



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>

October 31, 2019

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Agriculture, Trade and Consumer Protection: Section 16.505(2) Request to Provide 1.0 Project Position for Industrial Hemp -- Agenda Item III

On September 24, 2019, the Department of Administration (DOA) submitted for the Committee's approval, under a 14-day passive review, a request by the Department of Agriculture, Trade and Consumer Protection (DATCP) for the creation of 1.0 program revenue (PR) program and policy analyst two-year project position in the industrial hemp program. The position would be supported by licensing and inspection fees paid by hemp growers and processors.

On October 14, 2019, the Co-Chairs notified DOA that an objection had been raised, and the Committee would schedule a meeting to consider the matter. The request is now before the Committee under s. 13.10 of the statutes.

BACKGROUND

The federal Agricultural Act of 2014 legalized the cultivation of industrial hemp under certain circumstances, and cultivation was further expanded under the federal 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.

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. For 2019, DATCP reports 1,247 licensed and registered growers, and 556 licensed and registered processors. (In order to grow hemp, farmers must have both a license and an annual registration.) DATCP also reports an estimated 5,000 acres were planted in 2019. Thus, in the second year of the

program approximately five times as many farmers registered to grow hemp, and approximately 2.7 times more acres of hemp were eventually planted. Actual planted acreage was less than originally anticipated primarily due to wetter conditions and a resulting delayed planting season.

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. DATCP reports it conducted approximately 1,100 inspections at sampling locations in 2019, although this total does not include follow-up inspections, such as those to verify the destruction of condemned samples that exceed maximum allowable THC content.

When originally created, the industrial hemp program was authorized a PR appropriation to receive fees associated with the program, but no funding or positions. In the program's first year, DATCP relied on limited-term employees (LTEs) and temporarily reallocation of other staff. In 2019, DATCP reports approximately 16 non-hemp program staff within the Division of Agricultural Resource Management dedicated time to the hemp program, decreasing staff time available for other program areas within the Division. Additionally, during testing of hemp samples, DATCP reports approximately two-thirds of the permanent and project staff positions authorized in the Bureau of Laboratory Services spent some time processing and testing hemp samples.

The Department also reports 13 LTEs were hired during the 2019 license year, including nine for hemp sampling, which the Department notes is labor-intensive, as samples may not be shipped by commercial carrier and must be transported to the laboratory by DATCP staff. An additional four LTEs were assigned to administrative support during the growing year, including responding to grower inquiries and processing license amendments, planting reports, harvest notifications, invoices, and product certifications.

2019 Wisconsin Act 9, the 2019-21 biennial budget act, provided DATCP with 3.0 PR two-year project positions beginning in 2019-20 and associated funding of \$162,400 PR in 2019-20 and \$216,500 PR beginning in 2020-21. Further, Act 9 transferred 1.6 PR permanent positions and \$73,300 PR each year from other programs to the industrial hemp regulation appropriation. Act 9 also provided \$300,000 PR in one-time funding in 2019-20 for the program to purchase additional laboratory equipment.

Of the 4.6 PR program positions authorized by Act 9, DATCP reports as of October 28, 2.6 positions were filled, including: (a) a 1.0 hemp program manager; (b) 1.0 chemist; and (c) 0.6 regulatory specialist. The remaining 2.0 project positions are in recruitment. DATCP expects the four administrative support LTEs will transition to licensing operations for the renewal period prior to the beginning of the 2020 license year on January 1. Further, DATCP reports sampling LTE staffing will likely be reduced to the levels necessary to conduct sampling of greenhouse operations that may harvest in the winter.

ANALYSIS

DATCP argues the program and policy analyst project position is necessary for several policy developments that may affect program structure in the coming months. First, the position would draft the state hemp program plan to maintain primary regulatory authority under provisions enacted by the Agricultural Improvement Act of 2018. DATCP reports it is in the early stages of working with the U.S. Department of Agriculture (USDA) to implement federal regulations associated with the Agricultural Improvement Act. Without federal approval of a state plan, the state would be at risk of federal plan provisions superseding those of the state program. DATCP argues that a state-managed program under a state plan is preferable to a federal plan because it is more responsive to individual grower needs, more readily able to be inclusive of a variety of different sizes and types of hemp growers, and more flexible to accommodate emerging issues and innovations in the hemp industry. While a timeline for implementation of federal requirements remains unclear, the Department expects the proposed position would allow it to more quickly and effectively implement federal requirements and reduce future uncertainty related to hemp regulation in Wisconsin.

Second, DATCP expects the position would have responsibilities for amending state administrative rules to align the program with changes that are before the Legislature under 2019 Senate Bill 188 / Assembly Bill 206. The bill is generally intended to align state statutes with federal law. Beyond updating hemp program policies and guidance, DATCP does not anticipate the bill would otherwise change the program's workload. Additionally, DATCP expects the position to act as a liaison with the Department of Justice and other law enforcement agencies.

DATCP anticipates the position would cost \$87,000 on an annual basis, including \$70,000 for salary and fringe benefits and \$17,000 in supplies and services costs. Although the request does not seek to budget funding for the position, the DATCP industrial hemp appropriation is a continuing PR appropriation, meaning the agency could make expenditures for any program purposes, including authorized positions, that are supported by available revenues. The following table shows the condition of the industrial hemp PR appropriation through June 30, 2019.

DATCP Industrial Hemp Account Condition

	Actual <u>2017-18</u>	Actual <u>2018-19</u>
Opening Balance	\$0	\$3,500
Revenues	114,700	775,900
Expenditures	<u>- 111,200</u>	<u>- 472,400</u>
Closing Balance	\$3,500	\$307,000

Based on continued contacts and interest from persons not already participating in the hemp program, DATCP staff anticipate the program will continue to grow. However, uncertainty in future hemp program participation makes it difficult to predict future revenues and their ability to cover costs associated with hemp regulation. It may be reasonable to assume additional growth in the

program would both require additional staffing and provide additional program income to support associated costs, although DATCP notes that while revenues are expected to continue to increase, certain program costs are expected to decline as certain startup and equipment costs will not be ongoing. As a PR continuing appropriation, DATCP is authorized to expend all moneys received, and any program expenditures, including those for full-time staff, would be limited by the hemp program's revenues. The Department reports that it would seek to limit program costs, including perhaps holding vacancies, in the event hemp program revenues were not sufficient. The Committee could consider approving the request [Alternative 1].

The Committee could also deny the request [Alternative 2]. The Department could supplement current permanent staff with LTEs using available revenues for the remainder of the biennium, and future permanent or project staffing could be reevaluated during the 2021-23 biennial budget process.

ALTERNATIVES

1. Approve the request for 1.0 PR two-year project position under the Department of Agriculture, Trade and Consumer Protection appropriation for industrial hemp regulation [s. 20.115(7)(gc)]. (The project position would expire September 30, 2021.)
2. Deny the request.

Prepared by: Rory Tikalsky and Paul Ferguson