

Agriculture, Trade and Consumer Protection

Regulatory Programs

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June, 2021

Joint Committee on Finance

Paper #170

Meat Inspection Program (Agriculture, Trade and Consumer Protection -- Regulatory Programs)

[LFB 2021-23 Budget Summary: Page 66, #1 and #2]

CURRENT LAW

The Department of Agriculture, Trade and Consumer Protection (DATCP) meat safety program conducts inspections of livestock and poultry slaughtering and processing establishments not otherwise inspected by the U.S. Department of Agriculture (USDA). State inspection programs by law must enforce standards that are "at least equal to" federal food safety standards, including having sufficient levels of staffing to meet required inspections of processing establishments. For any inspected facility, a meat inspector must be on site during all slaughter activities. DATCP reports most state-inspected slaughter facilities are typically smaller, and schedule one day a week for slaughter. As of 2020, DATCP reports there are 82 state-inspected livestock and poultry slaughter facilities in Wisconsin.

The Bureau of Meat and Poultry Businesses currently employs 66.0 meat inspection staff and 8.0 meat inspection supervisors, consisting of 36.88 GPR and 37.12 FED positions. Additionally, the Department employs 6.0 limited-term meat inspectors to supplement permanent staff. The Bureau of Meat and Poultry Businesses employs 20.0 additional full-time staff, including veterinarians, food scientists, regulatory specialists, and management.

Federal funding is received from the USDA Food Safety and Inspection Service (FSIS), which generally provides matching funding of 50% of state program costs. FSIS also operates a cooperative interstate shipment (CIS) program, which allows certain participating state-inspected facilities to sell meat products at wholesale across state lines. CIS funding is provided at a 60% federal match. In 2019-20, the base matching grant supported \$2,431,900 FED in staff costs, and the cooperative interstate grant supported \$116,900 FED in staff costs. The slight difference in GPR and FED meat inspection positions represents the higher FED matching amount under the

DISCUSSION POINTS

A. Meat Inspection Staffing

1. During the initial months of the COVID-19 pandemic, several high-volume federally inspected meat establishments were temporarily closed, resulting in a bottleneck that slowed animal slaughter and processing. Further, as demand for dairy declined and dairy prices fell 29% from March to April of 2020, additional cattle entered the market ready for slaughter. The result was increased demand for slaughter at smaller, state-inspected facilities as animals were diverted from larger facilities. Consistent with this trend, total slaughters of cattle (43,300) and swine (46,100) rose 32% in 2020 relative to 2019. DATCP reports facilities responded by increasing the slaughter day length, or adding a second slaughter day. As an inspector must be on site during all slaughter activities, this increased the amount of inspection staff time required.

2. DATCP further reports that supply chain disruptions associated with the COVID-19 pandemic caused consumers to pursue locally sourced meat, which is usually slaughtered at smaller state-inspected facilities. DATCP reports it expects continued growth in smaller, state-inspected facilities in coming years as consumers demand for locally sourced meat products continues to grow.

3. DATCP argues that timely and comprehensive inspections allow it to ensure the safety of Wisconsin meat products and increase consumer confidence in Wisconsin meat. Further, increased inspection staff are expected to ensure adequate service levels and response times at state-inspected facilities and allow the Department sufficient capacity to support additional inspection and licensing duties associated with new facilities entering the industry. DATCP believes that increased meat inspection staffing capacity will ensure continued growth in Wisconsin's meat industry, produce economic benefits for farmers, retailers, and consumers, and strengthen farm-to-table connections for meat products.

4. The Bureau tracks inspection staff activities for operational and federal compliance purposes. In addition to overseeing slaughter, staff are responsible for a number of inspection tasks at facilities. In response to increased slaughter activity, DATCP reports that completion rates of other assigned inspection duties have declined from 96.6% immediately preceding the COVID-19 pandemic to 95.1% from December 2020, through March of 2021. Further, from March 2018, to March 2019, the Bureau recorded 86,450 tasks completed by inspectors, declining to 81,921 from March 2020 to March 2021.

5. The Department expresses concern that further declines in task completion may jeopardize the state's ability to maintain "at least equal to" status relative to federally inspected facilities. While a loss of status could ultimately jeopardize federal funding supporting state inspections, in the near term FSIS would require the state to correct any program deficiencies found through regular program audits. As of the most recent state audit, published in January of 2021, FSIS concluded DATCP "has sufficient resources to provide the required inspection coverage at state-inspected establishments." Given increasing demand for processing at state-inspected facilities and

decreasing capacity of existing staff to complete assigned inspection tasks, the Committee could consider providing 6.0 additional meat inspection positions and associated funding, split between GPR and FED [Alternative A1]. As task completion rates are approximately 5% less than assigned, the Committee could consider providing an additional 3.0 meat inspection positions and associated funding, roughly equal to a 5% increase in current staffing levels [Alternative A2].

