

HOUSE BILL REPORT

E2SHB 1401

As Amended by the Senate

Title: An act relating to hemp production.

Brief Description: Concerning hemp production.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Shea, Blake, Chandler, Walsh, Eslick and Kloba).

Brief History:

Committee Activity:

Commerce & Gaming: 2/5/19, 2/19/19 [DPS];

Appropriations: 2/25/19, 2/26/19 [DP2S(w/o sub COG)].

Floor Activity:

Passed House: 3/8/19, 95-0.

Senate Amended.

Passed Senate: 4/15/19, 48-0.

Brief Summary of Engrossed Second Substitute Bill

- Establishes a hemp agricultural commodity program, under the Washington State Department of Agriculture's (WSDA) jurisdiction, to replace the Industrial Hemp Research Program, which is repealed January 2020.
- Requires the WSDA to develop and submit the state's plan for regulating hemp production to the United States Department of Agriculture, with certain minimum components, under a process included in the 2018 Farm Bill.
- Directs Washington State University to develop and make accessible an Internet-based application to provide regional communications concerning recommended planting times for hemp crops in Washington.
- Amends the Controlled Substances Act to expressly exclude hemp from scheduled substances.

HOUSE COMMITTEE ON COMMERCE & GAMING

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Stanford, Chair; Reeves, Vice Chair; MacEwen,

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Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Blake, Jenkin, Kirby, Kloba, Morgan, Vick and Young.

Staff: Peter Clodfelter (786-7127).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Commerce & Gaming. Signed by 32 members: Representatives Ormsby, Chair; Bergquist, 2nd Vice Chair; Robinson, 1st Vice Chair; Stokesbary, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier, Chandler, Cody, Dolan, Dye, Fitzgibbon, Hansen, Hoff, Hudgins, Jinkins, Kraft, Macri, Mosbrucker, Pettigrew, Pollet, Ryu, Schmick, Senn, Springer, Stanford, Steele, Sullivan, Sutherland, Tharinger, Volz and Ybarra.

Minority Report: Without recommendation. Signed by 1 member: Representative Tarleton.

Staff: Dan Jones (786-7118).

Background:

Congress authorized states to establish limited industrial hemp pilot programs in the 2014 Farm Bill. By 2016 Washington and other states across the United States authorized limited agricultural pilot programs, called the Industrial Hemp Research Program in Washington, to authorize hemp production and commerce through research programs connected to institutions of higher education. The Washington State Department of Agriculture (WSDA) administers the program in Washington and licenses individual hemp producers and processors who produce and process hemp and hemp products for research-related purposes.

Federally, although the 2014 Farm Bill authorized these state pilot programs for hemp production and commerce, the federal Controlled Substances Act of 1970 continued to effectively outlaw hemp as a Schedule 1 controlled substance because it did not distinguish between hemp and other varieties of *Cannabis* on the basis of delta-9 tetrahydrocannabinol (THC) content.

Federal law regarding hemp substantially changed with the enactment of the 2018 Farm Bill (also called the federal Agriculture Improvement Act of 2018). Hemp is now expressly excluded from the federal Controlled Substances Act, is declared a legal agricultural commodity eligible for crop insurance, and is made subject to a new federal-state and federal-tribal regulatory framework. Under this framework, states and Indian tribes may choose how they wish to authorize, prohibit, or regulate hemp production.

A state or tribe desiring primary regulatory authority over hemp production in the state or tribe's territory must submit to the United States Department of Agriculture (USDA) a plan under which the state or tribe monitors and regulates hemp production. The USDA has 60 days to approve a compliant plan or disapprove of a noncompliant plan. The 2018 Farm Bill

includes certain minimum requirements for state and tribal plans, although states and tribes may regulate hemp production more stringently than the federal government otherwise would.

If a state or tribe does not have its own plan for regulating hemp production, persons in the state or tribe's jurisdiction qualifying for a hemp producer license developed by the USDA would be authorized under federal law to produce hemp. States and tribes are prohibited from stopping the transportation or shipment of hemp or hemp products produced under the new federal authorization through the state or tribal territory. Effective one year after the date the USDA establishes a plan for regulating hemp and reviewing and approving state regulatory plans, the authorization for industrial hemp research programs in the 2014 Farm Bill is repealed from federal law.

