



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873
Email: fiscal.bureau@legis.wisconsin.gov • Website: <http://legis.wisconsin.gov/lfb>

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Joint Committee on Finance

Paper #136

Industrial Hemp Program (Agriculture, Trade and Consumer Protection)

[LFB 2019-21 Budget Summary: Page 40, #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 Agricultural Improvement Act of 2018. Under the federal authorization, Wisconsin established its own industrial hemp research pilot program under 2017 Wisconsin Act 100 and administrative code Chapter ATCP 22. 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.

GOVERNOR

Provide an additional \$462,400 GPR in 2019-20 and \$216,500 GPR in 2020-21 with 3.0 two-year project positions to the industrial hemp program. Of these amounts, \$141,000 in 2019-20 and \$188,000 in 2020-21 would be associated with salary and fringe benefits, \$21,400 in 2019-20 and \$28,500 in 2020-21 would be associated with supplies and services, and \$300,000 in 2019-20 would be used to purchase laboratory equipment.

DISCUSSION POINTS

1. In 2018, the first year of the program, DATCP issued 247 grower licenses and 100 processor licenses, with 135 growers eventually planting a total of approximately 1,870 acres of hemp. As of May 29, 2019, DATCP reports it issued 1,308 grower licenses and 618 processor

licenses. In order to grow hemp, farmers must have both a license and an annual registration. For 2019, as of May 29, 1,224 farmers had an annual registration and registered to plant approximately 15,590 acres of hemp. Actual planted acreage data is not available until later in the summer, and farmers may not plant all acres they registered to plant. Thus, approximately nine times more farmers are expected to grow perhaps eight times more acres of hemp in the second year of the program.

2. When originally authorized, the industrial hemp program was provided a PR appropriation to receive fees associated with the program, but no funding or positions. Since December, 2017, DATCP reports staff time of approximately 10,300 hours has been supported by the appropriation, with staff being reallocated from other areas of the Department. In total, DATCP reports approximately 20 staff within the Division of Agricultural Resource Management (ARM) dedicated time to the hemp program in 2018. Staff time reallocated from ARM resulted in decreased work effort on other program areas within the Division. DATCP reports its reallocation of staff reflected a prioritization of available staff and reduced program activities in other areas. These amounts do not include staff time that was dedicated by the Secretary's Office, legal counsel, or the Division of Food and Recreational Safety.

3. DATCP reports it currently employs two full-time staff dedicated to its hemp program, including a program manager and regulatory specialist. These positions, along with three limited-term employee (LTE) license and permit staff and one LTE chemist, are funded from program revenues (PR) derived from licensing, registration, and sampling fees associated with the hemp program. Further, DATCP reports it intends to hire between six and 10 LTEs to conduct hemp field sampling in 2019. The Department notes that field sampling is labor-intensive, because samples may not be shipped by commercial carrier, and must be transported to the laboratory by DATCP staff.

4. DATCP intends to allocate the 3.0 proposed GPR two-year project positions as follows: (a) 1.0 license and permit program associate, which would be dedicated to processing licensing paperwork, providing education on licensing requirements, and conducting program reporting, sampling and compliance activities; (b) 1.0 hemp field lead, which would be dedicated to organizing inspection, investigation, and sampling for the hemp program, providing outreach to growers, and coordinating compliance activities; and (c) 1.0 chemist, which would be dedicated to regulatory testing for the hemp program within the Bureau of Laboratory Services (BLS). The administration indicates it provided project positions due to the unpredictable nature of the hemp program. The administration suggests that permanent staff could be considered once the program stabilizes.

5. Growers must pay a minimum license fee of \$150, plus \$5 per acre for each acre above 30, up to a maximum of \$1,000. Once licensed, growers pay annual registration fees equal to \$350. Processors do not pay a fee for a license, but pay annual registration fees of \$100. DATCP charges growers for the 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, thus growers may pay for several samples. In 2017-18, these license, registration, and sampling fees totaled \$114,700. In 2018-19 through June 3, fees totaled \$752,700. Due to the difference in timing between the growing season and fiscal year, fees associated with

the 2018 growing season may be reflected in 2018-19 revenues, especially testing fees, which are incurred in late summer and fall. Further, substantially increased program revenues are associated with similarly increased applications in the second year of the program.

6. DATCP reports one-time financing of \$300,000 in 2019-20 would be associated with purchase of laboratory equipment necessary to test an increased volume of hemp samples. Further, as registration for the hemp program currently is conducted via paper forms, DATCP would intend to improve its online licensing system to offer online applications, reporting, and sample requests, as well as electronic records keeping for field staff.