6. Given the uncertainty in future demand for meat products and trends in the Wisconsin meat processing industry, the Committee could consider providing additional positions as two- or four-year project positions, allowing it to reconsider staffing levels once disruptions resulting from the COVID-19 pandemic have dissipated [Alternative A3a or A3b]. Given FSIS has not identified any current program deficiencies, the Committee could also take no action, allowing DATCP to continue use of limited-term staff to supplement meat inspection activities if necessary [Alternative A4].

B. Matching Funds for Meat Inspection

7. FSIS provides funding for state meat inspection programs that operate inspection programs "at least equal to" federal inspection programs. Funding is provided on a matching basis to states, and generally requires an equal match from state sources for each federal dollar received. As costs increase over time, FSIS provides incrementally larger funding allocations each year. Standard budget adjustments made under each biennial budget, primarily reflecting increasing salary and fringe benefit, rent, and other administrative costs, have generally matched these federal funding increases offered by FSIS over time. However, DATCP reports such increases have been insufficient to fully match available federal funding in recent years, and estimates this shortfall to equal approximately \$88,500 each year.

8. DATCP reports if additional state funding were not made available, it would have to forgo a portion of federal inspection funding available to the state. As operational costs increase over time, total inspection program capacity would decline if no additional funding were provided. Additional federal funding is provided to offset these relative declines in purchasing power and resulting inspection activity. However, if state funding were insufficient to access all federal funding available to Wisconsin for meat inspection, DATCP's ability to meet "at least equal" inspection capacity could be reduced.

9. To ensure full funding of state required matching amounts for federal meat inspection funding, the Committee could provide an additional \$88,500 each year during the 2021-23 biennium [Alternative B1]. The Committee could also take no action [Alternative B2], and DATCP would forgo additional available federal funding for meat inspection.

ALTERNATIVES

A. Meat Inspection Staff

1. Provide an additional \$177,600 GPR and \$177,600 FED in 2021-22, and \$215,900 GPR and \$215,900 FED in 2022-23, with 3.0 GPR and 3.0 FED positions for meat inspection staff.

ALT A1	Change to Base	
	Funding	Positions
GPR	\$393,500	3.00
FED	<u>393,500</u>	<u>3.00</u>
Total	\$787,000	6.00

2. Provide an additional \$88,800 GPR and \$88,800 FED in 2021-22, and \$108,000 GPR and \$108,000 FED in 2022-23 with 1.5 GPR and 1.5 FED positions for meat inspection staff.

ALT A2	Change to Base	
	Funding	Positions
GPR	\$196,800	1.50
FED	<u>196,800</u>	<u>1.50</u>
Total	\$393,600	3.00

3. In addition to Alternatives A1 or A2 above, specify that positions be provided as project positions, authorized for:

- a. Two years; or
- b. Four years.
4. Take no action.

B. Matching Funds For Meat Inspection

1. Provide an additional \$88,500 GPR each year to meet federal matching requirements for DATCP's meat inspection program.

ALT B1	Change to Base
GPR	\$177,000

2. Take no action.

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June, 2021

Joint Committee on Finance

Paper #171

Dog Regulation and Rabies Control Program Overdraft (Agriculture, Trade and Consumer Protection -- Regulatory Programs)

[LFB 2021-23 Budget Summary: Page 67, #4]

CURRENT LAW

The Department of Agriculture, Trade and Consumer Protection (DATCP) is required by Chapter 173 of the statutes to: (a) regulate and license animal shelters and control facilities, and dog breeders and sellers; (b) assist local governments in administering dog licensing and rabies control laws; and (c) train and certify humane officers. These activities are supported by a program revenue (PR) continuing appropriation, authorized to expend all monies received for the purposes of operating the program. The program is budgeted 4.0 PR positions, consisting of 1.0 veterinarian and 3.0 inspectors, and \$471,900 PR each year during the 2021-23 biennium, including the base budget and standard budget adjustments.

The dog licenses, rabies control, and related services appropriation receives revenues from: (a) fees imposed on dog sellers, shelters, and animal control facilities (\$192,400 in 2019-20); (b) a portion of dog license fees paid by owners to local units of government (\$69,100); (c) training and certification fees associated with its humane officer training and certification program (\$5,400); and (d) training fees associated with rabies control programs (\$3,300). Fees are shown in Table 1.

TABLE 1**Dog Regulation and Rabies Control Program Fees**

<u>Fee Category/Type</u>	<u>Amount</u>
Dog Sellers	
Animal Control Facilities and Shelters	\$125
Breeders, Breeding Facilities, and Dealers	
25-49 Dogs	250
50-99 Dogs	500
100-249 Dogs	750
250+ Dogs	1,000
Out-of-State Dealers	Normal fee+50%
Facility reinspection	150
Dog Owners	
Individual Dog License Tax	
Spayed/Neutered Dog	\$0.15
Non-Spayed/Neutered Dog	0.40
Rabies Control	
Local Rabies Control Personnel Training Fee	\$55
Humane Officer Training and Certification	
Testing Fee	\$25
Certification Fee	35

The statutes require animal control facilities, animal shelters, dog breeding facilities, dog shelters, and animal rescue groups that handle 25 or more dogs per year to be licensed with the Department and inspected at least every two years following an initial pre-licensing inspection. Licenses expire each September 30. Table 2 provides a summary since calendar year 2016 of licensed entities by type, and regulatory actions by the Department. As of March, 2021, the Department reports 506 licensed dog sellers, consisting of: (a) 179 shelters or animal control facilities; (b) 120 small sellers (24-49 dogs per year); (c) 103 medium sellers (50-99); (d) 76 large sellers (100-249); and (e) 28 very large sellers (250+). Animal shelters are required to certify their status as nonprofit entities to qualify for the reduced license fee relative to other dog sellers. Animal control facilities, which are often local humane societies, are those that contract with a municipality to care for animals taken into custody by a humane officer or law enforcement.

