

**VILLAGE OF SOMERS
7511 12th STREET
SOMERS WI 53171**

**WORK SESSION MEETING
AMENDED AGENDA
01-21-2020
5:30 p.m.**

1. Call to order
2. President & Trustee Reports
3. Discuss Village's ability to regulate Industrial Hemp Farm
4. Discuss payment in the amount of \$351,574.10 for 2019 Paving Program to Stark Pavement Corporation
5. Discuss proposed Preliminary Resolution declaring the intent to exercise Special Assessment Police Powers for the Repair of Sewer Laterals for the 16th Place Sanitary Sewer Rehabilitation Project
6. Discuss possible resolution regarding opposition to 2019 Assembly Bill 623 and 2019 Senate Bill 560
7. Review Tentative Village Board Meeting Agenda for 01-28-2020
8. Adjourn

I hereby certify that as the designee of the chief elected official of the Village of Somers, I posted this notice of the Jan. 21, 2020 Village work session & Agenda in 1 public place & on the Village website.

Dated this 20th day of Jan. 2020

Mary Ann Cole Deputy Clerk



**VILLAGE OF SOMERS
VILLAGE BOARD
WORK SESSION ITEM MEMORANDUM**

WORK SESSION: January 21st, 2020

TO: Village President Stoner and Village Trustees

FROM: Jason J. Peters, Administrator

AGENDA ITEM: #3 Discuss Village's ability to regulate Industrial Hemp Farm

BACKGROUND:

In November of 2019, the Village was contacted by residents in Covelli Heights with concerns that industrial hemp maybe planted in field adjacent to their subdivision. Their main concerns are over the smell the plant may bring to the area and reports of people trespassing on hemp farms.

UPDATE:

Staff and Attorney Davison were directed to research the issue and present them to the Board in January.

COMMENTS:

State law limits the ability of the neighboring lands to restrict what is produced on farms. Wisconsin's Right to Farm Law (WI. Stat. Statutes 823.08) protects agricultural uses and practices from lawsuits that allege nuisance due to normal farming activities.

Attorney Davison has drafted a memorandum explaining the progress on how industrial hemp came to be recognized as agricultural activity in Wisconsin and the limitations the Village has to its regulation.

ATTACHMENTS:

Map of Area

Materials provided by Residents

Memo from Attorney Davison

HEMP IS A MARIJUANA PLANT AND SMELLS JUST AS BAD AS A MARIJUANA PLANT

<https://www.nytimes.com/2018/12/19/us/california-marijuana-stink.html>

NEW YORK

New York State and the Federal government recently opening doors for the legal growth of hemp (as opposed to marijuana which is still illegal) without any real discussion regarding the effects of such growth on public health, the environment and people's enjoyment of their property when located within proximity to a facility growing such hemp.

While Hemp may be the new cash crop which (reportedly) can help farms be more profitable, the lack of any constraints nor acknowledgement of the harm such operations cause to neighboring homes is troubling.

FIRST, WE DIFFERENTIATE INDUSTRIAL HEMP RESEARCH FROM TRUE "AGRICULTURAL" USED IN THE FOLLOWING WAYS:

1. No other agricultural use has such an intense smell that travels such far distances. Even a pig farm, which is arguably as smelly an agricultural operation as possible, is limited in size and does not take up 100+ acres, all of which produce a noxious smell.
2. Most agricultural uses do not create pollen clouds that can travel many miles and coat nearby structures, cars, clothing, pools, etc.
3. Most agricultural uses are not touted as "industrial" hemp under a "research program.
4. Most agricultural uses do not require substantial security fences with cameras, obnoxious and rather insulting signage regarding trespassing and/or guards (possibly armed).
5. Most agricultural uses do not have people stopping on the side of the road to gawk, take photos and/or try to steal hemp plants.
6. Most agricultural uses have been established for a long time and, while hemp growing has been done since humans started being agrarians, the hemp industry in NY and the US in general is in its infancy and it is still experimental in nature. Things such as health effects, effect to the environment, effects to property values, etc. are largely an unknown.

SECOND, THE FOLLOWING FACTS ARE LARGELY INDISPUTABLE FOR ANYONE WHO LIVES IN PROXIMITY TO AN INDUSTRIAL HEMP GROWING OPERATION.

1. The smell, stemming from the volatile organic compounds (VOCs) in the form of terpenes, is extremely unpleasant and directly affects the enjoyment of nearby homes and properties. This relates both to indoor activities and outdoor activities. Even with windows closed, the smell reaches indoor spaces through cracks, vents, etc.. Unfortunately, the peak season of the smell corresponds to the peak season for outdoor enjoyment.
2. The smell extends large distances (easily up to a 1/2 mile or more depending on the winds).
3. The pollen coats nearby structures, cars, clothing, pools, etc. with a residue which becomes dirty.
4. The pollen and smell from the VOCs causes noticeable health effects resulting in poor breathing, coughing, nausea, etc. This is especially true with sensitive populations such as people with asthma, young children and infants and the elderly.

THIRD, THE FOLLOWING QUESTIONS AND CONCERNS ARE OBVIOUS BUT NOT KNOWN DUE TO THE LACK OF ANY STUDY ASSOCIATED WITH THIS FLEDGLING INDUSTRY.

1. To what extent does the pollen or VOCs create ill health effects on a short term and seasonal basis.
2. To what extent does the pollen or VOCs create long term ill health effects.
3. How far does the pollen and/or VOCs actually travel and create ill effects?
4. To what extent could the pervasive smell create a chemical dependencies?
5. To what extent could the pervasive smell exacerbate existing chemical dependencies?
6. To what extent does the growth of hemp impact groundwater levels, upstream and downstream uses, etc.?
7. To what extent does the growth of hemp create concerns related to safety? What levels of security are normal and allowed?

AS SUCH, WE ASK THAT THE FOLLOWING BE DONE IMMEDIATELY:

1. All industrial hemp growth permits with New York State within 1/2 mile of any residential communities or public use facilities (i.e. any area with a residential or similar land use, town parks, etc.) immediately be put on hold directly after the 2019 harvest (this is an acknowledgement that it would be too much of a burden to ask for this years crop to be abandoned). This hold would be in place until the below studies are completed and/or a special use permit or waiver is issued by the

local municipality after a public hearing and notice to all property owners within 1/2 mile of the proposed facility.

2. That the state and/or affected towns complete a detailed study into the health effects from hemp growth. This study should include a discussion of the size of the hemp growing operation, the type of hemp being grown and the different stages of the growing operation from planting to harvest.

3. That the state and/or affected towns complete a detailed study into the effects on property values from hemp growth. This study should include a discussion of the size of the hemp growing operation, the type of the hemp being grown and the different stages of the growing operation from planting to harvest.

4. That the state and/or affected town complete a detailed study into distance from a hemp growth operation where the smell from the VOCs and the pollen can travel, this study should include a discussion of the size of the hemp growing operation, the type of hemp being grown and the different stages of the growing operation from planting to harvest.

5. That the state and/or affected town determine appropriate mitigation measures to limit the movement of VOCs and pollen from the hemp growth operations. There is ample science around this type of mitigation, especially as it would apply to any industrial or research facility.

6. That the above studies combined with the largely indisputable facts described above be used to both limit the areas where hemp can be grown in the future (i.e. not within 1/2 mile of a residential community) and determine appropriate mitigation measures.

We thank you ahead of time for your attention to this extremely important and timely concern.

https://www.change.org/p/andrew-m-cuomo-lagrange-industrial-hemp-growth-health-quiet-enjoyment-noxious-smell-property-values?recruiter+879005490&utm_source=share_petition&utm_medium=facebook&utm_campaign=psf_combo_share_initial&utm_term=share_petition&recruited_by_id=37c89c00-638e-11e8b68b-25730a3d9b2a&share_bandit_exp=initial-17997972-enUS&share_bandit_var=v0&utm_content=fht-17997972-en-us%3Av9

BREAKING Deal for Madison Street Kwik Trip development in Beaver Dam approved

https://www.wiscnews.com/portagedailyregister/news/local/crime-and-courts/men-allegedly-tried-to-steal-hemp-from-columbia-county-farm/article_6dac6fc8-5479-5ce7-bd05-481ffee16724.html

BREAKING

Men allegedly tried to steal hemp from Columbia County farm field

NOAH VERNAU nvernau@wiscnews.com Oct 10, 2019

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Hemp is seen in a licensed farm field in August in Sauk County.

TOWN OF COLUMBUS — A Madison man was arrested after he and three other men allegedly got a car stuck while trying to steal industrial hemp from a Columbia County farm.

Lorrell Anthony McCray, 31, faces up to 4 1/2 months in prison and \$5,000 in fines after prosecutors say he and the others tried to steal industrial hemp from a licensed hemp farm in the town of Columbus.

According to the criminal complaint, a sheriff's sergeant discovered McCray and three other men inside a vehicle stuck in the mud alongside the railroad tracks near an industrial hemp field. Inside the vehicle, he found several large garbage bags and steak

knives and observed a beaten-down path leading from the vehicle toward the hemp field. The next day, one of the hemp farm owners reported finding a large garbage bag filled with hemp on the property.

One of the other men, Naaman Dorenzo, 34, of Sun Prairie, is charged with operating a vehicle without a valid license in the same incident, per online court records.

“We want people to know there are licensed hemp farms registered properly throughout the state and here in Columbia County,” said Jason Kocovsky, sheriff’s captain. “Going onto their property and removing (hemp plants) is, of course, illegal, just as it would be stealing items from other farmers.”

Though the motive for stealing from the hemp farm near Columbus remains unclear, Kocovsky said hemp often shares similar physical characteristics to marijuana. He said it is possible someone might attempt to sell the hemp thinking it is marijuana.

Plant confusion?

Department of Agricultural Trade and Consumer Protection spokeswoman Donna Gilson said she was surprised to learn of the incident in Columbia County and wondered if any alleged perpetrators might assume a hemp crop is marijuana.

“But if it’s growing right in plain view, it’s probably not marijuana,” she said.

It's not the first such incident that's occurred locally this fall, Kocovsky said, though nobody else has been arrested for it. "We're starting to see this more often and we're confused, at this point, as to their purpose."

"We want people to realize there is this pilot program for hemp, and if somebody sees what they believe is marijuana, we encourage them to call the sheriff's office," Kocovsky said of the department's education efforts. "We can run that location or address through our records to see if they're licensed."

"We also want people to be mindful that these are farmers trying to earn a living, and when people are stealing their product, at the end of the day, they have nothing to sell and they're the ones losing out."

In 2017, the federal government allowed states to create a pilot research program permitting people to cultivate industrial hemp. The substance remained banned in Wisconsin until the state Department of Justice ruled in May 2018 that farmers could grow industrial hemp under the pilot program and that stores could sell CBD produced in compliance with regulations set by the state Department of Agriculture, Trade and Consumer Protection.

Hemp plants also commonly are used for grain and fiber. There are currently 52 registered hemp farm locations (fields or greenhouses) in Columbia County and 1,240 growers registered in the state, Gilson said.

“We really want people to educate themselves before they pay for a license or buy seed — to be aware, first, of what you’ll do with that crop,” Gilson said and reported 10 to 12 percent of the samples her department tests for THC exceed the legal limit, which is 0.3 percent or less in all parts of the plant when dried.

“Everybody is still learning about it and so we want people to get into it with eyes wide open. We want them to succeed, but it is high risk” because it’s difficult to farm correctly and lawfully. “Maybe five years from now it will be less risky.”

According to an online state DATCP fact sheet, the annual registration fee for growing industrial hemp is \$350 and the annual fee to process it is \$100.

For a list of rules and facts about growing and processing hemp in Wisconsin, visit datcp.wi.gov/Documents/IHFAQ.pdf.

Follow Noah Vernau on Twitter @NoahVernau or contact him at 608-695-4956.

MORE INFORMATION

Moriches, N.Y. (CBSNewYork) – A funny smell in the air has some Long Island residents complaining.

People say the smell of marijuana is overwhelming their yards.

Folks in one Moriches neighborhood loved the open space of nearby fields, until some say a farmer started growing hemp.

"It smells like a skunk," said Moriches resident Steven Colaianni. "We thought it was one of our friendly neighbors taking a couple of puffs."

"You don't want to come out here and smell that morning, noon and night. And I'm not against it. I just don't want to smell marijuana all the time," one Moriches resident added.

But beauty's in the nose of the beholder, reported CBS2's Carolyn Gusoff.

"To all of us its absolutely beautiful," said Ryan Andoos of Route 27 Hemp Yard.

The folks who operate Route 27 Hemp Yard embrace the seasonal smell.

"It's a very florally, citrus-y, pine-like smell," said Liz Ingalls of Route 27 Hemp Yard.

They aren't growing marijuana. Hemp is a different plant with only trace amounts of THC. Its oil makes CBD products they say do a lot of good.

"If you're going to have any type of headache, it will help with that. Any type of inflammation," Ingalls said.

And that potent smell lasts only a couple of months a year, when the flowers mature.

"I think this crop is much better than some other things that can be farmed, such as cow or chicks or ducks. Yes, there is a slight odor, but its only for two months out of the year," said Andoos.

