

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/CS/HB 1217 Industrial Hemp Programs

**SPONSOR(S):** Commerce Committee, Appropriations Committee, Agriculture & Property Rights Subcommittee; Massullo and others

**TIED BILLS:**           **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Property Rights Subcommittee	13 Y, 1 N, As CS	Thompson	Smith
2) Appropriations Committee	21 Y, 4 N, As CS	White	Leznoff
3) Commerce Committee	22 Y, 1 N, As CS	Thompson	Hamon

### SUMMARY ANALYSIS

Industrial hemp is an agricultural commodity grown from the plant species *Cannabis sativa* that is used to produce a variety of industrial and consumer products. Following the enactment of the federal Agricultural Act of 2014, hemp cultivation is now allowed in the United States under certain circumstances by research institutions and state departments of agriculture.

The bill authorizes any land grant university in the state that has a college of agriculture to conduct an industrial hemp research program. The purpose of the program is to conduct research projects related to the cultivation, harvesting, processing, testing, marketing, and commercial sale of industrial hemp, and to identify rural areas of the state that would benefit from the commercialization of industrial hemp. Any university that implements an industrial hemp program must adopt rules to ensure the proper operation and security of the program.

The bill requires a university that implements an industrial hemp program to, within four years after implementation, submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the status of the program and any research related to the cultivation, harvesting, processing, and uses of industrial hemp, as well as identification of rural areas of the state that would benefit from the commercialization of industrial hemp and any recommendations for implementing such commercialization.

The bill prohibits the commercial cultivation of industrial hemp in the state of Florida until an industrial hemp program has been in place for two years.

There is no fiscal impact to state or local governments. All costs incurred by an industrial hemp program must be funded through federal grants or private funding.

The bill is effective upon becoming law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### ***Industrial Hemp***

Industrial hemp is an agricultural commodity grown from the plant species *Cannabis sativa* that is used worldwide to produce a variety of industrial and consumer products.<sup>1</sup> Approximately 30 countries in Europe, Asia, and North and South America currently permit farmers to grow hemp.<sup>2</sup> The United States (U.S.) market is largely dependent on imports, both as finished hemp-containing products and as ingredients for use in further processing.<sup>3</sup> Although hemp and marijuana products both come from the cannabis plant, hemp is typically distinguished by its use, physical appearance and lower concentration of tetrahydrocannabinol (THC).<sup>4</sup>

Industrial hemp was grown historically in the U.S. with peak production occurring in the 1940's during World War II when it was used by the armed forces.<sup>5</sup> Subsequently, production sharply declined to the point of elimination by the mid-1950's.<sup>6</sup> Currently, all cannabis varieties, including hemp used for fiber and marijuana that contain THC used as a drug, are classified as "Schedule 1 controlled substances" under the federal Controlled Substances Act.<sup>7</sup>

##### ***Federal Agricultural Act of 2014 (2014 Farm Bill)***

Recently, there has been a resurgence in interest<sup>8</sup> in industrial hemp production in the U.S.<sup>9</sup> Following the enactment of the 2014 Farm Bill,<sup>10</sup> hemp cultivation is now allowed under certain circumstances by research institutions and state departments of agriculture if:

- The industrial hemp is grown or cultivated for research conducted under an agricultural pilot program or other agricultural or academic research; and
- The growing or cultivating of industrial hemp is allowed under state law where the university or state department of agriculture is located.<sup>11</sup>

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<sup>1</sup> Congressional Research Service, *Hemp as an Agricultural Commodity*, CRS Report 7-5700 Mar. 10, 2017, at Summary, available at <https://fas.org/sgp/crs/misc/RL32725.pdf> (last visited Mar. 17, 2017).

<sup>2</sup> Congressional Research Service, *Hemp as an Agricultural Commodity*, CRS Report 7-5700 Mar. 10, 2017, at p. 7, available at <https://fas.org/sgp/crs/misc/RL32725.pdf> (last visited Mar. 17, 2017).

<sup>3</sup> Congressional Research Service, *Hemp as an Agricultural Commodity*, CRS Report 7-5700, at Summary (Mar. 10, 2017) available at <https://fas.org/sgp/crs/misc/RL32725.pdf> (last visited Mar. 17, 2017).

<sup>4</sup> National Conference of State Legislatures State Industrial Hemp Statutes, available at <http://www.ncsl.org/research/agriculture-and-rural-development/state-industrial-hemp-statutes.aspx> (last visited Mar. 17, 2017).