TABLE 2**Dog Licensing Program Activities**

	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>
Licenses					
Animal Shelters	169	185	184	199	187
In-State Dog Sellers	227	249	280	292	293
Out-of-State Dog Sellers	<u>11</u>	<u>11</u>	<u>10</u>	<u>11</u>	<u>9</u>
Total Licenses	407	445	474	502	489
Inspections	281	359	293	337	309
Complaints	216	246	142	149	171
Investigations	154	157	115	98	117

In 2019 license fees were paid to counties for approximately 383,000 dogs. A portion of each fee is remitted to the state, equal to \$0.15 for spayed or neutered dogs and \$0.40 for sexually intact dogs. These fees equal 5% of the minimum \$3 and \$8, respectively, required to be imposed by counties for licensed dogs. While the Department collects dog seller fees based on number of dogs sold, it does not collect data on the total number of dogs sold each year.

DISCUSSION POINTS

1. As seen in Table 3, the dog licenses, rabies control, and related services appropriation has been in overdraft since 2018-19, meaning that the program revenue account balance is negative and draws against the balance of the general fund. Once fee revenues again become sufficient to cover operational costs, any excess revenue will accumulate in the account, returning it to solvency and eliminating the general fund liability. As of June 30, 2020, the program appropriation had an unsupported overdraft of \$249,700, an increase of \$64,300 from 2018-19. The Department estimates the closing unsupported balance of the account will total approximately \$450,000 on June 30, 2021.

TABLE 3**Dog Licenses, Rabies Control, and Related Services Appropriation Condition**

	<u>2015-16</u>	<u>2016-17</u>	<u>2017-18</u>	<u>2018-19</u>	<u>2019-20</u>
Opening Balance	\$22,300	\$11,800	\$21,300	\$13,400	-\$185,400
Revenues	240,000	264,300	264,300	256,900	270,200
Expenditures	<u>-250,500</u>	<u>-254,800</u>	<u>-272,200</u>	<u>-455,700</u>	<u>-334,500</u>
Closing Balance	\$11,800	\$21,300	\$13,400	-\$185,400	-\$249,700

2. Dog seller fees have not been modified since the program's creation in 2011, and revenues have been unable to support expenditures in recent years. Instead, the Department has

supported a portion of increased expenditures with GPR from its Division of Animal Health general program operations appropriation. Beginning in 2018-19, DATCP has been unable to absorb such costs with the Division's general program operations appropriation, resulting in an overdraft. In both 2019-20 and 2020-21, the animal health general program operations appropriation has been subject to lapse requirements in response to the COVID-19 pandemic.

3. Section 173.41 of the statutes specifies fee amounts for dog sellers and operators of animal shelters or control facilities, which are incorporated in Chapter ATCP 16 of the administrative code. Section 173.41 also allows the Department to promulgate rules specifying higher fee amounts for dog sellers, animal shelters, and animal control facilities if necessary to cover the costs of regulating those entities. DATCP has initiated rulemaking to consider modifying current fees and address the appropriation overdraft. On September 24, 2020, the DATCP Board approved a statement of scope to revise dog seller fees under ATCP 16.

4. On March 2, 2021, the Department convened an advisory group of retail dog sellers, dog breeders, humane societies, animal control facilities, veterinarians, and breed rescue groups to consider options for increasing fees. The advisory group considered a number of alternatives proposed by the Department to increase fees to meet certain revenue levels to cover the appropriation shortfall. The statutes limit DATCP to increasing fees within the current categories of dog sellers shown in Table 1, thus dog owner license fees, and rabies control and humane officer fees are not proposed to be modified.

5. Advisory members generally favored increasing seller and reinspection fees in a manner consistent with recovering the deficit over five years. Members were split among imposing an equal increase (on a percentage basis) among all categories of sellers, or excluding shelters and animal control facilities from the fee increase. Members who did not support increasing fees for shelters and animal control facilities argued these nonprofit entities have limited funding available to cover increased license costs. Rulemaking is ongoing, and the initial hearing draft proposes a fee increase of 100% on animal shelters and control facilities, 160% on dog sellers, and 167% for reinspection of a facility. Table 4 shows proposed new fee levels. The proposed fee increase would generate approximately \$300,000 of additional revenue each year, and would be intended to recoup the current program deficit over a period of perhaps five years, not including any deficits accruing in 2021-22 or 2022-23 while the rule is in promulgation.

