

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/CS/SB 1020

INTRODUCER: Appropriations Committee; Agriculture Committee; and Senators Bradley, Albritton, Hutson and others

SUBJECT: State Hemp Program

DATE: April 15, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>IT</u>	<u>Favorable</u>
2.	<u>Akhavein</u>	<u>Becker</u>	<u>AG</u>	<u>Fav/CS</u>
3.	<u>Blizzard</u>	<u>Kynoch</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1020 authorizes the Department of Agriculture and Consumer Services (department) to create a state industrial hemp program to administer and oversee the cultivation, handling, processing, and sale of hemp. The Agricultural Improvement Act of 2018 (2018 Farm Bill) legalized the industrial use of hemp and removed it from the U.S. Drug Enforcement Agency's list of controlled substances, separating it from marijuana and placing it under the supervision of the U.S. Department of Agriculture.

Specifically the bill:

- Requires registration with the department and a background check every two years;
- Requires a registrant to provide the legal land description and global positioning coordinates of the area where hemp will be cultivated;
- Requires the registrant to give the department prior written consent allowing physical inspections of premises where hemp is cultivated, handled, or processed;
- Expands participants in industrial hemp pilot projects;
- Provides for distribution and retail sale of hemp and hemp products;
- Provides that hemp seed and hemp seed dealers are subject to the provisions of the Florida Seed Law and that registrants shall only use certified seeds;
- Requires the department to adopt rules to administer the state hemp program in consultation with the Department of Health and the Department of Business and Professional Regulation;

- Directs the Commissioner of Agriculture, in consultation with the Governor and Attorney General, to submit a plan for regulating hemp to the United States Secretary of Agriculture;
- Creates an Industrial Hemp Advisory Board to provide advice and expertise to universities and the department;
- Revises the definition of “cannabis” for purposes of ch. 893, F.S., to exclude hemp and industrial hemp; and
- Directs the department to include information for administering the state hemp program in their legislative budget request for the 2020-2021 fiscal year.

The fiscal impact on state revenues and expenditures is indeterminate. However, the department estimates it will require additional resources of \$1.6 million to administer the state hemp program.

The bill takes effect upon becoming law.

II. Present Situation:

Industrial Hemp

Industrial hemp is a *Cannabis sativa* plant (cannabis) that has been cultivated for approximately 10,000 years as a fiber and grain crop. It is used for fiber, building materials, forages (animal feed), and pain relief as a topical oil.¹

Cannabis

Cannabis is a Schedule I controlled substance.² It is a felony of the third degree³ to sell, manufacture, deliver, or possess with intent to sell, manufacture, or deliver, cannabis in Florida.⁴

As a controlled substance in ch. 893, F.S., “cannabis” is defined to mean: all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin. The term does not include “marijuana,” as defined in s. 381.986, if manufactured, possessed, sold, purchased, delivered, distributed, or dispensed, in conformance with s. 381.986, F.S., [the Compassionate Medical Cannabis Act of 2014].⁵

Medical Marijuana

On November 4, 2016, Amendment 2 was approved by the electors and now is Article X, section 29, of the Florida Constitution. This section of the constitution became effective on January 3, 2017, and created several exemptions from criminal and civil liability for:

¹ See University of Florida, *UF/IFAS Industrial Hemp Pilot Project* at: <https://programs.ifas.ufl.edu/hemp/> (last visited March 21, 2019).

² Section 893.03(1)(c)7., F.S.

³ Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed \$5,000.

⁴ Section 893.13(1)(a)2., F.S.

⁵ Section 893.02(3), F.S.

- Qualifying patients medically using marijuana in compliance with the amendment;
- Physicians, solely for issuing physician certifications with reasonable care and in compliance with the amendment; and
- Medical marijuana treatment centers (MMTCs), their agents, and employees for actions or conduct under the amendment and in compliance with rules promulgated by the Florida Department of Health.

Subsequently, the Legislature passed SB 8-A in Special Session A of 2017.⁶ The bill revised the Compassionate Medical Cannabis Act of 2014⁷ in s. 381.986, F.S., to implement Article X, section 29 of the Florida Constitution.

The term medical marijuana includes two distinct forms of the plant genus *Cannabis*:

- Marijuana without any limitation or restriction on the percentage of THC;⁸ and
- “Low-THC cannabis” in which the percentage of THC is limited to 0.8 percent or less and has more than 10 percent of cannabidiol⁹ weight for weight.¹⁰

The Coalition for Medical Marijuana Research and Education located at the H. Lee Moffitt Cancer Center and Research Institute, Inc., may also conduct medical marijuana research and education.¹¹

A MMTC and a qualified patient or caregiver are specifically exempt from the criminal prohibition against the possession of cannabis.¹²

2014 Federal Farm Bill and State Industrial Hemp Pilot Programs

The Agricultural Improvement Act of 2014 (2014 Farm Bill) defined industrial hemp and allowed state departments of agriculture or universities to grow and produce industrial hemp as part of research or pilot programs. Specifically, the law allowed universities and state departments of agriculture to grow or cultivate industrial hemp if:

- The industrial hemp is grown or cultivated for purposes of research conducted under an agricultural pilot program or other agricultural or academic research; and
- The growing or cultivating of industrial hemp is allowed under the laws of the state in which such institution of higher education or state department of agriculture is located and such research occurs.¹³

The 2014 Farm Bill defines “industrial hemp” to mean:

⁶ Chapter 2017-232, Laws of Fla.

