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Agenda

February 16, 2017

Oversight Hearing

Marijuana in California: Revenue, Budget, and Community Impact

I. Opening Remarks

II. Proposition 64 Summary

Drew Soderborg, Managing Principal Analyst, Legislative Analyst's Office

III. Marijuana Revenues and their Allocations

Part 1 – Revenues

Colby White, Principal Program Budget Analyst, Department of Finance
Seth Kerstein, Economist, Legislative Analyst's Office

Part 2 – Allocations

Drew Soderborg, Managing Principal Analyst, Legislative Analyst's Office
Richard Miadich, Olson Hagel & Fishburn LLP

IV. Social Justice Aspects of Proposition 64

Tamar Todd, Esq., Senior Director, Office of Legal Affairs, Drug Policy Alliance

V. Marijuana Revenue Allocations and Community Impact

Zachary Norris, Executive Director, Ella Baker Center for Human Rights
Corey Brown, Attorney, Resources Legacy Fund
Rev. Troy Vaughn, Executive Director, Los Angeles Regional Reentry Partnership



Richard Miadich, Olson Hagel & Fishburn LLP

Richard C. Miadich is the managing partner with Olson Hagel & Fishburn LLP. Mr. Miadich's practice focuses on litigation matters involving election and campaign finance law, education law, government and administrative law, and constitutional law. He also assists in the firm's political advising, primarily in areas of elections and initiatives.

A member of the California State Bar, Mr. Miadich has litigated matters at the trial and appellate levels in California, including the California Supreme Court, and has represented clients before state administrative agencies. He has also participated in matters before the United States Supreme Court, the United States Courts of Appeals for the Seventh and Ninth Circuits, and the United States District Courts for the Northern and Eastern Districts of California. Representing appellant pro bono, Mr. Miadich successfully briefed and argued *Lee v. Keith* (7th. Cir. 2006) 463 F.3d 763, which resulted in several Illinois ballot access laws being declared unconstitutional.

Mr. Miadich is an At-Large Director on the Sacramento County Bar Association Board of Directors. He also serves on the Board of Directors of the Sacramento Law Foundation, a 501(c)(3) nonprofit organization that serves as the charitable arm of the Sacramento County Bar Association. Previously, Mr. Miadich served on the Executive Committee of the Public Law Section of the California State Bar, where he served as the assistant editor of the State Bar's Public Law Journal. His article *When to Run, Walk or Crawl to the Courthouse: Proper Timing of Legal Challenges to Initiative Measures*, (co-authored with William B. Tunick), was published in the Spring 2007 Public Law Journal.

Mr. Miadich earned his law degree from the University of California at Davis in 2002. While there, he served as a member of the U.C. Davis Law Review, externed with the California State Assembly Judiciary Committee, and participated in the school's trial practice program. He received bachelor's degrees in political science and history from the University of California at Los Angeles in 1998.

His professional memberships include: the American Bar Association, the Federal Bar Association, the Sacramento County Bar Association and the California Political Attorneys Association.



Tamar Todd, Drug Policy Alliance

Tamar Todd directs Drug Policy Alliance's Office of Legal Affairs. She is responsible for developing and overseeing the organization's legal work as it relates to legislative drafting, policy advocacy, litigation, and public education in local, state and federal jurisdictions. Todd also directs the work of DPA's Marijuana Law and Policy Unit, which focuses primarily on medical marijuana, marijuana decriminalization, and marijuana legalization and regulation initiatives, and their implementation across the United States.

She has co-authored several state and local ballot initiatives and statutes, including Amendment 64 in Colorado, and she has advised the government of Uruguay on its efforts to legalize the production and distribution of marijuana. She has testified in numerous legislative and government bodies in the United States and abroad on the issue of drug policy and the intersection of state and federal law.

Todd received her B.A. from the University of Vermont and her J.D. from the Georgetown University Law Center, where she graduated magna cum laude and served as executive editor of the *Georgetown Law Journal*. After law school, she clerked for the Hon. Emmet Sullivan on the U.S. District Court for the District of Columbia, and she spent several years representing death row inmates as a staff attorney with the Southern Center for Human Rights in Atlanta. Todd is a member of the California and Alabama bars.