TABLE 4**Proposed Fee Increases under ATCP 16 Rulemaking**

	<u>Current Law</u>	<u>Revised Amount</u>	<u>Change</u>
Animal Control Facilities and Shelters	\$125	\$250	100%
Breeders, Breeding Facilities, and Dealers			
25-49 Dogs	250	650	160
50-99 Dogs	500	1,300	160
100-249 Dogs	750	1,950	160
250+ Dogs	1,000	2,600	160
Out-of-State Dealers	Normal fee+50%	Normal fee+50%	160
Facility Reinspection	150	400	167

6. Under the currently anticipated rulemaking timeline, DATCP expects fee revisions will become effective on July 1, 2023. As noted previously, DATCP anticipates the deficit could increase to perhaps \$450,000 by June 30, 2021. If fee increases were not implemented until July 1, 2023, it is expected the appropriation deficit would continue to grow. DATCP anticipates annual dog regulation, rabies control, and humane officer program expenditures will exceed revenues by approximately \$230,000 each year during the 2021-23 biennium, which could increase the total deficit to roughly \$910,000 by June 30, 2023. To limit the growth of the appropriation deficit as fee changes were being implemented, the Committee could consider authorizing DATCP to promulgate an emergency rule to raise dog seller fees until a final revised rule could be promulgated [Alternative 3]. The Committee could also consider incorporating the currently proposed fee revisions shown in Table 4 into statute, which would allow the Department to immediately implement increased fees [Alternative 4].

7. Assembly Bill 68/Senate Bill 111 would transfer \$466,500 GPR to DATCP's dog licenses, rabies control, and related services appropriation to offset the anticipated June 30, 2021, unsupported overdraft; subsequent estimates from DATCP set this amount at \$450,000 by June 30, 2021. DATCP contends that GPR may be an appropriate supplement to existing program fees, as other species of animals benefit from rabies control and humane officer programs, which are supported primarily by fees on dog sellers and dog owners under current law. Further, DATCP notes that Illinois, Michigan, and Minnesota fund some or all of their dog regulation programs with general fund revenues. If a GPR supplement were provided, DATCP intends to reduce the fee increases currently being considered under its rulemaking process. If the Committee wished to reduce the required increase in fees, it could provide \$450,000 GPR in 2021-22 to offset the June 30, 2021, anticipated deficit in the dog license, rabies control, and related services appropriation [Alternative 1].

8. Although the bill directs a transfer from the general fund to the PR appropriation, the transfer is not reflected in the general fund condition statement of the bill. To more accurately reflect the directed use of general purpose revenues, the Committee could consider appropriating \$450,000 in DATCP's animal health general operations GPR appropriation and transferring funding to the dog license, rabies control and related services PR appropriation [Alternative 2]. Transfer language could be sunset June 30, 2022.

9. Current law allows DATCP to modify dog seller fees through the administrative rule process to levels sufficient to meet program costs. DATCP rulemaking is ongoing, and will allow for public participation and comment on proposed fee increases. Further, a final rule would be subject to review by the Legislature before being instituted. Given this ongoing process, the Committee could consider taking no action, which would allow the Department to continue the administrative rule process to modify fees [Alternative 5].

ALTERNATIVES

1. Transfer \$450,000 in 2021-22 from the general fund to the Department's dog licensing, rabies control, and related services appropriation to eliminate the anticipated deficit as of June 30, 2021.

ALT 1	Change to Base
GPR-Transfer	\$450,000

2. Provide \$450,000 GPR to DATCP's animal health general operations appropriation [s. 20.115 (2)(a)] in 2021-22. Require the amount to be transferred to the dog licensing, rabies control, and related services appropriation by June 30, 2022, and repeal transfer language as of that date.

ALT 2	Change to Base
GPR	\$450,000

3. Authorize DATCP to promulgate an emergency rule to increase dog seller fees, expiring on June 30, 2023, or on the date of publication of a final revised rule, whichever is sooner. Allow the emergency rule to be issued without the finding of an emergency, preparation of a statement of scope, or submittal of a draft rule to the Governor.

4. Increase fees for dog sellers as follows: (a) for animal shelters and control facilities, to \$250 each year (an increase of 100%); (b) for sellers of 25 to 49 dogs per year, to \$650 (160%); (c) for sellers of 50 to 99 dogs per year, to \$1,300 (160%); (d) for sellers of 100 to 249 dogs per year, to \$1,950 (160%); (e) for sellers of 250 or more dogs per year, \$2,600 (160%); and (f) for reinspection of a facility, to \$400 (167%). Sellers from out-of-state facilities would still be subject to a 50% surcharge on these fee amounts.

ALT 4	Change to Base
PR-REV	\$600,000

5. Take no action. DATCP would continue its rulemaking process, and fees would be anticipated to increase on July 1, 2023.