Neighbors say it belongs elsewhere.

"We didn't have any advance notice that they were going to come into this community," Colaianni said.

Hemp farms are all licensed by New York state. This is one of nearly 600 authorized CBS growers and processors.

The hemp season is just about over. The crop being harvested for use in a products that treat a wide range of ailments, but there is no treatment for the aroma. That will be back next July.

Hemp is also allowed to be burned on land where it is grown. The owners of Route 27 Hemp Yard said burning only takes place once a year.

Residents can call the DEC at (631) 444-0205 to report when the burning is happening

HEMP FIELDS IN OREGON ARE LICENSED BY THE DEPARTMENT OF AGRICULTURE AND ARE UNREGULATED IN TERMS OF SIZE AND CONTROLLING THE SKUNK SMELL OF POT.

HEMP GROWS ARE TESTED BY THE DEPARTMENT OF AGRICULTURE 4 WEEKS BEFORE A HARVEST BY TAKING A RANDOM 30 PLANT TESTING AREA. IF THE GROW THC TESTS HIGHER THAN .3% THC, THEN THE ENTIRE CROP MUST BE DESTROYED. MANY CROPS ARE TESTING AS HIGH AS .67%.

THESE HEMP GROWS CREATE INCREASED TRAFFIC, SUSPICIOUS PEOPLE THAT ARE NOT BACKGROUND CHECKED FREQUENTING THE AREA, EMIT THE SKUNKY SMELL OF POT MAKING IT IMPOSSIBLE FOR SURROUNDING NEIGHBORS TO ENJOY THEIR OWN PROPERTY, ARE LOCATED NEXT TO SCHOOLS AND CHILDREN PLAY AREAS AND ATTRACT BURGLARS.

MANY HEMP GROWS LOCATED IN AREAS WHERE RURAL RESIDENTAL HOMES ARE LOCATED ARE CAUSING ALARMING PUBLIC HEALTH ISSUES FOR NEIGHBORS, CREATING ALLERGIC REACTIONS FROM THE ODORS AND SMELL, SENDING SOME TO EMERGENCY BECAUSE IT HAS MADE IT DIFFICULT FOR THEM TO BREATHE.

A RECENT TESTIMONY BY NEIGHBORS IN CLACKAMAS COUNTY CAN BE REVIEWED AT THE BELOW LINK AT TIMEFRAME 15:38-THIS IS A CLACKAMAS COUNTY BOARD OF COMMISSIONERS BUSINESS MEETING NOV. 29TH/video/ UNDER CITIZEN COMMUNICATIONS:

<https://www.clackamas.us/meetings/bcc/business>

<https://www.youtube.com/watch?feature=youtu.be&v=rG1QZk3jPQ8>

*School Sours on scent of Hemp
by Kaylie Fernald TORWAY of the Mail Tribune, Oregon.
Nov 27-2018- Nausea, headaches etc.*

Oregon's Department of Agriculture issues Hemp Licenses and to date license requests have tripled since January of 2016 and there have been over 220 Hemp licenses issued as of 7-25-17 for seed dealers such as; (Costco, BiMart, Marshalls, Thrifty Payless, Walmart, Lowes, Albertsons, K Mart, Kroger, Cutters High School Pharmacy, Geren's Feed Boring), and licenses for wholesale seed dealers, hemp growers, and hemp handlers. The Oregon Department of Agriculture does not have the authority to regulate HEMP, therefore it is left up to the Counties and Cities to develop land use regulations.

If your county does not have any HEMP land use regulations, large HEMP growers can grow on just about every zone there is, even in your mom's back yard, with no restrictions on number of plants, no restrictions on type of plant male or female, no setbacks, no frontage road requirements, no lighting requirements for greenhouses, no hours of operation, no traffic limitations, no concentrate or extract processing limitations, basically turning your once quiet community into a HEMP production and processing zone.

Neighbors across Oregon are complaining of these open visible fields of HEMP. The Oregon Department of Agriculture is issuing HEMP licenses for a land use activity without the involvement or consultation of the local planning departments, simply because the DOA does not have authority to regulate HEMP according to the Department of Justice as HEMP has not been federally legal until December of 2018. Now the USDA is in the process of developing HEMP laws, but local State Department of Agriculture and local jurisdictions will hopefully be able to provide some HEMP regulations in order to mitigate the public health impacts to citizens.

<https://hempindustrydaily.com/usda-farm-bill-hemp-webinar/>

Processing industrial HEMP and agricultural HEMP seed is a commercial use in conjunction with farm use in applicable resource zones and as an outright use in appropriate industrial zones. In many counties any use that requires an ODA industrial hemp handler license requires a local land use review.

Like medical and recreational marijuana which requires a LUCS Land Use Compatibility Statement from local planning departments before being issued a license, the same should hold true for all HEMP production in our communities. Right now many are setting up HEMP grows in your mom's backyard without any land use regulation requirements.

If you find yourself with a large HEMP grow moving in next door contact your local Board of County Commissioners or City Counsel, and planning departments and require that they provide HEMP production and processing land use regulations in your area.

MANY GROWERS ARE FLYING LOW LEVEL HELICOPTERS OVER THEIR CROPS TO KEEP THEM FROM FREEZING. OTHERS ARE SHOOTING OFF WEAPONS AT 2AM TO KEEP THE DEER OUT OF THEIR FIELDS BECAUSE THE DEER ARE EATING THEIR CROPS.

SOME GROWERS WHO ARE LOCATED IN A WET PART OF THE STATE ARE GROWING THEIR CROPS, THEN HARVESTING THEM AND THEN TRUCKING THESE HARVESTED PLANTS TO DRYER PARTS OF THE STATE, RENTING PROPERTY AND THEN SPREADING THEIR HARVEST IN THOSE FIELDS TO DRY. NEIGHBORS IN THOSE AREAS ARE COMPLAINING OF THE SMELL AND HOW THIS SHOULD NOT BE ALLOWED TO HAPPEN IN RURAL RESIDENTIAL FARMING PROPERTIES.

DESCHUTES COUNTY ARTICLE REVEALS THE NEIGHBOR'S CONCERNS.

New industries will always have growing pains

It shouldn't be surprising that growing hemp should be experiencing hiccups. After all, growing hemp is something that hasn't really happened — legally, at least — in Pennsylvania for decades. The namesake of Hempfield Township and Hempfield Area School District may have once been common here, but as marijuana's industrious cousin, growing it got the ax ages ago.

But with the renewed interest in marijuana for medicinal purposes and the CBD oil derivative as a component to food, cosmetics and more, hemp has become all shiny and new again. It's being grown once more, and it's being processed.

And that's where the growing pains stop belonging to the industry and start becoming the property of the community.

In Jeannette, people say it stinks.

That's not a figure of speech. The 70 Jeannette residents who work for the Patriot Shield Security hemp-drying operation probably think the new business is great.

But it actually, literally stinks. Jeannette Mayor Curtis Antoniak has received more than a dozen complaints. The city issued a cease-and-desist order but walked that back when the company made plans to solve the problem, and Patriot Shield did install air scrubbers.

The state Department of Environmental Protection still responded to two new smell complaints, and an inspector called the odor "nauseating."

Nauseating is hard to work around. It's awful to live near. Nauseating is the kind of word used to describe things like old paper mills, sewage plants and pig farms. It has an impact.

The smell of drying hemp is nothing anyone has had to deal with for generations, so it isn't surprising that people doing it now might not know it needed to be addressed. Anyone with a slacker college roommate who burned a lot of "incense" might have guessed, though. The Colorado-based Patriot Shield probably should have had someone in the organization aware that certain plants can have a distinct smell.

DEP's notice of violation is toothless but further action could come if a solution isn't found, and how DEP handles this is important because it will set the tone for the industry, which — like a fast-growing child — needs to learn its limits.

Letting hemp or marijuana businesses grow wild could hurt the communities they inhabit and ultimately the industries themselves if they seem to be poor neighbors.

DAVISON LAW OFFICE, LTD.

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Memorandum

TO: Jason Peters
FROM: Attorney Jeffrey J. Davison
DATE: January 17, 2020
SUBJECT: Regulating Industrial Hemp

You have requested that I provide an opinion on the ability of the Village and/or Town to enact ordinances regulating the growing, cultivating, processing, etc. of industrial hemp. This issue came up at a recent Village board meeting during citizens' comments. I am going to give a summary of the status of this issue and provide additional materials for anyone who like to review further.

Generally speaking, industrial hemp has been grown in the United States since the colonial times. For the first time in the past 60 years, Wisconsin farmers legally grew industrial hemp in 2018. I should note that there was an industrial hemp factory in Darien in Walworth County during World War II, since hemp was used to make rope and most of the hemp had been imported from Southeast Asia prior to World War II. Obviously, once the Japanese took over Southeast Asia, it was impossible for the United States to import hemp for the production of rope.

Industrial hemp is a subspecies of the cannabis plant. Industrial hemp is distinguished from cannabis (marijuana) by having a level of THC not more than 0.3%. THC is the chemical in marijuana that provides the psychoactive effect that people associate with getting "high".

In 2014, the Federal government passed legislation that legalized the production of industrial hemp for the first time since it was prohibited in 1970. It was the Agricultural Act of 2014, also known as the 2014 Farm Bill, which allowed states to create agricultural pilot programs to govern the cultivation, processing and marketing of industrial hemp. Further refinements of that legislation occurred in 2017.

Wisconsin established a hemp pilot program in November of 2017 via 2017 Wisconsin Act 100. In pertinent part, that legislation created an industrial hemp program in Wisconsin under Section 94.55 of the Wisconsin Statutes which is administered by the Department of Agriculture, Trade and Consumer Protection. I have enclosed a copy of §94.55, Wis. Stats. This statute regulates the planting, growing, harvesting, processing, etc. of industrial hemp, requires licensing by the State of Wisconsin and so forth. The other important portion of that legislation for purposes of this discussion is that it also established §961.32(3)(b) of the Wisconsin Statutes, a copy of which I have also attached, which provides, in

pertinent part, that no person can be prosecuted for growing, processing, etc. industrial hemp either under State statute or “under any municipal ordinance that prohibits conduct that is the same as that prohibited under Chapter 961. . .” Although this legislation is so recent so as not to have any reported appellate judicial decisions, I am relatively sure that a court would view the regulations enacted under Wisconsin’s industrial hemp statutes as a matter of “statewide concern”. What that means is that local units of government cannot enact ordinances or regulations which would conflict with State statute, much as is the case under Chapter 125 of the Wisconsin Statutes which regulates alcohol beverage licensing.

In summary, the applicable Wisconsin Statutes were enacted under the authority of Federal law and provide the perimeters within which industrial hemp may be grown. It would be my opinion that the Village and/or Town is not in a position to be enacting ordinances contrary to State statute. The State regulates licensing of this activity and so long as a particular licensee complies with State law, the Village has no authority to regulate. I am also attaching a copy of the Legislative Reference Bureau’s article on regulating Wisconsin’s hemp industry for anyone who is interested in diving into this issue further.

If you have any questions concerning the foregoing, please do not hesitate to contact me.

JJD

4. The source of all of the cultivated ginseng dry root included in the sale or shipment.

5. The year in which the cultivated ginseng dry root was harvested.

(4) **INSPECTION OR SUBMISSION OF RECORDS.** A dealer or grower shall make all records that are required to be kept under this section available upon request to the department for inspection and copying. A dealer or grower registered in this state shall submit all records upon request to the department that are kept outside of this state and that are required to be kept under this section.

(5) **FALSE INFORMATION.** No person may include false information on any document or record required under this section, or submit false information to the department in connection with a registration under sub. (2). No person may knowingly accept or retain a document or record required under this section that contains false information to facilitate the sale or shipment of ginseng in violation of this section or s. 29.611.

(6) **PUBLIC INSPECTION OF DOCUMENTS AND RECORDS.** (a) Documents and records relating to transactions in cultivated ginseng dry root submitted under this section by a grower or dealer to the department are not open to public inspection.

(b) Documents and records relating to transactions in cultivated ginseng live root, tissue culture or seed which are submitted by a grower or dealer to the department under this section shall be open to public inspection under subch. II of ch. 19.

(7) **ENFORCEMENT ACTIONS.** The department may by an order deny, suspend or revoke the registration of a dealer or a grower and may invalidate shipment certificates completed by the dealer or grower, if the department finds that the dealer or grower has violated this section. The department may by a summary order and without prior notice or hearing, suspend or invalidate the registration and shipment certificates of a dealer or grower if the department finds that there is a need for immediate action to prevent a violation of this section. An order issued under this subsection shall be in writing, have the force and effect of an order issued under s. 93.18, and is subject to a right of hearing before the department, if requested within 10 days after service. Hearings on summary orders shall be conducted within 10 days after receipt of a request for hearing. Enforcement of a summary order shall not be stayed pending the hearing.

(8) **PENALTY.** A person violating this section shall forfeit not more than \$500 for each violation.

History: 1983 a. 27, 462; 1985 a. 29; 1997 a. 248; 1999 a. 9; 2011 a. 209.