Zachary Norris, Ella Baker Center for Human Rights

Zachary Norris is the Executive Director of the Ella Baker Center for Human Rights and a former director of our Books Not Bars campaign. Prior to rejoining the organization, Zachary co-founded and co-directed Justice for Families, a national alliance of family-driven organizations working to end our nation's youth incarceration epidemic.

During the seven years he led the campaign, Books Not Bars built California's first statewide network for families of incarcerated youth, led the effort to close five youth prisons in the state, passed legislation to enable families to stay in contact with their loved ones, and defeated Prop 6—a destructive and ineffective criminal justice ballot measure.

In addition to being a Harvard graduate and NYU-educated attorney, Zachary is also a graduate of the Labor Community Strategy Center's National School for Strategic Organizing in Los Angeles, California and was a 2011 Soros Justice Fellow. He is a former board member at Witness for Peace and Just Cause Oakland and is currently serving on the Justice for Families board. Zachary was a recipient of the American Constitution Society's David Carliner Public Interest Award in 2015, and is a member of the 2016 class of the Levi Strauss Foundation's Pioneers of Justice.

Zachary is a loving husband and dedicated father of two bright daughters, whom he is raising in his hometown of Oakland, California.

Corey Brown, Resources Legacy Fund



Corey Brown serves as a strategic policy advisor and program officer on a diverse portfolio of issues, including climate change, land use, park protection, urban rivers, and river restoration. In the past, Corey served as executive director of the Big Sur Land Trust, government affairs director for The Trust for Public Land (Western Region), general counsel for the Planning and Conservation League, legal counsel for Friends of the River, and Assembly Fellow with the California State Legislature. He also served as adjunct professor at the University of the Pacific, McGeorge School of Law where he taught the "Legislation and the Law of Politics" and organized the law school's legislative clinical for nearly ten years. He also served as a visiting lecturer at UC Davis. He is a graduate of the UC Davis School of Law.

Troy Vaughn, Los Angeles Regional Reentry Partnership



Mr. Troy F. Vaughn is the Executive Director and Chair of the Los Angeles Regional Reentry Partnership (LARRP), a network of over 400 organizations throughout Los Angeles County. LARRP is dedicated to creating viable housing and employment solutions and system-wide change for formerly justice-involved individuals. Mr. Vaughn also serves as Founder, President, and CEO of Christ-Centered Ministries, a non-profit organization dedicated to creating housing and employment opportunities for the disenfranchised. Throughout his 20+ year career, Mr. Vaughn has held a wide range of executive roles for several large non-profits in the Los Angeles area, including CEO and COO of two Federally Qualified Healthcare Centers (FQHCs), COO of Shields for Families, CPO for Lamp Community and Executive Director and Vice President of the Weingart Center for the Homeless.

Mr. Vaughn has an Executive J.D. from Concord Law School, M.B.A., and BS in Advanced Legal Studies from Kaplan University and BS in Business Administration from Cal State University of Los Angeles (CSULA). He also holds a Graduate Certification in Executive Non-profit Management from CSULA, and Fundraising and Marketing from Cal State University of Long Beach (CSULB). Mr. Vaughn also has a Masters in Divinity/Theology with a minor in Urban Planning from Kings Seminary in Van Nuys, California, and Doctorate in Theology from the Masters School of Divinity. He is happily married with one son and granddaughter. He and his wife live in the South Bay area of Los Angeles, California.

Marijuana in California: Revenue, Budget and Community Impact

Background

The statutorily authorized use of medical cannabis was approved in California in 1996 when voters approved Proposition 215, the Compassionate Use Act (CUA). The CUA provides certain Californians the right to obtain and use cannabis for medical purposes, as recommended by a physician, and prohibits criminal prosecution or sanction against physicians who make medical cannabis recommendations.¹ In 2003, Senate Bill 420 (Vasconcellos), Chapter 875, Statutes of 2003, established the Medical Cannabis Program under the California Department of Public Health, and created a medical cannabis identification card and registry database to verify qualified patients and primary caregivers.

Since 2003, advocates, patients, and local governments recognized some deficiencies in the oversight of medical cannabis and called for additional safety regulations. In June 2015, Governor Brown signed the Medical Marijuana Regulation and Safety Act, comprised of Assembly Bill 243 (Wood), Chapter 688, Statutes of 2015; Assembly Bill 266 (Bonta), Chapter 689, Statutes of 2015; and Senate Bill 643 (McGuire), Chapter 719, Statutes of 2015. The act was later renamed the Medical Cannabis Regulation and Safety Act (MCRSA). Together, these bills established the oversight and regulatory framework for the cultivation, manufacture, transportation, storage, and distribution of medical cannabis in California.