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Joint Committee on Finance

Paper #172

Industrial Hemp Program Staff (Agriculture, Trade and Consumer Protection -- Regulatory Programs)

[LFB 2021-23 Budget Summary: Page 67, #6]

CURRENT LAW

The federal Agricultural Act of 2014 legalized the cultivation of industrial hemp under certain circumstances, and cultivation was further expanded under the federal Agricultural Improvement Act of 2018. Under the federal authorization, Wisconsin established its own industrial hemp program under 2017 Wisconsin Act 100, and administrative code Chapter ATCP 22. Further changes were made to the program under 2019 Wisconsin Act 68. Under Wisconsin law, industrial hemp is defined as the plant *Cannabis sativa* that has a tetrahydrocannabinol (THC) concentration of less than 0.3% by weight. The Department is responsible for licensing and conducting a criminal background check on all growers and processors, and for sampling and testing cultivated hemp to ensure it complies with the THC limit.

The U.S. Department of Agriculture (USDA) is responsible for implementing federal regulation of hemp cultivation. As hemp cultivation has been incrementally legalized over time, USDA has promulgated successive rules to establish requirements for states operating hemp programs. Effective December 31, 2021, state hemp pilot programs (including Wisconsin's) authorized under the original 2014 law expire, and states must implement a new permanent hemp program, as approved by USDA, effective January 1, 2022.

Hemp growers must pay a license fee of \$150, or \$5 per acre up to \$1,000, whichever is greater. Once licensed, growers pay annual registration fees equal to \$350. DATCP charges growers for required testing at a rate of \$250 per sample collected, which is intended to cover the actual cost of sampling and testing. Each individual field and variety of hemp requires a separate sample, meaning growers may pay for several samples. Additionally, beginning in the 2021 growing season, growers may pay a fee of \$200 to retest a sample, or \$300 to resample and test a remediated field. Remediation is when a hemp field tested above the THC limit, but THC-

containing components of plants were destroyed, allowing a grower to salvage remaining portions of a plant. DATCP is also responsible for regulating hemp processors, who pay an initial license fee of \$150, and an annual registration fee of \$100.

DATCP first operated its hemp program during the 2018 growing season. In the first season, 180 growers registered with DATCP to plant approximately 1,900 acres. In 2019 and 2020, approximately 1,250 growers registered to plant 4,500 and 5,400 acres, respectively. For 2021 through May 5, 549 growers have registered with DATCP. It is expected most all growers for the 2021 season have already registered with DATCP, which represents a 56% decline relative to 2020. Annual processor registrations totaled 78, 562, 619, and 340, for 2018 through 2021 as of May 5, respectively.

DISCUSSION POINTS

Appropriation Condition

1. As seen in the table, the hemp program appropriation is anticipated to close with a negative balance of approximately -\$450,000 on June 30, 2021. As a result, the appropriation will be in overdraft and draw against the balance of the general fund until revenues are sufficient to recoup previous costs. The overdraft represents an imbalance in revenues and expenditures caused by a number of factors: (a) significantly lower participation during the 2021 growing season; (b) recurring costs related to program development; and (c) increasing staff and operations costs.

Hemp Regulation Appropriation Condition

	<u>2017-18</u>	<u>2018-19</u>	<u>2019-20</u>	<u>2020-21*</u>
Opening Balance	\$0	\$3,500	\$307,000	\$292,700
Revenues	114,700	775,900	1,171,800	695,800
Expenditures	<u>-111,200</u>	<u>-472,400</u>	<u>-1,186,100</u>	<u>-1,445,800</u>
Closing Balance	\$3,500	\$307,000	\$292,700	-\$457,300

*Estimated

2. As noted previously, hemp grower participation dropped 56% in 2021 relative to 2020. No individual reason is identifiable for the decline in participation in 2021, although DATCP suggests the following may have affected participation: (a) operational challenges and uncertainty related to COVID-19; (b) increased production and oversupply of hemp products and cannabidiol (CBD) leading to lower prices and difficulty finding markets for products; (c) a maturing hemp market, driving higher cost and unprofitable producers out of business; and (d) an increase in corn and soybean prices, which decreased interest in diversifying production to hemp. DATCP is in the process of surveying hemp producers for feedback on its program. To date, 62 of 92 respondents report they lost money producing hemp in 2019, and 66 of 92 lost money in 2020. The decline in participation is not unique to Wisconsin, and DATCP reports that in a survey of 41 state hemp programs, 76% reported a decline in participation in 2021. It is unclear at this time if participation will continue to decrease, or is reflective of a one-time market adjustment.

Program Development Costs

3. DATCP reports it expects the hemp program deficit to continue to grow in future years. When the hemp program was created, fees were set at levels intended to cover costs associated with regulation of hemp producers, as is customary in many regulatory programs managed by the Department. However, DATCP notes that program development costs for implementation of unique regulatory requirements for a nascent industry have resulted in significant costs passed on to producers. Program development costs consist primarily of legal, policy, Secretary's office, and laboratory staff time dedicated to research and design of program structure, rulemaking, interpretation of and compliance with federal law requirements, establishing guidance and best practices for regulated entities, and development of laboratory testing standards.

