

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 333 State Hemp Program

**SPONSOR(S):** State Affairs Committee, Agriculture & Natural Resources Subcommittee, Massullo, Killebrew and others

**TIED BILLS:** HB 1329      **IDEN./SIM. BILLS:** SB 1058, SB 7102

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	13 Y, 0 N, As CS	Shugar	Shugar
2) Agriculture & Natural Resources Appropriations Subcommittee	11 Y, 0 N	White	Pigott
3) State Affairs Committee	22 Y, 0 N, As CS	Shugar	Williamson

### SUMMARY ANALYSIS

Hemp is an agricultural commodity grown and used worldwide to produce a variety of industrial and commercial products. It is defined as the plant *Cannabis sativa L.* and any part of that plant, including seeds, derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers thereof, whether growing or not, with a delta-9 tetrahydrocannabinol concentration that does not exceed 0.3 percent on a dry weight basis.

The federal Agricultural Act of 2014 authorized an institution of higher education or a state department of agriculture to grow or cultivate industrial hemp under certain conditions. In 2017, Florida created the industrial hemp pilot projects. The Florida Department of Agriculture and Consumer Services (DACS) has approved one industrial hemp pilot project at the Institute of Food and Agricultural Science at the University of Florida.

The federal Agricultural Act of 2018 (2018 Farm Bill) authorized the cultivation of hemp under certain conditions and removed hemp-derived products from Schedule I of the federal Controlled Substances Act. The 2018 Farm Bill allows a state department of agriculture or an Indian tribe to submit a plan to the Secretary of the United States Department of Agriculture (Secretary) to apply for primary regulatory authority over the production of hemp in its state or tribal territory. The state plan must include procedures for tracking the land where hemp will be cultivated, record keeping and reporting, testing procedures, disposing of hemp grown in violation of the law, and annual inspections. Further, the state plan must provide for violations, corrective actions, and enforcement procedures.

The bill creates the state hemp program in DACS to regulate the cultivation of hemp in the state. The bill requires DACS to seek approval of the state plan from the Secretary within 30 days after adopting rules. The bill provides licensure requirements, including denial conditions; provides requirements for the distribution and retail sale of hemp extract; establishes violations and corrective action plans; establishes enforcement authority; requires maintenance of a land registry by DACS; and requires monthly reporting to the Secretary by DACS. The bill further requires the use of certified seed and cultivators and requires DACS to adopt rules to establish procedures for testing and disposal of plants cultivated in violation of the state hemp program.

The bill exempts hemp and industrial hemp from the criminal prohibition against the possession of "cannabis." Finally, the bill revises the colleges and universities at which DACS is required to authorize and oversee the development of industrial hemp pilot projects.

The bill may have an indeterminate negative fiscal impact on DACS once the state hemp program is approved.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0333c.SAC

DATE: 4/22/2019

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

Hemp, also called industrial hemp, is defined as the plant *Cannabis sativa L.* and any part of that plant, including seeds, derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers thereof, whether growing or not, with a delta-9 tetrahydrocannabinol (THC) concentration that does not exceed 0.3 percent on a dry weight basis.<sup>1</sup> While hemp and marijuana are both grown from the *Cannabis sativa L.* plant, they are different varieties that have been genetically bred and grown for different uses. Hemp can be distinguished from marijuana<sup>2</sup> by its lower concentrations of THC, and higher concentrations of cannabidiol (CBD).<sup>3</sup>

Hemp is an agricultural commodity grown and used worldwide to produce a variety of industrial and commercial products, including rope, textiles, clothing, shoes, food, paper, bioplastics, insulation, biofuel, cosmetic products, animal bedding, animal and bird feed, and human food and nutritional supplements.<sup>4</sup> At least 30 countries in Europe, Asia, and North and South America currently permit farmers to grow hemp. In the United States, large-scale commercial production does not exist and the hemp market is largely dependent on imports, both as finished hemp-containing products and as ingredients for use in further processing.<sup>5</sup>

Historically, hemp was produced in the United States with peak production occurring in the 1940s, during World War II, when it was used by the armed forces.<sup>6</sup> The Marijuana Tax Act of 1937<sup>7</sup> and competition with developing synthetic fiber sources negatively impacted hemp production, which sharply declined to the point of elimination by the mid-1950s.<sup>8</sup> The federal Controlled Substances Act of 1970 (Controlled Substances Act)<sup>9</sup> created a single comprehensive statute that placed the control of select plants, drugs, and chemicals under federal jurisdiction.<sup>10</sup> It further defined all varieties of cannabis, regardless of the THC level, as marijuana and classified them as Schedule I controlled substances.<sup>11</sup>

---

<sup>1</sup> 7 U.S.C. s. 5940 (2014); 7 U.S.C. s. 1639o (2018); Industrial hemp.net, *Frequently Asked Questions*, available at <http://www.industrialhemp.net/> (last visited Jan. 30, 2019).

