

*Colorado Legislative Council Staff Fiscal Note*

**STATE  
REVISED FISCAL IMPACT**

(replaces fiscal note dated March 25, 2015)

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<b>Drafting Number:</b> LLS 15-0336	<b>Date:</b> April 15, 2015
<b>Prime Sponsor(s):</b> Sen. Marble	<b>Bill Status:</b> Senate Appropriations
Rep. Lebsack	<b>Fiscal Analyst:</b> Clare Pramuk (303-866-2677)

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**BILL TOPIC:** INDUSTRIAL HEMP CERTIFIED SEEDS CONCENTRATION TEST

<b>Fiscal Impact Summary*</b>	<b>FY 2015-2016</b>	<b>FY 2016-2017</b>
<b>State Revenue</b>	<b>\$232,500</b>	<b>\$297,500</b>
Cash Funds	232,500	297,500
<b>State Expenditures</b>	<b>\$232,233</b>	<b>\$295,132</b>
Cash Funds	209,763	269,562
Centrally Appropriated Costs**	22,470	25,570
<b>TABOR Set Aside</b>	<b>\$232,500</b>	<b>\$297,500</b>
<b>FTE Position Change</b>	2.0 FTE	2.0 FTE
<b>Appropriation Required:</b> \$209,763 - Department of Agriculture (FY 2015-16)		

\* This summary shows changes from current law under the bill for each fiscal year.

\*\* These costs are not included in the bill's appropriation. See the State Expenditures section for more information.

**Summary of Legislation**

**As amended by the Senate Agriculture Committee and the Senate Finance Committee**, this bill expands the Industrial Hemp Committee from 9 to 11 members by including a representative of the cannabinoid industry and a representative of the certified seed growers industry. The Colorado Department of Agriculture (CDA) is required to administer an industrial hemp certified seed program to identify seeds that produce industrial hemp. The CDA may import seeds to develop the certified seed program in accordance with state and federal laws.

If an industrial hemp registrant wants a licensed retail marijuana testing facility to perform testing on the registrant's industrial hemp, the registrant is required to use a radio frequency identification-based inventory tracking system approved by the CDA Commissioner to test a sample of the crop. The inventory tracking system must be compatible with the Department of Revenue's seed-to-sale tracking system. The testing facility must provide the test results to the registrant and the commissioner. The results are considered confidential business information.

Current law provides criminal immunity from those processing, selling, and distributing industrial hemp. This bill extends that immunity to transporting and possessing hemp. The CDA may promulgate rules to require approved shipping documentation for the transportation of hemp.

## **Background**

Industrial hemp is regulated by the CDA. It cannot contain a THC concentration above 0.3 percent on a dry weight basis. It is considered a Schedule I controlled substance by the federal government. This schedule includes substances such as marijuana, heroin and LSD that have no currently accepted medical use, a lack of accepted safety for use under medical supervision, and a high potential for abuse.

Access to industrial hemp seed has been a challenge for Colorado growers. The limited amount of seed that is available is not certified to produce plants with a THC content at or below 0.3 percent. Crop yields that exceed 0.3 percent THC are destroyed at a loss for the grower. Identification and production of a certified seed is a multi-year endeavor.

The most recent federal Farm Bill included a provision that authorized a state department of agriculture or institution of higher education in a state where cultivation of industrial hemp is legal, to conduct industrial hemp research. The CDA obtained a Drug Enforcement Agency (DEA) registration allowing it to import industrial hemp seed. The CDA will be able to provide contract farmers, Colorado State University, and the University of Colorado at Boulder with hemp seed for the certified seed program and research without those entities having to obtain a DEA registration.

Retail marijuana testing facilities regulated by the MED are currently only permitted to test retail marijuana and medical marijuana that is grown or produced by a licensee. As a result, only retail and medical marijuana that is tracked in the MED's seed-to-sale tracking system is allowed in a retail marijuana testing facility. Testing of industrial hemp by a retail marijuana testing facility is a violation of current law.

## **State Revenue**

***This bill will increase revenue from fees to the CDA by \$232,500 in FY 2015-16 and \$297,500 in FY 2016-17 to the Industrial Hemp Registration Program Cash Fund.***

***Assumptions.*** This analysis is based on the following assumptions:

- 250 total industrial hemp registrants in FY 2015-16; and
- 350 total industrial hemp registrants in FY 2016-17.

Under previous CDA rules, multiple grow sites could be included in one registration. The rules were recently changed to require a separate registration for each grow site which will increase the number of registrants significantly. However, the full effect of the change will not occur until FY 2016-17.

***Fee impact on hemp registrants.*** Section 2-2-322, C.R.S., requires legislative service agency review of measures which create or increase any fee collected by a state agency. Table 1 below illustrates a scenario for funding the bill with fees. The actual fees will be set by the CDA in consultation with the Industrial Hemp Committee to cover the direct and indirect costs of the program.