⁷ Chapter 2014-157, Laws of Fla.

⁸ THC, or tetrahydrocannabinol, is the main active ingredient in cannabis and is responsible for most of the psychological effects of cannabis.

⁹ Cannabidiol (CBD) is a chemical compound, known as a cannabinoid, found in cannabis. CBD does not have the same psychoactivity as THC. See Michael J Breus, *Despite What You May Think... CBD Is Not Weed* (Sept. 20, 2018), Psychology Today, available at: <https://www.psychologytoday.com/us/blog/sleep-newzzz/201809/despite-what-you-may-think-cbd-is-not-weed> (last visited March 21, 2019).

¹⁰ See ss. 381.986(1)(e) and (f), F.S.

¹¹ Section 1004.4351, F.S.

¹² See 381.986(14), F.S.

¹³ Agricultural Improvement Act of 2014, Pub. L. No. 113-79, s. 7606, 128 Stat. 912 (2014) (codified at 7 U.S.C. s. 5940).

...the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.¹⁴

Section 1004.4473, F.S., authorizes the department to oversee the development of industrial hemp pilot projects for the Institute of Food and Agricultural Sciences (IFAS) at the University of Florida, Florida Agricultural and Mechanical University, and any land grant university in the state that has a college of agriculture.¹⁵ The purpose of the pilot projects is to cultivate, process, test, research, create, and market safe and effective commercial applications for industrial hemp in the agricultural sector in this state. The department has adopted a rule addressing safety, compliance, and accountability and other concerns.¹⁶

Section 1004.4473, F.S., does not provide a specific exemption from the criminal prohibition against the possession of cannabis in s. 893.13(1)(a)2, F.S.

2018 Federal Farm Bill

In the 2018 Farm Bill, the U.S. Congress legalized industrial hemp as an agricultural product by removing hemp's classification as a controlled substance.¹⁷ The 2018 Farm Bill defines "hemp" to mean:

...the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.¹⁸

The 2018 Farm Bill allows a state department of agriculture or an Indian tribe to submit a plan to the United States Secretary of Agriculture and apply for primary regulatory authority over the production of hemp in their state or tribal territory. A state or tribal plan must include:

- A procedure for tracking land upon which hemp will be produced;
- Testing methods for determining THC concentration levels of hemp;
- Methods for effective disposal of noncompliant products;
- Enforcement procedures;
- Inspection procedures; and

¹⁴ *Id.*

¹⁵ See University of Florida, *About the UF/IFAS Industrial Hemp Project*, at: <https://programs.ifas.ufl.edu/hemp/about-the-project/> (last visited March 21, 2019).

¹⁶ Fla. Admin. Code R. 5B-57.013 (2018).

¹⁷ Agricultural Improvement Act of 2018, Pub. L. No. 115-334, s. 12619, 132 Stat. 409 (2018) (codified at 21 U.S.C 802(16)).

¹⁸ Agricultural Improvement Act of 2018, Pub. L. No. 115-334, s. 10113, 132 Stat. 409 (2018) (codified at 7 U.S.C. s. 1639o).

- Certification procedures for the persons authorized to produce hemp producers, test hemp products, inspect hemp producers, and enforce the provisions of the state or tribal plan.¹⁹

Hemp Legislation in Other States

At least 38 states considered legislation related to industrial hemp in 2018. These bills ranged from clarifying existing laws to establishing new licensing requirements and programs. Alaska, Arizona, Kansas, Missouri, New Jersey, and Oklahoma enacted legislation in 2018 establishing hemp research and industrial hemp pilot programs.²⁰

III. Effect of Proposed Changes:

Section 1 creates s. 581.217, F.S., to establish a state hemp program within the department to promote the cultivation, handling, processing, and sale of hemp, hemp products, and hemp extract in the state, pursuant to the standards for a state-administered hemp program.

Specifically, the program:

- Provides definitions for the terms “cannabidiol,” “cultivate,” “federally defined THC level for hemp,” “handle,” “hemp,” “hemp extract,” “hemp products,” and “process;”
- Requires registration with the department and a background check every two years;
- Requires a registrant to provide the legal land description and global positioning coordinates of the area where hemp will be cultivated;
- Requires the registrant to give the department prior written consent allowing physical inspections of premises where hemp is cultivated, handled, or processed;
- Authorizes existing industrial hemp projects approved by a university to register with the department and participate in the state hemp program;
- Provides for distribution and retail sale of hemp and hemp products;
- Provides that hemp seed and hemp seed dealers are subject to the provisions of the Florida Seed Law and that registrants shall only use certified seeds;
- Requires the department to adopt rules to administer the state hemp program in consultation with the Department of Health and the Department of Business and Professional Regulation;
- Directs the Commissioner of Agriculture, in consultation with the Governor and Attorney General, to submit a plan for regulating hemp to the United States Secretary of Agriculture; and
- Creates an Industrial Hemp Advisory Board to provide advice and expertise to universities and the department.

