

March 24, 2008

Hon. Edmund G. Brown Jr.
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Krystal Paris
Initiative Coordinator

Dear Attorney General Brown:

Pursuant to Elections Code Section 9005, we have reviewed the proposed initiative cited as the “The Inalienable Rights Enforcement Initiative” (A.G. File No. 08-0009). The initiative amends the State Constitution and adds Section 32 that allows, with certain restrictions, the legal cultivation, possession, transportation, sale, and use of marijuana.

BACKGROUND

Existing Laws Regarding Marijuana

Federal Law. Federal law classifies marijuana as an illegal substance. The Federal Controlled Substances Abuse Act (Title 21, United States Code, commencing with Section 801), provides criminal sanctions for various activities relating to marijuana. Federal laws are enforced by federal law enforcement agencies that may act independently or in conjunction with state and local law enforcement agencies.

State Law and Proposition 215. The possession, use, transportation, and cultivation of marijuana are generally illegal in California. Penalties for marijuana related activities vary depending on the offense. For example, under California penal code, marijuana possession is a misdemeanor and may result in a fine or a jail sanction while selling marijuana is a felony and may result in a prison sanction.

In November 1996, voters approved Proposition 215 which legalized the cultivation and possession of marijuana in California for medicinal purposes. However, the U.S. Supreme Court ruled in 2005 that federal authorities could continue to prosecute California patients engaged in the medicinal use of marijuana for violations of federal law.

PROPOSAL

Legalization of Marijuana

This measure allows, with certain restrictions, the legal cultivation, possession, use, transportation, and sale of marijuana. (The measure defines marijuana to include any plant of the genus Cannabis or its product including hemp, unless otherwise distinguished.) Under this measure, any person(s) who cultivate marijuana for their own use or for sale would be required to purchase an annual license at a cost of \$50 dollars per plant. Furthermore, any marijuana sold under the measure would have to have a valid stamp affixed to the package at the time of sale. The cost of the stamp varies depending upon the weight of the marijuana contained in a package as follows: (1) \$5 per stamp for each package weighing one-eighth ounce or less, (2) \$40 per stamp for each package weighing one ounce or less, and (3) \$640 per stamp for each package weighing one pound. Stamps and licenses could be sold through vending machines in stores where marijuana was sold. Stamps and licenses would also be available for purchase on the internet. Generally, the anonymity of the purchasers of these stamps and licenses would be guaranteed. The cost of the stamps and licenses cannot be increased unless approved by voters.

This measure does not specifically repeal existing statute related to criminal marijuana activities.

Establishment of Inalienable Rights Enforcement Boards.

This measure establishes state and local Inalienable Rights Enforcement Boards (IREBs) to defend and safeguard the inalienable rights of people and to exercise oversight over the activities sanctioned by this measure. Local IREBs would generally be established at the county or city level and would be comprised of no fewer than five members elected to serve three-year terms. (The measure neither limits the number of local IREBs nor specifies the geographic areas that local IREBs would represent.) After local IREBs are established, each one is required to elect one member to serve on the state IREB which would generally be superior to the local IREBs in terms of the authority it exercised over activities sanctioned by this measure. However, the measure does not specify in detail how the state IREB and local IREBs would share authority. Generally, the state and local IREBs major responsibilities include but are not limited to the following:

- Collecting and administering revenue from the sale of marijuana stamps and licenses.
- Polling the public when a debatable question of morals or public policy is raised.

- Defending and safeguarding against infringement of the inalienable rights of the people, as defined by this measure.

Startup Funding for IREBs. This measure requires that the start-up costs of the IREBs be funded by diverting current expenditures by state and local governments on marijuana law enforcement activities to the IREBs.

Other Provisions

Inalienable Rights. This measure defines several inalienable rights of the people including the right to grow, sell, possess, and use marijuana. Specifically, the measure provides that individuals are to be free from detention, search, arrest, or incarceration for marijuana related activities sanctioned by the measure. The measure also limits drug testing by employers to determine whether a person has used marijuana.

Prohibitions on Advertising of Marijuana, Alcohol, and Tobacco Products. This measure generally prohibits the advertising, marketing and promoting of marijuana, alcohol, and tobacco in California. However, the measure permits advertisements in trade publications and gives the IREBs the discretion to make exceptions to the prohibition on advertising on a case-by-case basis.

Allocation of Stamp and License Revenues. This measure limits the administrative costs of the IREBs to 10 percent of revenues generated from the sale of stamps and licenses. The measure provides that the remaining 90 percent of these revenues be divided equally among three programs for: (1) alleviation of the symptoms of substance abuse and poverty, including but not limited to drug treatment, (2) job creation and job training, and (3) procurement and maintenance of indoor and outdoor recreation areas that would be open to the public at all times. This measure prohibits local IREBs from spending money for religious purposes.

FISCAL EFFECTS

This measure is likely to have a number of fiscal effects on state and local governments.

Measure's Fiscal Effects May Vary Based on Future Court Rulings

Some provisions of this measure may conflict with federal law. Therefore, it is uncertain whether these provisions could be applied, and if so, how broadly they could be applied. Ultimately, these issues would have to be determined by the courts. Given these uncertainties, there could be significant additional fiscal effects beyond the ones described below.