94.55 Industrial hemp. (1) **DEFINITION.** In this section, "industrial hemp" means the plant *Cannabis sativa*, or any part of the plant including the seeds, having a delta-9-tetrahydrocannabinol concentration of no more than 0.3 percent on a dry weight basis or the maximum concentration allowed under federal law up to 1 percent, whichever is greater. "Industrial hemp" includes a substance, material, or product only if it is designated as a controlled substance under the federal Controlled Substances Act under 21 USC 801 to 971 or the Uniform Controlled Substances Act under ch. 961 or both.

(2) **REGULATION OF INDUSTRIAL HEMP.** (a) Subject to the provisions under this subsection, a person may plant, grow, cultivate, harvest, sample, test, process, transport, transfer, take possession of, sell, import, and export industrial hemp in this state to the greatest extent allowed under federal law.

(b) 1. The department shall promulgate rules regulating the activities described in par. (a).

2. Except as provided under subds. 3. to 6. and subs. (3) and (4), rules promulgated under this paragraph shall regulate the activities described in par. (a) only to the extent required under federal law, and in a manner that allows the people of this state to have the greatest possible opportunity to engage in those activities.

3. The department shall promulgate rules, as necessary, to ensure the quality of industrial hemp grown or processed in this state, the security of activities related to industrial hemp, and the

safety of products produced from industrial hemp, including any necessary testing; to verify adherence to laws and rules governing activities related to industrial hemp; and to enforce violations of those laws and rules.

4. The department shall require the payment of an initial fee from any person who plants, grows, or cultivates industrial hemp in this state equal to the greater of \$150 or \$5 multiplied by the number of acres on which the person will plant, grow, or cultivate industrial hemp, but not to exceed \$1,000. The department may also impose an annual fee on any person whose activities related to industrial hemp are regulated by the department under this paragraph, in an amount not to exceed an amount sufficient to cover the costs to the department of regulating those activities, as determined by the department by rule.

5. The department shall ensure that any of the following information that is in the department's possession is confidential and not open to public inspection or copying under s. 19.35 (1), except that it shall be made available to a law enforcement agency or law enforcement officer:

a. Information relating to the locations of industrial hemp fields and processing locations.

b. Personally identifiable information relating to a person who is lawfully engaging in activities related to industrial hemp.

c. Information obtained about an individual as a result of any criminal history search performed in relation to authorizing the individual to engage in activities related to industrial hemp.

d. Any other information about activities related to industrial hemp that could create a security risk if disclosed.

6. The department shall promulgate rules setting forth the factors to be considered when determining whether to refer a person for prosecution under s. 961.32 (3) (c).

(c) The department shall establish and administer a certification program, or shall designate a member of the Association of Official Seed Certifying Agencies or a successor organization to administer a certification program, for industrial hemp seed in this state. A certification program under this paragraph shall include the testing and certification of delta-9-tetrahydrocannabinol concentrations in hemp plants. Participation in the certification program shall be voluntary for growers and cultivators of industrial hemp. The department shall promulgate rules for the administration of any certification program established and administered by the department under this paragraph.

(d) The department of justice shall provide information to the department that the department has identified, by rule, as necessary to administer the provisions under this subsection.

(e) The department may seek federal approval to serve as an importer of industrial hemp seed.

(3) **PILOT PROGRAM.** The department shall create a pilot program to study the growth, cultivation, and marketing of industrial hemp. The department shall promulgate rules to implement the pilot program consistent with the authority under sub. (2) (b). The department shall also do all of the following as part of the pilot program:

(a) Issue licenses that authorize the planting, growing, cultivating, harvesting, sampling, testing, processing, transporting, transferring, taking possession, selling, importing, and exporting of industrial hemp. The department shall identify the requirements for applying for a license, approving or denying a license, and suspending or revoking a license, and shall identify the restrictions and obligations that apply to operating under a license. As part of the application process, the department shall require an applicant to provide the global positioning system coordinates of the centers of all fields on which the industrial hemp will be planted, grown, cultivated, or harvested. The department shall obtain a criminal history search from the records maintained by the department of justice for each applicant and may not issue a license if the applicant has ever been convicted of a criminal violation of the federal Controlled Substances Act under 21 USC 801 to 971, the Uniform Controlled Substances Act under ch. 961, or

any controlled substances law of another state, as indicated in the information obtained from the criminal history search. A license issued under this paragraph does not expire unless the pilot program under this subsection expires or the license is revoked.

(b) Create a registration system that authorizes the sampling, testing, processing, transporting, transferring, taking possession, selling, importing, and exporting of industrial hemp. The department shall obtain a criminal history search from the records maintained by the department of justice for each person applying for registration and may not register an applicant who has been convicted of a criminal violation of the federal Controlled Substances Act under 21 USC 801 to 971, the Uniform Controlled Substances Act under ch. 961, or any controlled substances law of another state, as indicated in the information obtained from the criminal history search.

(c) Create a form to accompany any transfer of industrial hemp. The department shall identify the information to be included in the form, which shall include any test results showing the delta-9-tetrahydrocannabinol concentration of the industrial hemp being transferred, the amount of industrial hemp being transferred, and the full chain of custody of the industrial hemp being transferred for all transfers of the industrial hemp until it is processed in such a way that it no longer meets the definition under sub. (1), at which point the form shall be submitted to the department.

(4) PENALTIES. A person who violates any provision of this section, or an order issued or rule promulgated under this section, may be required to forfeit not less than \$200 nor more than \$5,000 or, for an offense committed within 5 years of an offense for which a penalty has been assessed under this section, may be required to forfeit not less than \$400 nor more than \$10,000.

History: 2017 a. 100.

94.64 Fertilizer. (1) DEFINITIONS. As used in this section:

(a) "Brand or product name" means a name term, design or trademark used in connection with one or more grades of fertilizer and which identifies the product as fertilizer.

(b) "Bulk fertilizer" means fertilizer distributed in a nonpackaged form.

(c) "Custom mixed fertilizer" means a mixed fertilizer formulated according to individual specifications furnished by the consumer prior to mixing.

(d) "Distribute" means to import, consign, sell, offer for sale, solicit orders for sale, or otherwise supply fertilizer for sale or use in this state.

(e) "Fertilizer" means any substance, containing one or more plant nutrients, which is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal or vegetable manures, marl, liming material, sewage sludge other than finished sewage sludge products, and wood ashes. "Fertilizer" includes fertilizer materials, mixed fertilizers, custom mixed fertilizers, nonagricultural fertilizers and all other fertilizers or mixtures of fertilizers, regardless of type or form.

(f) "Fertilizer material" means an element or chemical compound, or a substance manufactured by chemical reaction, which:

1. Contains one or more plant nutrients; and
2. Constitutes a component of fertilizer or is used to compound fertilizer.

(fm) "Finished sewage sludge product" means a product consisting in whole or in part of sewage sludge that is distributed to the public and that is disinfected by means of composting, pasteurization, wet air oxidation, heat treatment or other means.

(g) "Grade" means the percentage guarantee of total nitrogen, available phosphorus or available phosphate, and soluble potassium or soluble potash stated in the same order as listed in this paragraph.

(h) "Guaranteed analysis" means the percentage of each plant nutrient guaranteed or claimed to be present.

(i) "Label" means any written, printed or graphic matter on or attached to packaged fertilizer or which is used to identify fertilizer distributed in bulk or held in bulk storage.

(j) "Labeling" means all labels and other written, printed or graphic matter upon or accompanying fertilizer at any time, and includes advertising or sales literature.

(k) "Manufacture" means to process, granulate, compound, produce, mix, blend or alter the composition of fertilizer or fertilizer materials.

(L) "Mixed fertilizer" means a fertilizer containing any combination or mixture of fertilizer materials, or a fertilizer material and any other substance. A fertilizer material that contains impurities incident to the normal manufacturing or processing operations of that fertilizer material is not a mixed fertilizer as a result of the presence of such impurities unless the impurities are claimed as plant nutrients or fertilizer materials.

(Lm) "Nonagricultural fertilizer" means any fertilizer distributed for nonfarm use, such as for home gardens, lawns, shrubbery, flowers, golf courses, parks, cemeteries, greenhouses or nurseries or for research or experimental purposes.

(m) "Official sample" means a sample of fertilizer taken by a representative of the department in accordance with methods prescribed by department rules.

(n) "Packaged fertilizer" means any type of fertilizer sold in closed containers.

(o) "Percent" and "percentage" mean the percentage by weight.

(p) "Plant nutrient" means boron, calcium, chlorine, copper, iron, magnesium, manganese, molybdenum, nitrogen, phosphorus or available phosphate, potassium or potash, sodium, sulfur, zinc or any other chemical element recognized as a plant nutrient by department rule.

(pm) "Sewage sludge" means the residue material resulting from the treatment of sewage. In this paragraph, "sewage" has the meaning specified in s. 281.01 (13).

(q) "Special-use fertilizer" means fertilizer designed and labeled for use in remedying nutrient deficiencies which are unique to certain crops or certain local areas.

(r) "Ton" means a net ton of 2,000 pounds avoirdupois.

(t) "Unmanipulated animal or vegetable manure" means animal or vegetable manure which has not been treated by mechanical drying, grinding or pelletizing, by adding a substance or by any other means.

(2) LABELING. (a) Any packaged fertilizer, including packaged custom mixed fertilizer, distributed in this state shall have placed on or affixed to the package a label setting forth in clearly legible and conspicuous form the following information:

1. Name and address of the licensed manufacturer or distributor.
2. Brand or product name.
3. Grade.
4. Guaranteed analysis.
5. Net weight.

(b) Any fertilizer distributed in this state in bulk shall be accompanied by a written or printed invoice or statement to be furnished to purchaser at time of delivery containing in clearly legible and conspicuous form the following information:

1. Name and address of the licensed manufacturer or distributor.
2. Name and address of the purchaser.
3. Date of sale.
4. Brand or product name.
5. Grade.
6. Guaranteed analysis.
7. Net weight.

4. Any person exempted under federal law, or for whom federal registration requirements have been waived.

5. A person actively engaged in the direct operation or implementation of a drug disposal program that is authorized under s. 165.65 (2) or (3) or is authorized under federal law, as defined in s. 165.65 (1) (a).

(2m) (a) In this subsection, "certification" means a letter or other official document issued by a physician licensed under s. 448.04 (1) (a) that contains all of the following:

1. The name, address, and telephone number of the physician.
2. The name and address of the patient who is issued the letter or document.
3. The date on which the letter or document is issued.

(b) An individual may possess cannabidiol in a form without a psychoactive effect if the individual has certification stating that the individual possesses cannabidiol to treat a medical condition, if the certification has an issue date that is no more than one year prior to the possession, and if any expiration date provided by the physician in the certification has not passed.

(3) (a) In this subsection:

1. "Hemp" means the plant *Cannabis sativa*, or any part of the plant including the seeds.

2. "Industrial hemp" has the meaning given in s. 94.55 (1).

(b) A person who is acting in accordance with rules promulgated by the department of agriculture, trade and consumer protection under s. 94.55 (2) (b) may not be prosecuted for a criminal offense under this chapter, or under any municipal ordinance that prohibits conduct that is the same as that prohibited under this chapter, for any of the following:

1. Planting, growing, cultivating, harvesting, processing, or transporting hemp that contains a delta-9-tetrahydrocannabinol concentration of the crop of not more than 0.7 percent above the permissible limit for industrial hemp on a dry weight basis or that is grown from industrial hemp seed certified under s. 94.55 (2) (c).

2. Selling, transferring, importing, exporting, or taking possession of industrial hemp.

3. Selling, transferring, importing, exporting, processing, transporting, harvesting, or taking possession of hemp that has been certified under s. 94.55 (2) (c), by a laboratory authorized by the department of agriculture, trade and consumer protection to test the delta-9-tetrahydrocannabinol concentration in hemp, as meeting the permissible delta-9-tetrahydrocannabinol concentration limit for industrial hemp.

4. Possessing hemp with a delta-9-tetrahydrocannabinol concentration above the permissible level for industrial hemp if the hemp was certified under s. 94.55 (2) (c) at the time the possessor took possession as meeting the permissible concentration limit for industrial hemp and the possessor had no reason to believe at that time that the certification was incorrect.

5. Taking samples of hemp, transporting samples to a testing facility, or testing samples for their delta-9-tetrahydrocannabinol concentration.

(c) A person who plants, grows, cultivates, harvests, samples, tests, processes, transports, transfers, takes possession of, sells, imports, or exports industrial hemp in violation of a rule promulgated under s. 94.55 (2) (b) may not be prosecuted under s. 94.55 or this chapter unless the person is referred to the district attorney for the county in which the violation occurred by the department of agriculture, trade and consumer protection, and may not be prosecuted under a municipal ordinance that prohibits the same conduct as is prohibited under this chapter unless the person is referred to local law enforcement by the department of agriculture, trade and consumer protection.

(d) Notwithstanding s. 961.41 (4) (am) 2. a., engaging in an activity described under par. (b) does not constitute prima facie

evidence of a prohibited representation under s. 961.41 (4) (am) 1. a. or b.