Summary of Engrossed Second Substitute Bill:

The Washington State Department of Agriculture (WSDA) must develop an agricultural commodity program to replace the Industrial Hemp Research Program, in accordance with the federal Agriculture Improvement Act of 2018 (also called the 2018 Farm Bill). The WSDA is granted sole regulatory authority over the production of hemp and may adopt rules to implement the new program.

All rules relating to hemp, including any testing of hemp, are outside of the control and authority of the Washington State Liquor and Cannabis Board (LCB). When the WSDA's rules implementing the new program become effective, persons licensed to grow hemp under the Industrial Hemp Research Program (IHRP) may transfer into the new regulatory program and continue hemp production under the new program. Additionally, immediately upon the act's effective date, persons licensed to grow hemp under the IHRP may produce hemp in a manner otherwise consistent with the requirements of the new hemp program and the 2018 Farm Bill.

The WSDA, in consultation with the Governor and the Attorney General, must develop Washington's plan to conform to the 2018 Farm Bill. The proposal for Washington's plan may include any practice or procedure to the extent the practice or procedure is consistent with the 2018 Farm Bill, and the proposal must include the following minimum components:

- a practice for hemp producers to maintain relevant information regarding land on which hemp is produced including a legal description of the land, for a period of not less than three calendar years;
- a procedure for testing, using post-decarboxylation or other similarly reliable methods, delta-9 tetrahydrocannabinol (THC) concentration levels of hemp, without the application of heat;
- a procedure for the effective disposal of plants, whether growing or not, that are produced in violation of the new authorization, and products derived from the plants;
- a procedure for enforcement required under the 2018 Farm Bill; and
- a procedure for conducting annual inspections of, at a minimum, a random sample of hemp producers to verify hemp is not produced in violation of the authorization.

The WSDA must develop a postharvest test protocol for testing hemp that includes testing of whole plant samples or other testing protocol identified in regulations established by the

USDA. The WSDA must issue hemp producer licenses to applicants qualified under the program requirements and as provided in the 2018 Farm Bill. The plan must identify qualifications for license applicants, to include adults and corporations and to exclude persons with felony convictions as required under the 2018 Farm Bill. The WSDA may adopt rules establishing fees for THC testing, inspections, and additional services required by the USDA. License fees and any money received by the WSDA under the program are deposited in the new Hemp Regulatory Account (nonappropriated).

A person producing hemp under the program must notify the WSDA of the source of their hemp seed or clones to maintain a record of the sources of seeds and clones used for hemp production in Washington.

Hemp may be produced into food. The WSDA may regulate the processing of hemp food products that are allowable under federal law to the same extent as the WSDA regulates other food processing under the Food Safety and Security Act and the Washington Food Processing Act.

Washington State University must develop and make accessible an Internet-based application designed to assist hemp producers by providing regional communications concerning recommended planting times for hemp crops in Washington.

It is provided there is no distance requirement, limitation, or buffer zone between any licensed hemp producer or hemp processing facility and any marijuana producer or marijuana processor, and no such rule may be established without the evaluation of sufficient data showing impacts to either crop as a result of cross-pollination. In an effort to prevent cross-pollination between hemp plants produced under the program and marijuana plants produced within the regulated marijuana system, the WSDA, in consultation with the Washington State Liquor and Cannabis Board, must review the state's policy regarding cross-pollination and pollen capture to ensure an appropriate policy is in place, and must modify policies or establish new policies as appropriate. Under any such policy, when a documented conflict involving cross-pollination exists between two farms or production facilities growing or producing hemp or marijuana, the farm or production facility operating first in time shall have the right to continue operating and the farm or production facility operating second in time must cease growing or producing hemp or marijuana, as applicable.

Upon approval of Washington's plan by the USDA, the WSDA is required and authorized to engage in expedited rulemaking to develop the state's plan and to begin issuing hemp licenses without delay.

Hemp and seeds used for licensed hemp production are excluded from the definition of "Marijuana" in the Controlled Substances Act. Similarly, hemp is excluded from the listing for "Tetrahydrocannabinols" in the Controlled Substances Act, and from the definition of "controlled substance."

Effective January 1, 2020, the Industrial Hemp Research Program is repealed from law.

