

# MINUTES

## Industrial Hemp Study

Representative Lee Qualm, Chair  
Senator Rocky Blare, Vice Chair



**First Meeting, 2019 Interim**  
**Thursday, July 11, 2019**

**Room 414 – State Capitol**  
**Pierre, South Dakota**

The first meeting of the Industrial Hemp Study Committee was called to order by Representative Lee Qualm, Chair, at 9:00 AM (CDT) in room 414 of the State Capitol in Pierre. A quorum was determined with the following members answering roll call: Representatives Shawn Bordeaux, Bob Glanzer, Tim Goodwin, Randy Gross, Oren Lesmeister, and Nancy York; Senators Red Dawn Foster, Joshua Klumb, and Reynold Nesiba; Senator Rocky Blare, Vice Chair; and Representative Lee Qualm, Chair.

Staff members present included Amanda Marsh, Senior Research Analyst; Mitchell Close, Fiscal & Program Analyst; and Cindy Tryon, Senior Legislative Secretary.

*NOTE: For purpose of continuity, the following minutes are not necessarily in chronological order. Also, all referenced documents distributed at the meeting are attached to the original minutes on file in the Legislative Research Council office. This meeting was web cast live. The archived web cast is available at the LRC web site at [sdlegislature.gov](http://sdlegislature.gov).*

### **Opening Remarks**

Representative Qualm welcomed the members and audience to the first meeting of the Industrial Hemp Study. The scope of study for this committee is as follows, *“The Industrial Hemp Study Committee shall study the regulation and cost of implementing an industrial hemp program. What are the economic impacts of the production and sale of industrial hemp? What are the potential costs or challenges for law enforcement? Study requirements for registration, licenses and permits; as well as seed certification and access.”*

Representative Qualm, Representative Lesmeister, Senator Blare, and Senator Klumb, along with a member of the Governor’s staff, attended an Industrial Hemp meeting in Kentucky earlier this summer. Senator Klumb said the Kentucky State Police (KSP) was not in favor of legalizing industrial hemp when discussions first began but were more supportive once they learned more about it. Senator Klumb suggested the South Dakota Highway Patrol meet with the KSP and learn from their experiences. Senator Blare added that the cooperation between the Kentucky Department of Ag (KDA) and the KSP was key in the success of that program; communication is very important.

Representative Lesmeister said he has taken part in these Industrial Hemp meetings for several years and was pleased that other legislators, as well as Jason Simmons with the Governor’s Office, were able to attend and receive the same information he has been hearing during those meetings. He said Kentucky is a huge vault of information which they are willing to share with others. The attendees were able to see the process and how it works. Kentucky is making sure they get it right.

Representative Qualm said the group was able to sit down with the KDA and the KSP and talk with them together for a few hours. Kentucky shared some of the issues they faced and how they were able address those issues. The KSP is comfortable now with where Kentucky is regarding industrial hemp. Representative Qualm said this is an opportunity for South Dakota and we need both growers and processors to make this work. The legislature needs to remove the roadblocks so private industry can come in and work with the farmers to develop this industry in our state.

## **Kentucky Industrial Hemp Program Kentucky Department of Ag**

**Mr. Keith Rogers, Chief of Staff, Kentucky Department of Agriculture (KDA), Ms. Doris Hamilton, Hemp Program Manager, KDA, and Mr. Joe Bilby, General Counsel, KDA,** spoke to the study committee via telephone. The forms and other information discussed during the informational presentation can be found on the Kentucky Department of Agriculture website at [www.kyagr.com/marketing/hemp-pilot.html](http://www.kyagr.com/marketing/hemp-pilot.html).

Mr. Rogers said Kentucky is a very conservative state and does not have legalized recreational or medical marijuana. The hemp program is very structured and designed to help distinguish between marijuana and hemp. When talks about hemp production first began, law enforcement opposed the program, but the new KDA Commissioner worked on developing a strong relationship with law enforcement. By the time the KDA went in front of the legislature with the hemp program they had the support of Kentucky State Police (KSP).