<b>Table 1. Fee Impact on Industrial Hemp Registrants</b>					
<b>Type of Fee</b>	<b>Current Fee</b>	<b>Proposed Fee</b>	<b>Fee Change</b>	<b>Number Affected</b>	<b>Total Fee Impact</b>
Commercial Hemp Registration - FY 2015-16	\$500	\$1,430	\$930	151	\$140,430
Research & Development Registration - FY 2015-16	500	1,430	930	99	92,070
<b>FY 2015-16 TOTAL</b>					<b>\$232,500</b>
Commercial Hemp Registration - FY 2016-17	500	1,350	850	212	180,200
Research & Development Registration - FY 2016-17	500	1,350	850	138	117,300
<b>FY 2016-17 TOTAL</b>					<b>\$297,500</b>

**TABOR Impact**

This bill increases state revenue from fees, which will increase the amount required to be refunded under TABOR. TABOR refunds are paid from the General Fund.

**State Expenditures**

***This bill increases expenditures for the CDA by 232,233 and 2.0 FTE in FY 2015-16 and \$295,132 and 2.0 FTE in FY 2016-17 from the Industrial Hemp Registration Program Cash Fund.*** Costs are shown in Table 2 and explained below.

<b>Table 2. Expenditures Under SB15-196</b>		
<b>Cost Components</b>	<b>FY 2015-16</b>	<b>FY 2016-17</b>
Personal Services	\$83,237	\$110,982
FTE	2.0 FTE	2.0 FTE
Temporary Staff	15,000	37,500
Operating Expenses and Capital Outlay Costs	11,406	2,000
Computer Programming	50,000	5,000
Radio Frequency Tags and Postage	1,000	1,000
Legal Services	3,780	3,780
Seed Stock	3,000	3,000
Land Contracts	7,500	7,500
Testing Laboratory Costs (\$150 per THC sample)	30,000	90,000
Travel	4,840	8,800
Centrally Appropriated Costs*	22,470	25,570
<b>TOTAL</b>	<b>\$232,233</b>	<b>\$295,132</b>

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

**Seed Certification Program.** The Division of Plant Industry in the CDA will add 2.0 FTE to administer the seed certification program. Division staff will work with the commissioner, the Industrial Hemp Committee and independent seed producers to promulgate rules for the industrial seed certification program. The division will use 40 hours of legal services per year from the Department of Law for rulemaking, contracting with farmers, and compliance with DEA requirements. The division will be responsible for the selection, purchase, and importation of industrial hemp seed and will enter into agreements with farmers to produce varieties for testing on their land. Lab costs of \$150 per sample are required to measure the THC concentration level. The division is expected to conduct approximately 200 tests in FY 2015-16 at a cost of \$30,000, and 600 tests in FY 2016-17 at a cost of \$90,000.

The expenditures for the 2016 growing season are split over two fiscal years. Beginning in the spring of FY 2015-16, temporary staff will be added to collect samples multiple times from contract farmers and deliver the samples to the lab. Frequent trips will be required because industrial hemp samples cannot legally be sent through the U.S. mail. The division will lease state vehicles that have come off lease from other state agencies as seasonal vehicles at a cost of \$30 per month, per vehicle. The balance of travel costs are for overnight stays and vehicle mileage.

The first full year of the seed certification program is FY 2016-17, and the expenditures in Table 2 reflect the costs for a complete growing season which includes the end of the calendar year 2016 season and the beginning of the calendar year 2017 season. Beyond FY 2016-17, the division will need to purchase seed storage facilities and establish a distribution system, but those costs will be addressed during the annual budget process once known.

**Testing of industrial hemp.** The CDA will modify an existing database or develop a new database to track hemp samples in the retail marijuana testing facilities. This is expected to require \$50,000 in computer programming costs in FY 2015-16. Ongoing system costs are \$5,000 per year beginning in FY 2016-17. An additional \$1,000 per year is required to cover the costs of the radio frequency tags and postage to send them to industrial hemp registrants.

**Department of Revenue, MED.** The MED will work with the CDA to implement the tracking system for industrial hemp samples to be tested by retail marijuana testing facilities. This workload is not expected to require new appropriations.

**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. The centrally appropriated costs subject to this policy are estimated in the fiscal note for informational purposes and summarized in Table 3.

<b>Table 3. Centrally Appropriated Costs Under SB15-196*</b>		
<b>Cost Components</b>	<b>FY 2015-16</b>	<b>FY 2016-17</b>
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$16,018	\$16,073
Supplemental Employee Retirement Payments	6,452	9,497
<b>TOTAL</b>	<b>\$22,470</b>	<b>\$25,570</b>

\*More information is available at: <http://colorado.gov/fiscalnotes>

**Effective Date**

The bill takes effect August 5, 2015, if the General Assembly adjourns on May 6, 2015, as scheduled, and no referendum petition is filed.

**State Appropriations**

For FY 2015-16, the Department of Agriculture requires an appropriation of \$209,763 from the Industrial Hemp Registration Program Cash Fund and an allocation of 2.0 FTE. Of this, \$3,780 is reappropriated to the Department of Law.

**State and Local Government Contacts**

Agriculture  
Corrections Law  
Governor's Office

Revenue  
Judicial Department

Public Health and Environment  
Higher Education