4. Such program development costs could be considered one-time start-up costs, except that federal law requirements initially enacted in 2014 have continued to change under subsequent acts, and USDA guidance has similarly evolved to accommodate the unique context of hemp production. In response to these federal law requirements, Wisconsin has adopted legislation and several emergency rules to regulate hemp. DATCP estimates such program development costs have totaled perhaps \$650,000 from 2017-18 through 2020-21, and expects these costs to continue at perhaps \$265,000 for the next three years as it continues to pursue a permanent hemp rule and regulatory standards for hemp processing, product labeling, marketing, and quality.

Fee Increases

5. Even if program development costs were not supported by fees on producers, trends in revenues and expenditures would still result in a deficit in future years. DATCP suggests that it may be appropriate to increase fees on hemp growers to cover these increasing costs and resolve the program deficit. Fee structures vary by state, but Wisconsin generally has lower fees than its neighbors: (a) in Illinois, growers pay a fee of \$375, \$700, or \$1,000 for one, two, or three years; (b) in Iowa, growers pay an annual fee of \$500 for 0 to 5 acres, \$750 for 5 to 10 acres, and \$1,000 for 10 up to a maximum of 40 acres, plus an additional \$5 per acre; (c) in Michigan, growers pay an annual registration fee of \$1,250; and (d) in Minnesota, growers pay annual fees of \$150, plus \$250 per growing location. In addition to annual license fees, growers also typically pay sampling and testing fees.

6. DATCP estimates that doubling its hemp program fees could raise additional revenue of approximately \$300,000 each year. Under current law, DATCP has sufficient authority to raise annual registration fees through the administrative rule process. However, initial one-time license fees paid by hemp producers are set in statute, and DATCP would need additional authority to modify current one-time license fees, set at \$150, or \$5 per acre up to \$1,000, whichever is more.

General Fund Support

7. DATCP notes that fee increases could discourage participation in the program and have adverse effects on the growth of Wisconsin's hemp industry. If fees were increased, smaller or first-time growers may be discouraged from participating. Higher fees may make it cost-prohibitive to experiment with growing practices before scaling up an operation, which could discourage

prospective producers who might otherwise become long-term program participants. Further, based on current trends in revenues and expenditures, it is possible a fee increase totaling an additional \$300,000 each year would still be insufficient to bring expenditures and revenues into balance. Thus, DATCP contends that it would be appropriate to provide GPR support for hemp program operations.

8. DATCP notes neighboring states use general fund revenues to support hemp program operations, including: (a) \$770,000 in 2018-19 and \$150,000 in 2019-20 in Michigan; and (b) \$175,000 each year in Minnesota, as well as an initial appropriation of \$300,000 each year during the first two years of the Minnesota program. GPR supplements to the hemp program could be provided to offset program development costs, which may be considered necessary costs to establish a hemp industry in Wisconsin that are not reasonably recoverable from program participants without similarly discouraging growth of the industry.

9. Prior to the decline in hemp production after World War II, Wisconsin was a leading state in hemp production. In USDA's 1939 Census of Agriculture, 87 Wisconsin farms reported 813 acres of hemp production, representing 84% of total reported hemp production that year. This represented a significant decline from Wisconsin's 3,300 acres across 113 farms reported in 1919, equal to 47% of U.S. production at that time. Prior to 1919, Kentucky produced most hemp, totaling as high as 23,500 acres (94% of U.S. production) in 1889, the oldest available acreage statistics. It may be that Wisconsin's history of hemp production leaves it favorably positioned given the nationwide resurgence of hemp production in recent years. Thus, it could be considered appropriate to provide general fund revenues to allow Wisconsin to continue to offer low fees as compared to other states, which may encourage new producers to experiment with hemp production and further growth in Wisconsin hemp production.

Staffing

10. During the 2019-21 biennium, DATCP is provided 4.60 PR positions under its hemp regulation appropriation, including 3.0 PR project positions expiring on June 30, 2021. Additionally, DATCP reports it bills staff time for other permanent positions dedicating a portion of their time related to hemp regulation duties, including supervisory work by the section chief and bureau director. However, the hemp regulation appropriation does not support staff costs for the division administrator, legal counsel, or Secretary's Office staff, which have been significant due to evolving USDA requirements and implementation costs. DATCP also regularly hires limited-term employees (LTEs) to support seasonal surges in staff need for licensing, sampling, and testing capacity.

11. Assembly Bill 68/Senate Bill 111 would reauthorize the expiring 3.0 PR project positions as permanent positions, and reallocate an additional 0.4 PR position from other program areas, for a total of 5.0 permanent PR positions. DATCP reports the 5.0 PR positions represent the minimum staffing sufficient to operate the Department's hemp program. The 3.0 expiring project positions consist of: (a) 1.0 plant pest and disease specialist, responsible for management, coordination, and training related to hemp sampling conducted by LTEs; (b) 1.0 licensing and permit program associate, responsible for managing the processing of hemp applicants, including recordkeeping, conducting background checks, managing reporting by licensees, and training LTE staff dedicated to application processing; and (c) 1.0 laboratory chemist, which tests hemp samples for THC content, manages development of testing standards, and manages and trains LTE laboratory

testing staff. DATCP contends all 3.0 expiring project positions are essential to core hemp program operations and cannot be replaced with limited-term staff because these permanent positions maintain programmatic expertise and continuity necessary to oversee and hire additional LTE staff for seasonal program needs. If these positions were not renewed, DATCP reports it would need to strongly consider relinquishing control of hemp regulation duties to USDA.