History: 1971 c. 219, 336; 1983 a. 500 s. 43; 1993 a. 482; 1995 a. 448 s. 232; Stats. 1995 s. 961.32; 2013 a. 198; 2017 a. 4, 100.

A doctor or dentist who dispenses drugs to a patient within the course of professional practice is not subject to criminal liability. *State v. Townsend*, 107 Wis. 2d 24, 318 N.W.2d 361 (1982).

961.335 Special use authorization. (1) (a) Upon application the controlled substances board may issue a permit authorizing a person to manufacture, obtain, possess, use, administer, or dispense a controlled substance for purposes of scientific research, instructional activities, chemical analysis, or other special uses, without restriction because of enumeration.

(b) Except as provided in par. (c), no person may engage in any activity described under par. (a) without a permit issued under this section.

(c) 1. A person who is actively engaged in the direct operation or implementation of a drug disposal program that is authorized under s. 165.65 (2) or (3) or is authorized under federal law, as defined in s. 165.65 (1) (a), may, without a permit issued under this section, obtain or possess a controlled substance for the purposes of operating and implementing the drug disposal program.

2. A person who is permitted under federal law to dispose of a controlled substance may, without a permit issued under this section, possess the controlled substance for the purpose of disposing of the controlled substance.

3. An individual who is designated and authorized to receive a permit under this section for a college or university department, research unit, or similar administrative organizational unit, and students, laboratory technicians, research specialists, or chemical analysts under his or her supervision, may, without an additional permit issued under this section, possess and use a controlled substance, for the purposes authorized in the permit received for the department or unit.

(2) A permit issued under this section shall be valid for one year from the date of issue.

(3) The fee for a permit under this section shall be an amount determined by the controlled substances board but shall not exceed \$25. No fee may be charged for permits issued to employees of state agencies or institutions.

(4) Permits issued under this section shall be effective only for and shall specify:

(a) The name and address of the permittee.

(b) The nature of the project authorized by the permit.

(c) The controlled substances to be used in the project, by name if included in schedule I, and by name or schedule if included in any other schedule, except that, for any permit issued to a state crime laboratory, the permit is effective for any controlled substance whether or not the name or schedule is specified.

(d) Whether dispensing to human subjects is authorized.

(5) A permit shall be effective only for the person, project, and, except as provided in sub. (4) (c), substances specified on its face and for additional projects which derive directly from the stated project. Upon application, a valid permit may be amended to add a further activity or to add further substances or schedules to the project permitted thereunder. The fee for such amendment shall be determined by the controlled substances board but shall not exceed \$5.

(6) Persons who possess a valid permit issued under this section are exempt from state prosecution for possession and distribution of controlled substances to the extent of the authorization.

(7) The controlled substances board may authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of individuals who are the subjects of research. Persons who obtain this authorization are not compelled in any civil, criminal,

LEGISLATIVE REFERENCE BUREAU

Regulating Wisconsin's Hemp Industry

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In 2018, Wisconsin farmers grew hemp legally for the first time in 60 years. These farmers are participants in Wisconsin's industrial hemp pilot program, which the state established in November 2017. Wisconsin created its hemp program following the passage of federal legislation in 2014 that allowed states to create pilot programs to harvest and process hemp. In December 2018, the federal government passed additional legislation that created a permanent federal hemp program that will replace Wisconsin's current pilot program unless the Wisconsin Legislature acts to establish its own permanent program. Several states have already passed legislation to establish their own permanent programs. This paper aims to provide information about the hemp industry and hemp laws, including ongoing legal issues that the state will need to consider if it chooses to create a permanent program of its own.

What is hemp?

Hemp¹ belongs to the *cannabis sativa* plant species and, botanically, is the same as marijuana.² Legally, the two plants are distinguished by the level of delta-9 tetrahydrocannabinol (THC)³ they contain. THC is the chemical in cannabis that provides the psychoactive effect that people associate with the "high" sensation. Hemp has a significantly lower concentration of THC, typically less than 1 percent, as compared to marijuana, which has an average THC concentration of 10 percent and a maximum concentration of 30 percent.⁴ A THC concentration of around 1 percent is the generally accepted threshold for the plant to have a psychoactive effect.⁵ Under federal law, hemp is defined as having a THC concentration of "not more than 0.3 percent on a dry weight basis."⁶

Hemp originated in China thousands of years ago and has a long history of being cultivated for agricultural and industrial purposes. As a highly versatile crop, hemp is harvested to produce over 25,000 products today.⁷ There are three main parts of the plant that are harvested by farmers: the stalk, the seeds, and the flowers.⁸ The stalk is harvested for its fiber, which is used to make products such as rope, textiles, yarn, paper, construction materials, plastics, and car parts. Hemp has long been an attractive source of fiber

1. "Hemp" is also often referred to as "industrial hemp," including in the Wisconsin statutes. For consistency in this paper and with federal law, this paper will use the term "hemp."

2. Renée Johnson, "[Hemp as an Agricultural Commodity](https://fas.org/)," Congressional Research Service, June 22, 2018, <https://fas.org/>.

3. This paper will refer to delta-9 tetrahydrocannabinol as "THC" throughout. Note that there are other types of THC present in cannabis, but delta-9 THC is the variety of interest to policymakers due to its psychoactive effect.

4. Renée Johnson, "[Defining Hemp: A Fact Sheet](https://fas.org/)," Congressional Research Service, March 22, 2019, <https://fas.org/>.

5. Johnson, "Defining Hemp: A Fact Sheet."

6. Hemp is defined in federal law in 7 U.S.C. § 5940(a)(2) as "the plant *Cannabis sativa* L. and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis."

7. Johnson, "Hemp as an Agricultural Commodity."

8. Christopher Booker, "[Why Kentucky Farmers Are Quitting Tobacco and Turning to an Unlikely New Crop](https://www.pbs.org/)," *PBS NewsHour*, October 17, 2015, <https://www.pbs.org/>.

because of its strength, malleability, and resistance to wear and water.⁹ Hemp seed is used in food, cooking oil, dietary supplements, hygienic products like shampoo and lotion, and medicinal and pharmaceutical products.¹⁰ Recently, hemp farmers have begun harvesting hemp flowers to extract cannabidiol (CBD)—a non-psychoactive chemical compound that has garnered consumer interest for its purported medicinal and therapeutic benefits.

Physical characteristics of hemp plants, such as height, the number of branches they have, and the number of flowers they produce, can vary substantially. Each physical characteristic provides different benefits depending on the intended use of the plant. These physical differences are a result of the cannabis plant being selectively bred over thousands of years to optimize different uses.¹¹ Hemp grown for fiber or seeds tends to be taller with fewer branches, ranging from six to fifteen feet in height. The hemp plant's height and lack of branches make it ideal for extracting fiber. Hemp grown for CBD is typically shorter and bushier, consisting of more leaves and branches, which is optimal for harvesting flowers to extract CBD.¹²

The physical attributes of the plants are also affected by the reproductive nature of the cannabis species. Male plants are typically used to produce fiber or seeds because they tend to grow taller and have fewer branches if they do not flower.¹³ Alternatively, female plants are primarily used for CBD production because they grow more flowers.¹⁴ It is vital that a hemp crop consist of only one plant gender, because cross-pollination affects the characteristics of the plants and the quality of the desired harvestable component. For example, cross-pollination of a hemp crop grown for CBD can result in lower CBD levels.¹⁵

The cultivation techniques for hemp also vary depending on which part of the plant a farmer is harvesting. Hemp grown for fiber or seeds is typically grown close together to prevent branching and flowering. Hemp plants used for CBD production are planted with more space between them, which allows for more branches and flowers to grow. Growing and harvesting hemp for CBD is more time-consuming and labor-intensive than harvesting hemp for fiber or seeds.¹⁶ Fiber and seeds can be harvested efficiently using machinery, but harvesting CBD from flowers requires manual labor. As a result, hemp grown for CBD tends to be grown in small plots.

9. Albert Hazen Wright, "Wisconsin's Hemp Industry," Wisconsin Bulletin 293, Madison: Agricultural Experiment Station of the University of Wisconsin, 1918, <https://babel.hathitrust.org/>.

10. Johnson, "Hemp as an Agricultural Commodity."

11. Johnson, "Defining Hemp: A Fact Sheet."

12. Johnson, "Defining Hemp: A Fact Sheet."

13. Johnson, "Hemp as an Agricultural Commodity."

14. Jennifer Lu, "High Risks, High Rewards: Interest in Industrial Hemp Surges as Wisconsin Enters Second Year of Legal Production," *La Crosse Tribune*, February 24, 2019, <https://lacrossetribune.com/>.

15. Lu, "High Risks, High Rewards."

16. Johnson, "Defining Hemp: A Fact Sheet."

Background of hemp production in the United States

The United States has a rich history of growing hemp for industrial and agricultural purposes, dating back to the colonial period. Hemp was brought to the American colonies by the Puritans in 1645 as a source of fiber to make cloth, paper, canvas, and rope.¹⁷ Hemp fiber was especially important during the colonial period when it was used to make products such as rope and canvas for ships.¹⁸ Hemp production prospered in the United States, particularly in Kentucky, Illinois, and Missouri, until the Civil War. Following the Civil War, Kentucky remained the sole state with a substantial hemp industry due in part to cotton becoming a more popular source of fiber.¹⁹ Kentucky's dominance in the hemp market started to dwindle in the early 1900s when several other states, including Wisconsin, started their own hemp industries.

Wisconsin harvested its first hemp crop in 1908 when the Wisconsin Experiment Station and the United States Department of Agriculture (USDA) planted nine acres of hemp for research purposes.²⁰ Wisconsin proved particularly well-suited for cultivating hemp, due to its humid and temperate climate and fertile soil. Wisconsin's suitability for growing hemp led to a rapid growth in hemp production in the state, which was further buoyed by advances in technology at the time. In 1917, machinery was invented with the help of scientists at UW–Madison that more efficiently harvested and processed hemp.²¹ Hemp mills were then built in Wisconsin to process hemp stalks into fiber, and Wisconsin became the nation's hub for producing hemp fibers. As a result of Wisconsin's suitability to grow hemp and technological advancements, Wisconsin became the top hemp producing state in the country by 1920 and remained the top producer until the 1950s.²²

Nationally, hemp production began declining in the 1930s due to several factors. Hemp fiber faced competition from cheaper fibers, including cotton and imported fibers like jute, sisal, and Manila hemp.²³ Additionally, in 1937 the federal government passed the Marijuana Tax Act, which taxed all forms of marijuana, including hemp, and put in place restrictions that made it significantly more difficult to grow hemp.²⁴ In effect, the act created a ban on hemp due to its onerous restrictions and bureaucracy. However, World War II caused the federal government to temporarily loosen its restrictions on

17. Economic Research Service, "Industrial Hemp in the United States: Status and Market Potential," U.S. Department of Agriculture, January 2000, <https://www.ers.usda.gov/>, 3.

18. Carey Reed, "8 Things You Didn't Know about Hemp," *PBS NewsHour*, October 17, 2015, <https://www.pbs.org/news-hour>.

19. Wright, "Wisconsin's Hemp Industry."

20. Wright, "Wisconsin's Hemp Industry."

21. Jerry Apps, *Wisconsin Agriculture: A History*, Wisconsin Historical Society Press, 2015, p. 176.

22. Marisa Wojcik, "Fast Facts: Hemp in Wisconsin," *Wisconsin Public Television*, May 4, 2018, <https://wpt4.org/>.

23. Wright, "Wisconsin's Hemp Industry."

24. Gerald J. McKenna, "The Current Status of Medical Marijuana in the United States," *Hawai'i Journal of Medicine & Public Health* 73, no. 4 (April 2014): 105–8, <https://www.ncbi.nlm.nih.gov/>.

hemp production as the war caused a shortage of imported fibers from Asia and increased domestic demand for fibers.²⁵ In response, the federal government embraced and promoted domestic production of hemp and created the program, “Hemp for Victory!” that included a film to educate U.S. farmers on growing hemp.²⁶ Hemp fiber was pivotal in the production of materials needed for the war effort including thread for sewing shoes, rope, and materials for building ships and calking vessels.²⁷ Hemp production was at a peak during the war, with the United States cultivating more than 400,000 acres of hemp from 1942 to 1945.²⁸

After the war, U.S. hemp production quickly declined as the federal government resumed enforcement of its strict regulations and demand for hemp fiber decreased due to increased competition from cheaper imported fiber and newly developed synthetic fibers.²⁹ By the 1950s, the hemp fiber industry was largely diminished and lingered in Wisconsin until 1957, when the last hemp crop was harvested in the state and country.³⁰ The hemp industry was outlawed entirely in 1970 when the federal government passed the Controlled Substances Act (CSA), which identified “marihuana,” including hemp, as a Schedule I³¹ drug. The designation of hemp as a controlled substance prohibited its production and use in any capacity, ending hemp production for the foreseeable future.