Section 2 amends s. 893.02, F.S., to exclude hemp and industrial hemp from the definition of “cannabis.”

¹⁹ Agricultural Improvement Act of 2018, Pub. L. No. 115-334, s. 10113, 132 Stat. 409 (2018) (codified at 7 U.S.C. s. 1639p).

²⁰ See <http://www.ncsl.org/research/agriculture-and-rural-development/state-industrial-hemp-statutes.aspx> (last visited March 21, 2019).

Section 3 amends s. 1004.4473, F.S., to expand the schools at which the department is required to authorize and oversee the development of industrial hemp pilot projects. It also authorizes universities to implement industrial hemp pilot projects pursuant to the state hemp program.

Section 4 directs the department to include information for administering the state hemp program in their legislative budget request for the 2020-2021 fiscal year.

Section 5 directs the Division of Law Revision to replace the phrase the effective date of this act wherever it occurs in this act with the date this act becomes a law.

Section 6 provides that this act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

CS/CS/SB 1020 authorizes the department to adopt rules that include a schedule of nonrefundable fees.

B. Private Sector Impact:

Some Florida farmers may receive a beneficial economic opportunity provided by the planting, processing, and sale of hemp and hemp-based products.

C. Government Sector Impact:

The bill may have an indeterminate negative fiscal impact on the department associated with rulemaking, the creation and submittal of the state hemp plan to the United States Secretary of Agriculture (Secretary), and for travel and per diem related to the newly created Industrial Hemp Advisory Board. The bill directs the department to include in their Fiscal Year 2020-2021 legislative budget request, a fee schedule and an outline of costs associated with administering the program. The department estimates the costs to administer the provisions in the bill to be \$1.6 million.²¹

The bill requires the department to adopt rules in consultation with the Department of Health and the Department of Business and Professional Regulation, and to submit the state hemp plan to the Secretary in consultation with the Governor and Attorney General. Therefore, it is unknown how long the rulemaking process will take to complete and what the fiscal impact of the bill will actually be.

VI. Technical Deficiencies:

None.

VII. Related Issues:

SB 7088 by the Committee on Agriculture is linked to CS/CS/SB 1020. SB 7088 amends s. 581.217, F.S., as created by CS/CS/SB 1020, to authorize a fee for each application for initial registration and renewal registration for participation in the state hemp program created under CS/CS/SB 1020. The fee authorized by SB 7088 must be specified in a rule adopted by the department, and may not exceed \$500 per application. SB 7088 allows the department to waive payment of the fee by rule and requires fees collected to be deposited in the Plant Industry Trust Fund.²²

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 893.02 and 1004.4473.

This bill creates section 581.217 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS/CS by Appropriations on April 11, 2019:**

The committee substitute:

- Revises the definition of “federally defined THC level for hemp” and “hemp extract;”
- Removes the requirement of the department to administer a certified hemp seed program;

²¹ DACS Agency Bill Analysis, *Senate Bill 7088 (linked to SB 1020)* on file with the Senate Committee on Appropriations.

²² Section 570.321, F.S., creates the Plant Industry Trust Fund to be administered by the department.

- Provides that hemp seed and hemp seed dealers are subject to the Florida Seed Law;
- Requires the department's rules to provide for the regulation of transportation of hemp and hemp products;
- Adds additional requirements for inclusion in the department's state hemp plan that are consistent with the 2018 Federal Farm Bill;
- Revises the membership of the Industrial Hemp Advisory Board;
- Revises the definition of "cannabis" for purposes of ch. 893, F.S., to exclude hemp and industrial hemp; and
- Requires the department to include information for administering the state hemp program in their legislative budget request for the 2020-2021 fiscal year.

CS by Agriculture on March 25, 2019:

The committee substitute:

- Provides legislative findings;
- Defines terms for use in the state hemp program;
- Provides requirements for program registration and for the distribution and retail sale of hemp and hemp products;
- Requires the department to administer a certified hemp seed program;
- Requires the department to adopt rules to administer the state hemp program in consultation with the Department of Health and the Department of Business and Professional Regulation;
- Directs the Commissioner of Agriculture, in consultation with the Governor and Attorney General, to submit a plan for regulating hemp to the United States Secretary of Agriculture;
- Creates an Industrial Hemp Advisory Board to provide advice and expertise to universities and the department;
- Expands the schools at which the department is required to authorize and oversee the development of industrial hemp pilot projects. It also authorizes universities to implement industrial hemp pilot projects pursuant to the state hemp program; and
- Directs the Division of Law Revision to replace the phrase "the effective date of this act" wherever it occurs in this act with the date this act becomes a law.

B. Amendments:

None.