Kentucky's hemp program structure is heavy on bureaucracy as this type of structure was needed to get legislative support. The KDA hopes as technology moves forward, they will be able to eliminate some of the bureaucracy while maintaining the integrity of the program.

Ms. Hamilton is the hemp program manager and has led the way in building this program for Kentucky which has allowed industrial hemp for six years. Ms. Hamilton said the program is at a pivotal point right now and everyone involved is operating in a research pilot program for 2019 and gearing up for the production program in 2020.

When the Kentucky program started in 2014, farmers planted 33 acres. In 2018, licensed growers planted 6,700 acres and harvested about 6,000 acres. This year they have approved just over 60,000 acres and just over 8,000 acres have already been planted. They anticipate 20-30 thousand acres in the ground this year. Ms. Hamilton said there is a grower license, a process wrangler license and a university license. GPS formats and area maps are all available to law enforcement so they know where this product can be grown legally. There is a long, analytical process to determine the difference between cannabis and hemp, but law enforcement is called in when there is a questionable case.

The application window runs from fall to early spring so planting can start in the spring. There are about 250 strains of hemp. The planning report tells the department what is being planted and where. All that information is given to the state police. The KDA hires part-time inspectors who inspect every field and sample every variety. These inspectors test only for the KDA program and not for the license holders. The growers and processors can hire licensed testers for their own use.

The plants are tested for THC levels. Once the test comes back compliant the grower can ship to the processor. Background checks are completed annually on all processors. Growers must reapply for the hemp license every year.

Representative Goodwin asked about the additional staff needed for this program. Mr. Rogers said the program started out sharing KDA staff, but they quickly learned a new agency program would need to be established. Ms. Hamilton was hired as the program manager along with three additional full-time staff and they will soon be adding two more full-time staff. The Department also hires up to ten part-time people to complete the inspections. Originally general fund dollars were used for staffing, but the Department realized fees would have to be assessed to make the program self-sustaining. As of July 1 of this year, the hemp program is totally self-sufficient and financed by the fees collected.

The grower pays a \$100 application fee and then \$400 per growing address, regardless of how many acres are at that address. The processors pay different fees for different parts of the processing. Ms. Hamilton said they

currently have 1,000 licensed growers and 200 licensed processors, as compared to last year when they had 210 licensed growers and 72 licensed processors.

Representative York asked what are the end products from hemp. Ms. Hamilton said there are three different strains of hemp: fiber, grain and floral. There are currently three fiber processors in Kentucky and some of the products are insulation, pressed lumber, wood flooring, engineering products for water waste treatment plants. The grain hemp is a high-protein oil crop and is primarily used for human consumption and can be found in the grain section of the grocery store, salad oils and cosmetics. The floral material produces the cannabinoids or CBD oils that are used in health and wellness products.

Representative Lesmeister asked about the regulations on the processing plants. Mr. Rogers said they license the processors based on their location and then let law enforcement know of the processing locations. The KDA does not get involved in the food safety or inspection side of the operation. Regarding food products, the processor needs permits from the food safety agency. The FDA is expected to come forward and provide some oversight.

Ms. Hamilton said the KDA is responsible for assuring the hemp grown meets the legal requirements. The KDA authority stops once the hemp plant is turned into something else.

Mr. Rogers said when the 2014 farm bill made it legal to grow hemp, everyone was thinking it would be grown for fiber. That was the case for the first two years, but things changed and now much of the crop is being grown for CBD oil. Last year 75% of the hemp was grown for CBD, 15% for fiber, and the remaining 10% for grain.

Ms. Hamilton said hemp has a history in Kentucky and people say they remember their fathers and their grandfathers raising hemp. The majority of hemp grown in the United States in the early 1900s was grown in Kentucky. Things are coming back around and now 102 of the 120 counties in Kentucky have at least one licensed hemp grower.

Representative Qualm asked when the inspections are completed. Ms. Hamilton said inspections can be done at any time but are normally conducted within two weeks of harvest. The level of THC cannot be determined in an immature plant.