The reemergence of hemp in the United States

In 2014, the federal government passed legislation that legalized the production of hemp for the first time since it was prohibited in 1970. The Agricultural Act of 2014, also known as the 2014 Farm Bill, allowed states to create agricultural pilot programs to “study the growth, cultivation, or marketing of industrial hemp.”³² Under the pilot programs, hemp can be grown, processed, and sold on a limited basis under the purview of universities and state departments of agriculture. The law did not change hemp’s classification as a Schedule I drug and thus hemp remained illegal for all other purposes. The law also defined “industrial hemp” as “the plant *Cannabis sativa* L. and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.”³³

25. Reed, “8 Things You Didn’t Know about Hemp.”

26. Deb Kozel, “Industrial Hemp Update,” Iowa Legislative Services Agency, February 1, 2019.

27. Wright, “Wisconsin’s Hemp Industry.”

28. Kozel, “Industrial Hemp Update.”

29. Economic Research Service, “Industrial Hemp in the United States: Status and Market Potential.”

30. Carol Spaeth-Bauer, “Looking at an Exciting Future for Industrial Hemp,” *Wisconsin State Farmer*, December 19, 2018, <https://www.wisfarmer.com/>.

31. There are five schedules of drugs. The federal government defines Schedule I drugs as substances that have a high potential for abuse, have no currently accepted medical use in treatment, and lack accepted safety for use.

32. Agricultural Act of 2014, Pub. L. 113-79, section 7606.

33. Agricultural Act of 2014, Pub. L. 113-79, section 7606.

In August 2016, the USDA, the Drug Enforcement Administration (DEA), and U.S. Food and Drug Administration (FDA) released the “Statement of Principles on Industrial Hemp” to clarify policies relating to activities involving hemp that were not addressed in the 2014 Farm Bill. According to the statement, since the farm bill did not remove hemp from the list of controlled substances, hemp remained illegal for all purposes not specified in the bill. The agencies clarified their policies on several key activities. First, hemp products could be sold only “for purposes of marketing research” and could not be sold in states that did not have hemp pilot programs. Second, hemp seeds and plants could not be transported over state lines. Third, individuals had to be registered with the DEA to import viable cannabis seeds. Finally, rules applying to controlled substances still applied to products containing hemp, meaning products could not be manufactured or distributed unless approved by the FDA.³⁴ This policy also prohibited the transportation of hemp products across state lines.³⁵ Collectively, these policy clarifications formalized barriers to growing and processing hemp and limited how hemp could be used and sold.

Since the passage of the 2014 Farm Bill, 47 states, including Wisconsin, have established hemp pilot programs.³⁶ Several states moved quickly to implement hemp programs, but it has taken several years for most states to launch them. As a result, hemp production has grown rapidly in recent years. From 2016 to 2017, hemp production more than doubled, increasing from 9,770 acres to 25,500 acres.³⁷ Colorado is currently the leading state for hemp production, growing 9,700 acres in 2017. In addition to a surge in hemp production, sales of hemp products continue to grow, increasing 10–20 percent annually since 2011 and totaling \$688 million in 2016.³⁸ The U.S. market currently relies heavily on imported hemp goods, mostly from Canada, and global hemp production dwarfs U.S. production. In 2016, global production of hemp totaled 225,000 acres in 2016, which was more than 20 times what the United States produced.³⁹ This suggests that there is great potential for growth of domestic hemp production and a growing market in the United States for hemp products.

Wisconsin established a hemp pilot program in November 2017 via 2017 Wisconsin Act 100. Similar to the vast majority of other states that have created pilot programs, Wisconsin defines hemp as “a variety of cannabis with a THC concentration of not more than 0.3 percent.”⁴⁰ West Virginia is the only state that defines hemp differently, defining hemp

34. “Statement of Principles on Industrial Hemp,” 81 Fed. Reg. 156, August 12, 2016.

35. Matthew DeFour, “DOJ Issues Warning on Sale and Possession of CBD Oil, Upsetting Hemp Farmers,” *Wisconsin State Journal*, May 5, 2018, <https://madison.com/ws/>.

36. “State Industrial Hemp Statutes,” National Conference of State Legislatures, February 1, 2019, <http://www.ncsl.org/>.

37. Johnson, “Hemp as an Agricultural Commodity.”

38. Johnson, “Hemp as an Agricultural Commodity.”

39. Johnson, “Hemp as an Agricultural Commodity.”

40. “Industrial hemp” as defined under Wis. Stat § 94.55(1) also provides that “‘industrial hemp’ includes a substance, material, or product only if it is designated as a controlled substance under the federal Controlled Substances Act under 21 USC 801 to 971 or the Uniform Controlled Substances Act under ch. 961 or both.”

as having a THC concentration that is less than 1 percent.⁴¹ In the Wisconsin act, the legislature directed DATCP to create a pilot program and promulgate emergency rules⁴² to operate the program. Similar to federal law, the act did not remove hemp from the state list of controlled substances,⁴³ meaning the use of hemp outside the program is still illegal. The act also established protections from prosecution for program participants who use hemp as allowed under the program. People who grow or process hemp outside the program or use hemp in ways not approved under program regulations are still subject to prosecution under the state's controlled substances laws.

DATCP officially launched the state pilot program in 2018 in time for the growing season. 2017 Wisconsin Act 100 established several specific requirements for the program. First, an entity must have a license to grow or process hemp.⁴⁴ Second, licensed hemp growers or processors must be registered with DATCP.⁴⁵ Finally, the law requires that a form accompany any harvested hemp being processed and transported to ensure it complies with the THC concentration requirement.⁴⁶ As required by law, DATCP developed regulations for the operation of the pilot program including licensing requirements, program fees, protocols for sampling and testing hemp for its THC concentration, and reporting requirements.⁴⁷ For more details on Wisconsin's hemp pilot program, see the appendix.

In the first year of Wisconsin's program, 347 people applied for licenses to grow or process hemp.⁴⁸ Of the 247 licenses issued to grow hemp, 135 individuals grew a total of 1,872 acres of hemp.⁴⁹ For the 2019 season, DATCP saw a significant increase in applications, receiving 2,227 applications to grow or process hemp. DATCP has issued 1,308 licenses to grow hemp and 618 licenses to process hemp.⁵⁰ The significant increase in applications and licenses issued for the 2019 season suggests strong enthusiasm to grow hemp and participate in the hemp industry.

In the first year of the program, hemp farmers in Wisconsin experienced several issues that resulted in low yields.⁵¹ These issues included poor weather and mistakes due

41. National Conference of State Legislatures, "State Industrial Hemp Statutes."

42. As required by the act, DATCP promulgated Emergency Rule 1808 in March 2018, which created ATCP Chapter 22, establishing the industrial hemp pilot program. These rules remain in place until July 1, 2020, unless permanent rules are enacted prior to that date.

43. Wis. Stat. § 961.14(4)(t) identifies THC contained in marijuana as a Schedule I controlled substance. Hemp is included in the definition for marijuana as defined in Wis. Stat. § 961.01(14). However, Wis. Stat. § 961.14(4)(t)2, exempts THC contained in fiber from stalks or compounds made from the seeds of hemp plants.

44. Wis. Stat § 94.55(3)(a).

45. Wis. Stat § 94.55(3)(b).

46. Wis. Stat § 94.55(3)(c).

47. Wis. Admin. Code § ATCP 22, EmR1808.

48. Angela James, written testimony for Senate Committee on Agriculture, Revenue and Financial Institutions hearing on SB 188, Wisconsin Department of Agriculture, Trade and Consumer Protection, May 30, 2019.

49. Ibid.

50. Ibid.

51. Spaeth-Bauer, "Looking at an Exciting Future for Industrial Hemp."

to inexperience in growing the crop. Rainy weather during the planting and harvesting stages of the season led to poor germination because hemp grows poorly in saturated soil and rain makes harvesting difficult.⁵² Some farmers also made mistakes due to a lack of knowledge or experience growing the crop; for example, some farmers planted seeds too deep in the soil.⁵³ Other farmers lost their crop due to the THC level being too high, as was the case for 21 crops out of 303 sampled.⁵⁴ Mistakes are to be expected with any new or reintroduced crop and are one of the main motivations for conducting a pilot program.

Wisconsin hemp farmers also faced challenges in growing or selling their crops due to barriers in the hemp industry and market. Some farmers struggled to find viable seeds or were overcharged by seed dealers.⁵⁵ Hemp seeds can be expensive, ranging from \$1 to \$5 per seed.⁵⁶ Additionally, hemp seedlings have a high mortality rate with approximately 25 percent of seeds failing to grow into mature plants.⁵⁷ The high cost of seeds coupled with a high seedling mortality rate poses a serious financial risk to farmers who experience particularly poor germination. A number of states, including Wisconsin, have acted to regulate seeds and create hemp seed certification programs⁵⁸ to ensure that viable hemp seeds that meet THC concentration requirements are available.⁵⁹ Seed certification may help improve uniformity of hemp crops and compliance with THC requirements, but may also pose challenges to farmers by limiting the hemp seed varieties they can buy and plant. In addition to the seed issue, a number of farmers were unable to find buyers for their crops.⁶⁰ Hemp is a relatively new and undeveloped industry, meaning the current market for hemp is unpredictable and unstable. At this time, it is difficult to predict how the market will develop and whether growing hemp will become lucrative.

The 2018 Farm Bill

In December 2018, the federal government made significant changes to its hemp laws as part of the Agriculture Improvement Act of 2018, also known as the 2018 Farm Bill. Perhaps most significantly, the farm bill removed hemp from the list of controlled substances.⁶¹ The farm bill also defined hemp as an agricultural commodity, but still required it

52. Spaeth-Bauer, "Looking at an Exciting Future for Industrial Hemp."

53. Molly Stentz, "The Comeback Crop," *Isthmus*, February 21, 2019, <https://isthmus.com/>.

54. Shamane Mills, "DATCP Takes Nearly 2.1K Hemp Grower, Producer Applications," *WPR*, March 4, 2019, <https://www.wpr.org>.

55. Stentz, "The Comeback Crop."

56. Lu, "High Risks, High Rewards."

57. Lu, "High Risks, High Rewards."

58. Wis. Stat. § 94.55(2)(c) requires DATCP or a specified organization to administer a seed certification program. DATCP established specific rules for hemp seeds and hemp seed certification in Wis. Admin. Code § ATCP 22.07.

59. National Conference of State Legislatures, "State Industrial Hemp Statutes."

60. Rick Romell, "CBD 'gold Rush' Could Mean Big Business for Wisconsin's Hemp Industry," *Milwaukee Journal Sentinel*, November 12, 2018, <https://www.jsonline.com/>.

61. The act exempted hemp under the definition for "marihuana" under 21 U.S.C. § 802(16)(B)(i).

to be regulated. Specifically, the farm bill directed the USDA to establish a permanent federal hemp program. The farm bill phases out these state pilot programs, terminating them one year after the USDA secretary releases regulations for the federal program.⁶² The USDA is planning on issuing regulations in the fall of 2019 that would go into effect for the 2020 growing season.⁶³ However, states and Indian tribes have the option of establishing their own permanent programs in lieu of the federal program as long as the programs include specific requirements as established in the farm bill. These requirements include procedures for testing THC levels, annual inspections of hemp producers, protocols for disposing of plants that violate standards, and enforcement procedures for program violations.⁶⁴ Several states, including Michigan, Virginia, and Texas, have already passed legislation to establish permanent programs. States planning to establish their own programs must do so before the pilot programs expire, which occurs twelve months after regulations are issued for the federal program.

The farm bill addressed several other issues relating to hemp, most notably the issue of interstate commerce and the transportation of hemp. The law addressed the transportation restrictions established in the 2016 USDA statement by preventing states from prohibiting the transportation of hemp or hemp products.⁶⁵ Hemp and hemp products can now be transported across all state lines—even in states that do not have hemp programs. Additionally, the act defined hemp as an agricultural commodity, making it eligible for crop insurance.⁶⁶ Collectively, these changes make it easier to grow and sell hemp and help provide stability and legitimacy to the hemp industry.

Wisconsin must pass legislation to establish a permanent hemp program or its current pilot program will cease to exist and hemp producers in the state will be regulated under the federal program. Wisconsin's program would need to be approved by the USDA before it could go into effect. The Wisconsin Legislature has introduced legislation, 2019 SB 188 and 2019 AB 206, or the "Growing Opportunities Act" or "Hemp 2.0" as it is commonly known, to make changes to Wisconsin's hemp laws. Senators Testin and Taylor, who are leading the senate bill, state that the legislation is mostly a clean-up bill to bring Wisconsin law into compliance with federal laws and to establish a permanent state program.

The proposed legislation seeks to make additional changes to Wisconsin's hemp program that are not required by federal law. These changes include increasing legal protections for persons possessing hemp with a THC concentration above 0.3 percent, establishing labeling requirements for hemp and hemp products, clarifying that CBD is

62. Pub. L. 115-334, section 7605.

63. "Hemp Production Program," United States Department of Agriculture, February 27, 2019, <https://www.ams.usda.gov/>.

64. Pub. L. 115-334, section 297B.

65. Pub. L. 115-334, section 10114.

66. Agriculture Improvement Act of 2018, Pub. L. 115-334, section 11106.

not a controlled substance, and making changes to the administration of the program. As other states move to establish their own permanent hemp programs, Wisconsin has an incentive to adopt policies that will make its program attractive to farmers and hemp processors and that will result in a competitive and prosperous hemp industry in the state.