<sup>2</sup> Marijuana is identified in the United States drug laws as cannabis having high THC levels that are associated with psychotropic effects and is typically made from the flowering tops and leaves of the *Cannabis sativa L.* plant (sativa or indica varieties); The Controlled Substances Act was enacted as Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970; 84 s. 1236 (1970).

<sup>3</sup> National Conference of State Legislatures (NCSL), *State Industrial Hemp Statutes*, available at <http://www.ncsl.org/research/agriculture-and-rural-development/state-industrial-hemp-statutes.aspx> (last visited Jan. 29, 2019).

<sup>4</sup> Congressional Research Service (CRS), *Hemp as an Agricultural Commodity*, CRS Report 7-5700 (June 22, 2018), available at <https://fas.org/sgp/crs/misc/RL32725.pdf> (last visited Apr. 15, 2019).

<sup>5</sup> *Id.*

<sup>6</sup> University of Florida Institute of Food and Agricultural Sciences (IFAS) Research, *The Potential for Industrial Hemp Production in Florida*, (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 Jan. 29, 2019).

<sup>7</sup> 50 s. 551 (1937).

<sup>8</sup> Mindy Bridges and Karmen Hanson, *Regulating Hemp and Cannabis-Based Products*, NCSL (October 2017), available at <http://www.ncsl.org/research/agriculture-and-rural-development/regulating-hemp-and-cannabis-based-products.aspx> (last visited Jan. 29, 2019).

<sup>9</sup> 84 s. 1236 (1970).

<sup>10</sup> 21 U.S.C. s. 801; CRS, *Hemp as an Agricultural Commodity*, CRS Report 7-5700 (June 22, 2018) available at <https://fas.org/sgp/crs/misc/RL32725.pdf> (last visited Jan. 29, 2019).

<sup>11</sup> 21 U.S.C. s. 801; 21 C.F.R. s. 1308.11.

In Florida, cannabis is a Schedule I controlled substance.<sup>12</sup> It is a felony of the third degree to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, cannabis in Florida. The term “cannabis” is defined to mean: all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin.<sup>13</sup> The term “cannabis” does not include medical marijuana.<sup>14</sup> An exclusion for hemp does not exist.<sup>15</sup>

During the past 10 years, the interest in industrial hemp production in the United States has increased.<sup>16</sup> At least 41 states have enacted laws related to establishing commercial hemp programs, establishing industrial hemp research programs, or authorizing studies of industrial hemp or the industrial hemp industry.<sup>17</sup>

State policymakers have addressed various policy issues, including the definition of hemp, licensure of growers, seed regulation and certification, statewide commissions, and legal protection of growers. State research programs include research on growing conditions, such as soil quality, season length, and seed viability. In addition, research efforts have explored the crop’s economic and marketing potential.<sup>18</sup>

### Industrial Hemp Pilot Programs

#### *Agricultural Act of 2014*

The Agricultural Act of 2014 (2014 Farm Bill) authorized an institution of higher education or a state department of agriculture to grow or cultivate industrial hemp<sup>19</sup> if it is grown or cultivated for research conducted under an agricultural pilot program or other agricultural or academic research program provided the growing or cultivating of industrial hemp is allowed under state law where the university or state department of agriculture is located.<sup>20</sup>

More than 20 states have passed laws creating industrial hemp research or pilot programs. State agencies and institutions of higher education administer these programs in order to study the cultivation, processing, and economics of industrial hemp. Some states have established specific regulatory agencies or committees, rules, and goals to oversee the research programs, and may require coordination between colleges or universities and the programs.<sup>21</sup>

---

<sup>12</sup> Section 893.03(1)(c)7., F.S.

<sup>13</sup> Section 893.02(3), F.S.

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

<sup>15</sup> Section 893.02(3), F.S.; an exclusion exists for marijuana when it is used for medical purposes and manufactured, possessed, sold, purchased, delivered, distributed, or dispensed, in conformance with s. 381.986, F.S.

<sup>16</sup> IFAS Research, *The Potential for Industrial Hemp Production in Florida*, (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 Jan. 29, 2019).