Senator Blare asked about the risks for the farmers and ranchers. Mr. Rogers said hemp has brought non-farmers into ag production and some people have actually moved to Kentucky to buy farms just because they can legally grow hemp. The KDA has a four-hour orientation for hemp producers, doing everything the department can to help the growers understand the crops, the laws, and everything they need to grow hemp. Most of the crops are contracted between the farmer and the producer and those contracts vary. The KDA does try to help the growers understand the risks. There is no type of grading standards, no Chicago Board of Trade, and no pricing standards for hemp. There is a risk the producer cannot meet the requirements of the contract. There have been some lawsuits between producers and processors.

Representative Goodwin asked what happens to a marijuana plant located in a hemp field. Ms. Hamilton said nothing happens. If the hemp plants get to the marijuana plant, they will lower the strength of the marijuana. There is no interaction the other way unless the marijuana plant is a male plant shedding pollen and that will affect the next year's crop. Cross pollination is not the concern it was made out to be early on. In fact, some processors refuse to purchase hemp that has seeds in it.

Senator Klumb asked if seeds can be kept for replanting or do the seeds need to be purchased new every year. Ms. Hamilton said hemp is handled like any other crop; if the contract allows the seeds to be replanted, then the KDA makes sure the grower abides by that. It is strongly recommend the growers not violate intellectual property rights of others, but many seeds are not protected. There are now requirements of so many plants in a certain size field, growers cannot legally grow hemp in the closet.

Representative Lesmeister asked if there is an increase in purchasing seeds from international providers. Ms. Hamilton said the opposite is happening. With the passage of the farm bill there has been a sharp decline in the use of international seeds. Grain and fiber seeds are being produced here in the United States, and domestic seeds now provide the higher CBD strains.

Representative Qualm thanked the presenters from the Kentucky Department of Agriculture.

### **Insights on the Hemp Program from the Kentucky State Police**

**Lt. Colonel Jeremy C. Slinker, Operations Division, Kentucky State Police (KSP)**, spoke to the committee via telephone. In 2013-2014, Lt. Colonel Slinker was the commander of the cannabis suppression branch, which is now called the cannabis investigation branch. Kentucky was not one of the legalized marijuana states, so the state police was not sure what to expect with legalizing hemp. At first, the relationship between KDA and KSP was rocky, as the state police were adamantly opposed to the hemp commission. The Commissioner of Ag really stepped up and worked closely with KSP, insuring them that everything will be done to prevent marijuana growers from coming into Kentucky. The KDA works hard to keep the bad actors out of the state.

The relationship between the two agencies is much better now. Once the law is passed, it doesn't matter how we feel – we enforce the laws. Everything the KSP speculated would become an issue with this program has become an issue, but they have been able to deal with it because they were prepared for it. It is important that the hemp program be kept about agriculture, not about marijuana.

Lt. Colonel Slinker said almost all the CBD hemp growers have some level of high security surrounding the agricultural area, including armed guards and visual security. There have been a few shootings involving people in the fields illegally, but no one has been hit yet. The KSP has investigated some bad actors and have found marijuana mixed in with legal hemp. One grower harvested marijuana along with the hemp and it was difficult to tell the plants apart in the barn, but law enforcement was able to prove the suspect plants were illegal and the grower was trying to use the hemp license to cover the marijuana crop.

Lt. Colonel Slinker said the staff at KSP's labs were concerned about the impact the hemp cases would have on the labs. The testing was first outsourced but that became very expensive. The cost could be \$2-4 thousand for outsource testing and if someone from that lab had to testify in court, the total cost could be as much as \$10,000 a case. So KSP purchased two additional testing machines and hired one drug chemist for each of the six labs. Kentucky is also right in the epicenter of the opioid work, so the additional machines and chemists help with those cases, too.

Lt. Colonel Slinker said federal CBD laws are not real clear right now so the KSP is not taking much action in those situations. The legislature did give unlicensed possession and/or transportation of hemp the same penalties as possession and/or transportation of marijuana which is helpful to law enforcement.

