

MAY 13, 2019

Governor's May Revision Plan to Expend Cannabis Tax Revenues



LEGISLATIVE ANALYST'S OFFICE

Overview of Cannabis Taxes Under Proposition 64

Proposition 64 Imposes Various Taxes on Cannabis. These include two state excise taxes on cannabis: a retail excise tax and a cultivation tax. The revenues from these taxes are deposited in a special fund, the Cannabis Tax Fund.

Provides Tax Revenues to Three Categories of Activities. Proposition 64 continuously appropriates Cannabis Tax Fund proceeds to fund three categories of activities in priority order.

- ***Allocation 1—Regulatory and Administrative Costs.*** First, revenues are used to pay back certain state agencies for any cannabis regulatory and administrative costs not covered by license fees.
- ***Allocation 2—Specified Allocations.*** Second, after regulatory and administrative costs are covered, revenues are provided to certain specific research and other programs (such as researching the effects of cannabis and the effects of the measure).
- ***Allocation 3—Percentage Allocations.*** Unlike the above allocations, funding for Allocation 3 is based on the balance of tax receipts from the prior year and are provided on a percentage basis to three broad categories of activities: 60 percent for youth programs, 20 percent for environmental programs, and 20 percent for law enforcement.

Proposition Provides Administration Discretion Within Allocation 3. The measure gives the administration authority to allocate funding among various eligible activities and implementing departments within each of the three Allocation 3 categories.

- ***Youth Education, Prevention, Early Intervention and Treatment Account (Youth Account).*** Funds are provided to the Department of Health Care Services—using interagency agreements with the California Department of Public Health (CDPH) and the Department of Education—to support youth programs related to substance use education, prevention, and treatment.
- ***Environmental Restoration and Protection Account.*** Funds are provided to the Department of Fish and Wildlife (DFW) and the Department of Parks and Recreation (DPR) to clean up and prevent environmental damage resulting from the illegal growing of cannabis.



Overview of Cannabis Taxes Under Proposition 64

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- ***State and Local Government Law Enforcement Account.*** Funds are provided to the California Highway Patrol (CHP) to support programs designed to reduce driving while impaired and to the Board of State and Community Corrections (BSCC) to support programs designed to reduce any potential negative impacts on public health or safety resulting from the measure.



Governor's May Revision Cannabis Expenditure Package

Cannabis Tax Fund—Expected Revenues and Planned Allocations		
<i>(Dollars in Millions)</i>		
Revenues	2018-19	2019-20
Beginning balance	\$83.9	\$198.8
Cannabis tax revenues	288.0	358.8
General Fund loan repayment	-120.0	-59.3
Total Revenues	\$251.8	\$498.3
Allocations—Department/Program	2018-19	2019-20
Allocation 1: Regulatory and Administrative		
Bureau of Cannabis Control—Equity Program administered by Go-Biz	—	\$15.6
Fish and Wildlife	\$9.2	9.2
Pesticide Regulation	2.3	2.3
State Water Resources Control Board	7.6	7.4
Employment Development Department	3.7	2.5
Tax and Fee Administration	4.8	7.3
Finance	0.4	—
Statewide General Administration	—	0.2
Total Allocation 1	\$28.0	\$44.5
Allocation 2: Research and Other Programs		
Go-Biz—community reinvestment	\$10.0	\$20.0
Public universities—evaluation of effects of measure	10.0	10.0
Highway Patrol—establishment of methods for determining impaired driving	3.0	3.0
University of San Diego—cannabis research	2.0	2.0
Total Allocation 2	\$25.0	\$35.0
Allocation 3: Percentage Allocations		
Youth Education, Prevention, Early Intervention and Treatment Account		
Education—child care slots	—	\$80.5
Health Care Services—local prevention programs	—	21.5
Public Health—cannabis surveillance and education	—	12.0
Resources Agency—youth community access grants	—	5.3
Subtotal, Youth Account	(—)	(\$119.3)
Environmental Restoration and Protection Account		
Fish and Wildlife—environmental cleanup and enforcement	—	\$23.9
Parks—program development, ingress and egress, and restoration	—	15.9
Subtotal, Environmental Restoration and Protection Account	(—)	(\$39.8)
State and Local Government Law Enforcement Account		
State and Community Corrections—local grants for public health and safety	—	\$26.0
Highway Patrol—impaired driving and traffic safety	—	13.8
Subtotal, State and Local Government Law Enforcement Account	(—)	(\$39.8)
Total Allocation 3	—	\$198.8
Total Expenditures	\$53.0	\$278.3
Balance of Tax Receipts^a	\$198.8	\$220.0

^a Balance available for Allocation 3 in the following fiscal year.
Go-Biz = Governor's Office of Business and Economic Development.