<sup>17</sup> NCSL, *State Industrial Hemp Statutes*, available at <http://www.ncsl.org/research/agriculture-and-rural-development/state-industrial-hemp-statutes.aspx> (last visited Jan. 29, 2019).

<sup>18</sup> Mindy Bridges and Karmen Hanson, *Regulating Hemp and Cannabis-Based Products*, NCSL (October 2017), available at <http://www.ncsl.org/research/agriculture-and-rural-development/regulating-hemp-and-cannabis-based-products.aspx> (last visited Jan. 29, 2019).

<sup>19</sup> “Industrial hemp” means all parts and varieties of the *Cannabis sativa L.* plant, whether growing or not, which contain a THC that does not exceed 0.3 percent on a dry-weight basis.

<sup>20</sup> 7 U.S.C. s. 5940 (2014); Mindy Bridges and Karmen Hanson, *Regulating Hemp and Cannabis-Based Products*, NCSL (October 2017), available at <http://www.ncsl.org/research/agriculture-and-rural-development/regulating-hemp-and-cannabis-based-products.aspx> (last visited Jan. 29, 2019).

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

## *Florida Industrial Hemp Pilot Projects*

In 2017, the Legislature authorized the Department of Agriculture and Consumer Services (DACS) to oversee the development of industrial hemp pilot projects for the Institute of Food and Agricultural Science (IFAS) at the University of Florida, Florida Agricultural and Mechanical University, and any land grant university in the state that has a college of agriculture.<sup>22</sup> The purposes of the pilot projects are to cultivate, process, test, research, create, and market safe and effective commercial applications for industrial hemp in the agricultural sector.<sup>23</sup> The term “industrial hemp” means all parts and varieties of the *Cannabis sativa L.* plant, cultivated or possessed by an approved grower under the pilot project, whether growing or not, which contain a THC that does not exceed 0.3 percent on a dry-weight basis.<sup>24</sup>

Currently, the only approved industrial hemp pilot project is being conducted by IFAS. The project design has been completed and the planting of 31 certified varieties of industrial hemp at four locations is in progress. The intent of the IFAS pilot project is to identify hemp varieties suitable for planting in Florida’s various environments, develop hemp management practices and cropping systems economically viable for Florida, and assess hemp invasion risk in Florida’s natural and built environments.<sup>25</sup>

### Agriculture Improvement Act of 2018

Section 10113 of the Agriculture Improvement Act of 2018 (2018 Farm Bill) created the Hemp Farming Act to allow the cultivation of hemp beyond industrial hemp pilot programs. The 2018 Farm Bill removed hemp-derived products from Schedule I of the Controlled Substances Act. While the law legalized hemp as an agricultural product, the law did not legalize CBD generally.<sup>26</sup> CBDs derived from hemp are considered legal if the hemp is grown by a licensed grower, produced in a manner that is consistent with the 2018 Farm Bill, and complies with other federal and state regulations.<sup>27</sup>

The 2018 Farm Bill defined “hemp” to mean the plant *Cannabis sativa L.* and any part of that plant, including the seeds thereof, and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 THC concentration of not more than 0.3 percent on a dry weight basis.<sup>28</sup>

### *State and Tribal Plans*

The 2018 Farm Bill allows a state department of agriculture or an Indian tribe to submit a plan to the Secretary of the United States Department of Agriculture (Secretary) and apply for primary regulatory authority over the production of hemp in their state or tribal territory. A state or tribal plan must include:

- A procedure for tracking land upon which hemp will be cultivated, including a legal land description and global positioning coordinates;
- A procedure for maintaining records for at least three years and reporting to the Secretary;
- Testing procedures that use post-decarboxylation or other similarly reliable methods for determining THC concentration levels of hemp;
- Procedures for methods to effectively dispose of hemp plants, growing or not, and products made from hemp plants grown in violation of the 2018 Farm Bill;

---

<sup>22</sup> Chapter 2017-124, Laws of Fla.; s. 1004.4473, F.S.

<sup>23</sup> Section 1004.4473(2)(a), F.S.

<sup>24</sup> Section 1004.4473(1)(c), F.S.

<sup>25</sup> Robert Gilbert, Dean for Research, UF/IFAS, Presentation to the Agriculture & Natural Resources Subcommittee Meeting (Jan. 23, 2019).

<sup>26</sup> 7 U.S.C. s. 1639o (2018).