Federal Drug Enforcement Activities Would Likely Affect Fiscal Impact

Given that the federal government continued to enforce federal marijuana laws after the passage of Proposition 215, it is likely that enforcement of federal marijuana laws would continue if this measure were enacted. To the extent that the federal government aggressively enforced federal marijuana laws, it would generally have the effect of impeding or eliminating the cultivation, possession, transportation, sale, and use of marijuana thereby reducing the revenues from licenses and stamps. Thus, the amount of revenues that could be generated under this measure is uncertain given that it would depend to a considerable extent upon the intensity of federal antimarijuana law enforcement activities in California.

Revenues

Possible New Revenue From the Legalization of Marijuana. To the extent that a commercial industry for marijuana products developed in California, revenues would be generated from the taxation of marijuana. While the measure specifically prohibits income tax on marijuana related profits, the taxation impacts described below are possible.

Revenue From Marijuana Stamps and Licenses. There is a lack of accurate data on current marijuana consumption and the sales price of marijuana due to the current illegal nature of consumption. However, based on the limited data available at the time this analysis was prepared, it appears the proposed method of taxation through stamps and licenses could potentially result in revenue from the tens of millions to low hundreds of millions of dollars annually. However, it is difficult to anticipate the revenue that may accompany the proposed taxation scheme for many reasons. For example, there is a possible disincentive for consumers to participate in the new taxation scheme for fear of federal prosecution because marijuana related activities are illegal under federal law. Additionally, the anonymous nature of the taxation scheme would make enforcement difficult.

Revenue From Marijuana Related Sales and Use Tax (SUT). California imposes an SUT on the final sale of tangible personal property. Legalizing the sale of marijuana would allow for the collection of SUT revenue on legal marijuana goods resulting in unknown but potentially significant increase in revenues to the state General Fund as well as local governments annually.

Potential Loss of Alcohol and Tobacco Tax Revenues. This measure prohibits certain advertising of tobacco and alcohol products in California. This prohibition may result in a decrease in the consumption of alcohol and tobacco products. To the extent this occurs it will also result in a decrease in revenue collected from current SUT and excise taxes on alcohol and tobacco products. There could be an unknown but potentially significant decrease in revenue to the General Fund where alcohol excise tax revenues and a portion of the cigarette excise tax revenues as well as SUT on both of these products are deposited. Additionally, there could be an unknown but potentially significant decrease in revenues to certain state programs funded by tobacco taxes.

Criminal Justice

Criminal Justice System Impacts. This measure would likely have the following fiscal impacts on state and local criminal justice systems:

- ***IREBs Start-Up Costs.*** This measure requires that some of the current state spending on marijuana criminal enforcement expenditures be redirected to fund the start-up costs of the state and local IREBs. These one-time costs could be up to the tens of millions of dollars or more depending on what expenditures are considered start-up costs and how long the start-up period lasts.
- ***Local and State Incarceration Costs.*** The measure could possibly result in significant savings to state and local governments, up to several tens of millions of dollars annually, by lowering the number of marijuana offenders incarcerated in state prisons and county jails. It could also reduce the number of persons placed on probation or parole under current antimarijuana laws. The county jail savings would decline to the extent that jail beds no longer needed for marijuana offenders were used for other criminals who are now being released early because of a lack of jail space.
- ***Redirection of Court and Law Enforcement Resources.*** The measure would potentially result in a significant reduction in state and local costs for enforcement of marijuana related offenses and the number of criminal cases in the court system due to the legalization of certain marijuana related activities. However, these savings could be reduced or completely offset because they would likely be redirected to support (1) other law enforcement and court activities, and (2) enforcement of provisions of this measure.

State and Local Substance Abuse Programs and Drug Testing

Effect on Public Substance Abuse Programs. The measure could cause an increase in the consumption of marijuana due to its potentially improved availability, thereby resulting in a potentially significant increase in the number of individuals seeking publicly funded substance abuse treatment services. While the measure specifies that 30 percent of revenues generated from the stamps and licenses be used for a drug treatment program, it is silent on exactly how these revenues would be spent and if they could be used to support or expand existing state and local programs. Thus, there could be a significant increase in state and local spending on substance abuse treatment services that could potentially be partially or fully offset by revenues from this measure.

Prohibition Against Testing for Off-the-Job Use of Marijuana. The measure might result in slightly lower costs for state and local agencies that perform drug testing, since these agencies would no longer be allowed to test for past use of marijuana. These cost savings are likely to be minimal, however, since such agencies would most likely maintain their programs to test for other substances.

Summary

Given that the federal government continues to enforce federal marijuana laws after the passage of California's Proposition 215, which allowed marijuana use for medicinal purposes, it is likely that enforcement of federal marijuana laws would continue if this measure is enacted. As such, any revenues and expenditures generated by this measure would be subject to significant uncertainty. The measure would have the following major fiscal effects:

- Potential savings of up to several tens of millions of dollars annually to state and local governments, which would no longer incur the costs of incarcerating and supervising certain marijuana offenders.
- Potential costs of up to the tens of millions of dollars to state and local governments to fund the one-time start-up costs of the IREBs.
- A potentially significant increase in state and local spending on substance abuse treatment services that could possibly be partially or fully offset by revenues from this measure.
- Potential increased revenues in the tens of millions to low hundreds of millions of dollars annually from marijuana stamps and licenses to support specified programs and the IREBs.
- Unknown but potentially significant increase in state and local revenues from collection of SUT on the sale of Marijuana.

- Unknown but potentially significant decrease in state and local revenues from taxes on tobacco and alcohol due to a prohibition of advertising for these goods that would likely result in a decline in sales.

Sincerely,

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Legislative Analyst

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