With California having the largest economy in the U.S., many advocates called for the legalization of recreational use of cannabis, predicting an increase of hundreds of millions of dollars in state revenue. In November 2016 voters approved Proposition 64, or the Adult Use of Marijuana Act (AUMA). AUMA legalized nonmedical, adult use of cannabis in California. Similarly to MCRSA, the act creates a regulatory framework for the cultivation, manufacture, transportation, storage and distribution of cannabis for nonmedical use. Below is a table that summarizes the various provisions of MCRSA and AUMA across departments.

¹ Health and Safety Code §11362.5

**Cannabis Regulation
Responsibilities by Department**

Department	Tasks Assigned by MCRSA	Tasks Assigned by AUMA
Department of Consumer Affairs	License dispensaries, distributors, testing laboratories, and transporters.	License dispensaries, distributors, and microbusinesses.
Department of Fish and Wildlife	Expand its pilot project to address the environmental impacts of cannabis cultivation.	Expand pilot project to a statewide level and make project permanent.
State Water Resources Control Board	Authorized to address waste discharge resulting from cannabis cultivation.	Authorized to address waste discharge resulting from cannabis cultivation.
Department of Food and Agriculture	<p>License indoor and outdoor cultivation sites.</p> <p>Ensure water diversion and discharge from cultivation does not affect instream flows for fish spawning, migration, or rearing.</p> <p>Establish a medical cannabis cultivation program, with specified criteria.</p> <p>Establish program that identifies a permitted medical cannabis plant by a unique identifier.</p> <p>Develop a separate “track-and-trace” system to report movement of commercial products through distribution.</p>	<p>License indoor and outdoor cultivation sites.</p> <p>Ensure water diversion and discharge from cultivation does not affect instream flows for fish spawning, migration, or rearing.</p> <p>Establish a cannabis cultivation program.</p> <p>Implement a unique identification program for retail cannabis and cannabis products.</p> <p>Expand “track-and-trace” system to include the same level of information for nonmedical products.</p>
Department of Public Health	<p>License cannabis manufacturers.</p> <p>Develop regulations for producing and labeling of cannabis products.</p>	License cannabis manufacturers and testing sites.
Department of Pesticide Regulation	Develop cultivation regulations for pesticide use.	Develop cultivation regulations for pesticide use.

Most departments will have the same responsibilities under MCRSA and AUMA, but there are some differences. For example, the Department of Consumer Affairs is responsible for licensing testing laboratories for medical cannabis, while the Department of Public Health is responsible for licensing testing laboratories for recreational use.

Licensing and fees. Licensing authorities must establish a scale of application, licensing, and renewal fees. The licensing and renewal fees are calculated to cover the costs of regulatory activities and are set on a scaled basis depending on the size of the business. All fees are deposited into an account specific to that licensing authority, which will be established within the Cannabis Control Fund. There are a total of 17 different types of licenses for medical cannabis businesses, while AUMA lists 19 different license types.

Local control. Cities and counties may regulate all cannabis businesses and require them to obtain local licenses. Cities and counties may ban cannabis-related businesses, but not cannabis transportation through their jurisdictions. Unlike medical business, recreational cannabis businesses are not required to have a local license (unless a local jurisdiction takes action to require local licensure), but must abide by local ordinances in order to obtain a state license. Local authorities must send notice to the Bureau of Marijuana Control (BMC), or relevant licensing authority, when they revoke a cannabis license.

Penalties and Violations. The measure changes state marijuana penalties. For example, possession of one ounce or less of marijuana is currently punishable by a \$100 fine. Under the measure, such a crime committed by someone under the age of 18 would instead be punishable by a requirement to attend a drug education or counseling program and complete community service. In addition, selling marijuana for nonmedical purposes is currently punishable by up to four years in state prison or county jail. Under AUMA, selling marijuana without a license would be a crime generally punishable by up to six months in county jail and/or a fine of up to \$500.