Relinquishment to USDA

12. As part of the certification process for delegation of hemp regulation to a state-operated program, DATCP must certify to USDA that Wisconsin has sufficient funding and staff capacity to operate its hemp program consistent with federal law requirements. If funding or staff were to become insufficient, DATCP would have to consider relinquishing its delegated regulatory authority to USDA. Under a USDA-regulated hemp program, producers would be licensed by USDA, which operates its hemp regulation program from its Washington, D.C. office. DATCP reports USDA is currently operating its federal regulatory program for the first time this year in Mississippi, New Hampshire, and Hawaii, as well as for several tribal nations.

13. Under the USDA program, growers must contract with private third parties for sampling and testing of hemp prior to harvest, and DATCP believes there is sufficient capacity in Wisconsin for private sampling and testing to occur. DATCP suggests that it is possible a USDA-operated hemp program would not provide the same level of customer service to regulated growers, and may provide limited outreach, best practices sharing, or support in response to grower inquiries. Thus, a USDA-operated program could be less accessible to first-time growers seeking to begin hemp farming. However, USDA does not impose fees on program participants, which could reduce costs for producers and outweigh any loss of services.

14. DATCP reports that a decision on relinquishment to USDA would need to be made by July 1, 2021, in order to allow sufficient time to transfer regulatory duties to USDA by January 1, 2022, in time for the next growing season. Relinquishment of DATCP's hemp program to USDA would prevent further growth in the hemp program deficit, although the Department would still be responsible for any 2020-21 closing deficit. Further, USDA does not regulate hemp processors or hemp products for safety, quality, or product labeling, and DATCP would retain responsibility for those activities.

Alternatives

15. 2020-21 represents the first year the hemp regulation program is in deficit. Significant uncertainty remains with respect to future participation in Wisconsin's hemp program, the short-term impacts of the COVID-19 pandemic, market trends for hemp products, and any potential impacts of a USDA-administered Wisconsin hemp program. Given the recency of the current program deficit and uncertainty associated with future program trends, it could be considered appropriate to allow for the Department to continue operating its hemp program under the current fee schedule.

16. Given existing uncertainty, the Committee could direct DATCP to further study options for resolving the hemp program deficit and require DATCP to report to the Committee by September 30, 2022, on its recommendations [Alternative 6]. To continue current hemp program operations, the

Committee could consider reauthorizing the expiring 3.0 PR positions in the Department's hemp regulation appropriation for an additional two years [Alternative 1b] or on an ongoing basis [Alternative 1a].

17. Given the ongoing program development costs associated with compliance with evolving federal law requirements, rulemaking, research and development, and outreach to hemp growers, the Committee could consider providing a GPR supplement to support hemp program operations. Such a supplement could be a one-time transfer equal to program development costs to date, which total approximately \$650,000 [Alternative 4], or an ongoing appropriation equal to estimated current program development costs of \$265,000 annually [Alternative 5]. If a GPR supplement were provided, any DATCP fee increase would be expected to be smaller. If no supplemental funding were provided, it is likely the hemp program deficit would continue to grow while DATCP considered other funding options for the program.

18. The Committee could also consider increasing program fees to alleviate the program deficit. It could direct DATCP to use existing rulemaking authority to increase annual registration fees for growers [Alternative 2], and/or modify current law to allow DATCP to increase its initial licensing fee for new growers if a higher fee is necessary to cover hemp regulation costs [Alternative 3].

19. The Committee could also consider taking no action, and the hemp program would be provided 2.0 PR permanent positions during the 2021-23 biennium [Alternative 7]. It is likely that if new positions were not authorized, DATCP would relinquish its regulatory authority to USDA.

ALTERNATIVES

1. Provide 3.0 PR positions with \$146,600 PR in 2021-22 and \$195,700 PR in 2022-23 to support the industrial hemp program. Specify positions be:

- a. Permanent; or
- b. Two-year project positions.

ALT 1	Change to Base Funding	Positions
PR	\$342,300	3.00

2. Direct DATCP to increase annual hemp grower registration fees using existing rulemaking authority.

3. Modify current law to allow DATCP to increase the initial license fee for new hemp growers through rulemaking as is necessary to recover costs of hemp regulation.

4. Provide an additional \$650,000 GPR in 2021-22 to the Division of Agricultural

Resource Management's general program operations appropriation, and specify funding be transferred to the hemp regulation appropriation.