<sup>5</sup> UF/IFAS Research, *The Potential for Industrial Hemp Production in Florida*, at p. 1 (Sept. 15, 2015) available at [https://www.votehemp.com/PDF/Potential%20for%20Industrial%20Hemp%20Production%20in%20Florida\\_9-15-2015.pdf](https://www.votehemp.com/PDF/Potential%20for%20Industrial%20Hemp%20Production%20in%20Florida_9-15-2015.pdf) (last visited Mar. 17, 2017).

<sup>6</sup> *Id.*

<sup>7</sup> 21 U.S.C. §§801 et seq.; Title 21 C.F.R. Part 1308.11.

<sup>8</sup> Logan Yonavjak, *Industrial Hemp: A Win-Win For The Economy And The Environment*, Forbes (May 29, 2013), <https://www.forbes.com/sites/ashoka/2013/05/29/industrial-hemp-a-win-win-for-the-economy-and-the-environment/#2c4e3f4b289b> (last visited Mar. 17, 2017).

<sup>9</sup> According to UF/IFAS Research, *The Potential for Industrial Hemp Production in Florida*, at p. 1 (Sept. 15, 2015) "future markets are continuing to emerge, led primarily by the cosmetic and health food industry, leading to greater demand for hemp products.";

<sup>10</sup> Agricultural Act of 2014, Pub. L. 113-79.

<sup>11</sup> 7 U.S.C. § 5940.

The 2014 Farm Bill defines “industrial hemp” as the plant *Cannabis sativa L.* and any part thereof, whether growing or not, with a delta-9 THC concentration of no more than 0.3 percent on a dry weight basis.<sup>12</sup>

According to the Congressional Research Service, Congress has blocked the U.S. Drug Enforcement Administration (DEA) and federal law enforcement authorities from interfering with state agencies, hemp growers, and agricultural research.<sup>13</sup> In addition, appropriators have blocked the U.S. Department of Agriculture (USDA) from prohibiting the transportation, processing, sale, or use of industrial hemp that is grown or cultivated in accordance with the 2014 Farm Bill.<sup>14</sup>

### **Other States**

Approximately 30 states have enacted laws regarding industrial hemp production.<sup>15</sup> These laws have generally taken the following three approaches:

- Establishing commercial industrial hemp programs;
- Establishing industrial hemp research programs; or
- Authorizing studies of industrial hemp or the industrial hemp industry.<sup>16</sup>

At least 20 states have passed laws creating industrial hemp research or pilot programs.<sup>17</sup> State agencies and institutions of higher education administer these programs in order to study the cultivation, processing, and economics of industrial hemp.<sup>18</sup> Some states establish specific regulatory agencies or committees, rules, and goals to oversee the research programs, and may also require coordination between colleges or universities and the programs.<sup>19</sup>

The following are examples of several state laws that have recently been passed creating industrial hemp programs:

- Alabama provides for an industrial hemp research program overseen by the Alabama Department of Agriculture and Industries.<sup>20</sup> The department is authorized to coordinate the study with institutions of higher education.<sup>21</sup>
- North Carolina provides for an agricultural hemp pilot program overseen by the North Carolina Industrial Hemp Commission within the North Carolina Department of Agriculture.<sup>22</sup> The commission must collaborate with North Carolina State University and North Carolina A&T State University.<sup>23</sup>
- New York allows for the growth of hemp as part of an agricultural pilot program by its Department of Agriculture and Markets and/or an institution of higher education.<sup>24</sup> The commissioner of agriculture and markets may authorize no more than 10 sites for growing hemp as part of a pilot program.<sup>25</sup>

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<sup>12</sup> Agricultural Act of 2014, Pub. L. 113-79.

<sup>13</sup> Congressional Research Service, *Hemp as an Agricultural Commodity*, CRS Report 7-5700, at p. 1 (Mar. 10, 2017) available at <https://fas.org/sgp/crs/misc/RL32725.pdf> (last visited Mar. 17, 2017).

<sup>14</sup> *Id.*

<sup>15</sup> National Conference of State Legislatures State Industrial Hemp Statutes, available at <http://www.ncsl.org/research/agriculture-and-rural-development/state-industrial-hemp-statutes.aspx> (last visited Mar. 21, 2017).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Ala. Code § 2-8-380 to 2-8-383 and § 20-2-2.

<sup>21</sup> *Id.*

<sup>22</sup> N.C. Gen. Stat. § 106-568.50 to 106-568.54 and § 90-87.

