

Department of Planning and Budget 2015 Fiscal Impact Statement

1. **Bill Number:** HB1277

House of Origin Introduced Substitute Engrossed
 Second House In Committee Substitute Enrolled

2. **Patron:** Yost

3. **Committee:** Agriculture, Chesapeake, and Natural Resources

4. **Title:** Industrial hemp; production and manufacturing.

5. **Summary:** The bill allows the licensed cultivation of industrial hemp and defines industrial hemp as the plant Cannabis sativa with a concentration of Tetrahydrocannabinol (THC) no greater than that allowed by federal law. The bill directs the Commissioner of Agriculture and Consumer Services to establish a program for licensing growers of industrial hemp. The bill further directs the Board of Agriculture and Consumer Services (Board) to adopt regulations pursuant to this new chapter as necessary to license persons to grow industrial hemp, establish industrial hemp testing criteria and protocols, and administer the industrial hemp research program. This bill also establishes the Virginia Industrial Hemp Program Fund and directs the Commissioner to oversee an industrial hemp research program.

6. **Budget Amendment Necessary:** Yes, to Items 88, 90 and 401 of HB1400/SB800. See discussion in item 8, below.

7. **Fiscal Impact Estimates:** Preliminary.

7a. Expenditure Impact:

Department of Agriculture and Consumer Services

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2015	n/a	n/a	n/a
2016	\$165,310 + \$200/sample	2.0	GF/NGF
2017	\$158,310 + \$200/sample	2.0	GF/NGF
2018	\$158,310 + \$200/sample	2.0	GF/NGF
2019	\$158,310 + \$200/sample	2.0	GF/NGF
2020	\$158,310 + \$200/sample	2.0	GF/NGF
2021	\$158,310 + \$200/sample	2.0	GF/NGF

Department of Forensic Science

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2015	n/a	n/a	n/a
2016	\$5,160,738	41.0	GF
2017	\$4,440,738	41.0	GF
2018	\$4,440,738	41.0	GF
2019	\$4,440,738	41.0	GF
2020	\$4,440,738	41.0	GF
2021	\$4,440,738	41.0	GF

7b. Revenue Impact: Indeterminate.

- 8. Fiscal Implications:** The bill authorizes the Commissioner of Agriculture and Consumer Services to issue two types of industrial hemp grower licenses: an industrial hemp research program grower license and an industrial hemp grower license. The bill requires a license application fee that may not exceed \$100 and an annual license renewal fee that may not exceed \$100. The bill also requires that the license holder be responsible for the cost of testing industrial hemp, not to exceed \$100.

Section 7606 of the federal Farm Bill of 2013, Legitimacy of Industrial Hemp Research, defines industrial hemp as distinct and authorizes institutions of higher education or State departments of agriculture in states where hemp is legal to grow hemp for research or agricultural pilot programs. According to the law, each state that allows hemp farming may promulgate its own regulations regarding industrial hemp research and pilot programs. Anyone authorized by the state to conduct research must follow the state regulations and grow industrial hemp as defined under Section 7606. As such, the only purpose for growing industrial hemp is for research purposes as defined under this section. Because of this, the Department of Agriculture and Consumer Services (VDACS) anticipates that the number of eligible licensees will be limited to research organizations like universities. Currently, a neighboring state, Kentucky, has enacted similar legislation and the number of qualified growers is in the range of seven to ten.

With a limited number of potential, eligible licensees, the department estimates that the fees authorized by HB1277 will be insufficient to establish and maintain an industrial hemp regulatory program. Additional general fund appropriation will likely be required. VDACS estimates the issuance and renewal of licenses, and onsite inspections, will require at least one new staff position with an estimated cost of \$53,507 in salary and fringe, and an additional \$20,000 in operating costs each year for this position. Increased participation in the program once it is established may require a dedicated registration analyst at the same cost as well as a second inspector, also at the same cost; however, the estimates for these two positions are not included in the fiscal impact table above.

The costs associated with sampling and laboratory analysis of industrial hemp for compliance with THC level requirements will likely exceed \$100. The Department of General Services, Division of Consolidated Laboratory Services (DCLS), estimates an analysis cost of \$175-

\$200 per sample. DCLS also indicates that an estimated startup cost of \$5,000 to \$7,000 will be required to bring this testing online. Additionally, shipping of industrial hemp samples is not allowed under the federal Controlled Substances Act and therefore will require inspectors to deliver the samples.

The bill establishes the Virginia Industrial Hemp Program Fund. All fees collected will be credited to this special nonreverting fund. The bill requires that, to the extent funds are available in the Virginia Industrial Hemp Program Fund, the Commissioner shall establish a five-year industrial hemp research program. As the agency estimates that the prescribed fees will be insufficient to cover the costs associated with an industrial hemp regulatory program, it is anticipated that no funds will be available to establish the industrial hemp research program prescribed by the bill.

The bill also directs the Commissioner to promote research into the development of industrial hemp and commercial markets for industrial hemp with funds available in the Virginia Industrial Hemp Program Fund. The agency estimates it will need to dedicate one staff member for the promotion of industrial hemp with a cost of \$64,803 in salary and fringe, and an additional \$20,000 in operating costs. Depending on demand, a second person at the same cost may be needed in future years.

In addition to the impact to VDACS, the bill may also have an impact on the Department of State Police (DSP) and the Department of Forensic Science (DFS). A provision of the bill specifies that the Commissioner of VDACS shall require a background check by DSP on any person applying for licensure. DSP is authorized to charge a fee for each background check to be paid by the applicant. The bill also states that licensees shall allow DSP officers to inspect the industrial hemp crops being cultivated. According to DSP, the impact of these requirements on the department is indeterminate as the number of industrialized hemp operations is unknown.

DFS believes that the bill, as written, will impact agency operations and require additional general fund support. As provided for in the proposed legislation, industrialized hemp is classified as all parts and varieties of the plant *Cannabis sativa*, cultivated or possessed by a licensed grower, that contain a concentration of tetrahydrocannabinol (THC) that is no greater than that allowed by federal law. According to federal law, to be considered industrialized hemp, the plant must contain a THC concentration of not more than 0.3 percent on a dry weight basis. The bill excludes industrialized hemp from the definition of marijuana as found in § 54.1-3401, Code of Virginia. To differentiate industrialized hemp from marijuana, a test of THC levels would be required.

Examiners in the Controlled Substances Section of DFS analyze materials for the presence of controlled substances and marijuana in criminal drug possession cases. Currently, DFS examiners do not analyze marijuana plant material in all cases, as statute allows for officers to forgo laboratory testing for plant material suspected to be marijuana in simple possession cases. As HB1277 exempts industrialized hemp from the definition of marijuana, DFS believes it will be required to test every potential marijuana possession case to determine whether the sample is marijuana or industrialized hemp. To do this, the agency estimates that

a minimum of 41 additional Controlled Substances examiners will be needed to conduct the quantitative analyses that will be required as a result of this bill. This is based upon DFS's estimate that it will be required to conduct the quantitative analysis in approximately 15,000 marijuana cases per year. DFS will also need a minimum of two additional scientific instruments at each laboratory to perform this analysis. The estimated total cost to the agency is approximately \$5.0 million in additional general fund support.

9. Specific Agency or Political Subdivisions Affected: Department of Agriculture and Consumer Services; Department of General Services, Division of Consolidated Laboratories; Department of State Police; Department of Forensic Science.

10. Technical Amendment Necessary: No.

11. Other Comments: This bill is a companion to SB955 as introduced.