

April 5, 2019

The Honorable Dan Kerschen, Chairperson
Senate Committee on Agriculture and Natural Resources
Statehouse, Room 225-E
Topeka, Kansas 66612

Dear Senator Kerschen:

SUBJECT: Fiscal Note for SB 233 by Senate Committee on Ways and Means

In accordance with KSA 75-3715a, the following fiscal note concerning SB 233 is respectfully submitted to your committee.

SB 233 would establish the Commercial Industrial Hemp Act. The bill would state that the implementation of the Act should be conducted in the least restrictive manner allowed under federal law. The bill would rename the Alternative Crop Research Act Licensing Fee Fund as the Commercial Industrial Hemp Act Licensing Fee Fund, and would change all references to the Alternative Crop Research Act in existing law to the Commercial Industrial Hemp Act. The bill would establish the procedures to be used by the Kansas Department of Agriculture (KDA), in consultation with the Governor and the Attorney General, in submitting a plan to the U.S. Department of Agriculture, under which the KDA would monitor and regulate the commercial production of industrial hemp. The plan would be required to include licensing requirements and rules and regulations for the production of commercial hemp and must include a procedure for the creation of documentation that a hemp producer could use to prove to any law enforcement officer that the producer is authorized to engage in the cultivation, production, distribution or processing of industrial hemp for commercial purposes.

Rules and regulations concerned with fingerprinting, background checks, or the recording of license plates would be required to be developed by the Secretary of Agriculture for the Commercial Industrial Hemp Program. Any individual working as an employee, agent, or unpaid worker of a hemp processor would be required to be fingerprinted and to submit to a state and national criminal history record check. The Kansas Bureau of Investigation (KBI) could charge a fee to the individual to recoup the costs of this investigation. Persons who have been convicted of certain felony violations within the past ten years would be prohibited from initial or continuing licensure.

The bill would limit any license modification fee established by the KDA to no more than \$50, and the Secretary of KDA must continue to accept applications for licensure for the 2019 growing season from March 1, 2019 through June 1, 2019. Industrial hemp, when cultivated, produced, possessed, or used for activities authorized by the Commercial Industrial Hemp Act, as well as waste products derived from industrial hemp and industrial hemp products, would be excluded from the definition of “marijuana” contained in current law and would be excluded from the list of Schedule I controlled substances. Hemp producers who negligently violate this Act or associated rules and regulations would not be subject to any state or local criminal enforcement action; however, the producers would be subject to licensing sanctions.

SB 233 would also establish the Industrial Hemp Regulatory Commission within the Kansas Department of Revenue and provide for the authority of the Commission and the appointment of a Director, as well as establish requirements for employees of the Commission. The Commission would be required to establish a database to store information regarding licenses, licensees, and individuals working as employees, agents, or unpaid workers of a hemp processor. Information in the database would be required to be shared with law enforcement authorities. Persons who are in compliance with any Kansas tax law and wish to become hemp processors could apply to the Commission and pay a licensure fee not to exceed \$5,000. Licensees would be required to have a license in their possession when engaged in activities relating to hemp production. The bill would define the terms “hemp processor” and “authorized seed or clone plants,” and would specify certain hemp products which it would be unlawful for any person in Kansas to manufacture, market, sell or distribute. The bill would define “effective disposal” and would amend existing law to authorize the KDA to begin cultivation of industrial hemp on and after July 1, 2019. The bill would take effect from and after its publication in the *Kansas Register*.

SB 233 indicates that the KDA would establish fees for licenses, license renewals and other necessary expenses to defray the cost of implementing and operating the Commercial Industrial Hemp Program and directs those fees to be deposited in the Commercial Industrial Hemp Act Licensing Fee Fund to be administered by the Secretary of Agriculture. However, the bill also directs license fees to be paid to the Industrial Hemp Regulatory Commission in the KDOR and directs those receipts to be deposited into the Commercial Industrial Hemp Processor Fund established by the bill. The bill would need to be amended to correct this duplication. In either case, the KDA estimates that there will be approximately 200 applicants and licensees resulting in revenue totaling \$300,000 (200 licenses X (\$200 application fee + \$1,300 license fee)) = \$300,000.

The KDA estimates that expenditures related to enactment of SB 233 would amount to \$300,000, with \$133,000 for salaries and wages for 2.00 FTE positions; \$47,550 for travel, fuel and supplies; \$16,000 for seasonal staff; \$8,000 for vehicle and equipment rentals for seasonal staff; \$50,000 for lab samples and lab support; and \$45,450 for administrative support and overhead. One of the additional FTE positions has already been created and will be hired in FY 2019 to staff the Alternative Crop Research Act Program. The agency states that if revenues from licenses were not sufficient to support the planned expenditures, it would depend on existing funds to make up the difference. As indicated above, however, it is not clear that the agency would be receiving license fee revenue.

According to the Attorney General, enactment of SB 233 would require the agency to assist in submitting a plan for the commercial production of industrial hemp and respond to a report by the KDA of any violation by a hemp producer with a greater culpable mental state than negligence. The first provision could be accomplished by the agency within existing resources, while the second could create a new flow of criminal violation reports to be referred to the appropriate local law enforcement agency for investigation or to the appropriate county or district attorney for prosecution. Because the agency cannot determine how many reports would be received, it is unable to determine the costs that could result. The Kansas Department of Health and Environment assumes that there would not be a significant increase in the number of hazardous waste generators as a result of enactment of SB 233, and therefore, inspections of any new generators could be absorbed within existing resources.