<sup>23</sup> *Id.*

<sup>24</sup> N.Y. Agriculture and Markets Law § 505 to 508.

<sup>25</sup> *Id.*

- Illinois provides for an industrial hemp pilot program which allows the Illinois Department of Agriculture or state institutions of higher education to grow hemp for research purposes.<sup>26</sup> The law requires institutions of higher education to provide annual reports to the department.<sup>27</sup>
- Tennessee allows commercial hemp production overseen by the Tennessee Department of Agriculture.<sup>28</sup> The law directs the commissioner of agriculture to develop licensing rules for processors and distributors, and allows institutions of higher education to acquire and study seeds for research and possible certification.<sup>29</sup>

## Effect of Proposed Changes

### *Industrial Hemp Research Programs*

The bill creates s. 1004.4473, F.S., relating to industrial hemp research programs.

In the bill, the Legislature finds that:

- Industrial hemp may be a suitable crop for the state of Florida, and its production could contribute positively to the future of agriculture in the state.
- A viable industrial hemp program would create new business opportunities and jobs in communities throughout the state.
- As a food crop, industrial hemp seeds and oil produced from the seeds have high nutritional value, including healthy fats and proteins.
- As a fiber crop, industrial hemp can be used in the manufacture of products such as clothing, building supplies, and animal bedding.
- As a fuel crop, industrial hemp seeds can be processed into biodiesel and stalks can be pelletized or flaked for burning or processed for cellulosic ethanol.
- The production of industrial hemp can play an important role in farm land management as part of a crop rotation system.

The bill defines the following terms:

- “Industrial hemp” means the plant *Cannabis sativa L.* and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry-weight basis as defined in the Agricultural Act of 2014, 7 U.S.C. § 5940. Cannabis as defined in chapter 893, F.S., does not meet the definition of industrial hemp.
- “Industrial hemp research project” means a project associated with an industrial hemp program that includes any aspect of research, cultivation, harvesting, processing, testing, marketing, commercial sale, and use of approved industrial hemp agricultural, industrial, and commercial products.

The bill authorizes any land grant university<sup>30</sup> in the state that has a college of agriculture, upon approval by its board of trustees, to engage in an industrial hemp program consistent with the Agricultural Act of 2014, 7 U.S.C. § 5940. The purpose of the program is to conduct research projects related to the cultivation, harvesting, processing, testing, marketing, and commercial sale of industrial hemp, and to identify rural areas of the state that would benefit from the commercialization of industrial hemp.

The bill requires a college or university that is implementing an industrial hemp program to adopt rules to ensure the proper operation and security of the program. At a minimum, the rules must:

<sup>26</sup> Ill. Ann. Stat. ch. 720 § 550/15.2

<sup>27</sup> *Id.*

<sup>28</sup> Tenn. Code Ann. § 43-26-101 to 43-26-103.

<sup>29</sup> *Id.*

<sup>30</sup> Land grant university refers to any university that is eligible to receive grants under the “Hatch Act of 1887”, the “First Morrill Act of 1862”, the “Second Morrill Act of 1890”, and all acts supplemental thereto pursuant to s. 1004.31, F.S. There are two such universities: the University of Florida and the Florida Agricultural and Mechanical University.

- Establish minimum security standards for the growing, handling, and processing of industrial hemp.
- Designate the physical location of the industrial hemp project facility. Areas must be designated within the facility as general access or limited access. An area where industrial hemp is cultivated, processed, stored, or packaged, or where industrial hemp research is conducted, must be designated as limited access. Access to limited-access areas is restricted to authorized personnel and authorized visitors. All other areas of the project facility may be designated as general access and open to authorized visitors accompanied by authorized personnel.
- Establish seed procurement and storage standards. At a minimum, all seed must be certified by the university legally imported under United States Drug Enforcement Administration regulation 21 CFR, § 1312.13, parts (a) and (b).
- Establish storage, packaging, and labeling requirements for raw hemp material.
- Facilitate coordination with state and local law enforcement agencies to ensure the program complies with state and federal laws.
- Establish a seed-to-product testing program and research protocols to ensure the proper chemical composition and labeling of hemp material.

The bill provides that to the fullest extent possible, industrial hemp projects should be implemented in rural agricultural areas of the state where the potential for enhancing agricultural economic development is high. An industrial hemp commercialization project may only be conducted after an industrial hemp program has been in place for two years. A university shall delay an industrial hemp commercialization project if the university is not satisfied its research establishes that industrial hemp does not pose a risk as an invasive species or entomological risk to agriculture industry in the state.