Outstanding issues pertaining to hemp

The legalization of hemp has resulted in complications and legal uncertainty for certain hemp products and activities. The most prevalent issue that has been the subject of several state and federal policy clarifications is the legal status of CBD and CBD-based products. Also at issue is how legal hemp products that contain trace amounts of THC intersect with laws on operating a motor vehicle while intoxicated (OWI). Finally, there has been an issue of hemp businesses experiencing difficulty in obtaining financial services. This section will explain these ongoing legal issues pertaining to hemp.

Legal status of CBD

CBD, which lacks a psychoactive effect from THC, is one of more than 80 chemical compounds found in hemp.⁶⁷ CBD is purported to have therapeutic and medical benefits including treating pain, anxiety, inflammation, and seizures.⁶⁸ As a result, interest in CBD has soared in recent years and a wide variety of CBD-based products including oil, food, dietary supplements, and vaporizers have entered the U.S. market. While the manufacturers of many of these products claim their products have medical benefits, the FDA has approved the use of CBD in only one drug, Epidiolex, which was approved in June 2018 to treat severe seizures.⁶⁹ CBD's potential to treat other medical conditions is still unknown and is the subject of ongoing scientific studies.⁷⁰

Since the 2014 farm bill, the CBD industry has proliferated and CBD products can be seen on shelves in establishments ranging from hair salons to video rental stores. Many farmers are interested in producing hemp for CBD due to the rapid expansion of the CBD market and the potential to earn a higher profit from CBD compared to other parts of the hemp plant like fiber or seeds.⁷¹ The market for CBD is expected to continue

67. Sheila Kaplan, "Cannabis Companies Push F.D.A. to Ease Rules on CBD Products," *The New York Times*, May 31, 2019, <https://www.nytimes.com/>.

68. Romell, "CBD 'gold Rush' Could Mean Big Business for Wisconsin's Hemp Industry."

69. "FDA Approves First Drug Comprised of an Active Ingredient Derived from Marijuana to Treat Rare, Severe Forms of Epilepsy," U.S. Food & Drug Administration, June 26, 2018, <https://www.fda.gov/>. Epidiolex uses CBD that is created synthetically rather than from cannabis plants.

70. Moises Velasquez-Manoff, "Can CBD Really Do All That?," *The New York Times Magazine*, May 14, 2019, <https://www.nytimes.com/>.

71. Tom Still, "InsideWis: Industrial Hemp May Be Agriculture's next Big Thing, but Wisconsin Can't Dawdle," Wisconsin Technology Council, February 27, 2019, <https://wisconsintechnologycouncil.com/>.

growing with CBD sales in the United States estimated to reach \$16 billion annually by 2025.⁷² Revenue estimates for CBD vary widely, from \$40,000 an acre to \$100,000 an acre, raising doubts about the profitability of CBD.⁷³ Despite the uncertainty over CBD's profitability, hemp farmers will likely continue prioritizing CBD over seeds or fiber due to its market potential and promise for higher profits.

While the CBD market prospers, the legal status of CBD remains uncertain and has been in flux over the last several years. In December 2016, the DEA issued a rule and clarification explicitly stating that CBD fell under the definition of marijuana under the Controlled Substances Act.⁷⁴ Using the DEA rule as guidance, former Wisconsin Attorney General Brad Schimel released a memo⁷⁵ on April 27, 2018, stating that CBD oil produced from hemp was illegal in the state except for approved medical purposes as allowed under state law.⁷⁶ Facing backlash from state hemp farmers, Attorney General Schimel released another memo on May 10, 2018, effectively reversing the decision. This memo stated: "Farmers who participate in [the hemp pilot program] and follow the rules are exempt from criminal prosecution, and products made from hemp, including CBD, are lawful."⁷⁷ The memo did not address whether CBD-based products made from a plant other than hemp are legal.

The 2018 Farm Bill greatly clarified the legal status of CBD by removing hemp from the federal list of controlled substances. This change effectively legalized hemp products, including CBD, that contain a THC concentration of 0.3 percent or less.

A Wisconsin law commonly known as "Lydia's Law"⁷⁸ allows for the use or possession of products that contain CBD with a THC concentration greater than 0.3 percent, under specified conditions, as long as it does not have a psychoactive effect. However, state law does not specify the THC concentration level needed to cause a psychoactive effect. Under Lydia's Law, CBD must be dispensed by a pharmacy or physician for a medical condition and individuals are allowed to possess CBD if they have a certification issued by a physician that allows for the possession of CBD to treat a medical condition.⁷⁹ In effect, Lydia's Law allows certain individuals to possess CBD with a THC concentration higher than what is allowed under federal law. The current proposed legislation (SB 188

72. Kaplan, "Cannabis Companies Push F.D.A. to Ease Rules on CBD Products."

73. Romell, "CBD 'gold Rush' Could Mean Big Business for Wisconsin's Hemp Industry."

74. "Clarification of the New Drug Code (7350) for Marijuana Extract," Drug Enforcement Administration, <https://www.deadiversion.usdoj.gov/>.

75. The memo is not available as it was removed from the DATCP website.

76. Wisconsin State Farmer, "Schimel Issues Guidance on CBD Oil, Industrial Hemp Production," *Wisconsin State Farmer*, May 4, 2018, <https://www.wisfarmer.com/>.

77. John P. Koremenos, Jr., "AG Schimel and Stakeholders Resolve Questions Surrounding DATCP Hemp Research Pilot Program," Wisconsin Department of Justice, May 10, 2018.

78. Lydia's Law was passed in 2014 as 2013 Wisconsin Act 267. The act exempted CBD from the definition of THC under Wisconsin's Controlled Substances Act and allowed for CBD to be dispensed by physicians and pharmacists and possessed by individuals with a medical certificate. The law's language was amended by 2017 Wisconsin Act 4.

79. Wis. Stat. § 961.38(1n)(a); Wis. Stat. § 961.32(2m)(b).

and AB 206) would have state law match federal law in removing hemp, including CBD, from the state list of controlled substances if it has a THC concentration of 0.3 percent or less. However, the bill does not make any changes to Lydia's Law, meaning a person with a medical certificate could still possess and use CBD that contains a higher THC concentration than is currently allowed under federal law.

Even though the 2018 Farm Bill clarified the legality of CBD generally, FDA regulations have continued to cause confusion. The farm bill explicitly preserved the FDA's authority to regulate hemp and CBD under the Federal Food, Drug, and Cosmetic Act (FD&C Act)⁸⁰ and the Public Health Service Act.⁸¹ Because CBD is the active ingredient in the FDA-approved drug Epidiolex, the FDA's position is that, under the FD&C Act, CBD may not be added to food or dietary supplements.⁸² Federal law prohibits the introduction of food that contains an active ingredient in an FDA-approved drug into interstate commerce.⁸³ In addition, the FDA considers any product that is marketed or sold for use in curing, treating, or preventing a disease to be a "drug" that must be approved by the FDA before it can be marketed for human or animal use.⁸⁴ In a public hearing held on May 31, 2019, the FDA suggested that it may be open to issuing regulations that would allow CBD to be added to food and dietary supplements.⁸⁵ The FDA has previously approved the use of hemp seeds and seed extract in food products.⁸⁶ A change in FDA policy to allow the use of CBD in dietary supplements and food would put CBD in line with other hemp components that can be used in any product.

Since 2015, the FDA has issued warning letters to companies making egregious claims about the medical or therapeutic benefits of CBD, such as curing cancer or Alzheimer's.⁸⁷ However, to date, the FDA has not initiated any enforcement actions against any company that is selling or marketing CBD or CBD products that violate FDA regulations. There is also currently a lack of consumer protection provisions in place at the state and federal levels to ensure that CBD products that are sold are safe for consumption and meet set standards, such as the amount of CBD that can be present in a product. Some companies make false claims about the amount of CBD a product contains, with products often containing less CBD than claimed or no CBD at all.⁸⁸ Some CBD products have also

80. 21 U.S.C. § 301.

81. 42 U.S.C. § 262.

82. Scott Gottlieb, "Statement from FDA Commissioner Scott Gottlieb, M.D., on Signing of the Agriculture Improvement Act and the Agency's Regulation of Products Containing Cannabis and Cannabis-Derived Compounds." U.S. Food & Drug Administration, December 20, 2018, <https://www.fda.gov/>.

83. 21 U.S.C. § 331(l).

84. Gottlieb, "Statement from FDA Commissioner Scott Gottlieb, M.D."

85. "Scientific Data and Information About Products Containing Cannabis or Cannabis-Derived Compounds; Public Hearing; Request for Comments." Federal Register, Vol. 84, No. 64, April 3, 2019, <https://www.federalregister.gov/>.

86. "FDA Responds to Three GRAS Notices for Hemp Seed-Derived Ingredients for Use in Human Food." U.S. Food & Drug Administration, December 20, 2018, <https://www.fda.gov/>.

87. Kaplan, "Cannabis Companies Push F.D.A. to Ease Rules on CBD Products."

88. Velasquez-Manoff, "Can CBD Really Do All That?"

been shown to contain harmful substances including lead and pesticides.⁸⁹ Proposed SB 188 and AB 206 address some of these issues at the state level by requiring products to be labeled properly and prohibiting companies from making inaccurate claims about their products. The legislation does not require specific standards for products or quality control measures, but current law does require DATCP to promulgate rules to ensure the safety of hemp products.

Laws on operating a motor vehicle while intoxicated

An individual who ingests CBD and drives may be at risk of violating the law against operating a motor vehicle while intoxicated (OWI). OWI law prohibits operation of a motor vehicle with a detectable amount of a restricted controlled substance in one's blood.⁹⁰ Currently, the list of restricted controlled substances includes THC, regardless of the source.⁹¹ CBD products commonly contain a small amount of THC, putting people who consume CBD at risk of committing an OWI. State law provides an affirmative defense to an OWI charge that, at the time of the incident, the operator of the motor vehicle had a valid prescription for THC.⁹² However, this defense does not apply to individuals who consume CBD without a valid medical certificate.

OWI law also prohibits operation of a motor vehicle while impaired; however, determining whether a person is impaired from THC is not straightforward. Unlike alcohol, which has a set standard of a blood alcohol concentration of 0.8 percent to determine intoxication, there is currently no accepted standard amount of THC that is used to determine impairment from THC.⁹³ Several states have attempted to set THC levels to determine impairment, but these levels are not supported by scientific evidence. Using the standard of any amount of THC, like Wisconsin currently does, is also problematic because THC can remain in a person's body for up to a month after consumption—well beyond the period of experiencing a psychoactive effect.⁹⁴ Based on these properties, a person can have THC present in his or her system and not be experiencing a psychoactive effect that would make him or her impaired to drive. This makes it difficult to set a standard for determining impairment from THC.

State lawmakers and law enforcement personnel are wrestling with how to address this issue. SB 188 and AB 206 include a provision that would remove THC from the definition of "restricted controlled substance" as it pertains to operating a motorized vehicle and other motorized modes of transportation. Under this proposal, a person could not be

89. Kaplan, "Cannabis Companies Push F.D.A. to Ease Rules on CBD Products."

90. Wis. Stat. § 346.63 (1) (am).

91. Wis. Stat. § 340.01 (50m) (e).

92. Wis. Stat. § 346.63 (1) (d).

93. Eric Westervelt, "The Pot Breathalyzer is Here. Maybe," *NPR*, August 4, 2018, <https://www.npr.org>.

94. Westervelt, "The Pot Breathalyzer is Here. Maybe."

charged under OWI laws for having THC in his or her blood, as is the case under current law. Law enforcement would need to prove that an individual is impaired, but cannot rely solely on the presence of THC to support that claim. At a committee hearing on the bill on May 31, 2019, several law enforcement officers expressed opposition to the proposal, suggesting that it would make it more difficult to enforce OWI laws for people driving while high. Under a proposed amendment to the senate and assembly bills, THC would remain a restricted controlled substance but only at a concentration of one or more nanograms per milliliter of a person's blood.⁹⁵

Financial barriers for hemp businesses

Hemp businesses have experienced difficulty in securing loans or bank accounts due to federal laws. Previously, when hemp was listed as a controlled substance, financial institutions were at risk of being prosecuted for serving hemp businesses under federal money laundering laws and other banking laws.⁹⁶ In February 2014, the U.S. Treasury Department provided guidance in accordance with a memo issued by the U.S. Department of Justice (DOJ) that allowed financial institutions to individually decide whether to serve marijuana-based businesses, at their own risk.⁹⁷ This memo was an extension of the Cole Memo⁹⁸ issued by DOJ in August 2013 that effectively limited enforcement of federal marijuana laws in states that legalized marijuana with strong enforcement mechanisms. Many financial institutions still refused to serve hemp businesses and the Small Business Administration (SBA) even established a policy in April 2018 forbidding banks from providing loans to any "hemp-related business" unless the business could prove it was legal.⁹⁹ The statement specifically mentioned "paper, clothing and rope" as legal products, but it did not specify what other activities or products are considered legal.¹⁰⁰

The issue of hemp businesses being denied financial services appeared to be resolved when the 2018 Farm Bill removed hemp from the federal list of controlled substances. In accordance with the farm bill, the SBA reversed its policy in February 2019 and allowed loans to be made to hemp businesses.¹⁰¹ Despite the change made by the farm bill, many hemp businesses are still being refused financial services. As recently as May 2019, hemp

95. Senate Amendment 1 to Senate Bill 188 and Assembly Amendment 1 to Assembly Bill 206.

96. Banks are subject to prosecution under federal money laundering laws (18 U.S.C. § 1956 and 18 U.S.C. § 1957), unlicensed money transmitter laws (18 U.S.C. § 1960), and the Bank Secrecy Act (31 U.S.C. § 5311).