Representative Goodwin asked what type of additional burden has been placed on law enforcement with the legalization of growing hemp. Lt. Colonel Slinker said the new laws have affected law enforcement but it hasn't been anything they can't deal with. KSP has had to slow down and do more investigating and that does take more man hours. Plants that are questionable are not just eradicated without further investigation as law enforcement may have just received the wrong coordinates or some other paperwork error. The situation continues to improve as law enforcement works more closely with the KDA. Law enforcement is also getting much better at spotting the fields from the air.

Lt. Colonel Slinker continued saying another challenge for law enforcement is the canine unit in that the dogs react the same to hemp as they do to marijuana, which is a national issue. Kentucky law enforcement is working to find better technology that will let them know more about the plants more quickly. One other issue is fraudulent licenses and permits. There needs to be a better way to issue licenses and permits that cannot be counterfeited.

Lt. Colonel Slinker said staffing was already an issue prior to the legalization of hemp and KSP is recruiting and hiring as fast as they can, so the shortage of manpower is not because of the hemp issue, although that does create additional work. KSP knows this is about the farmers and the KDA wants people who know agriculture to get into growing the hemp; it was not established for the niche growers who just want to grow hemp for fun. Communication between the Department of Ag and law enforcement is of utmost importance when legalizing the production and processing of hemp.

Representative Qualm thanked Lt. Colonel Slinker for taking the time to talk to the study committee.

### **Industrial Hemp Research and Production**

**Mr. Steve Bevan, President, GenCanna Global, and member of the U.S. Hemp Roundtable, Lexington, Kentucky,** talked to the committee about the formation of the GenCanna corporation and their work with industrial hemp. Additional information on GenCanna can be found on their website at [gencanna.com](http://gencanna.com). Mr. Bevan said about five years ago a bunch of investors came together and formed a company that was the first pilot program in Kentucky to participate in the cannabinoids program. There was a significant lack of understanding and communication in the beginning, which is probably what is being experienced in South Dakota right now. GenCanna planted their first industrial hemp with CBD five years ago in Kentucky through a close working relationship with the Kentucky Department of Ag. GenCanna did not know a lot about marijuana growing techniques and did a lot of experimenting, receiving a lot of assistance from the Kentucky tobacco growers. The tobacco growers were in great need of finding another crop and GenCanna was in the right place at the right time.

GenCanna uses a very extensive model and has been able to significantly decrease the production costs over the years. It is one thing to cut the crop, but then they have to figure out how to dry it and store it. GenCanna has a machine that dries the harvest quickly, and today they have an entire drying facility. The crop must be treated as food. GenCanna has over 300 people employed in processing, value creation, and other areas; this does not include the farmers growing the crops or their laborers.

GenCanna took about 18 months to learn quality extraction and did not realize their first revenues until 2017. 2017 revenues were about \$9 million; 2018 revenues were about \$30 million; and they will do well over \$45 million this year. There are many who have been growing hemp for seed and fiber for decades but not many have grown hemp for floral (CBD). It is a great and advantageous place for American farmers to take part in this industry.

Mr. Bevan said he attended today's meeting to tell the committee that the nuances and newness of the industrial hemp program can be scary, but it is so worth it. GenCanna is very grateful for the thoughtfulness of the federal agencies, and relationships with all government entities are very important. Everyone is coming together to develop standards, and a lot of regulatory needs do exist. Hemp processing is starting to look more like part of the food processing chain. The 2018 Farm Bill has helped give comfort to many in the industrial hemp industry, and many are concerned about what the FDA will say about safety. GenCanna would very much welcome the FDA oversight and communication.

