

October 3, 2011

Hon. Kamala D. Harris
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Dawn McFarland
Initiative Coordinator

Dear Attorney General Harris:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative related to the use, possession, and sale of marijuana (A.G. File No. 11-0034).

Background

Federal Law. Federal laws classify marijuana as an illegal substance and provide criminal penalties for various activities relating to its use. These laws are enforced by federal agencies that may act independently or in cooperation with state and local law enforcement agencies.

State Law and Proposition 215. Under current state law, the possession, cultivation, or distribution of marijuana generally is illegal in California. Penalties for marijuana-related activities vary depending on the offense. For example, possession of less than one ounce of marijuana is an infraction punishable by a fine, while selling marijuana is a felony and may result in a jail or prison sentence.

In November 1996, voters approved Proposition 215, which legalized the cultivation and possession of marijuana in California for medical purposes under state law. The U.S. Supreme Court ruled in 2005, however, that federal authorities could continue under federal law to prosecute California patients and providers engaged in the cultivation and use of marijuana for medical purposes. Despite having this authority, the U.S. Department of Justice's (DOJ's) current policy (announced in a June 29, 2011 memo from the department to its attorneys) is to not prosecute individual marijuana patients and caregivers who act in compliance with state medical marijuana laws. However, the department stated that it would continue to prosecute "commercial" medical marijuana activities. Moreover, in an earlier October 13, 2010 letter to the U.S. Drug Enforcement Agency, the U.S. Attorney General stated that DOJ would continue to enforce federal laws prohibiting marijuana activities related to recreational use, even if such activities are permitted under state law.

Proposal

This measure changes state law to legalize various marijuana-related activities and regulate the commercial production and sale of marijuana. Despite these changes to state law, activities related to the use of marijuana would continue to be prohibited under federal law. These federal prohibitions could still be enforced by federal agencies.

State Legalization of Marijuana-Related Activities. The measure states that it repeals various state statutes that prohibit marijuana possession, sales to adults or minors, transportation, production, processing, or cultivation, as well as removes references to marijuana from all statutes that regulate controlled substances. However, the measure states that it does not repeal existing statutes that prohibit driving under the influence of alcohol or drugs. The measure also specifies that adults may legally possess, share, transport, use, distribute, sell, cultivate, or process marijuana. Although the measure states that its purpose is not to condone the diversion of cannabis to minors, it effectively legalizes marijuana-related activities by minors by repealing various state statutes which prohibit these activities.

State Regulation of Commercial Production and Sale. The measure allows adults to cultivate and possess less than three pounds of processed marijuana and 100 square feet of marijuana plants for personal use without being subject to regulation. However, production of marijuana in excess of the amounts specified for personal use or for commercial purposes would be subject to regulations adopted by the California Department of Public Health (DPH). These regulations would apply to the cultivation, production, processing, testing, distribution, or sale of marijuana. For example, the measure requires the department to license businesses that manufacture and sell marijuana and establish regulations that limit their size, location, and hours of operation.

Fiscal Effects

The U.S. DOJ's announcement that it would continue to enforce federal prohibitions on non-medical marijuana activities could have the effect of impeding the activities permitted by this measure under state law. Also, the level of these activities could depend upon how, and to what extent, the state chooses to regulate the commercial production and sale of marijuana. Thus, the potential revenue and expenditure impacts of this measure described below are subject to significant uncertainty.

Reduction in State and Local Correctional Costs. The measure could result in savings to the state and local governments by reducing the number of marijuana offenders incarcerated in state prisons and county jails, as well as the number placed under county probation or state parole supervision. These savings could reach several tens of millions of dollars annually. The county jail savings would be offset 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.

Reduction in Court and Law Enforcement Costs. The measure would result in a reduction in state and local costs for enforcement of marijuana-related offenses and the handling of related criminal cases in the court system. However, it is likely that the state and local governments would redirect their resources to other law enforcement and court activities.

Other Fiscal Effects on State and Local Programs. The measure could also have fiscal effects on various other state and local programs. For example, the measure could result in an increase in the consumption of marijuana, potentially resulting in an unknown increase in the number of individuals seeking publicly funded substance abuse treatment and other medical services. This measure could also potentially reduce both the costs and offsetting revenues of the state's Medical Marijuana Program, a patient registry that identifies those individuals eligible under state law to legally purchase and consume marijuana for medical purposes. In addition, the measure would result in costs for DPH to regulate the commercial production and sale of marijuana. Depending on how, and to what extent, the department chose to implement such regulations, these costs could potentially be up to the low tens of millions of dollars annually.

Effects on State and Local Revenues. The state and local governments would receive additional revenues from taxes and fees from marijuana-related activities allowed under this measure. For instance,

state and local governments would receive increased sales tax revenues from the sale of marijuana. In addition, businesses and individuals producing and selling marijuana would pay individual and business taxes. To the extent that this business activity pulled in spending from persons in other states, the measure also would result in a net increase in taxable economic activity in the state. However, the potential new revenues from marijuana-related economic activity could partially be offset by declines in other economic activity as consumers spend less on other consumer products and/or invest less. The magnitude of the net increase in economic activity is unknown and would depend considerably on the extent to which the federal government enforces its laws against marijuana in California. To the extent that a commercial marijuana industry further develops in the state as a result of this measure, however, our best estimate is that the state and local governments could eventually collect hundreds of millions of dollars annually in net additional revenues.

Summary of Fiscal Effects

We estimate that this measure would have the following major fiscal effects:

- The fiscal effects of this measure are subject to considerable uncertainty depending on the extent to which the federal government continues to enforce federal marijuana laws and depending upon how, and to what extent, the state chooses to regulate the commercial production and sale of marijuana.
- Savings of potentially several tens of millions of dollars annually to state and local governments on the costs of incarcerating and supervising certain marijuana offenders.
- Costs potentially up to the low tens of millions of dollars annually to the state to regulate the commercial production and sale of marijuana.
- Potentially hundreds of millions of dollars in net additional tax revenues related to the production and sale of marijuana products.

Sincerely,

Mac Taylor
Legislative Analyst

Ana J. Matosantos
Director of Finance