

HB 2646 B BUDGET REPORT and MEASURE SUMMARY

Carrier: Rep. Post

Joint Committee On Ways and Means

Action Date: 06/21/21

Action: Do pass with amendments to the A-Eng bill. (Printed B-Eng.)

House Vote

Yeas: 10 - Bynum, Drazan, Gomberg, Leif, McLain, Nosse, Rayfield, Sanchez, Sollman, Stark

Exc: 1 - Smith G

Senate Vote

Yeas: 12 - Anderson, Frederick, Girod, Golden, Gorsek, Hansell, Johnson, Knopp, Lieber, Steiner Hayward, Taylor, Thomsen

Prepared By: Renee Klein and Michelle Lisper, Department of Administrative Services

Reviewed By: John Terpening, Legislative Fiscal Office

Department of Agriculture

2021-23

Department of Justice

2021-23

Budget Summary*

	2019-21	2021 - 23	2021-23	Committee Change from 2019-21	
	Legislatively Approved Budget ⁽¹⁾	Current Service Level	Committee Recommendation	Leg. Approved	
				\$ Change	% Change
Oregon Department of Agriculture					
General Fund	\$ -	\$ -	\$ 1,099,977	\$ 1,099,977	100.0%
Total	\$ -	\$ -	\$ 1,099,977	\$ 1,099,977	100.0%
Oregon Department of Justice					
Other Funds Limited	\$ -	\$ -	\$ 304,964	\$ 304,964	100.0%
Total	\$ -	\$ -	\$ 304,964	\$ 304,964	100.0%

Position Summary

Oregon Department of Agriculture

Authorized Positions	0	0	4	4
Full-time Equivalent (FTE) positions	0.00	0.00	3.14	3.14

Oregon Department of Justice

Authorized Positions	0	0	1	1
Full-time Equivalent (FTE) positions	0.00	0.00	0.88	0.88

⁽¹⁾ Includes adjustments through January 2021

* Excludes Capital Construction expenditures

Summary of Revenue Changes

HB 2646 allows the State Department of Agriculture (ODA) to establish regulations for kratom products, as well as assess a registration fee to each kratom processor. The initial fee that ODA can charge processors is set at \$2,500 for the first year and ties annual adjustments to the Consumer Price Index. Due to the exact number of potential registrations being unknown, start-up costs and potentially ongoing costs will need to be funded by the General Fund. The bill appropriates \$1,099,977 General Fund to ODA for this purpose. The bill also provides \$304,964 Other Funds expenditure limitation to the Oregon Department of Justice (DOJ), whose revenue sources is legal service billings to ODA, which will be paid for from monies received from registration fees collected under this measure.

Summary of Natural Resources Subcommittee Action

House Bill 2646 is the Oregon Kratom Consumer Protection Act, regulating processors and sellers of kratom and directs ODA to adopt rules to carryout regulations contained in the bill. The Subcommittee recommended \$1,099,977 General Fund, \$304,964 Other Funds and five positions (4.02 FTE) to carry out provisions of the bill.

Oregon Department of Agriculture

Kratom is not presently federally regulated and there is no use of the product that has been approved by the Federal Food and Drug Administration. The regulation of kratom will be a new role for the State of Oregon and ODA. The Department will have significant start-up costs to establish rules related to regulation, develop lab testing methods to determine safe usage and for label accuracy, as well as standard program development costs, and personnel costs. To perform the work required in the bill, the Subcommittee approved three permanent full-time positions, including two Natural Resource Specialist 3's (0.88 FTE each), a Chemist 3 (0.88 FTE), and a permanent halftime Operations and Policy Analyst 3 (0.50 FTE) that will assist with ongoing implementation and oversight.

In addition to positions, ODA will receive funding for other costs associated with starting a new program of this nature. ODA will need to develop rules related to labeling standards, product safety standards, and accuracy testing, which are estimated to be approximately \$150,000. Since this is a previously unregulated product, it is anticipated that significant DOJ consultation will be required. Further, a licensing system and registration database will need to be created, estimated around \$50,000. ODA also anticipates significant lab work to ensure public safety. Costs for developing lab testing standards are estimated between \$100,000 and \$300,000 but may increase depending on the type and scope of testing required and what effect the product may have on laboratory equipment. Contracting out with third-party labs may also be required in order to determine appropriate two standard testing.

The Legislative Fiscal Office notes that this is likely to be a complicated and expensive regulatory program that under current conditions, will not be able to be funded only with registration fees like other regulatory programs within the Department. Once the program is fully implemented, the Department may need to return to the Legislature for additional resources.

The Subcommittee approved the following budget note for ODA:

Budget Note

Due to the lack federal regulation around kratom, and that there are currently no federal Food and Drug Administration-approved uses, there are concerns about the Department of Agriculture's ability to implement some aspects of the Oregon Kratom Consumer Protection Act, specifically the ability of ODA's laboratory to establish standards for testing to ensure a kratom product is safe for human consumption, and standards for recommended serving sizes. Additionally, the measure places restrictions on the fee that ODA may charge processors for licensure, and based on current information around known kratom processors, this will necessitate that the program to be subsidized with significant ongoing General Fund unless the number of licensees increases. The Department of

Agriculture is directed to report to the Legislature on its progress in implementing the measure's requirements, including but not limited to, laboratory-related issues, challenges with rule-making or potential legal issues, recommended policy changes that would assist the Department in effectively implementing the state program, an update on program costs, and projections for operation of the program going forward, including the need for any additional resources. The Department is directed to provide this report to the Joint Committee on Ways and Means during the 2022 Legislative session.

Department of Justice

The Subcommittee approved \$304,964 Other Funds expenditure limitation and authorized the establishment of one permanent full-time Assistant Attorney General (0.88 FTE), with \$40,922 in associated services and supplies. The Department of Justice (DOJ), Civil Enforcement Division, will assist ODA in drafting rules to develop labeling standards, product safety standards, testing for label accuracy of kratom products, fees and fee schedules, as well as for governing the civil penalty matrix and standards for implementing and enforcing the prohibitions in the bill. In addition, DOJ may need to defend ODA in regulatory actions and contested cases.

DETAIL OF JOINT COMMITTEE ON WAYS AND MEANS ACTION

Oregon Department of Agriculture & Department of Justice
 Renee Klein -- 971-283-1841

DESCRIPTION	GENERAL FUND	LOTTERY FUNDS	OTHER FUNDS		FEDERAL FUNDS		TOTAL ALL FUNDS	POS	FTE
			LIMITED	NONLIMITED	LIMITED	NONLIMITED			
<u>Department of Agriculture</u>									
SCR 030 - Food Safety									
Personal Services	\$ 625,165	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 625,165	4	3.14
Services and Supplies	\$ 474,812	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 474,812		
<u>Department of Justice</u>									
SCR 050 - General Counsel									
Personal Services	\$ -	\$ -	\$ 264,042	\$ -	\$ -	\$ -	\$ 264,042	1	0.88
Services and Supplies	\$ -	\$ -	\$ 40,922	\$ -	\$ -	\$ -	\$ 40,922		
TOTAL ADJUSTMENTS	\$ 1,099,977	\$ -	\$ 304,964	\$ -	\$ -	\$ -	\$ 1,404,941	5	4.02
SUBCOMMITTEE RECOMMENDATION	\$ 1,099,977	\$ -	\$ 304,964	\$ -	\$ -	\$ -	\$ 1,404,941	5	4.02