Mr. Bevan said the 2018 Farm Bill removed hemp from the laws regarding marijuana. GenCanna added a senior member of the drug enforcement administration to their staff as a great working relationship with law enforcement is important. GenCanna wants everyone who may be critical of the industry to ask questions and share their concerns so they can be addressed. Industrial hemp creates more jobs, people are making money, and it has made for better farm economics in Kentucky. As better techniques are created, the amount of income from the crop will continue to grow. GenCanna demands all laws be adhered to. The farmers know what to expect from GenCanna and GenCanna knows what to expect from them. Kentucky is very fortunate to have the tobacco farmers who want and need new crops as an option.

In response to questions from the committee, Mr. Bevan said GenCanna has developed a hemp seed with no THC, but this is still in early development. The growing season for hemp is to plant in the spring, the plants flower in

August, and are harvested in October. In the case of an early frost, a little light frost stresses the plant and stress actually helps the CBD. However, a heavy frost will kill the plant.

Mr. Bevan said GenCanna does use clones and explained cloning as a way of taking cuttings from a plant that is known to be compliant, preparing the cuttings, dipping them in hormones to promote rooting and then sticking it in the dirt allowing the plant to clone itself. GenCanna also uses seeds.

Mr. Bevan said GenCanna works with several universities on research but most research is done on the farms. Mr. Bevan said a group of farmers can learn a lot faster than a research lab. Mr. Bevan said young people really like having the hemp option for their family farms and are willing to work hard to grow this crop. The hemp plant can be a great source of protein and fiber. It is harder for the farmer to make as much profit with the grain form of hemp than with the floral form.

Representative Qualm thanked Mr. Bevan for meeting with the study committee.

### **Public Testimony**

**Mr. Ken Meyer, AH Meyer & Sons, Madison**, said their operation is learning about industrial hemp processing and believes this would be a great opportunity for their business. Up until about two years ago, AH Meyer & Sons was in the beekeeping industry. About two years ago they sold the bees and now concentrate on processing the beeswax for other beekeepers. The beeswax production creates CO2 and the company operates a CO2 plant.

Senator Blare said they learned in Kentucky that the processors work to keep purity, uniformity, and quality control number one for their products. Senator Blare asked Mr. Meyer if he has looked to other states' processors to learn what they are doing regarding quality control. Mr. Meyer said they have done a lot of exploration and research and are looking at going in the direction of doing something at an even higher quality grade than what they do now. Mr. Meyer said they are looking at taking part in the certification program through the U.S. Hemp Roundtable.

Representative Gross said Mr. Meyer is a constituent and a model citizen. AH Meyer & Sons are the kind of people the state will want in the forefront of this industry as we move forward.

Mr. Meyer said they plan to produce the cannabinoids and the system they currently have is way more robust than what is needed for this process.

**Mr. Don Haggar, State Director, Americans for Prosperity, Sioux Falls**, testified via telephone. Mr. Haggar commended the legislature for passing the hemp legislation during the 2019 session. Hemp production is an idea whose time has come and the reason for this study is to get the details right. There is a growing body of evidence that CBD oil will help those with chronic pain with no risk of addiction. The Americans for Prosperity are in support of the legalization of hemp and the production of CBD oil and they ask that the legislature does not make it too difficult for the small companies to participate in this growing industry. Mr. Haggar said he is confident the legislature will approach industrial hemp in a way that makes South Dakota a better place to live.

**Mr. Mitch Richter, SD Farmers Union, Huron**, said the Farmers Union were big promoters of industrial hemp this past session and will continue to be. Mr. Richter said it is important to have law enforcement take part in this study and they should be asked if they have taken the time to obtain information from other states' law enforcement regarding the regulation of hemp. Mr. Richter added that they would support legislation protecting the producers from the seed side of it; giving the producer a way to be compensated if the seed provider sells them bad seeds.

### **U.S. Hemp Roundtable**

**Mr. Jonathan Miller, General Counsel, U.S. Hemp Roundtable, Lexington, Kentucky**, addressed the study committee. Additional information on the U.S. Hemp Roundtable can be found on their website at [hempsupporter.com](http://hempsupporter.com). Launched in 2017, the U.S. Hemp Roundtable is the leading organization for the promotion

of hemp in this country. The passage of the 2018 Farm Bill allows states to legalize hemp production and processing. South Dakota is one of four states that has not yet done that but has the opportunity to take the next step to legalize hemp and CBD oil. Mr. Miller stressed the fact that hemp is not marijuana.