The act is null and void unless specifically funded in the omnibus appropriations act.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment makes the following changes to the House bill:

- References to "growers" are changed to "producers" and the location of provisions regarding processing hemp for food products, and the lawful transfer of hemp and hemp products, are moved within the act.
- It is provided that all receipts from fees established under the new hemp program are deposited in the Hemp Regulatory Account, rather than referencing only receipts from license fees.
- The requirement that Washington State University must develop an internet-based application to provide regional communications concerning recommended plating times for hemp crops is changed from a requirement to a permissive grant of authority accomplished within existing resources.
- The requirement is eliminated that the United States Department of Agriculture (USDA) must have approved Washington's hemp plan submitted to the USDA before the Washington State Department of Agriculture must engage in expedited rule making to adopt the state hemp plan.
- The prohibition is removed from the existing Industrial Hemp Research Program on processing industrial hemp, except seed, as food, extract, oil, cake, concentrate, resin, or other preparation for topical use, oral consumption, or inhalation by humans. (The entirety of the existing Industrial Hemp Research Program is still repealed effective January 1, 2020.)
- The null and void clause is removed.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately, except for section 15, relating to the repeal of the Industrial Hemp Research Program, which takes effect January 1, 2020. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony (Commerce & Gaming):

(In support) The Founding Fathers grew hemp and drafts of the Declaration of Independence were produced on hemp paper. At one time, Washington was a leading hemp exporter, but not currently. This bill seeks to change that, and is a result of meetings with stakeholders, the Washington State Department of Agriculture, and representatives of the federal crop insurance program. It recognizes that hemp is not marijuana, allows producers to access seed cultivars, addresses hemp use in food, and establishes clear testing standards. Important parts of the bill recognize established international hemp cultivars and hemp as a food substance. Hemp seed can currently be purchased at major retailers. There have been problems with the four-mile buffer zone established under the Industrial Hemp Research Program, and this new program prohibits any buffer zones between licensed hemp and licensed marijuana producers. There are prohibitive aspects of the previous hemp law that should be avoided with this legislation. First, do not prohibit access to sources of seeds or require international seed sourcing. Second, fix the state line issue requiring a hemp farmer in Washington to sell only to processors in Washington and allow them to sell to businesses in other states.

Enacting a hemp program will create many jobs in the state and will produce tax revenue. Some stakeholders strongly support the bill overall but are concerned about the provisions on seed cultivars and think the seed sourcing provisions are unduly restrictive, can be clarified, and the language about international seeds removed. Time is of the essence, and passing the bill will start the process to get hemp seeds planted. Oregon's current hemp program is superior to Washington's existing program, and farmers and businesses are investing there instead of Washington. Washington is as far behind on hemp as states that did not have industrial hemp research programs, and Washington is the only state in the nation going backwards on acreage produced. The Colville Tribe was the only hemp producer in the state in 2018. There may be grey-area issues associated with hemp cannabidiol (CBD) food products. Perhaps the same regulatory framework for marijuana edibles could apply to hemp-derived CBD products.

(Opposed) None.

(Other) The costs of the program are not included in the Governor's proposed budget, so there may be issues with program funding. But the Washington State Department of Agriculture (WSDA) appreciates the opportunity to provide input and is enthusiastic about the opportunities and potential for this new commercial hemp program for hemp farmers to participate in this emerging market. There are several changes needed to create a crosswalk between the federal authorizing law (the 2018 Farm Bill) and the state statutory framework, to ensure the program is self sustaining. A previous law created the Industrial Hemp Research Program, administered by the WSDA, under the 2014 Federal Farm Bill. Under that program, the WSDA issued only 11 licenses and had only one grower in 2018 for a total of about 141 acres. This compares to over 7,000 acres in production in Oregon in the same year. The WSDA is excited about the opportunities created in the bill, and will work with sponsors to make any final alignments needed relative to the 2018 Farm Bill.

Staff Summary of Public Testimony (Appropriations):

(In support) None.

(Opposed) None.

Persons Testifying (Commerce & Gaming): (In support) Representative Shea, prime sponsor; Bonny Jo Peterson, Industrial Hemp Association of Washington; Sativa Rasmussen and Joshua Ashby, Lane Powell Professional Corporation; Gregg Gnecco, Hemp Northwest and Queen of Hearts Hemp Foods; and Liz Kasser.

(Other) Kelly McLain, Washington State Department of Agriculture.

Persons Testifying (Appropriations): None.

Persons Signed In To Testify But Not Testifying (Commerce & Gaming): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.