

## Department of Planning and Budget 2019 Fiscal Impact Statement

**1. Bill Number:** HB1839

House of Origin	<input checked="" type="checkbox"/> Introduced	<input type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
Second House	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input type="checkbox"/> Enrolled

**2. Patron:** Marshall

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

**4. Title:** Industrial hemp; federal Farm Bill; emergency.

**5. Summary:** Conforms Virginia law to the provisions of the federal 2018 Farm Bill by amending the definitions of cannabidiol oil, marijuana, and tetrahydrocannabinol (THC) to exclude industrial hemp that is grown, dealt, or processed in compliance with state or federal law. The bill defines "industrial hemp" as any part of the plant *Cannabis sativa* that has a concentration of THC that is no greater than that allowed by federal law, and it adds the category of "dealer" in industrial hemp to the existing registration categories of grower and processor. The bill also removes a provision in current law that makes it unnecessary for a prosecutor to negate an industrial hemp exemption in a drug prosecution; such current provision places the burden of proof of any such exemption on the defendant.

The bill requires any registered grower, dealer, or processor who negligently violates the law to comply with a corrective action plan established by the Commissioner of Agriculture and Consumer Services (the Commissioner). The plan must identify a date by which the person is required to correct the violation and requires the person to report periodically for not less than two calendar years on his compliance with the law. No person who negligently violates the industrial hemp law three times in a five-year period is eligible to grow, deal in, or process industrial hemp for a period of five years beginning on the date of the third violation.

The bill directs the Commissioner to (i) revoke the registration of any registered grower, dealer, or processor who violates the law with a culpable mental state greater than negligence and (ii) advise the Attorney General of the United States and the Superintendent of State Police, or the chief law-enforcement officer of the county or city, when such person grows, deals in, or processes any *Cannabis sativa* with a concentration of THC that is greater than that allowed by federal law with a culpable mental state greater than negligence.

The bill abolishes the higher education and Virginia industrial hemp research programs, along with the requirement that a grower or processor act exclusively within such a program. The bill authorizes the Commissioner to charge a fee for certain THC testing. Finally, the bill directs the Department of Agriculture and Consumer Services to report to the General Assembly by September 1, 2019, on the fiscal impact of the growth of the industrial hemp industry upon the Department's registration program and the existence of any need to alter the registration fee. The bill includes an emergency clause.

6. **Budget Amendment Necessary:** Yes, Item 407 of HB1700/SB1100.

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

**7a. Expenditure Impact:**

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2020	\$3,296,225	13	General Fund
2021	\$1,667,225	13	General Fund
2022	\$1,667,225	13	General Fund
2023	\$1,667,225	13	General Fund
2024	\$1,667,225	13	General Fund
2025	\$1,667,225	13	General Fund

8. **Fiscal Implications:** It is anticipated that this bill will not have a fiscal impact on the Department of Agriculture and Consumer Services (VDACS); however, at this time, VDACS is not able to assess whether, or to what extent, its current hemp registration program will expand as the result of the Farm Bill. Additionally, the U.S. Department of Agriculture (USDA) has not yet issued guidance regarding the content of the regulatory plans it expects to receive from states that desire primary regulatory authority over hemp production pursuant to the hemp provisions in the 2018 Farm Bill. VDACS may require additional resources to meet USDA requirements, should Virginia elect to pursue primary regulatory authority over hemp production within the state.

The Department of State Police does not anticipate a fiscal impact as a result of this bill.

The Department of Forensic Science (DFS) does anticipate an expenditure impact as a result of this bill. The requirements of this bill are estimated to cost approximately \$3.3 million in FY 2020 (start-up) and \$1.7 million annually thereafter. While this bill does contain an emergency clause, DFS anticipates being able to absorb any increased workload that may result in the remainder of FY 2019, given the timing and the initial establishment of the new program.

The bill excludes all forms of industrial hemp, as defined in the bill, from the definition of marijuana if grown, dealt, or processed in compliance with state or federal law. As the 2018 Federal Farm Bill removes industrial hemp from the definition of marijuana, DFS anticipates receiving an increase in the number of samples for quantitative analysis to distinguish between marijuana and industrial hemp. Material with a THC concentration of less than 0.3 percent is not considered marijuana.

Currently, there are not any field test kits available in the U.S. that can distinguish between industrial hemp and marijuana. Therefore, marijuana arrests that are not currently sent to DFS for analysis will have to be submitted for quantitation.

DFS is estimating a 20 percent increase in marijuana cases, for a total of approximately 9,660 cases. According to DFS, THC quantitation takes approximately 10 hours per case; however, to address the workload resulting from this bill, DFS anticipates the need to establish a special Forensic Marijuana/Hemp Quantitation Unit that will be solely dedicated to this type

of case analysis. The establishment of a special unit is expected to result in a new average of 2.5 hours per quantitation. DFS anticipates requiring 13 new, full-time positions to include 11 Forensic Scientists, 1 Forensic Scientist Group Supervisor, and 1 Forensic Scientist Section Supervisor. Salaries and supplies to support these positions are estimated to cost approximately \$1.7 million annually.

In the first year, one-time capital renovation and equipment costs are anticipated. According to DFS, all four of the Controlled Substances Sections are utilizing 100 percent of facility space and cannot accommodate additional people or equipment. The Eastern Laboratory in Norfolk, Virginia has the only available contiguous laboratory space that can be utilized for this unit; however, this space will require capital renovations in order to meet the needs of the newly formed unit.

The available space is approximately 5,000 square feet and the agency estimates a total renovation cost of \$1.0 million. Each examiner will need a balance, microscope, and other miscellaneous equipment items estimated at \$8,000 per scientist for a total one-time cost of \$104,000. Additionally, larger equipment needs for the section include one Liquid Chromatograph Diode Array Detectors for every three examiners, at a cost of approximately \$80,000 per instrument. This section also will need two Gas Chromatograph/Mass Spectrometers at a cost of approximately \$120,000 each. DFS also estimates an annual cost of approximately \$96,600 associated with reference samples for batch processing of marijuana quantification.

Any revenue that may be generated by the fee this bill authorizes the Commissioner to charge for certain THC testing is indeterminate. Any such revenue is to be deposited to the state treasury.

**9. Specific Agency or Political Subdivisions Affected:** Department of Forensic Science; Department of Agriculture and Consumer Services; Department of State Police.

**10. Technical Amendment Necessary:** No.

**11. Other Comments:** SB1692, as introduced, is the companion to this bill. HB2346, HB2649, and SB1057 also address industrial hemp.