

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

May 16, 2019

TO: Honorable Dennis Bonnen, Speaker of the House, House of Representatives

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: **HB1325** by King, Tracy O. (Relating to the production and regulation of hemp; requiring occupational licenses; authorizing fees; creating criminal offenses; providing civil and administrative penalties.), **As Passed 2nd House**

There would be an indeterminate fiscal impact to the state due to an unknown number of administrative penalties; number of authorizations and renewals that would be issued; and number of inspections and tests that would be conducted.

The bill would amend the Agriculture Code regarding the production of hemp. It would require the Texas Department of Agriculture (TDA), in consultation with the Governor and the Attorney General, to develop a state plan to monitor and regulate the production of hemp in Texas and to submit that plan to the U.S. Department of Agriculture. This analysis assumes TDA could accomplish this using existing resources.

The bill would require TDA to adopt rules to establish a state hemp production plan to monitor and regulate the production of hemp in Texas and to establish a program for certification of hemp seeds. It would require TDA to set and collect fees in amounts that are reasonable and necessary to cover the costs of administering and enforcing the state hemp program up to maximum statutory fee amounts. The bill would authorize the Comptroller of Public Accounts (CPA) to allow TDA to collect fees higher than the maximum amounts established by the bill if necessary to cover TDA's costs of administering the hemp program.

Fees collected under the bill's provisions would be deposited into the newly created State Hemp Production Account in the General Revenue Fund to be administered by TDA. In addition to other revenues, the bill would require that penalties collected under the provisions of the bill be deposited to the credit of the new account. The bill would require that money in the account only be appropriated for the administration and enforcement of the state hemp program.

The bill would require anyone shipping hemp in Texas to obtain a shipping certificate from TDA if the hemp was produced in Texas or to carry certain other specific documentation if the hemp was produced outside of Texas. Shipping hemp without the proper certification or documentation would be a misdemeanor punishable by a fine of not more than \$1,000 and would also subject the person to a civil penalty in an amount not to exceed \$500 for each violation. These civil penalties would be deposited to the Hemp Transportation Account, an account that would be created by the bill within the General Revenue Fund to be administered by TDA. Money in this fund could only be appropriated to TDA for the administration and enforcement of hemp shipping requirements. TDA would be authorized to transfer funds in the account to the Department of Public Safety

(DPS) for the purpose of inspecting vehicles transporting hemp and for laboratory testing of hemp taken from vehicles. The bill would authorize peace officers to inspect and collect samples from hemp found in a vehicle for testing, but would prohibit a peace officer from seizing the plant material or arresting the person transporting it unless the officer had probable cause to believe the plant material was marijuana. A peace officer would be authorized to detain a person transporting hemp until the person produces either a TDA-issued certificate for transport or appropriate documentation showing the provenance of the hemp outside of Texas. This analysis assumes that any additional equipment required by DPS for testing of hemp would be paid for out of the Hemp Transportation Account with proceeds from civil penalties. This analysis also assumes the provisions of the bill creating new criminal offenses would not result in a significant impact on state correctional populations or the demand for state correctional resources. Additional information is available in the Criminal Justice Impact Statement.

TDA indicates it is unable to estimate the number of applications it would receive from producers for industrial hemp, the number of authorizations it would issue each fiscal year, or the number that would renew in subsequent years. This analysis assumes there would be a positive, but indeterminate fiscal impact to the state because the number of authorizations and renewals that would be issued and the number of inspections and tests that would be conducted each fiscal year cannot be determined.

The bill would allow only persons authorized by TDA under the state hemp program to cultivate, handle, or process hemp or to transport hemp outside the state. The bill would allow TDA to assess an administrative penalty of up to \$5,000 per violation against violators of the state hemp program. The fiscal impact to the state resulting from administrative penalties cannot be determined as the number of penalties and the amount of fines that would be assessed is unknown.

The bill would amend the Health and Safety Code to allow establishments to apply for a consumable hemp product manufacturer's license through the rules developed by the Department of State Health Services (DSHS). It would require an individual to register with DSHS with each location owned, operated, or controlled by the person at which the products are sold. The bill would allow DSHS to issue a single registration covering multiple locations, and would allow DSHS to adopt a reasonable fee for renewal of the registrations. The bill would require that a sample of a consumable hemp product be tested by an accredited laboratory to determine the delta-tetrahydrocannabinol (THC) concentrate of the product, presence of heavy metals, pesticides, and other substances prescribed by DSHS. The bill would require DSHS and the Department of Public Safety to establish a process for random testing of cannabinoid oil at various establishments that sell, offer the sale, distribute, or use the oil to ensure that oil does not contain harmful ingredients, is produced in compliance with federal regulation, and has a THC concentrate of less than 0.3 percent. The bill would require DSHS to maintain a list of states or jurisdictions that legally process and manufacture a consumable hemp product.

Based on information provided by DSHS, this analysis assumes that the agency would need \$362,330 in General Revenue in fiscal year 2020 to cover the costs of hiring staff and preparing to launch the program prior to collecting fees. The agency estimates that within four months the fees generated by the program would be sufficient to cover the costs of the program. Once the program is launched, all fees will be deposited to the credit of General Revenue-Dedicated Account 5024, Food and Drug Administration, and all agency costs would be paid from that account. This analysis assumes 13.0 FTEs would be necessary to implement the provisions of the bill each fiscal year with costs totaling \$1,408,772 in fiscal year 2020 and \$2,076,022 each subsequent fiscal year.

Based on the analysis of the Office of Court Administration and the Office of the Attorney

General, the duties and responsibilities associated with implementing the provisions of the bill could be accomplished using existing resources.

Based on the analysis of the Comptroller of Public Accounts, the bill would create an indeterminate positive fiscal impact to the state from the fees and administrative penalties that would be assessed under the provisions of the bill.

The bill would take immediate effect if it received a two-thirds majority vote of members of both houses of the Legislature, otherwise it would take effect September 1, 2019.

This legislation would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either with or outside of the Treasury, or create a dedicated revenue source. The fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 537 State Health Services, Department of, 212 Office of Court Administration, Texas Judicial Council, 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 405 Department of Public Safety, 529 Health and Human Services Commission, 551 Department of Agriculture, 696 Department of Criminal Justice

LBB Staff: WP, AMa, JPo, PBO, SZ, MW, SMi