The bill requires all costs incurred by an industrial hemp program to be funded through federal grants or private funding. An industrial hemp program shall be financed through private resources to the fullest extent possible.

The bill requires a university that implements an industrial hemp program to, within four years after implementation, submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the status of the program and any research related to the cultivation, harvesting, processing, and uses of industrial hemp, as well as identification of rural areas of the state that would benefit from the commercialization of industrial hemp and any recommendations for implementing such commercialization.

The bill does not:

- Prohibit any research on cannabis pursuant to ss. 2<sup>31</sup> and 4,<sup>32</sup> chapter 2016-123, Laws of Florida, lawfully conducted before, on, or after the effective date of the bill.
- Authorize the use of any industrial hemp product for medical use. Any medical use of industrial hemp is limited to and governed by s. 381.986, F.S.<sup>33</sup>

The bill is effective upon becoming law.

## B. SECTION DIRECTORY:

**Section 1** creates s. 1004.4473, F.S., related to industrial hemp research programs.

<sup>31</sup> s. 2, chapter 2016-123, Laws of Florida, revises the Florida “Right to Try Act” addressing experimental treatments for terminal conditions by defining a “dispensing organization” as an organization approved by the Department of Health under s. 381.986(5), F.S., to cultivate, process, transport, and dispense low-THC cannabis, medical cannabis, and cannabis delivery devices.

<sup>32</sup> s. 4, chapter 2016-123, Laws of Florida, provides that any college or university in the state that has a college of agriculture may conduct cannabis research consistent with state and federal law.

<sup>33</sup> ch. 2014-157, L.O.F., codified in s. 381.986, F.S., is a component of the Compassionate Medical Cannabis Act (CMCA), legalizes a low-THC and high-CBD form of low-THC cannabis for medical use by patients suffering from cancer or a physical medical condition that chronically produces symptoms of seizures or severe and persistent muscle spasms.

**Section 2** provides an effective date of upon becoming a law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill does not appear to have a direct economic impact on the private sector.

### **D. FISCAL COMMENTS:**

The bill requires all costs incurred by an industrial hemp program to be funded through federal grants or private funding.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

### **B. RULE-MAKING AUTHORITY:**

The bill requires a university implementing an industrial hemp program to adopt rules as required under 7 C.F.R. § 5940 of the United States Agricultural Act of 2014. This is the federal provision that authorizes an institution of higher education or a state department of agriculture to grow or cultivate industrial hemp.

### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 21, 2017, the Agriculture & Property Rights Subcommittee adopted one strike-all amendment to the bill. The amendment removed language authorizing specified state colleges and universities to engage in industrial hemp programs and, instead authorized specified state universities to engage in industrial hemp research projects relating to potential impacts the cultivation of industrial hemp may have on other crops commercially grown in Florida. The bill was reported favorably as a committee substitute.

On April 18, 2017, the Appropriations Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Expanded the legislative findings regarding industrial hemp.
- Removed the Department of Agriculture and Consumer Services from the bill and limited industrial hemp research projects to be conducted by land grant universities.
- Narrowed the definition of “industrial hemp” to mean the plant *Cannabis sativa* L. and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry-weight basis as defined in Agricultural Act of 2014, 7 U.S.C. 5940. *Cannabis* as defined in chapter 893, F.S., does not meet the definition of industrial hemp.
- Required a university that is implementing an industrial hemp program to adopt rules to ensure the proper operation and security of the program.
- Removed the appropriation from the bill and required all costs incurred by an industrial hemp program to be funded through federal grants or private funding.
- Restricted an industrial hemp project from being conducted until after an industrial hemp program has been in place for two years.
- Required a university that implements an industrial hemp program to, within four years after implementation, submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the status of the program and any research related to the cultivation, harvesting, processing, and uses of industrial hemp, as well as identification of rural areas of the state that would benefit from the commercialization of industrial hemp and any recommendations for implementing such commercialization.

On April 24, 2017, the Commerce Committee adopted one amendment to the bill and reported the bill favorably as a committee substitute. The amendment moved the Industrial Hemp Research Program from ch. 570, F.S., which relates to the Department of Agriculture and Consumer Services, to ch. 1004, F.S., which relates to Public Postsecondary Education.

The analysis is drafted to the committee substitute as passed by the Commerce Committee.