

STATE OF KANSAS



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February 15, 2018

The Honorable Kyle Hoffman, Chairperson
House Committee on Agriculture
Statehouse, Room 481-W
Topeka, Kansas 66612

Dear Representative Hoffman:

SUBJECT: Fiscal Note for HB 2649 by Representative Dove

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2649 is respectfully submitted to your committee.

HB 2649 would create the Industrial Hemp Pilot Program in the Kansas Department of Agriculture (KDA). This program would allow the study of the growth, cultivation, and marketing of industrial hemp and its derivative products in accordance with section 7606 of the Agricultural Act of 2014, 7 U.S.C. 5940. Among other terms, the bill would define "industrial hemp," "C.B.D." and "C.B.D. product." The bill would require the KDA and the Kansas Bureau of Investigation (KBI) to jointly develop an electronic system to track the location of industrial hemp in the state and establishes the requirements for that system and for the development of rules and regulations related to the system. The Secretary of the KDA would be authorized to adopt rules and regulations concerning licensure of persons who grow, process, test or distribute industrial hemp, including who would or would not be eligible for a license.

Every person who acts as a grower, processor, laboratory, or seller would be required to obtain a license from the KDA for each location in the state where industrial hemp is grown, processed, tested or sold, as well as be fingerprinted and submit to a National Criminal History Record check. The Secretary would be required to provide copies of all licenses issued and notifications of revocations or expirations of licenses to the KBI and to city or county law enforcement agencies with jurisdiction over the location of the licensee's address or location where the industrial hemp is grown, processed, or tested or where C.B.D. products are sold.

Revenue from license fees and interest earned on that revenue would be deposited into the Industrial Hemp Program Licensing Fee Fund, created by the bill and administered by the KDA. Revenue from fees established by the Secretary of the KDA for testing and enforcement of the

program would be deposited in the Industrial Hemp Testing and Enforcement Fee Fund, created by the bill and administered by the KBI. Only agents of licensees would be allowed to transport industrial hemp or C.B.D. products, and transportation records must be maintained at all times. The bill would exempt this program from the prohibitions of existing law concerning controlled substances and would include industrial hemp under the definition of marijuana contained in current law.

Estimated State Fiscal Effect				
	FY 2018 SGF	FY 2018 All Funds	FY 2019 SGF	FY 2019 All Funds
Revenue	--	--	--	--
Expenditure	--	--	\$990,200	\$1,040,200
FTE Pos.	--	--	--	9.50

According to the Kansas Department of Agriculture, the costs of issuing and monitoring licenses related to enactment of the Industrial Hemp Pilot Program created by HB 2649 would be recovered through fee receipts. The agency estimates that in addition to those costs, \$50,000, also from the fee fund, would be needed for stakeholder outreach, miscellaneous legal and consulting fees, and 2.00 FTE positions to conduct the activities of developing rules and regulations.

The Kansas Bureau of Investigation estimates that enactment of HB 2649 would result in additional State General Fund expenditures of a minimum of \$990,200 in FY 2019. Currently, possession of any product containing tetrahydrocannabinol (THC) is illegal under Kansas law. As such, forensic laboratories currently perform a qualitative analysis to determine the presence of THC. According to the agency, enactment of HB 2649 would create a situation where possession of a product containing THC would be legal for a licensed grower, processor, laboratory, or seller. The KBI indicates that, from a practical standpoint, there is no way, scientifically or otherwise, to prove or disprove that a product containing THC was cultivated by an entity authorized to do so under the provisions of the bill. In addition, because industrial hemp and marijuana have the same taxonomy, the only way to determine under which definition a product would fall would be through plant DNA testing. To carry out this testing, the agency estimates that the bill would require the KBI Forensic Science Laboratory to develop a basic capacity to perform a THC quantitation analysis. The agency does not currently have validated methods or specialized laboratory equipment necessary to perform this analysis. New methods would have to be developed and specialized analytical equipment and supplies obtained. Analytical instrumentation is estimated to cost at least \$357,870 in FY 2019, and is higher than estimates in previous cost assessments submitted for prior pieces of industrial hemp legislation. Because of questions concerning the costs associated with the prior bills, the agency performed a research project to determine whether or not it would be able to perform THC quantitation analysis and what equipment would be required to produce consistent results. As a result of that analysis, 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 increased capital outlay costs over prior fiscal impact assessments.

In addition to the instrumentation costs above, the agency assumes it would need to fill at least 7.50 Forensic Scientist FTE I positions at a cost of \$494,477 in FY 2019. Contractual costs are estimated to be \$68,412 and commodity costs to be \$69,441 for a total minimum estimated fiscal effect to the KBI in FY 2019 of \$990,200. The estimated minimum fiscal effect on the KBI resulting from enactment of HB 2649 would be realized if the Forensic Science Laboratory was required to perform additional examinations on approximately 5,000 evidence items annually. This number is based on the number of items containing marijuana received and analyzed in CY 2016. Each examination is estimated to take three hours to perform. The agency indicates, however, that the fiscal effect of enactment of HB 2649 would likely be much higher than estimated given the costs of electronic system development and maintenance. The agency also notes that the forensic laboratories in Sedgwick and Johnson counties lack the capacity and resources to perform the required examinations. Any additional submissions that the KBI would receive from these laboratories are not included in the minimum estimate.

In subsequent years, the costs for salaries and wages would increase to \$551,276 due to promotion of Forensic Scientist 1 positions to Forensic Scientist 2 positions. It is expected that contractual costs would be \$31,694, and commodities would be \$57,556. Although these expenditures appear to be significantly less than those estimated for FY 2019, the agency believes it is likely that the FY 2019 estimates are understated and as a result, the total maximum estimated fiscal effect in subsequent years cannot be estimated. Any fiscal effect associated with HB 2649 is not reflected in *The FY 2019 Governor's Budget Report*.

Sincerely,



Larry L. Campbell
Chief Budget Officer

cc: Justin Law, Agriculture
Shelia Sawyer-Tyler, KBI