Mr. Miller said the U.S. Hemp Roundtable is made up of over 75 companies and organizations. They are working closely with the FDA in developing a strong, safe regulatory path for industrial hemp. The U.S. Hemp Roundtable has spent two years developing state of the art best practices and standards for hemp. Hemp processors can go through a third party audit and if they pass the audit and receive approval from the organization the company is allowed to put a U.S. Hemp Roundtable seal on their products assuring consumers the products are safe.

Representative Lesmeister asked what Mr. Miller would change legislatively to help better regulate hemp into the future. Mr. Miller said it is important to be as nimble and flexible as possible to allow the producers and processors to keep up with the changes in the industry. Mr. Miller said he would like to see more done with the fiber and the seed as there could be a real revolution in the marketplace with that growth. One thing that the industry is seeing is new labeling requirements. Kentucky does not have labeling requirements, but other states do. Everyone in the industry is waiting for the FDA to set their rules regarding hemp.

Representative Qualm asked about hemp seed research. Mr. Miller said a lot of research is being done regarding hemp seeds. At first, the seeds had to be imported from other countries, but they are now available here in the United States, and universities are doing extensive research into the development of native grown seeds that would be well below the legal limit of THC levels and GenCanna is even looking at seeds for plants with 0% THC levels.

Representative Lesmeister asked Mr. Miller about the relationship between the marijuana industry and the hemp industry. Mr. Miller said there is a lot of tension right now. About half of the Roundtable members support the legalization of marijuana and half are dead set against it. Some of the members of the marijuana industry view the hemp industry as competition and are promoting extensive regulations of hemp products so legally they are treated the same as marijuana. Mr. Miller added that there is a misconception that hemp is the gateway to marijuana, and he said he can't emphasize enough how inaccurate that is.

Mr. Miller added that there are 75 different companies that are members of the U.S. Hemp Roundtable organization and they have a list of over 40,000 people who support what the organization is doing.

Representative Qualm thanked Mr. Miller for taking the time to meet with the study committee.

### **Committee Discussion**

Representative Lesmeister said the state needs to have strong regulations in industrial hemp but needs to be careful not to set the regulations so small businesses are not able to take part and be competitive. There will be bumps in the road regarding the hemp industry, but we will have other states' experiences to help us get through. This is a developing industry and there are still studies being done on hemp and on additional products than can come from the hemp by-products. Having QR codes on the products would be great as those codes tell the consumer who produced the product and who tested the product. Hemp products can also have an impact on the environment and could result in tons of plastics not ending up in our landfills.

Representative York requested the committee hear from the South Dakota Department of Agriculture. Representative York added that the industry seems to be focused on the CBD oils, but it is the hemp plant itself that can help us environmentally.

Representative Qualm agreed with Representative York saying that right now the money is with the CBD oil but that will change as time goes by, as there will be additional industries coming into play.

Representative Bordeaux said there are several tribes who already have submitted plans for growing hemp to the USDA, and he suggested the study committee engage with the tribes regarding this subject. The legislature needs to be mindful that there is a whole other segment of our population that needs to be considered when studying industrial hemp.

Representative Qualm said industrial hemp is a very viable product and South Dakota can do so much more research and studying of the vast opportunities once it is legalized. The goal of this committee is to write legislation for the 2020 legislature to consider.

Representative Qualm suggested the committee members and others interested in this topic read the book “Tell Your Children the Truth about Marijuana, Mental Illness and Violence” by Alex Berenson.

The next Industrial Hemp Study Committee meeting will be August 19 in Pierre starting at 10:00 AM.

### **Adjourn**

***A motion was made by Representative Goodwin, seconded by Representative Gross, that the Industrial Hemp Study Committee be adjourned. The motion prevailed on a voice vote.***

The Committee adjourned at 2:30 PM.