Issues for Legislative Consideration

Reflects Governor's Expenditure Priorities. In many cases, the language in Proposition 64 is broad enough to allow cannabis tax revenues—particularly those provided pursuant to Allocation 3—to be used to support a variety of different possible eligible activities. The May Revision package presents the administration's decisions on which specific programs and activities to fund in 2019-20. This is based on the administration's estimates of Cannabis Tax Fund revenues for 2018-19 and, thus, is subject to change based on actual tax receipts.

Generally Seems Consistent With Proposition 64. While generally consistent with the requirements of Proposition 64, in a couple cases, there may be some legal uncertainty regarding the allowable uses of Cannabis Tax Fund revenues. Specific areas of uncertainty include (1) using Allocation 1 to fund an equity program intended to assist members of groups that have been disadvantaged by past state and federal drug policies participate in the legal cannabis market and (2) using Allocation 3 to fund child care slots. In these cases, the Legislature might want to ask the administration about its rationale for using Cannabis Tax Fund revenues to support these activities to ensure it is comfortable with the administration's approach.

Some Legal Uncertainty Regarding Legislative Role. Since Proposition 64 continuously appropriates Cannabis Tax Fund revenues to implementing departments, no legislative action is needed to appropriate funds. We also note that given the language of Proposition 64, the ability for the Legislature to direct the use of the Cannabis Tax Fund revenues is uncertain.

Legislature Plays Important Oversight Role. The Legislature retains an important oversight role over the expenditures from the Cannabis Tax Fund. On an ongoing basis, the Legislature can use its oversight authority to ensure that departments are implementing programs effectively and ensure programs are achieving desired outcomes. As it conducts this role related to the Governor's May Revision cannabis revenue package, we suggest the Legislature consider the following issues.

- ***Has the Administration Provided Sufficient Information to Assess Implementation Plans?*** In some cases, these funds are proposed to expand existing programs, such as to provide additional child care slots. In other cases, they are proposed to establish new programs



Issues for Legislative Consideration

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or activities, such as BSCC's grant program. It will be important for the Legislature to have adequate information to understand how the proposed activities will be carried out. For example, this includes information on which populations will be served by the youth programs, where restoration activities are expected to occur, how public safety grants are anticipated to be awarded, and how the proposed programs are expected to interact with similar existing state programs, if any. In addition, the administration's plan includes about 180 new positions with more than 90 percent of these positions in DFW, DPR, CHP, and CDPH. The Legislature will want to ensure that it has sufficient information to determine if the level of staffing proposed for each activity is reasonable. In cases where the Legislature does not have sufficient information to understand how proposed activities will occur and assess the administration's plans, it could have the relevant departments report such information at budget hearings.

- ***What Outcomes Do Departments Project to Achieve?*** The Legislature could ask the administration to identify the outcomes that it seeks to achieve with the use of these funds and whether it has measurable targets for each outcome. For example, this could include the number of acres restored or the change in rates of youth substance abuse that are anticipated to be achieved. A clear articulation of the desired outcomes from the funds provided will assist the Legislature in evaluating whether it concurs with the administration's approach to the use of the funds and can hold the administration accountable on an ongoing basis. In cases where the administration has not adequately identified expected outcomes, the Legislature could adopt reporting language requiring the administration to identify these outcomes. Alternatively, the Legislature could adopt legislative intent language articulating its desired outcomes.
- ***How Will Implementation and Outcomes Be Monitored and Evaluated?*** We suggest the Legislature consider what information it would like to have the administration provide on an ongoing basis and direct the administration accordingly. For example, it might want to require future reporting by the administration on how much funding is spent on each activity and what specific outcomes have been achieved.