97. "BSA Expectations Regarding Marijuana-Related Businesses," Financial Crimes Enforcement Network, Department of the Treasury, February 14, 2014, <https://www.fincen.gov/>.

98. The Cole Memo was issued by former Deputy Attorney General James M. Cole in August 2013 and was later rescinded by a memo issued in January 2018 by former Attorney General Jeff Sessions. This memo reasserted the right of federal prosecutors to determine how to enforce and prioritize prosecution for federal marijuana offenses.

99. Linda E. McMahon, "Revised Guidance on Credit Elsewhere and Other Provisions in SOP 50 10 5(j)," Small Business Administration, April 3, 2018.

100. Ibid.

101. Dianna L. Seaborn, "Issuance of SOP 50 10 5(K)," Small Business Administration, February 15, 2019.

businesses in Wisconsin have had their bank accounts closed or were denied from opening accounts.¹⁰² Some financial institutions have cited a lack of federal regulations on hemp and CBD as the reason they are not serving hemp businesses.¹⁰³ These institutions worry that without federal regulations they run the risk of not being in compliance with existing financial regulations. Until federal regulations are developed on this subject, individual financial institutions are left to decide whether to serve hemp businesses.

Summary

Over the past several years, states have experimented with growing hemp and allowing businesses to process and sell hemp on a limited basis. The 2018 Farm Bill made hemp a permanent part of U.S. agriculture and provided stability to a new and uncertain industry. The farm bill has provided an opportunity for states to establish their own programs and develop regulations for an industry that is just starting and expected to grow quickly. There is strong enthusiasm for hemp in Wisconsin as indicated by the significant increase in applications for grower and processor licenses for the 2019 growing season. Given this enthusiasm and Wisconsin's past history and success in growing hemp, Wisconsin has an incentive to establish a hemp program that facilitates hemp production in the state while also ensuring that key legal and enforcement issues are addressed. The state legislature will need to consider several key legal, industry, and regulatory barriers as outlined in this paper to establish a program that will best meet the needs of the hemp industry in Wisconsin. ■

102. Brittany Lewis, "CBD Store Owner Says Banks Account Closed Over Products Sold," *CBS 58 WDJT - Milwaukee*, May 23, 2019, <https://www.cbs58.com/>.

103. Emilee Fannon, "CBD Issue Puts Credit Union at Odds with State Officials," *WKOW*, April 26, 2019, <https://wkow.com/>.

Appendix: Wisconsin's hemp pilot program

Wisconsin's hemp pilot program is established in section 94.55 of the Wisconsin Statutes and is administered by DATCP. Protections from prosecution for program participants are established in section 961.32(3)(b) of the Wisconsin Statutes under Chapter 961, the Uniform Controlled Substances Act. The following is a detailed description of the program components.

Licensure

A person that grows or processes hemp must obtain a license.¹⁰⁴ There are two types of licenses: a grower license and a processor license.¹⁰⁵ A grower license is required to plant or harvest hemp. A processor license is required to store, transport, handle, and convert hemp to be used for retail purposes. A licensed hemp grower may process hemp without a separate processor license if the grower is processing only hemp that he or she grows. Licenses do not expire and remain valid until the pilot program ends unless a license is suspended or revoked.¹⁰⁶

There are two main requirements to obtain a grower or processor license established in Wisconsin Statutes.¹⁰⁷ First, a person applying for a grower's license must provide the GPS coordinates for the location where hemp production will occur. Second, a person applying for either a grower or a processor license must undergo a background check. If the background check reveals that an applicant has violated any controlled substances law in any jurisdiction, the applicant will be denied a license. DATCP has the authority to determine additional license application requirements as well as authority to establish criteria for accepting, rejecting, suspending, or revoking licenses.¹⁰⁸

Registration

Licensed hemp growers and processors must register with DATCP every year they wish to grow or process hemp.¹⁰⁹ To register, DATCP currently requires each program participant to pay a registration fee and submit the GPS coordinates of hemp facilities, a

104. Under Wis. Stat. § 94.55(3)(a), DATCP must "issue licenses that authorize the planting, growing, cultivating, harvesting, sampling, testing, processing, transporting, transferring, taking possession, selling, importing, and exporting of industrial hemp."

105. Wis. Admin. Code § ATCP 22.03.

106. Wis. Stat. § 94.55(3)(a); Wis. Admin. Code § ATCP 22.03(1) and 22.03(3).

107. Wis. Stat. § 94.55(3)(a).

108. Requirements for obtaining a license and policies for amending, denying, suspending, and revoking licenses are established in Wis. Admin. Code § ATCP 22.03.

109. See Wis. Stat. § 94.55(3)(b): DATCP must "create a registration system that authorizes the sampling, testing, processing, transporting, transferring, taking possession, selling, importing, and exporting of industrial hemp."

research plan, and a signed research agreement.¹¹⁰ Program participants must register by December 31 to grow or process hemp for the next season.¹¹¹

Fees

To operate the hemp pilot program, DATCP leverages license, registration, and hemp sampling and testing fees. To obtain a license to grow hemp, a person must pay a onetime fee, the amount varying based on the number of acres grown.¹¹² Hemp growers who wish to change how many acres they grow must pay a \$50 fee plus the possible cost for additional acreage.¹¹³ There is no fee for obtaining a processor license.

DATCP is authorized by state statute to charge an annual fee “in an amount not to exceed an amount sufficient to cover the costs to the department of regulating those activities.”¹¹⁴ Under this provision, DATCP currently requires an annual registration fee of \$350 for growers and \$100 for processors.¹¹⁵ DATCP also charges hemp growers a \$250 fee to sample and test the THC concentration of each hemp crop.¹¹⁶ Table 1 provides a complete breakdown of the required fees for hemp growers and table 2 provides this information for hemp processors.

Table 1. Fees for hemp growers

License (onetime)	Registration (annual)	Sampling and testing
\$150 (0–30 acres)	\$350	\$250 per sample/ test
\$5/acre (31–199 acres)	\$350	\$250 per sample/ test
\$1,000 (200+ acres)	\$350	\$250 per sample/ test

Table 2. Fees for hemp processors

License	Registration (annual)
No fee	\$100

110. “Frequently Asked Questions: Wisconsin’s Industrial Hemp Pilot Research Program,” Wisconsin Department of Agriculture, Trade and Consumer Protection, March 13, 2019, <https://datcp.wi.gov/>.

111. Wis. Admin. Code § ATCP 22.04(1).

112. Wis. Stat. § 94.55(2)(b)4.

113. Wis. Admin. Code § ATCP 22.03(7).

114. Wis. Stat. § 94.55(2)(b)4.

115. Wis. Admin. Code § ATCP 22.04.

116. Wis. Admin. Code § ATCP 22.11.

Inspections, sampling, and testing

DATCP may inspect any location or facility associated with hemp activities “at any time and without notice.”¹¹⁷ State law requires that hemp grown in the state be tested for its THC concentration to ensure it does not exceed the legal amount of 0.3 percent.¹¹⁸ DATCP requires hemp growers to have a minimum of one sample tested from “each registered field and plant variety.”¹¹⁹ DATCP requires hemp growers to notify the department at least 30 days in advance of the intended harvest date. DATCP then determines when sampling and testing will occur.

Hemp samples are tested in a laboratory using a high performance liquid chromatography test.¹²⁰ A sample that produces a THC concentration of greater than 0.3 percent fails the test. If a sample fails a test, DATCP requires the entire crop where the sample originated to be destroyed.¹²¹ DATCP must then inspect the field to ensure the crop has been destroyed. If the grower fails to destroy the crop, DATCP may destroy it and charge the grower for the cost.¹²² If a test results in a THC concentration between 0.3 and 1 percent, the grower can request a re-test of the same sample or a test of a new sample.¹²³ Only one re-test can be conducted for each field or plant variety. If a sample fails the re-test, the grower must destroy the crop within ten days. A crop from a sample that passes the test must be harvested by the grower within ten days.¹²⁴

A hemp grower is charged \$250 for each sample tested.¹²⁵ Hemp growers also bear the cost for any re-sampling or re-testing. DATCP invoices the grower for the cost of sampling and testing, which the grower must pay within 30 days or face possible suspension of his or her license.¹²⁶

Fit for commerce certification

Any hemp that is being transported must be accompanied by a form, referred to as a “fit for commerce certificate.”¹²⁷ The certificate must include the following information: THC test results, the amount of hemp being transported, and a full record of the chain of custody for all transfers made.¹²⁸ DATCP may require other information on the cer-

117. Wis. Admin. Code § ATCP 22.08.

118. Wis. Stat. § 94.55(2)(a).

119. Wis. Admin. Code § ATCP 22.09.

120. Wis. Admin. Code § ATCP 22.10.

121. Wis. Admin. Code § ATC 22.10(5).

122. Wis. Admin. Code § ATCP 22.10(6).

123. Wis. Admin. Code § ATCP 22.10(4).

124. Wisconsin Department of Agriculture, Trade and Consumer Protection, “Frequently Asked Questions.”

125. Wis. Admin. Code § ATCP 22.11.

126. Wis. Admin. Code § ATCP 22.11.

127. Wis. Admin. Code § ATCP 22.02(9).

128. Wis. Stat. § 94.55(3)(c).

tificate. The certificate must accompany the crop until it is processed in such a way that no longer meets the legal definition for hemp.¹²⁹ The certificate is then submitted to DATCP. Any harvested hemp found without the certificate may be seized and destroyed by DATCP and may result in an individual's license being suspended or revoked.¹³⁰

Protections and Penalties

Since hemp is still considered a controlled substance under state law, individuals who possess or handle hemp are subject to the Uniform Controlled Substances Act. However, 2017 Wisconsin Act 100 established protections from prosecution for persons engaging in activities allowed under the pilot program.¹³¹ These protections include (1) "planting, growing, cultivating, harvesting, processing, or transporting hemp" with a THC concentration of up to 1 percent; (2) "selling, transferring, importing, exporting, or taking possession" of hemp; (3) "selling, transferring, importing, exporting, processing, transporting, harvesting, or taking possession of hemp" that is certified to be in compliance with the THC concentration limit; (4) possessing hemp with a THC level above the permissible level after it has been certified for being in compliance if the person had no reason to believe it was not in compliance; and (5) taking, transporting, or testing samples of hemp.¹³²

Pilot program participants are subject to penalties for violating hemp pilot program laws and rules. A person found in violation of program requirements is subject to a fine between \$200 and \$5,000 for the first offense and between \$400 and \$10,000 for an offense that is committed within five years of a previous offense.¹³³

Reporting and records

Hemp growers and processors are required to submit specific types of reports to DATCP and maintain records. A hemp grower is required to submit at least two types of reports to the DATCP: a planting report by July 1 or within 30 days of planting and a final production report by December 15.¹³⁴ DATCP may require a hemp grower to submit additional reports. A hemp processor is required to submit a report to DATCP by December 15 that includes information on the quantity of hemp received and the intended markets for that hemp.¹³⁵

Hemp growers and processors are also required to maintain records for at least three

129. Wis. Stat. § 94.55(3)(c).

130. Wis. Admin. Code § ATCP 22.12.

131. Wis. Stat. § 961.32(3)(b).

132. Wis. Stat. § 961.32(3)(b).

133. Wis. Stat. § 94.55(4).

134. Wis. Admin. Code § ATCP 22.05(1)(a).

135. Wis. Admin. Code § ATCP 22.05(1)(b).

years following a growing season.¹³⁶ DATCP requires hemp growers to maintain records on hemp seed sources and variety, agronomic and production information, a copy of their fit for commerce certificates, information on their processors, and a description of how their crop was disposed of, if applicable.¹³⁷ DATCP requires hemp processors to maintain records on their sources of hemp, including the quantities purchased, and information on the recipients of their product, including the quantities sold.¹³⁸

136. Wis. Admin. Code § ATCP 22.05(2)(a).

137. Wis. Admin. Code § ATCP 22.05(2)(b).

138. Wis. Admin. Code § ATCP 22.05(2)(c).



www.somers.org

P.O. Box 197, Somers, WI 53171 • PH: (262) 859-2822 • FAX: (262) 859-2331

**VILLAGE OF SOMERS
VILLAGE BOARD
WORK SESSION ITEM MEMORANDUM**

WORK SESSION: January 21st, 2020

TO: Village President Stoner and Village Trustees

FROM: Jason J. Peters, Administrator

AGENDA ITEM: #4 Discuss payment in the amount of \$351,574.10 for 2019 Paving Program to Stark Pavement Corporation

BACKGROUND:

Stark Pavement Corporation has sent an invoice for the 2019 Paving Program. Stark was awarded the contract in May of 2019.