ALT 4	Change to Base
GPR	\$650,000

5. Create an annual GPR appropriation and provide \$265,000 GPR annually for hemp regulation.

ALT 5	Change to Base
GPR	\$530,000

6. Require DATCP to study options for resolving the hemp program deficit, including modifying fees, relinquishing operations to USDA, or restructuring program operations. Require DATCP to report to the Committee by September 30, 2022, on its recommendations for resolving the hemp program deficit.

7. Take no action.

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June, 2021

Joint Committee on Finance

Paper #173

Veterinary Examining Board Staff (Agriculture, Trade and Consumer Protection -- Regulatory Programs)

[LFB 2021-23 Budget Summary: Page 68, #7]

CURRENT LAW

The Veterinary Examining Board (VEB) is responsible for the credentialing, regulation, and disposition of complaints related to veterinarians and veterinary technicians in Wisconsin. Effective July 1, 2015, the Board was transferred from the Department of Safety and Professional Services to the Department of Agriculture, Trade and Consumer Protection (DATCP). The Board meets quarterly and consists of five licensed veterinarians, one veterinary technician, and two public members. Transfer of the Board included creation of a program revenue continuing appropriation, authorized to expend all monies received from credentialing of veterinarians and veterinary technicians.

DISCUSSION POINTS

1. A two-year project position was provided to support the Board beginning in November, 2015, and was renewed for an additional two years in November, 2017. Since the November, 2019, expiration of the project position, the Department has supported VEB activities through a limited-term employee with a dual appointment. In addition, DATCP reports the appropriation incurs costs related to legal counsel, policy development, and credentialing and compliance supported by portions of positions housed in other areas of the Department.

2. DATCP reports common compliance issues considered by VEB include unlicensed veterinary providers, negligence, abuse of controlled substances, poor quality care, and unprofessional conduct. DATCP reports the workload associated with complaints has grown over time, with 70 complaints in 2017, 91 in 2018, 147 in 2019, and 113 in 2020. Further, DATCP suggests clinic closures and reduced activities during the COVID-19 pandemic likely resulted in the decrease

in complaints in 2020, and the Department expects the increase in complaints to continue.

3. Assembly Bill 68/Senate Bill 111 would provide 1.0 PR position with \$69,500 PR in 2021-22 and \$87,300 PR in 2022-23 to support the Board. The position would support enforcement actions by the Board through monitoring of compliance, development of investigation procedures, and conducting investigations. A typical investigation includes: (a) initial preliminary investigation, including contacting involved parties and obtaining records; (b) presentation of preliminary information to Board members for consideration to open an investigation; (c) formal investigation, including clinic visits, records inspections, and interviewing involved parties; (d) preparation of formal orders or other legal action; and (e) resolution through agreements with involved parties and presentation to Board members.

4. The table shows the appropriation condition since VEB was transferred to DATCP. Revenues vary each year because veterinarians and veterinary technicians must renew their license on a biennial basis, by December 15 of each odd-numbered year. As of June 30, 2020, the appropriation had a closing balance of \$1,295,400. Based on current trends in revenues and expenditures, it is expected there will be sufficient funding to support the proposed position.

Veterinary Examining Board Appropriation Condition

	<u>2015-16</u>	<u>2016-17</u>	<u>2017-18</u>	<u>2018-19</u>	<u>2019-20</u>
Opening Balance	\$742,300	\$557,900	\$219,900	\$808,300	\$613,200
Revenues	127,800	90,800	956,200	100,000	1,026,500
Expenditures	<u>-312,200</u>	<u>-428,800</u>	<u>-367,800</u>	<u>-295,100</u>	<u>-344,300</u>
Closing Balance	\$557,900	\$219,900	\$808,300	\$613,200	\$1,295,400

5. Given the availability of funding and increasing workload of the Board over time, the Committee could consider providing 1.0 PR permanent position with \$69,500 PR in 2021-22 and \$87,300 PR in 2022-23 [Alternative 1]. If the Committee were concerned about ongoing availability of funding for the position, it could consider providing a two- or four-year project position [Alternatives 2a or 2b]. The Committee could also take no action [Alternative 3]. Without an authorized position, DATCP would likely continue to allocate limited-term staffing to VEB regulatory duties.

ALTERNATIVES

1. Provide 1.0 PR permanent position with \$69,500 PR in 2021-22 and \$87,300 PR in 2022-23 to support the Veterinary Examining Board.

ALT 1	Change to Base Funding Positions	
PR	\$156,800	1.00

2. Provide 1.0 PR project position with \$69,500 PR in 2021-22 and \$87,300 PR in 2022-23 to support the Veterinary Examining Board, and authorize the position for:

ALT 2	Change to Base	
	Funding	Positions
PR	\$156,800	1.00

- a. Two years; or
 - b. Four years.
3. Take no action.

Prepared by: Rory Tikalsky

Agriculture, Trade and Consumer Protection -- Regulatory Programs

LFB Summary Items for Which No Issue Papers Have Been Prepared

<u>Item #</u>	<u>Title</u>
3	Food, Lodging and Recreation Regulation
13	Enforcement Cost Recovery