The Kansas Bureau of Investigation estimates that enactment of SB 233, would result in increased expenditures ranging from \$357,860 to \$1,105,319 all from the State General Fund. According to the agency, the definition of “hemp producer” contained in the bill would allow any individual, licensed or otherwise, to engage in the cultivation, production, distribution and/or processing of industrial hemp for commercial purposes, resulting in a situation where possession of a product containing tetrahydrocannabinol (THC) would be legal under the provisions of the Act. However, the amended definition of “industrial hemp” contained in the bill does not change the substantive definition of hemp as a plant containing THC. Because industrial hemp and marijuana have the same taxonomy, the only way for law enforcement officers, prosecutors, and the courts to determine whether a person possesses legal industrial hemp or illegal marijuana would be through analysis to determine the THC concentration of plants and plant parts. The agency does not currently have the validated methods or specialized laboratory equipment necessary to perform this analysis and the KBI would need to develop new methods to perform quantitative forensic analysis of plant material and provide laboratory results to prosecutors so they can make informed charging decisions in instances where the product being cultivated is in question. Performing these analyses would require specialized analytical equipment and supplies. The agency indicates that it lacks any relevant data to estimate the annual number of analyses that could be required; thus, the fiscal impact assessment is a range of the minimum to maximum cost and includes the minimum cost for equipment required to establish a base testing capacity to the maximum impact if THC quantitation analysis is required on all vegetation samples submitted to the agency for analysis. By consulting with another state’s forensic laboratory that was required to quantitate THC concentration upon passage of similar legislation, the agency determined that each examination is estimated to take three additional hours to perform. This estimate does not include time for report writing, court appearances or time away from work for sick leave, vacation or holidays. The minimum fiscal effect of the bill would require the KBI Forensic Science Laboratory to develop a basic capacity to perform a THC quantitation analysis. The agency estimates it would need to hire at least 1.00 Forensic Scientist I FTE, with salaries and wages costs of \$67,946 in FY 2020. Contractual services, commodities and capital outlay expenditures for FY 2020 are estimated to be \$9,122, \$4,396, and \$176,397, respectively. Making the database available to law enforcement could possibly be accomplished by updating the existing interfaces between the KBI and the KDOR. The estimated cost of this update is likely to be less than

\$100,000; however, without knowing the exact data elements needed and the timeframe allotted, an exact estimate could not be provided.

The estimated maximum fiscal effect of the bill could be realized if the Laboratory were required to perform examinations of approximately 5,000 evidence items per year. The number of evidence items was arrived at by considering the number of marijuana submissions received annually since 2014. Based solely on this assumption, the KBI states that a conservative estimate of the additional staff required would be 7.50 Forensic Scientist I FTEs. Personnel costs are estimated to be \$509,596 in FY 2020 and \$605,596 in subsequent years. The out-year increase is attributable to the movement of FTEs from Forensic Scientist I to Forensic Scientist II classification. Costs for contractual services are estimated to be \$68,412 in FY 2020 and \$31,694 in subsequent years. To validate newly developed methods and obtain specialized analytical equipment and supplies, consumable costs are estimated to be \$69,441 in the first year and \$57,557 in subsequent years.

Because of questions concerning the costs for capital outlay associated with prior industrial hemp bills, the agency performed a research project to determine whether it would be able to perform THC quantitation analysis and what equipment would be required to produce consistent results. As a result of that research, the agency determined that the limits of detection and quantitation of the Gas Chromatography/Mass Spectrometry instruments do not result in the specificity required. Instead, Liquid Chromatography/Mass Spectrometry instruments would be required. Additional required equipment includes cryogenic grinders, isotemp ovens, and nitrogen generators, resulting in estimated capital outlay costs of \$357,870 in FY 2020. As described above, the estimated cost to make the database accessible to law enforcement is expected to be approximately \$100,000.

The estimates provided by the KBI are based solely on the number of samples received in its forensic laboratory annually and do not assume that the agency would receive additional submissions from either the Johnson County Criminalistics Laboratory or the Sedgwick County Regional Forensic Science Center. The agency assumes that these laboratories also lack the capacity and resources to perform the required examinations; however, expenditures related to additional submissions received from these laboratories is not included in the estimates provided by the KBI.

Costs to the Kansas Department of Revenue for implementation of the provisions of the bill are expected to amount to approximately \$1.9 million from the State General Fund. This amount would include expenditures of \$242,345 for salaries and wages for 3.00 FTE positions; \$13,888 for new forms, publications, and processes; and \$1,615,702 for information technology programming. Out-year expenditures would be \$242,345 for personnel. As is indicated above, it is not clear whether the KDOR or the KDA would have access to the estimated \$300,000 in application and licensing fees. Any fiscal effect associated with SB 233 is not reflected in *The FY 2020 Governor's Budget Report*.

Under the provisions of SB 233, forensic laboratories in Sedgwick and Johnson Counties would also be required to perform THC quantitation analyses, if the counties did not submit

substances to the KBI laboratory. This would result in significant costs to each county. In addition, any law enforcement agency that has dogs trained to detect marijuana and other controlled substances would be affected.

Sincerely,

A handwritten signature in black ink that reads "L. L. Campbell". The signature is written in a cursive style with a large initial "L" and a smaller "L" followed by "Campbell".

Larry L. Campbell
Division of the Budget

cc: Kellen Liebsch, Agriculture
Willie Prescott, Office of the Attorney General
Paul Weisgerber, KBI
Lynn Robinson, Department of Revenue
Dan Thimmesch, Health & Environment