Individuals serving sentences for activities that are made legal or are subject to lesser penalties under the measure would be eligible for resentencing. Qualifying individuals would be resentenced to whatever punishment they would have received under the measure. Resentenced individuals currently in jail or prison would be subject to community supervision (such as probation) for up to one year following their release, unless a court removes that requirement. In addition, individuals who have completed sentences for crimes that are reduced by the measure could apply to the courts to have their criminal records changed.

State law authorizes a civil penalty of up to twice the amount of the license fee for each violation relating to the use of medical cannabis, and a civil penalty of up to three times the amount of the license fee for violations relating to commercial cannabis. Statute establishes different locations for where the penalties will be deposited, depending on whether the Attorney General, district attorney or county counsel, or a city attorney or city prosecutor brings forth the action. The department, state, local authority, or court may also order the destruction of the cannabis associated with the violation. AUMA also requires the destruction—within two years—of criminal records for individuals arrested or convicted for certain marijuana-related offenses.

Taxes. AUMA instituted a new state tax on the cultivation of cannabis that enters the commercial market (\$9.25 per ounce of dried flower and \$2.75 per ounce of dried leaves), as well as a new state retail excise tax (15% retail price). Both of these taxes would affect medical and nonmedical cannabis. The tax on cultivation would be adjusted for inflation annually beginning in 2020. AUMA eliminated sales tax on medical cannabis, but recreational cannabis would be subject to existing state and local sales tax (a statewide average of 8%). Revenues from these new taxes would be deposited into a new special fund, the California Cannabis Tax Fund.

The fund would first be used to reimburse state agencies for cannabis-related regulatory costs, and remaining funds would be distributed as follows:

- \$10 million annually, until 2028-29, to public universities to research and evaluate the implementation and effects of recreational cannabis use. Funding recipients are required to publish findings at a minimum of every two years. Recipients will be selected by the BMC.
- \$3 million annually, until 2022-23, to the California Highway Patrol to establish and adopt methods to determine whether an individual is driving impaired and to set forth best practices to assist law enforcement agencies. This may include providing grants to research institutions to develop technology for determining when a driver is impaired.
- \$10 million in 2018-19, with a \$10 million increase annually until 2022-23, and \$50 million annually afterwards for a grant program to provide services to communities most affected by past drug policies. Funding will be administered by the Governor's Office of Business and Economic Development, in consultation with the Labor and Workforce Development Agency and the State Department of Social Services. Funding will be provided to local health departments and community-based nonprofit organizations to support job placement, mental health treatment, substance abuse disorder treatment, system navigation services, legal services, and linkages to medical care. Grant awarding will begin no later than 2020.
- \$2 million annually to the University of San Diego Center for Medicinal Cannabis Research to study hazards and values of medicinal cannabis.
- After the above allocations, remaining funds would be apportioned as follows:
 - 60 percent for youth programs designed to educate about and to prevent substance use disorders, administered by the Department of Health Care Services in collaboration with the Department of Public Health and the Department of Education.
 - 20 percent to the Departments of Fish and Wildlife and Parks and Recreation, allocated by the Secretary of the Natural Resources Agency, to mediate environmental damage from cannabis cultivation, to operate state-owned wildlife habitats and state parks to discourage illegal cultivation, and to fund the watershed enforcement program. General Fund appropriations to the departments shall not be reduced below levels in the Budget Act of 2014.
 - 20 percent to the California Highway Patrol and the Board of State and Community Corrections for programs for detecting, testing, and enforcing impaired driving laws; grants to non-profit organizations and local governments

for education, prevention, and enforcement of impaired driving laws; and for making grants to local governments to assist with law enforcement, fire protection and other programs to reduce negative public health impacts. Local governments that have banned the cultivation or retail sale of marijuana or marijuana products are not eligible to receive these grants.

The budget includes \$52.2 million to fund regulatory activities, license processing, and enforcement. Loans from the General Fund have provided initial funding for support of regulatory activities, as licensing fees will not be collected until January 1, 2018. The budget includes several proposals across different departments, including:

