

December 22, 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. 11-0073).

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 one ounce or less 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 under state law the cultivation and possession of marijuana in California for medical purposes. 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 is to not prosecute individual marijuana patients and caregivers who act in compliance with state medical marijuana laws. The department, however, stated that it would continue to prosecute "commercial" medical marijuana activities. Moreover, the U.S. Attorney General has stated that the U.S. DOJ would continue to enforce federal laws prohibiting marijuana activities related to recreational use, even if such activities were to be permitted under state law. State and local governments currently collect sales tax on medicinal marijuana sales.

Proposal

This measure changes state law to legalize various non-medicinal marijuana-related activities and regulate the commercial production and sale of marijuana. Despite these changes to state law, these activities would continue to be prohibited under federal law.

State Legalization of Marijuana-Related Activities. The measure provides that no person or corporate entity could be arrested or prosecuted for the possession, cultivation, transportation, distribution, or consumption of various products derived from cannabis plants, including marijuana and hemp. The measure also provides that the manufacture, marketing, distribution, or sale between adults of equipment or accessories associated with the above products shall not be prohibited. In addition, the measure bars the use of California law enforcement personnel or funds to assist in the enforcement of federal laws relating to marijuana and provides that any person who “threatens the enjoyment” of the provisions of this measure is guilty of a misdemeanor.

While the measure generally permits the use of marijuana, it authorizes the Legislature to impose standards restricting the use of marijuana by persons operating a motor vehicle or heavy machinery, or engaging in conduct that could affect public safety. Personal use of such marijuana products in enclosed or restricted public places could also be regulated.

Regulation of Commercial Production. This measure requires that commercial production of marijuana products for recreational or religious use be regulated in a manner analogous to California’s beer and wine industries. Commercial production of marijuana is defined in this measure as the production of more than 99 flowering female marijuana plants and 12 pounds of dried, cured flowers of marijuana. The production of a lesser amount is deemed personal use and is exempt from permitting, licensing requirements, or taxation. The measure also limits the commercial production of marijuana products to persons age 21 or older.

Imposition of Fees and Taxes. The initiative allows, but does not require, the Legislature to license and impose fees on vendors who distribute marijuana products to persons 21 or older for recreational or religious use. Any such license or permit fee could not exceed \$1,000. In addition, the Legislature could place excise taxes on the commercial sale of such marijuana products up to \$10 per ounce of marijuana and up to \$2 per gram of concentrated marijuana. Under the terms of the measure, half of any excise tax revenues collected from marijuana sales shall support research, development, or promotion of the industrial and medicinal marijuana and hemp industries in California. For commercial hemp production, the measure prohibits any special zoning requirements, licensing fees, or taxes that are “excessive, discriminatory, or prohibitive.” This measure also prohibits the taxation of marijuana products that are used for medical purposes.

Marijuana Offenders. The measure states that persons in prison or jail, or on parole or probation, convicted under current criminal statutes for marijuana-related activities made legal under this measure would be released from custody. In addition, the measure requires the deletion of marijuana-related criminal records for all persons currently charged with or convicted of legal violations related to marijuana products. The measure also requires the Attorney General to develop and distribute an application form for qualifying individuals to seek the destruction of such records upon the payment of a \$10 fee.

Drug Tests for Past Marijuana Use. Currently, some private businesses and agencies in California use drug tests to detect current intoxication or past marijuana usage for the purposes of making decisions about hiring or terminating employees. Under this measure, such tests could only be considered if they are limited to detecting current marijuana intoxication. Tests that are used for purposes of determining insurance eligibility would similarly be restricted to those that detect current intoxication.

Fiscal Effects

The provisions of this measure would affect both costs and revenues for state and local governments. The U.S. DOJ's announcement, however, 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 considerable uncertainty.

Reduction in Various Criminal Justice 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 community supervision (such as county probation). In addition, the measure could result in a reduction in state and local costs for enforcement of marijuana-related offenses and the handling of related criminal cases in the state court system. In total, the measure could result in savings to the state and local governments on various criminal justice costs in the low hundreds of millions of dollars annually.

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 could result in costs for the state to regulate the commercial production and sale of marijuana. Depending on how, and to what extent, the state chose to implement such regulations, these costs could potentially be up to the low tens of millions of dollars annually. However, these costs could be largely offset by license and permit fees levied on marijuana-related businesses if the Legislature exercises its authority to charge such fees authorized by the measure. Finally, the measure could result in potentially minor state costs and potentially significant local costs related to the destruction of criminal records. Some or all of these costs might be offset by the \$10 fee specified in the measure.

Effects on State and Local Revenues. State and local governments could receive additional revenues, such as sales and excise taxes from marijuana-related activities allowed under this measure. However, since the measure prohibits taxation on medical marijuana products, these revenues would be partially offset by the loss of sales tax currently collected on medical marijuana sales. The state could also realize additional revenues to the extent that the Legislature exercises its option under the measure to collect excise taxes of up to \$10 per ounce of marijuana and up to \$2 per gram of concentrated marijuana. As noted earlier, half of any excise tax revenues collected would support research, development, or promotion of the marijuana and hemp industries in California.

In addition, the measure could result in an increase in taxable economic activity in the state, as businesses and individuals producing and selling marijuana would pay personal income and corporation taxes. Moreover, the measure could increase economic activity in the state to the extent that out-of-state consumers redirect spending into the state. The magnitude of the net increase in economic activity is unknown and would depend considerably on the extent to which the federal government enforces marijuana laws in California. To the extent that a commercial marijuana

industry further develops in the state as a result of this measure and the Legislature chooses to impose excise taxes on marijuana sales, however, our best estimate is that the state and local governments could eventually collect net additional revenues in the low hundreds of millions of dollars annually.

Reduction of Existing Fine and Asset Forfeiture Revenues. The measure could reduce state and local revenues from the collection of the fines established in current law for marijuana offenses and the assets that are forfeited in some criminal marijuana cases. We estimate that these revenues could amount to the low tens of millions of dollars annually. This could be somewhat offset, however, by additional fine revenue generated from the new misdemeanor penalty for persons who threaten the enjoyment of the provisions of this measure.

Summary of Fiscal Effects

We estimate that this measure would have the following major fiscal effects, which could vary considerably depending on future actions by the federal government to enforce federal marijuana laws:

- Savings potentially in the low hundreds of millions of dollars annually to state and local governments on the costs of enforcing certain marijuana-related offenses, handling the related criminal cases in the court system, and incarcerating and supervising certain marijuana offenders.
- Potential net additional tax revenues in the low hundreds of millions of dollars annually related to the production and sale of marijuana.

Sincerely,

Mac Taylor
Legislative Analyst

Ana J. Matosantos
Director of Finance