing staff.

Position	1
Salary and Fringe Benefits	\$50,306
Vehicle Purchase	27,000
Other operating Expenses	<u>7,081</u>
Total FY 2022 State Expenditures	\$84,387

Future year expenditures reflect a full salary with annual increases and employee turnover and ongoing operating expenses.

Because the Hemp Farming Program only began accepting applications for licensure at the beginning of calendar 2021, it is assumed that some level of general fund support is needed, at least in the first year, until sufficient fees are collected and revenues are deposited into the Hemp Farming Fund.

Small Business Effect: The bill establishes significant restrictions to the siting of hemp farms under the Hemp Farming Program. According to MDA, in 2020, there were 104 growers in the State. 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. MDA began accepting applications for the Hemp Farming Program at the beginning of 2021, so any growers that have already obtained their licenses may be unable to renew their licenses. Further, applicants whose applications are being processed may need to resubmit their applications or find that their currently planned sites are unacceptable. Under the bill, an applicant 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 or are already participating in the program.

Additional Information

Prior Introductions: HB 574 of 2020 received a hearing in the House Environment and Transportation Committee, but no further action was taken.

Designated Cross File: HB 249 (Delegate Cardin) - Environment and Transportation.

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

Fiscal Note History: First Reader - February 8, 2021
an/lgc

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