

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

May 21, 2021

TO: Honorable Charles Perry, Chair, Senate Committee on Water, Agriculture & Rural Affairs

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB3948 by King, Tracy O. (Relating to the production and regulation of hemp and consumable hemp products; providing administrative penalties; creating a criminal offense.), **Committee Report 2nd House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB3948, Committee Report 2nd House, Substituted : a negative impact of (\$1,952,267) through the biennium ending August 31, 2023.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five- Year Impact:

<i>Fiscal Year</i>	<i>Probable Net Positive/(Negative) Impact to General Revenue Related Funds</i>
2022	(\$953,947)
2023	(\$998,320)
2024	(\$999,024)
2025	(\$999,748)
2026	(\$1,000,496)

All Funds, Five-Year Impact:

<i>Fiscal Year</i>	<i>Probable Savings/(Cost) from General Revenue Fund 1</i>	<i>Probable Revenue Gain/(Loss) from General Revenue Fund 1</i>	<i>Probable Savings/(Cost) from State Hemp Program 5178</i>	<i>Probable Revenue Gain/(Loss) from State Hemp Program 5178</i>
2022	(\$354,955)	(\$598,992)	(\$95,666)	\$95,666
2023	(\$399,328)	(\$598,992)	(\$89,856)	\$89,856
2024	(\$400,032)	(\$598,992)	(\$89,856)	\$89,856
2025	(\$400,756)	(\$598,992)	(\$89,856)	\$89,856
2026	(\$401,504)	(\$598,992)	(\$89,856)	\$89,856

<i>Fiscal Year</i>	<i>Probable Revenue Gain/(Loss) from New General Revenue Dedicated Consumable Hemp Product account</i>	<i>Change in Number of State Employees from FY 2021</i>
2022	\$598,992	5.0
2023	\$598,992	5.0
2024	\$598,992	5.0
2025	\$598,992	5.0
2026	\$598,992	5.0

Fiscal Analysis

This bill would amend the Agriculture and Health and Safety Codes concerning the production and regulation of hemp and consumable hemp products. The bill would exempt higher education institutions conducting hemp research from fees, permits, preharvest testing, certification, and penalties and fees associated with the Agriculture Code's requirements for cultivating hemp. The bill would require a higher education institution that sells or transfers hemp to another person to comply with requirements for preharvest testing, documentation, and shipping that it is otherwise exempt from in the bill.

The bill would require that any laboratory performing testing required under the Agriculture Code for cultivation of hemp to report on concentrations of certain chemicals as defined in the bill. The bill would permit the transport of seedlings and other immature hemp plants into the state or intrastate by a license holder without a permit as long as the plants are not sold to another person. The bill would also establish a criminal offense for cultivating hemp without a license. The bill would set penalties for cultivating hemp without a license to include a \$500 administrative penalty on the first and second violations with the third and subsequent offenses being Class B misdemeanors.

The bill would establish a new General Revenue–Dedicated Consumable Hemp Product account administered by the Department of State Health Services (DSHS) consisting of appropriations to the account by the legislature, public or private gifts or donations, fees and penalties related to consumable hemp products, and interest and income earned. The bill provides that use of funding in the account be only used by DSHS for administration and enforcement of the hemp program.

The bill would require DSHS to determine if a consumable hemp product, in the form and quantity as packaged for consumer use, does or does not reasonably have an intoxicating effect. The bill would authorize DSHS to establish and implement an expedited licensing process for someone who purchases a consumable hemp products business and would add requirements for certain consumable hemp product labels.

This bill would take effect September 1, 2021.

Methodology

The hemp program currently exists at the Texas Department of Agriculture (TDA) as a cost recovery program funded through General Revenue–Dedicated State Hemp Program Fund No. 5178. Based on information provided by TDA, this analysis assumes the agency would need 1.0 additional FTE to implement the provisions of the bill. This includes 0.5 FTE for an Assistant Attorney General II (\$31,808 in annual salary plus \$10,344 in benefits) and 0.5 FTE for a Program Specialist III (\$27,801 in annual salary plus \$9,041 in benefits) with annual operating expenses of \$16,672 in fiscal year 2022 and \$10,862 each subsequent fiscal year. This analysis also assumes that TDA would adjust program fees to cover the total cost of the bill's obligations.

Consumable hemp fees are collected by DSHS and deposited to the credit of the General Revenue Fund under current law. Under the provisions of the bill, these fees would be deposited to the credit of the General Revenue–Dedicated Consumable Hemp Product account created by the bill. This analysis assumes a decrease of \$598,992 in General Revenue each year with an offsetting increase to the newly established General Revenue–Dedicated account associated with this transfer.

According to DSHS, the agency does not currently have the resources to determine if a consumable hemp product does or does not reasonably have an intoxicating effect or to enforce the new provisions of the bill. The analysis assumes that DSHS would require 4.0 additional FTEs including a toxicologist and 3.0 sanitarians to enforce the new requirements. The analysis assumes costs for the FTEs including salary, benefits, furniture, supplies, and travel would be \$333,690 in fiscal year 2022; \$381,508 in fiscal year 2023; \$382,212 in fiscal year 2024; \$382,936 in fiscal year 2025; and \$383,684 in fiscal year 2026. The analysis assumes that these costs would be in General Revenue because statute does not require DSHS to increase fees to cover program costs for the consumable hemp program.

Based on information provided by the Office of Court Administration, it is assumed that the establishment of a

criminal offense for cultivating hemp without a license would not have a significant fiscal impact to the state court system.

This analysis assumes the provisions of the bill addressing sanctions for criminal offenses would not result in a significant impact on state correctional agencies.

Based on information provided by the Comptroller of Public Accounts, this analysis assumes the fiscal impact related to penalties and associated court cost revenues cannot be determined because the number of penalties that would be assessed is unknown.

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.

Technology

The analysis assumes DSHS would have technology-related costs of \$3,425 in General Revenue in fiscal year 2022 to configure inspection forms in the Regulatory Automation System. In addition, DSHS would have technology costs for FTEs related to data center services and seat management. These costs are estimated to be \$17,840 in General Revenue in fiscal year 2022 and \$17,820 in General Revenue in subsequent fiscal years.

Local Government Impact

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

Source Agencies: 212 Office of Court Admin, 304 Comptroller of Public Accounts, 537 State Health Services, 551 Department of Agriculture

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