<sup>27</sup> John Hudak, *The Farm Bill, hemp legalization and the status of CBD: An Explainer*, Brookings Dec. 14, 2018, available online at: <https://www.brookings.edu/blog/fixgov/2018/12/14/the-farm-bill-hemp-and-cbd-explainer/> last visited Jan. 30, 2019).

<sup>28</sup> 7 U.S.C. s. 1639o (2018).

- Annual inspection procedures;
- Violations and corrective actions;
- Enforcement procedures;
- A procedure for submitting information on land where hemp is cultivated to the Secretary not more than 30 days after the date on which the information is received by the state or tribe;
- Certification that the state or tribe has the resources and personnel to carry out the practices and procedures in the state or tribal plan; and
- Any other practice or procedure established by the state or tribe that is consistent with the 2018 Farm Bill.<sup>29</sup>

States and tribes may not allow an individual to participate in a hemp program if the individual:

- Has been convicted of a felony relating to a controlled substance under state or federal law for 10 years following the date of the conviction. This provision does not apply to any person growing hemp lawfully under a pilot program before December 20, 2019; or
- Has falsified any information contained in an application to participate in a hemp program.

### *Responsibilities of the Secretary*

The 2018 Farm Bill requires the Secretary to approve or disapprove a state or tribal plan within 60 days of receipt. It further requires the Secretary to consult with the United States Attorney General when carrying out the requirements associated with state and tribal plans. The Secretary is authorized to provide technical assistance to states and tribes in the development of a state or tribal plan. The 2018 Farm Bill further authorizes the Secretary to conduct compliance audits of state and tribal plans. If noncompliance is determined, the Secretary is required to collaborate with the state or tribe to develop a corrective action plan in the case of a first instance of noncompliance. The Secretary is authorized to revoke the approval of a state or tribal plan in the case of a second or subsequent instance of noncompliance.<sup>30</sup>

The Secretary must establish a United States Department of Agriculture (USDA) plan to be used where a state or tribal plan is not approved. The USDA plan mirrors the requirements of state and tribal plans. The Secretary is further required to promulgate regulations and guidelines to implement the 2018 Farm Bill requirements for hemp production as expeditiously as possible.<sup>31</sup> The USDA has begun the process of gathering information for rulemaking that will provide specific details for both federally regulated hemp production and a process for the submission of state and tribal plans to the USDA. The USDA has stated it will hold state and tribal submissions until regulations have been promulgated.<sup>32</sup>

### Seed Certification

The Federal Seed Act (FSA) regulates the interstate shipping of agricultural and vegetable seed.<sup>33</sup> The FSA requires seed shipped in interstate commerce be labeled with truthful information that allows seed buyers to make informed choices.<sup>34</sup>

The Florida Seed Law<sup>35</sup> implements the FSA in the state. Every person must register with DACS as a seed dealer before selling, distributing for sale, offering for sale, exposing for sale, handling for sale, or

---

<sup>29</sup> 7 U.S.C. s. 1639p (2018).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> USDA, *Hemp Production Program* (Feb. 27, 2019), available at <https://www.ams.usda.gov/content/hemp-production-program> (last visited Mar. 23, 2019).

<sup>33</sup> 7 U.S.C. s. 1562.

<sup>34</sup> *Id.*

<sup>35</sup> Chapter 578, F.S., is known as the “Florida Seed Law.” Section 578.001, F.S.

soliciting orders for the purchase of any agricultural, vegetable, flower, tree, or shrub seed or mixture.<sup>36</sup> In general, the Florida Seed Law prohibits the sale or distribution of any agricultural, vegetable, flower, tree, or shrub seed within the state:

- Unless the test to determine the percentage of germination has been completed immediately prior to sale, exposure for sale, offering for sale, or transportation, except for a germination test for seed in hermetically sealed containers.
- If the seed is not labeled in accordance with the Florida Seed Law or contains a false or misleading label.
- If there has been a false or misleading advertisement.
- If the seed contains noxious weed seeds.
- Unless a dealer license has been obtained.
- Unless the seed conforms to the definition of a “lot.”<sup>37</sup>

The Florida Seed Act prohibits a person within this state from labeling, advertising, or otherwise representing seed as certified seed, or any class thereof, including classes such as “registered seed,” “foundation seed,” “breeder seed,” or similar representations, unless:

- A seed certifying agency determines that such seed conformed to standards of purity and identity as to the kind, variety, or species and, if appropriate, subspecies and the seed certifying agency also determines that tree or shrub seed was found to be of the origin and elevation claimed in compliance with the rules and regulations of such agency pertaining to such seed; and
- The seed bears an official label issued for such seed by a seed certifying agency certifying that the seed is of a specified class and specified to the kind, variety, or species and, if appropriate, subspecies.