UPDATE:

The final payment to Stark will be in the amount of \$370,078.00. The payment at this time is \$351,574.10, which represents a 5% retainage. The retainage is being held due to work that still needs to be completed on 64th Street and 65th Street.

COMMENTS:

Staff would request that this item be placed on our January 28th Board meeting for approval.

ATTACHMENTS:

Stark Invoice



Date:	11/20/2019
Dept:	Public Works

PURCHASE REQUEST

Vender	Stark Pavement Corporation				
Company					
Address	12845 W Burleigh Road				
City	Brookfield	State	WI	Zip	53005
Telephone	(414) 784-6841		Fax	(262)784-6841	

Requested by: Jerry Smith	Date Needed	Account #:	Previous Supplier: Yes X No
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QUANTITY	ITEM NUMBER	ITEM TO BE PURCHASED	UNIT PRICE	TOTAL
1		43 rd Avenue Paving	\$111,568.00	\$ 111,568.00
1		45 th Avenue Paving	88,718.00	88,718.00
1		45 th Ave. Item #6, Cross Culvert Not Used	- 3,670.00	- 3,670.00
1		16 th Street Paving	80,635.00	80,635.00
1		16 th Street, Item #9, Cross Culvert Not Used	- 4,395.00	- 4,395.00
80 %		65 th Street 80% Complete	70,592.00	56,474.00
80 %		64 th Street 80% Complete	50,935.00	40,748.00
			Sub Total=	\$ 370,078.00
			Less 5 % Retention=	18,503.90
			Current Invoice=	\$ 351,574.10
		SHIPPING		
			TOTAL	\$ 351,574.10

APPROVALS	
DATE APPROVED:	DATE APPROVED:
DEPARTMENT MANAGER APPROVAL:	PURCHASING AGENT APPROVAL:

PURCHASING DEPARTMENT ONLY	
DATE ORDERED:	P.O. NUMBER:



STARK
 PAVEMENT CORP
 STARK PAVEMENT CORPORATION
 12845 W Burleigh Road
 Brookfield, WI 53005
 Phone: (414) 466-0644
 Fax: (262) 784-6841

INVOICE NUMBER
 62356

SOLD TO VILLAGE OF SOMERS
 PO Box 197
 Somers, WI 53171

SHIP TO Somers 2019 Paving program
 Various Streets
 Somers, WI 53171

ACCOUNT NO	PO NUMBER	SHIP VIA	DATE SHIPPED	TERMS	INVOICE DATE	PAGE
2SOMERS				Net 30	11/15/2019	1

Job# 198754

Billing for work completed to 10/31/2019 as listed.

ITEM NO	QUANTITY	DESCRIPTION	UNIT PRICE	EXTENDED
	1	2019 Paving Program 43rd Ave. as per proposal	111,568.00	111,568.00
	1	2019 Paving Program 45th Ave. as per proposal	88,718.00	88,718.00
6	1	2019 Paving Program 45th Ave. Item #6 not used	-3,670.00	-3,670.00
	1	2019 Paving Program 16th Street as per proposal	80,635.00	80,635.00
9	1	2019 Paving Program 16th Street - Item #9 not used	-4,395.00	-4,395.00
	0.8	2019 Paving Program 65th Street as per proposal - 80% complete	70,592.50	56,474.00
CO# 1	0.8	2019 Paving Program 64th Street as per proposal - 80% complete	50,935.00	40,748.00

ITEM TOTAL 370,078.00

RETENTION 5% -18,503.90

TOTAL AMOUNT \$ 351,574.10



**VILLAGE OF SOMERS
VILLAGE BOARD
WORK SESSION ITEM MEMORANDUM**

WORK SESSION: January 21st, 2020

TO: Village President Stoner and Village Trustees

FROM: Jason J. Peters, Administrator

AGENDA ITEM: #5 Discuss proposed Preliminary Resolution declaring the intent to exercise Special Assessment Police Powers for the Repair of Sewer Laterals for the 16th Place Sanitary Sewer Rehabilitation Project

BACKGROUND:

Musson Brothers Construction, Inc. has completed the Sanitary Sewer Lining project on 52nd Avenue and 16th Place. In the end, the only 16th Place needed lining. Engineer Snyder has completed the assessment report. Each parcel was notified that it was the Village's intent to specially assess their parcel \$1,000 for the lining of their lateral.

UPDATE:

At our January 7th Work Session the Board discussed assessing the nine parcels that needed to be lined. The direction from the Board was to move forward with the assessment process. Attorney Davison has drafted the attached Preliminary Resolution.

COMMENTS:

Staff would request that this item be placed on our February 11th Board meeting for action. If the Board passes the resolution on the 11th, notices with send/posted that a public hearing on the assessments will be held February 25th.

ATTACHMENTS:

Preliminary Resolution

**2020 PRELIMINARY RESOLUTION DECLARING THE INTENT TO
EXERCISE SPECIAL ASSESSMENT POLICE POWERS FOR THE
REPAIR OF SEWER LATERALS FOR THE 16th PLACE SANITARY
SEWER REHABILITATION PROJECT**

RESOLVED, by the Village Board of Trustees of the Village of Somers, Kenosha County, Wisconsin:

1. The governing body hereby declares its intention to levy special assessments pursuant to §66.0703, Wis. Stats., upon property described in Exhibit “A” hereto for special benefits conferred upon such property by the rehabilitation of sewer laterals on 16th Place in accordance with the attached Exhibit “A” which is incorporated herein by reference.
2. The governing body hereby determines that the rehabilitation of such improvements are in the best interest of and for the health and welfare of the municipality and the property affected by the improvement and constitutes an exercise of the police power.
3. The Clerk/Treasurer shall cause to be prepared a report from the Village Engineers which shall consist of:
 - (a) An itemization of the entire cost of the improvements.
 - (b) A schedule of proposed assessments.
4. When the report is completed, the Clerk/Treasurer shall make a copy of the report available for public inspection.
5. Upon completion of the report, the Clerk/Treasurer shall cause notice to be given stating the nature of the proposed improvement, the time and place at which the report may be inspected, and the time and place of the public

hearing on the matters contained in the preliminary resolution and report.

This notice shall be published as a Class 1 Notice and a copy shall be mailed, at least ten (10) days before the hearing, to every interested party.

6. The hearing shall be held at the regular meeting place of the governing body, 7511 12th Street, Somers, Wisconsin, on February 25, 2020, at 5:30 p.m. in accordance with §66.0703, Wis. Stats.

Dated this 11th day of February, 2020.

VILLAGE OF SOMERS

By: _____
George Stoner, President

Attest: _____
Timothy Kitzman, Clerk/Treasurer

EXHIBIT "A"

Name(s): Bryan M. and Teagan E. Paielli
Parcel No. 83-4-223-184-0525
Assessment: \$1,000.00

Name(s): Gerald M. and Diane R. Sorensen
Parcel No. 83-4-223-184-0500
Assessment: \$1,000.00

Name(s): Todd A. and Amy M. Kehl
Parcel No. 83-4-223-184-0495
Assessment: \$1,000.00

Name(s): Robert D. & Patricia A. Schelp
Revocable Trust
Parcel No. 83-4-223-184-0440
Assessment: \$1,000.00

Name(s): Jennifer H. Harris & Tammy Harris
Parcel No. 83-4-223-184-0435
Assessment: \$1,000.00

Name(s): Douglas A. Hebert
Parcel No. 83-4-223-184-0430
Assessment: \$1,000.00

Name(s): Tracy Gilbert
Parcel No. 83-4-223-184-0420
Assessment: \$1,000.00

Name(s): Robert J. Smuda
Parcel No. 83-4-223-184-0410
Assessment: \$1,000.00

Name(s): Ralph M. Nudi Revocable Trust
Parcel No. 83-4-223-184-0535
Assessment: \$1,000.00



**VILLAGE OF SOMERS
VILLAGE BOARD
WORK SESSION ITEM MEMORANDUM**

WORK SESSION: January 21st, 2020

TO: Village President Stoner and Village Trustees

FROM: Jason J. Peters, Administrator

AGENDA ITEM: #6 Discuss possible resolution regarding opposition to 2019 Assembly Bill 623 and 2019 Senate Bill 560

BACKGROUND:

President Stoner has requested that the Board discuss the possibility of passing a resolution in opposition to 2019 Assembly Bill 623 and 2019 Senate Bill 560. The proposed legislation deals with tax increment finance districts. If enacted the TID would be limited in the amount of cash grants that could be made. The limit would be set at twenty percent of the total project costs. The legislation also requires a unanimous vote by the Joint Review Board to add territory to a project plan or to extend the plan's original termination date.

2019 Assembly Bill 623

<https://docs.legis.wisconsin.gov/2019/proposals/AB623>

2019 Senate Bill 560

<https://docs.legis.wisconsin.gov/2019/proposals/sb560>

ATTACHMENTS:

City of Kenosha's proposed Resolution

RESOLUTION _____

PRINCIPAL SPONSOR: ALDERPERSON BOGDALA
LEAD CO-SPONSOR: ALDERPERSON PEDERSEN
CO-SPONSORS: ALDERPERSON WILSON
ALDERPERSON LAMACCHIA
ALDERPERSON PROZANSKI
ALDERPERSON RUFFALO
ALDERPERSON ROSE
ALDERPERSON MICHALSKI

**RESOLUTION TO URGE THE STATE LEGISLATIVE TO
DEFEAT 2019 ASSEMBLY BILL 623 AND 2019 SENATE BILL 560
WHICH LIMITS MUNICIPAL TID AUTHORITY AND CHANGES
VOTING REQUIREMENTS FOR TID JOINT REVIEW BOARDS**

WHEREAS, under the current tax incremental financing program, a City may create a Tax Incremental District (TID) in part of its territory to foster development;

WHEREAS, 2019 Assembly Bill 623 and 2019 Senate Bill 560 (the bills) propose to change the voting requirements for a TID's joint review board (JRB) and limit the amount of cash grants that a City may make for TID's project costs;

WHEREAS, the bills require unanimous JRB approval for a vote to amend a TID's project plan that would either add territory to the TID or extend its original termination date rather than a majority vote;

WHEREAS, as a result of the bills, the total of all allowable cash grants, including financing costs attributable to the grants, could not exceed 20 percent of the total project costs of a TID;

WHEREAS, the City has and continues to use the tax incremental financing program to foster development in the City of Kenosha;

WHEREAS, the creation and use of TIDs is a significant instrument which the City has successfully utilized to rehabilitate and revitalize blighted areas within the City of

Kenosha;

WHEREAS, the bills would negatively impact local authority to create and manage locally created TIDs by limiting the City’s authority to provide cash grants and altering the voting requirements; and

WHEREAS, the bills impede local control of significant local concerns.

NOW, THEREFORE, BE IT RESOLVED, the Common Council for the City of Kenosha urges the State Assembly and the State Senate to protect local authority of local government to create and manage locally created TIDs by defeating 2019 Assembly Bill 623 and 2019 Senate Bill 560.

BE IT FURTHER RESOLVED, that the City Clerk is directed to send a copy of the resolution to State Senator Scott Fitzgerald, State Senator Robert Wirsch, State Senator Van Wanggaard, State Representative Robert Vos, State Representative Tip McGuire, State Representative Samantha Kerkman, and State Representative Tod Ohnstad.

Adopted this ____ day of _____, 2020.

ATTEST: _____
DEBRA SALAS, City Clerk/Treasurer

Date: _____

APPROVED: _____
JOHN M. ANTARAMIAN, Mayor

Date: _____

Drafted By:
MATTHEW A. KNIGHT
Deputy City Attorney

**VILLAGE OF SOMERS
7511 12th STREET
SOMERS, WI 53171**

**VILLAGE BOARD MEETING
TENTATIVE AGENDA
01-28-2020
5:30 P.M.**

1. Call to order
2. Pledge of Allegiance
3. Consent and Approval of Minutes of Regular meeting on 01-14-2020; Vouchers dated 01-16-2020, December 2019 ACH payments
4. Correspondence:
5. Citizen Comments
6. Trustee Comments
7. Motion to approve payment in the amount of \$351,574.10 for 2019 Paving Program to Stark Pavement Corporation
8. Approval of Operator Licenses: Clerk Recommends Approval:
9. Adjourn

I hereby certify that as the designee of the chief elected official of the Village of Somers, I posted this notice of the Jan. 28th, 2020 Village Board Meeting Agenda in 1 public place & on the Village website.

Dated this 17th day of Jan., 2020

Mary Ann Cole, Deputy Clerk

Requests from person with disabilities who need assistance to participate in this meeting should be made to the Clerk's Office at 262-859-2822 with as much notice as possible. Notice is hereby given that members of the Village Board may participate telephonically. Notice is hereby given that members of the Town Board may be in attendance for the sole purpose of gathering information. A quorum may be present. However, no Board action will be taken.