- **Department of Food and Agriculture (CDFA)** – The budget proposes \$22.4 million and 51 positions to provide administrative oversight for the Cannabis Cultivation Program, establish regulations, issue cannabis cultivation licenses, and perform an environmental impact report. Also, CDFA, with the California Department of Technology and the Board of Equalization, will establish a track and trace program to report the movement of products throughout the distribution chain.
- **Department of Consumer Affairs (DCA)** – The budget includes \$22.5 million and 120 positions to augment the BMC, formerly the Bureau of Medical Cannabis Regulation, within DCA.
- **Department of Public Health (CDPH)** – The budget includes \$1.4 million for licensing and regulation of medical cannabis product manufacturers.
- **Board of Equalization** – The budget includes \$5.3 million and 22 positions to notify businesses of new tax requirements and to update information technology systems. The Board of Equalization is required to administer an excise tax on cannabis sales and a cultivation tax on harvested cannabis that enters the commercial market.
- **Department of Health Care Services** – The budget includes \$5 million in 2016-17 for establishing and implementing the public information program that will cover health related topics pertaining to cannabis. The program is to be established and implemented no later than September 1, 2017.

Issues to Consider

Tax Revenue. Beginning January 1, 2018, a new excise tax on cannabis and cannabis products, and a new tax on cannabis cultivation will be imposed. Revenues from these new taxes will be apportioned for various purposes, as mentioned above. Even though taxes have not begun to be collected, many organizations are hoping to receive a share of that funding. AUMA broadly defines how these taxes are to be allocated, but does not specify particular groups or programs for funding. The Legislature may wish to start the discussion around distributing funding and directing departments in how to assign funding to various programs.

Impending deadlines. The Bureau of Marijuana Control, along with other licensing entities, will be responsible for 17 different types of medical cannabis business licenses, including: cultivators, nurseries, processors, testing labs, dispensaries, and distributors. With the passage of AUMA licensing authorities have been charged with issuing 19 other license types for recreational use. The bureau must begin issuing licenses by January 1, 2018, and will need to have regulations in place prior to issuing licenses. To meet this deadline, DCA has already held meetings with other licensing entities, and has educated staff and the public about the new law, including: holding educational tours of cannabis businesses, seeing demonstrations on the track and trace systems, and receiving expert presentations. Pre-regulatory stakeholder meetings were held in September and October of 2016. On February 10, 2017, BMC began accepting applications for the Cannabis Advisory Committee which will advise the bureau on both medical and nonmedical cannabis use. Even with this preparation, January 1 is an ambitious timeline for departments to finalize regulations, specifically relating to nonmedical cannabis use, and set up information technology (IT) systems to administer such a large and complex program.

Given the impending deadline, and the lack of recent precedent for establishing an oversight and regulatory scheme of this magnitude,² the Legislature may wish to consider the following oversight questions during the subcommittee process:

- As the bureau may begin issuing licenses on January 1, 2018, will the bureau be accepting applications for licenses before that date? If so, is the bureau currently equipped to handle intake of those applications?
- The bureau, CDFR, and CDPH are all charged with various licensing duties and may have different IT systems to handle licenses. Are these departments collaborating to ensure that their systems work with the others?
- How will DCA and other relevant licensing authorities regularly update the Legislature on the regulatory development process?
- What will happen if state agencies are unable to meet the January 1, 2018 deadline?

Dual regulatory frameworks. The passage of Proposition 64 created two different systems for medical and nonmedical cannabis regulation. While there are similarities between the systems, there are also differences. Under MCRSA, license applicants are not subject to residency requirements, and licensing authorities do not evaluate special market considerations when issuing a license. Both of these conditions are requirements for granting licenses for recreational cannabis businesses. Restrictions on vertical integration, or businesses possessing multiple license types, were enacted by MCRSA, but no such restrictions were implemented by AUMA. Further, medical cannabis regulations require businesses to obtain both a state and local license to operate, while only a state license is needed to operate a recreational business. However, recreational businesses must abide by local zoning and other requirements. Many state agencies

² The last bureau to be created under DCA was the Professional Fiduciaries Bureau, established in 2007, which only licenses approximately 600 individuals.

and businesses, especially businesses that produce both medical and nonmedical products, will likely be confused by these conflicting regulations.

Merging these two frameworks into one may alleviate confusion, and allow more efficient regulation by state agencies. However, there may be merit to keeping the two structures separate. As the sale and distribution of cannabis is illegal under federal law, federal prosecutors may choose to take action against cannabis operations, thus affecting the cannabis industry in California. If there is no distinction between these two structures, then the medical cannabis industry may be affected as well. The Legislature may wish to weigh the benefits and risks of having two different sets of regulations for medical and nonmedical use of cannabis.