A “certifying agency” is an agency authorized under the laws of a state, territory, or possession of the United States to officially certify seed which has standards and procedures approved by the Secretary to assure the genetic purity and identity of the seed certified; or an agency of a foreign country that the Secretary has determined as adhering to procedures and standards for seed certification comparable to those adhered to generally by seed certifying agencies in the United States.<sup>38</sup>

The purpose of seed certification is to preserve genetic purity and varietal identity. It enables companies to market genetically pure seed. Certification services are available for field crops, turf grasses, vegetables, fruits, vegetatively propagated species, woody plants, and forbs. Requirements for producing certified seed include special land requirements, planting eligible stock, field inspections, proper seed labeling, and meeting standards based on complete lab analysis.<sup>39</sup>

### Effect of Proposed Changes

The bill creates the state hemp program in DACS to regulate the cultivation of hemp in Florida. The bill provides that the act must constitute the state plan for the regulation of the cultivation of hemp for compliance with the 2018 Farm Bill. The bill defines the term “hemp” as the plant *Cannabis sativa L.* and any part of that plant, including the seeds thereof, and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers thereof, whether growing or not, that has a total delta-9 THC concentration that does not exceed 0.3 percent on a dry-weight basis.

---

<sup>36</sup> Section 578.08, F.S. An exception applies for farmers who sell only uncleaned, unprocessed, unpackaged, and unlabeled seeds; s. 578.08(4), F.S.

<sup>37</sup> Section 578.13, F.S.; s. 578.011, F.S., defines the term “lot” to mean a definite quantity of seed identified by a lot number or other mark, every portion or bag of which is uniform within recognized tolerances for the factors that appear in the labeling.

<sup>38</sup> Section 578.011(8), F.S.; 7 U.S.C. s. 1561

<sup>39</sup> Association of Official Seed Certifying Agencies, *Seed Certification*, <https://www.aosca.org/programs-and-services/seed-certification/> (last visited April 14, 2019).

The bill requires DACS to seek approval of the state plan from the Secretary within 30 days after adopting rules. The bill further requires that if the Secretary does not approve the state plan, the Commissioner of DACS, in consultation with the Governor and Attorney General, must seek guidance on how to amend the plan and submit recommendations to the Legislature.

The bill prohibits the cultivation of hemp without a license and directs DACS to adopt rules establishing procedures for the issuance and the annual renewal of hemp licenses. The bill requires a person seeking to cultivate hemp to apply for a hemp license with DACS and provide the legal land description and global positioning coordinates of the area where hemp will be cultivated. The bill prohibits DACS from issuing or renewing a hemp license to any applicant that has falsified any information contained in an application to participate in the state hemp program or that has been convicted of a felony related to a controlled substance under state or federal law for a period of 10 years following the date of the conviction.

The bill provides that a licensee may only use hemp seeds and cultivars certified by a certifying agency or a university conducting an industrial hemp pilot project.

The bill allows hemp extract to be distributed and sold in the state only if the product:

- Has a certificate of analysis that is prepared by an independent testing laboratory that states: the hemp extract is the product of a batch tested by the independent testing laboratory, the batched contained a total delta-9 THC concentration that did not exceed 0.3 percent on a dry-weight basis pursuant to the testing of a random sample of the batch, and the batch does not contain contaminants unsafe for human consumption; and
- Is distributed or sold in packaging that includes a scannable barcode or quick response code linked to the certificate of analysis of the hemp extract by an independent testing laboratory, the batch number, the Internet address of a website where batch information may be obtained, the expiration date, the number of milligrams of hemp extract, and a statement that the product contains a total delta-9 THC concentration that does not exceed 0.3 percent on a dry-weight basis.

The bill requires DACS to maintain a registry of land on which hemp is cultivated, including the global positioning coordinates and legal land description for each location where hemp has been grown within the past three calendar years. The bill requires DACS to submit monthly to the Secretary a report that includes each location in the state where hemp is cultivated or has been cultivated within the past three calendar years and the contact information for each licensee.

The bill requires licensees to complete a corrective action plan if DACS has determined that the licensee has negligently violated the state hemp plan or DACS rules, including negligently failing to provide the legal land description and global positioning coordinates, failing to obtain a proper license or other required authorization from DACS, or producing *Cannabis sativa L.* that has a THC concentration that exceeds 0.3 percent on a dry weight basis. The bill further requires the corrective action plan to include a reasonable date by which the licensee must correct the negligent violation and requires the licensee to periodically report to DACS on compliance with the program for a period of at least two calendar years after the date of the violation.

