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FISCAL NOTE

Drafting Number: LLS 20-1115
Prime Sponsors: Sen. Fenberg; Marble

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Bill Status: Senate Agriculture
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Bill Topic: ALIGNING STATE AND FEDERAL LAW ON HEMP

- Summary of Fiscal Impact:
- State Revenue
- State Expenditure
- State Transfer
- TABOR Refund
- Local Government
- Statutory Public Entity

This bill aligns state and federal law related to the regulation of industrial hemp. It increases state revenue and expenditures on an ongoing basis.

Appropriation Summary: For FY 2020-21, the bill requires an appropriation of \$55,620 to the Department of Public Safety.

Fiscal Note Status: The fiscal note reflects the introduced bill.

Table 1
State Fiscal Impacts Under SB 20-197

Table with 4 columns: Category, Sub-category, FY 2020-21, FY 2021-22. Rows include Revenue (Cash Funds), Expenditures (Cash Funds, Centrally Appropriated, Total), Total FTE, Transfers, and TABOR Refund.

## **Summary of Legislation**

This bill aligns Colorado's industrial hemp program statutes with federal hemp law. These changes include:

- new and modified definitions;
- changes to the size and appointing authorities for the renamed Industrial Hemp Advisory Committee;
- eliminating statutory authority for the research and development cultivation of hemp, but allowing the Commissioner of Agriculture to establish registration and waiver requirements for the research and development cultivation of hemp;
- requiring that fingerprint-based criminal history record checks be submitted with applications for registrations;
- establishing a registration and certification program for authorized samplers to collect and handle industrial hemp samples;
- requiring the testing of 100 percent of hemp lots planted each year;
- expanding record-keeping requirements for industrial hemp registrants;
- specifying unlawful acts and establishing civil penalties of up to \$2,000 per violation per day; and
- authorizing the commissioner to administer oaths, take statements, and issue subpoenas.

## **Background**

Amendment 64, passed by the voters in 2012, differentiated industrial hemp from marijuana and required the General Assembly to enact legislation governing the cultivation, processing, and sale of industrial hemp. The Colorado Department of Agriculture's (CDA) Industrial Hemp Registration Program regulates the cultivation of industrial hemp and administers a certified seed program. The program is cash funded by fees paid by hemp growers and an appropriation from the Marijuana Tax Cash Fund.

The federal 2018 Farm Bill removed hemp from the Controlled Substances Act and made hemp more of a mainstream agricultural product, but with a regulatory requirement. For a state to regulate hemp growers, the U.S. Department of Agriculture (USDA) must approve its state plan. Senate Bill 19-220 required the Commissioner of Agriculture to draft and submit a hemp management plan in accordance with requirements set forth by the USDA. The USDA's interim final rule on the Establishment of a Domestic Hemp Production Program will be in effect until November 1, 2021, when it will be replaced by the final rule. The CDA will submit its hemp management plan to the USDA for approval later this year.

The CDA has been regulating industrial hemp under state law since 2013. Between February 28, 2019, and February 27, 2020, Colorado registered:

- 86,880 acres to grow industrial hemp outdoors;
- 16.3 million square feet to grow industrial hemp indoors;
- 2,748 properties; and
- 2,037 growers.

## Assumptions

The fiscal note assumes that all growers will be fingerprinted in both FY 2020-21 and FY 2021-22.

## State Revenue

**Fingerprint-based background checks – DPS.** This bill increases state cash fund revenue from fingerprint-based criminal history background checks to the CBI Identification Unit Cash Fund in the Department of Public Safety (DPS) by \$80,462 in FY 2020-21 and FY 2021-22. This assumes 2,037 checks will be conducted in FY 2020-21 and FY 2021-22. The current fee for background checks is \$39.50, which includes \$11.25 for a Federal Bureau of Investigation (FBI) fingerprint based check, which is passed on to that federal agency. The federal portion of this fee is excluded from the state TABOR limit.

## State Expenditures

This bill will increase expenditures for the DPS and workload for the CDA and Judicial Department as shown in Table 2 and discussed below.

**Department of Public Safety.** This bill increases overall expenditures from the CBI Identification Unit Cash Fund in DPS by \$61,794 and 0.3 FTE in FY 2020-21 and \$69,998 and 0.3 FTE in FY 2021-22. These costs are shown in Table 2 and explained below.

**Table 2**  
**Expenditures Under SB 20-197**

	<b>FY 2020-21</b>	<b>FY 2021-22</b>
<b>Department of Public Safety</b>		
Personal Services	\$14,147	\$20,957
FBI Pass-Through	\$22,916	\$22,916
Other Costs	\$18,557	\$18,557
Centrally Appropriated Costs*	\$6,174	\$7,568
<b>Total Cost</b>	<b>\$61,794</b>	<b>\$69,998</b>
<b>Total FTE</b>	<b>0.3 FTE</b>	<b>0.3 FTE</b>

\* Centrally appropriated costs are not included in the bill's appropriation.

**Personal services.** Beginning in FY 2019-20, DPS will require 0.2 FTE Fingerprint Examiner II and 0.1 FTE Data Specialist to process the 2,037 fingerprint background applications that the fiscal note assumes the bill will generate from growers applying for industrial hemp registration. A Fingerprint Examiner II can process 8,250 requests per year, and a Data Specialist 16,500. Personal services costs for FY 2020-21 are prorated for the September 1, 2020 effective date.

**Federal Bureau of Investigation pass-through.** The DPS passes \$11.25 of every application on to the federal government. For 2,037 applications, this equates to \$22,916 per year.

**Other costs.** There are the several additional costs associated with each background check application: \$6.10 dedicated to equipment maintenance; \$1.55 for print digitization; \$0.88 to access the Colorado Crime Information Center for information pertinent to the background check; and \$0.58 printing and postage costs. These costs total \$18,557 per year.

**Department of Agriculture.** The bill increases workload for the CDA to update its rules and develop registration and waiver requirements for the research and development cultivation of hemp and establish a registration and certification program for authorized samplers. The CDA inspected 23 percent of registered hemp lots in 2019, so the requirement to test 100 percent of hemp lots will significantly increase inspection workload. Inspections of records will take more time because of the expanded requirements under the bill. The increased workload is expected to be accomplished within existing appropriations, but if it exceeds the capacity of the current workforce, the CDA will request additional appropriations through the annual budget process.

**Judicial Department.** This bill may increase court filings under the provision authorizing the commissioner to seek a restraining order or injunction to compel compliance with a cease-and-desist order. Filings may also occur under the provision allowing the commissioner to petition a district court to compel compliance with an administrative subpoena for a witness' appearance or to obtain documentary evidence. Failure to comply will be punishable as contempt of court. The number of new cases is expected to be minimal and can be accomplished within existing resources.

**Centrally appropriated costs.** Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are estimated to be \$6,174 in FY 2020-21 and \$7,568 in FY 2021-22.

**TABOR refund.** Under the March 2020 LCS Economic and Revenue Forecast, the state is not expected to collect revenue above the TABOR limit in either FY 2020-21 or FY 2021-22, and refund obligations are not anticipated for these years. This bill does not change these expectations concerning refunds to taxpayers.

## **Effective Date**

The bill takes effect September 1, 2020, if no referendum petition is filed.

## **State Appropriations**

For FY 2020-21, the bill requires an appropriation of \$55,620 from the CBI Identification Unit Cash Fund to the Department of Public Safety.

## **State and Local Government Contacts**

Agriculture  
Judicial

Higher Education  
Public Safety

Information Technology