

February 13, 2019

The Honorable Ron Highland, Chairperson
House Committee on Agriculture
Statehouse, Room 458-W
Topeka, Kansas 66612

Dear Representative Highland:

SUBJECT: Fiscal Note for HB 2173 by House Committee on Agriculture

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2173 is respectfully submitted to your committee.

HB 2173 would establish the procedures to be used by the Kansas Department of Agriculture (KDA), in consultation with the Governor and the Attorney General, in submitting a plan to the U.S. Department of Agriculture under which the KDA would monitor and regulate the commercial production of industrial hemp. The bill would establish the state requirements that must be included in such a plan. The bill would amend existing law to rename the Alternative Crop Research Act the Alternative Crop Act and would add the definitions for “commercial” and “hemp producer” to the Act. The bill would rename the Alternative Crop Research Act Licensing Fee Fund as the Alternative Crop Act Licensing Fee Fund. Industrial hemp, when cultivated, produced, possessed or used for activities authorized by the Alternative Crop Act would be excluded from the definition of “marijuana” contained in current law and would be excluded from the list of Schedule I controlled substances. Hemp producers who violate this Act or associated rules and regulations would not be subject to any state or local criminal enforcement action.

Estimated State Fiscal Effect				
	FY 2019 SGF	FY 2019 All Funds	FY 2020 SGF	FY 2020 All Funds
Revenue	--	--	--	\$112,500
Expenditure	--	--	\$257,860- \$1,005,319	\$366,860- \$1,114,319
FTE Pos.	--	--	--	8.50

Although the Attorney General is mentioned twice in the bill, the agency is unsure what its role would be in developing or enforcing the amended Act. The consultation that the agency would be a part of in developing the plan is not expected to cause any costs for the Attorney General. The bill directs the Department of Agriculture to report to the Attorney General any producer of hemp who violates the Act with a greater culpable mental state than negligence. The Attorney General does not know how many of these reports it would receive, nor does the bill specify what action is to be taken after the reports are received; therefore, the agency is unable to estimate any fiscal effect resulting from this requirement.

The KDA estimates that expenditures related to enactment of HB 2173 would amount to \$109,000, with \$63,000 for salaries and wages for 1.00 FTE, \$30,000 for lab samples and lab support and \$16,000 for administrative support and overhead. Revenue from application and license fees is expected to total \$112,500 (75 licenses X (\$200 application fee + \$1,300 license fee) = \$112,500). The additional FTE is being hired in FY 2019 to staff the Alternative Crop Research Act Program. If HB 2173 is enacted, the FTE will staff the Alternative Crop Act program. If revenues from licenses are not sufficient to support the planned expenditures, the agency will use existing funds.

The Kansas Bureau of Investigation estimates that enactment of HB 2173 would result in increased expenditures ranging from \$257,860 to \$1,005,319 all from the State General Fund. According to the agency, the definition of “hemp producer” contained in the bill would allow any individual, licensed or otherwise, to engage in the cultivation, production, distribution and/or processing of industrial hemp for commercial purposes, resulting in a situation where possession of a product containing tetrahydrocannabinol (THC) would be legal under the provisions of the Act. However, the amended definition of “industrial hemp” contained in the bill does not change the substantive definition of hemp as a plant containing THC. Because industrial hemp and marijuana have the same taxonomy, the only way for law enforcement officers, prosecutors, and the courts to determine whether a person possesses legal industrial hemp or illegal marijuana would be through analysis to determine the THC concentration of plants and plant parts. The agency does not currently have the validated methods or specialized laboratory equipment necessary to perform this analysis, and new methods would need to be developed requiring specialized analytical equipment and supplies. Under the provisions of the bill, the KBI Forensic Science Laboratory would be required to perform quantitative forensic analysis of plant material and provide laboratory results to prosecutors so they can make informed charging decisions in instances where the product being cultivated is in question. The agency indicates that it lacks any relevant data to estimate the annual number of analyses that could be required; thus, the fiscal impact assessment is a range of the minimum equipment required to establish a base testing capacity to the maximum impact if THC quantitation analysis is required on all vegetation samples submitted to the agency for analysis. By consulting with another state’s forensic laboratory that was required to quantitate THC concentration upon passage of similar legislation, the agency determined that each examination is estimated to take three additional hours to perform. This estimate does not include time for report writing, court appearances or time away from work for sick leave, vacation or holidays. The minimum fiscal effect would require the KBI Forensic Science Laboratory to develop a basic capacity to perform a THC quantitation analysis. The agency estimates it would need to hire at least 1.00 Forensic Scientist I FTE, with salaries and

wages costs of \$67,945. Contractual services, commodities and capital outlay expenditures for FY 2020 are estimated to be \$9,122, \$4,396, and \$176,397, respectively.

The estimated maximum fiscal effect could be realized if the Laboratory were required to perform examinations of approximately 5,000 evidence items per year. The number of evidence items was arrived at by considering the number of marijuana submissions received annually since 2014. Based solely on this assumption, the KBI states that a conservative estimate of the additional staff required would be 7.50 Forensic Scientist I FTEs. Personnel costs are estimated to be \$509,596 in FY 2020 and \$605,596 in subsequent years. The out-year increase is attributable to the movement of FTEs from Forensic Scientist I to Forensic Scientist II classification. Costs for contractual services are estimated to be \$68,412 in FY 2020 and \$31,694 in subsequent years. To validate newly developed methods and obtain specialized analytical equipment and supplies, consumable costs are estimated to be \$69,441 in the first year and \$57,557 in subsequent years.

Because of questions concerning the costs for capital outlay associated with prior industrial hemp bills, the agency performed a research project to determine whether it would be able to perform THC quantitation analysis and what equipment would be required to produce consistent results. As a result of that research, the agency determined that the limits of detection and quantitation of the Gas Chromatography/Mass Spectrometry instruments do not result in the specificity required. Instead, Liquid Chromatography/Mass Spectrometry instruments would be required. Additional required equipment includes cryogenic grinders, isotemp ovens, and nitrogen generators, resulting in estimated capital outlay costs of \$357,870 in FY 2020. Any fiscal effect associated with HB 2173 is not reflected in *The FY 2020 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "L. L. Campbell". The signature is fluid and cursive, with a large initial "L" and "C".

Larry L. Campbell
Director of the Budget

cc: Kellen Liebsch, Agriculture
Willie Prescott, Office of the Attorney General
Paul Weisgerber, KBI