The bill prohibits a licensee who negligently violates the corrective action plan three times within five years from cultivating hemp for five years following the date of the third violation. The bill requires DACS to report immediately to the Attorney General and the United States Attorney General any licensee who has violated this act or DACS rules with a culpable mental state greater than negligence.

The bill requires DACS to enforce the state hemp program and further requires every state attorney, sheriff, police officer, and other appropriate county or municipal officer to enforce, or to assist any agent of DACS in the enforcement of the act and rules adopted by DACS. The bill further authorizes DACS, or its agent, to enter any public or private premises during regular business hours in the performance of its duties related to hemp cultivation and requires DACS to conduct random inspections, at least

annually, of each licensee to ensure that only certified hemp seeds are being used and that hemp is being cultivated in compliance with the act.

The bill requires DACS, in consultation with the Department of Health and the Department of Business and Professional Regulation, to initiate rulemaking by August 1, 2019. The rules must include a procedure that uses post-decarboxylation or other similarly reliable methods for testing the delta-9 THC concentration of cultivated hemp and a procedure for the effective disposal of plants, whether growing or not, that are cultivated in violation of the act or DACS rules, and products derived from those plants.

The bill specifies that the act does not authorize a licensee to violate any federal or state law or regulation and that it does not apply to a pilot program or project. The bill further specifies that a licensee who negligently violates this act or DACS rules is not subject to any criminal or civil enforcement action by the state or a local government other than the enforcement action authorized in the act.

The bill exempts hemp and industrial hemp from the criminal prohibition against the possession of "cannabis."

Finally, the bill revises the colleges and universities at which DACS is required to authorize and oversee industrial hemp pilot projects to include any Florida College System institution or state university that has an established agriculture, engineering, or pharmacy program.

#### B. SECTION DIRECTORY:

**Section 1** creates s. 581.217, F.S., establishing the state hemp program.

**Section 2** amends s. 893.02, F.S., exempting hemp and industrial hemp from the definition of "cannabis."

**Section 3** amends s. 1004.4473, F.S., revising specified colleges and universities is required to authorize and oversee industrial hemp pilot projects.

**Section 4** provides an effective date of July 1, 2019.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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

##### 1. Revenues:

None.

##### 2. Expenditures:

The bill may have an indeterminate negative impact on DACS associated with rulemaking and the creation and submittal of the state plan to the Secretary. The fiscal impact can likely be absorbed within existing DACS resources. There may be a significant negative fiscal impact on DACS after DACS has adopted rules and the state hemp plan is approved.

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

##### 1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive fiscal impact on farmers that will cultivate hemp once a state plan has been approved by the Secretary, and for individuals that would like to distribute and sell hemp extract in the state.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires DACS to adopt rules to administer the state hemp program, including establishing procedures for the issuance and annual renewal of a hemp license. By August 1, 2019, the bill requires DACS, in consultation with the Department of Health and the Department of Business and Professional Regulation, to initiate rulemaking to administer the program and requires the rules to provide:

- A procedure that uses post-decarboxylation or other similarly reliable methods for testing delta-9 THC concentration levels of cultivated hemp cultivated.
- A procedure for the effective disposal of plants, whether growing or not, that are cultivated in violation of the state hemp program and department rules, and products derived from those plants.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 26, 2019, the Agriculture & Natural Resources Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS narrowed the state hemp program from the cultivation, handling, processing, and sale of hemp, hemp products, and hemp extract to the cultivation of hemp. The PCS establishes the state hemp program in DACS; requires DACS to seek approval of the state plan from the Secretary; requires DACS to administer a certified hemp seed program; requires licensure to cultivate hemp in the state; provides for violations and enforcement; requires DACS to maintain a land registry and report to the USDA; and amends the definition of "cannabis" to exempt hemp and industrial hemp.

On April 18, 2019, the State Affairs Committee adopted a PCS and reported the bill favorably as a committee substitute. The PCS expanded the state hemp program to authorize the distribution and sale of hemp extract under certain conditions. The PCS removed the requirement for DACS to create a seed certification program; required hemp cultivators to use certified hemp seeds and cultivars; and expanded the colleges and universities at which DACS is required to authorize and oversee industrial hemp pilot projects.

This analysis is drafted to the committee substitute as approved by the State Affairs Committee.