7. The variability and uncertainty in hemp program participation makes it difficult to predict future revenues and their ability to cover costs associated with hemp regulation. The February 28 balance of the appropriation, upon submittal of the Governor's budget proposal, totaled approximately \$70,000. Thus, at the time it was not clear PR funding would have been sufficient to meet anticipated one-time costs and staffing proposed under the bill. As of June 3, 2019, the appropriation had a balance of approximately \$352,100, suggesting the Committee could cover some of the proposed program expenditures with this balance. The Committee could consider providing the 3.0 project positions and funding (\$162,400 in 2019-20 and \$216,500 in 2020-21) as PR (Alternative 2a) and one-time financing of \$300,000 as GPR (Alternative 1b). This would allow the regulated community to bear the ongoing cost of its regulation, while the general fund would support one-time expenditures associated with program infrastructure.

8. If GPR funding and positions were not provided, DATCP reports it would hire LTEs and charge reallocated staff time to its PR appropriation as it is able, in order to meet the minimum licensing and inspection duties for the program. It would be incumbent on the Department to manage expenditures based on available revenues to avoid an unsupported overdraft. Due to the uncertainty associated with revenues and expenditures of the new and growing hemp program, the Committee could consider providing additional GPR funding in its supplemental appropriation, which DATCP could request under s. 13.10 of the statutes if PR became insufficient (Alternative 3). This would allow for expenditure of existing PR balances before use of GPR, but allow the Committee to provide supplemental funding if it is merited.

9. If additional staff were not provided, DATCP reports it would not be able to meet the increasing needs of local law enforcement, local governments, and supporting industries like laboratories and financial institutions. Further, the Department expects it would find it challenging to provide a high level of service to the regulated community and meet the public's expectation for regulation of industrial hemp. Due to the relatively controversial nature of hemp, which was previously a schedule one drug under federal law, it could be considered appropriate to provide additional resources to regulate hemp and support public outreach in order to reduce the stigma associated with cultivation of hemp and encourage more farmers to participate.

10. Considering the substantial growth associated with the hemp program in its second year, and uncertainty over the sufficiency of program revenues, the Committee could consider adopting the Governor's proposal to provide 3.0 GPR project positions with \$162,400 GPR in 2019-20 and \$216,500 GPR in 2020-21 (Alternative 1a), and one-time financing of \$300,000 GPR in 2019-20 (Alternative 1b). Given current program revenue balances associated with the hemp

program, the Committee could also consider providing positions and their associated funding (Alternative 2a) and one-time funding (Alternative 2b) as PR.

11. Due to additional changes to the legal status of cultivation of industrial hemp under the Agricultural Improvement Act of 2018, DATCP reports it is expected the U.S. Department of Agriculture will announce new rules in 2019, which may necessitate additional public outreach and education, and changes to state regulations. 2019 Assembly Bill 206/Senate Bill 188 includes provisions that address changes under the Agricultural Improvement Act of 2018, and updates other portions of current hemp regulation due to program developments. Further, AB 206/SB 188 provides substantially similar funding of \$216,500 GPR annually during the 2019-21 biennium with 3.0 permanent GPR positions, and one-time funding of \$300,000 GPR in 2019-20. Considering other legislation is currently pending regarding hemp regulation and funding, the Committee could consider taking no action (Alternative 4). However, if funding were provided under subsequent legislation, it is possible it could be delayed, limiting hemp program activities during the 2019 growing season.

ALTERNATIVES

1. Adopt one or both of the following, as recommended by the Governor.

a. Provide 3.0 two-year GPR project positions and \$162,400 GPR in 2019-20 and \$216,500 GPR in 2020-21 to the industrial hemp program.

ALT 1a	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
GPR	\$378,900	3.00	\$0	0.00

b. Provide \$300,000 GPR in 2019-20 in one-time funding to the industrial hemp program.

ALT 1b	Change to	
	Base	Bill
GPR	\$300,000	\$0

2. Modify the Governor's proposal by providing one or both of the following from the industrial hemp regulation PR appropriation:

a. 3.0 two-year PR project positions and \$162,400 PR in 2019-20 and \$216,500 PR in 2020-21 to the industrial hemp program.

ALT 2a	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
GPR	\$0	0.00	-\$378,900	- 3.00
PR	<u>378,900</u>	<u>3.00</u>	<u>378,900</u>	<u>3.00</u>
Total	\$378,900	3.00	\$0	0.00

- b. \$300,000 PR in 2019-20 in one-time financing to the industrial hemp program.

ALT 2b	Change to	
	Base	Bill
GPR	\$0	-\$300,000
PR	<u>300,000</u>	<u>300,000</u>
Total	\$300,000	\$0

3. In addition to Alternative 1a and/or 1b above, specify that GPR funding be provided under the Committee's supplemental funding appropriation, which could be requested by DATCP under s. 13.10 of the statutes.

4. Take no action.

ALT 4	Change to Base		Change to Bill	
	Funding	Positions	Funding	Positions
GPR	\$0	0.00	-\$678,900	- 3.00

Prepared by: Rory Tikalsky