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L E G I S L A T I V E A N A L Y S T ' S O F F I C E

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**The 2016-17 Budget:
Overview of
Governor's Proposals to
Implement the
Medical Marijuana
Regulation and Safety Act**





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Executive Summary

- ☑ ***This Document Summarizes Proposals and Highlights Important Legislative Considerations.*** After providing some background information, this document summarizes the administration's planned approach for implementing the Medical Marijuana Regulation and Safety Act (MMRSA) and the associated budget decisions before the Legislature. We then provide a more detailed description of the proposed funding, staffing, and activities for each of the affected state departments. We conclude by highlighting issues and uncertainties for the Legislature to consider as the state begins implementation.

- ☑ ***State Launching New, Large-Scale Regulatory Effort.*** In 2015, the Legislature enacted MMRSA, a package of legislation establishing a new regulatory framework for medical marijuana cultivation and use in California. The Governor's budget for 2016-17 includes \$25 million and 126 positions across six state departments to implement MMRSA.

- ☑ ***LAO Bottom Line: Proposed Approach Consistent With Legislation, Ongoing Oversight Will Be Important.*** Our review did not identify any major concerns with the Governor's proposed approach to implementing MMRSA. The scope and complexity of new state-level activities required by the act, however, are significant. Undertaking such activities requires considerable coordination among agencies and affects multiple areas of statewide importance—including public health, public safety, and environmental protection. Moreover, there remains uncertainty regarding the ultimate size of the regulated medical marijuana industry and other unknown factors, such as whether voters will opt to legalize recreational marijuana in the coming years. Given these potential challenges and uncertainties, we believe close monitoring over the status, pace, and effectiveness of MMRSA implementation will be an important task for the Legislature in the coming years.



Medical Marijuana Legal in California for Nearly 20 Years

- Voters passed Proposition 215 in November 1996, making it legal for individuals to cultivate and possess marijuana in California for medical purposes only, specifically with a recommendation from a licensed physician.
- In 2003, the Legislature authorized the formation of medical marijuana cooperatives—nonprofit organizations that cultivate and distribute marijuana for medical uses to their members through dispensaries.



Marijuana Cultivation Significant in California, Has Had Environmental Impacts

- Estimates suggest California has twice as many outdoor grow sites than any other state, with much of the cultivation activity located in the northern part of the state.
- Cultivation sites on both public and private lands have had damaging environmental effects, including diverting water from and contaminating watersheds that are home to sensitive fish and wildlife species.



Federal Government Generally Does Not Prosecute Marijuana Users Who Follow State Law

- While any marijuana cultivation or use is illegal under federal law, current federal policy is not to prosecute marijuana users and businesses that act in compliance with state marijuana laws so long as federal priorities are upheld (including not distributing to minors or transporting across state lines).



Overview of MMRSA



MMRSA Passed by Legislature in 2015, Took Effect January 2016

- Implemented via three pieces of legislation: Chapters 688, 689, and 719 of 2015 (AB 243, Wood; AB 266, Bonta; and SB 643, McGuire).



Establishes New Regulatory Framework for Medical Marijuana Industry

- Implements new structure for licensing and enforcement of medical marijuana cultivation, product manufacturing, testing, transportation, storage, and distribution. Assigns various responsibilities to both state and local governments.
- Authorizes state and local governments to collect specified fees and taxes, as well as issue penalties for violations. State departments can establish licensing fees to cover regulatory costs.
- Requires state to set standards for labeling, testing, and packaging medical marijuana products and to develop an information technology (IT) system to track such products throughout the supply chain.
- Institutes system for regulating, monitoring, and reducing environmental impacts of marijuana cultivation.
- Phases out medical marijuana cooperatives within a few years and replaces them with state-licensed businesses.



Establishes New State Regulatory Entity, New Special Fund

- Creates Bureau of Medical Marijuana Regulation (BMMR) within DCA. Tasks five other departments with various responsibilities (described on subsequent pages).
- Establishes Medical Marijuana Regulation and Safety Act Fund (MMRSAF) to receive fees and penalties assessed under the act, and to be used for associated regulatory and enforcement activities. Provides one-time loan of up to \$10 million from the General Fund to the MMRSAF to begin implementation of the act.

Overview of Governor's 2016-17 Proposals

Summary of Governor's 2016-17 Proposals for Implementing MMRSA

(Dollars in Thousands)

Department	Funding		Total	Staffing	Primary Responsibilities
	General Fund	Special Fund			
DFW	\$7,655	—	\$7,655	31	Monitor and reduce environmental impacts of marijuana cultivation.
SWRCB	5,200	\$472 ^a	5,672	35	Regulate the environmental impacts of marijuana cultivation on water quality and instream flows.
DCA	—	3,800 ^b	3,800	25	License and enforce marijuana distributors, transporters, and dispensaries.
CDFA	—	3,400 ^b	3,400	18	Regulate marijuana cultivation and issue licenses to growers.
DPH	—	3,400 ^b	3,400	14	Regulate medical marijuana product manufacturers and testing laboratories.
DPR	—	700 ^c	700	3	Develop pesticide use guidelines for the cultivation of marijuana.
Totals	\$12,855	\$11,772	\$24,627	126	

^a Waste Discharge Permit Fund.

^b Medical Marijuana Regulation and Safety Act Fund.

^c Department of Pesticide Regulation Fund.

MMRSA = Medical Marijuana Regulation and Safety Act; DFW = Department of Fish and Wildlife; SWRCB = State Water Resources Control Board; DCA = Department of Consumer Affairs; CDFA = California Department of Food and Agriculture; DPH = Department of Public Health; and DPR = Department of Pesticide Regulation.



Provides \$24.6 Million, 126 Positions Across Six State Departments

- Roughly half of funding from MMRSF, half from General Fund.



Governor Proposes Multiyear Implementation Plan

Governor's Multiyear MMRSA Rollout Plan					
<i>(In Millions)</i>					
Department	2015-16^a	2016-17	2017-18	2018-19	After 2018-19
DFW	—	\$7.7	\$5.8	\$5.8	\$5.8
SWRCB	—	5.7	6.7	5.7	5.7
DCA	\$1.6	3.8	4.1	0.5 ^b	0.5 ^b
CDFA	3.3	3.4	3.4	3.4	3.4
DPH	0.5	3.4	2.5	5.7	5.3
DPR	—	0.7	0.7	0.7	0.7
Totals	\$5.4	\$24.6	\$23.1	\$21.8	\$21.4

^a From Medical Marijuana Regulation and Safety Act Fund, appropriated to DCA in Chapter 688 of 2015 (AB 243, Wood). Funding for CDFA and DPH provided as reimbursements from DCA.

^b The administration intends to submit additional funding requests for DCA once it has a better estimate of ongoing workload needs. Funding likely will exceed amount displayed.

MMRSA = Medical Marijuana Regulation and Safety Act; DFW = Department of Fish and Wildlife; SWRCB = State Water Resources Control Board; DCA = Department of Consumer Affairs; CDFA = California Department of Food and Agriculture; DPH = Department of Public Health; and DPR = Department of Pesticide Regulation.



Some Upfront Start-Up Costs Expected to Decrease in Future Years

- Funding proposals for 2016-17 and 2017-18 include one-time costs such as equipment for DFW and DPH and consulting services for SWRCB.
- However, DPH funding increases in 2018-19 largely due to phasing in of staff.



Funding Levels to be Revisited in Future Years Depending on Workload

- For DCA in particular, the administration intends to submit additional funding requests in future years when ongoing workload needs become more certain. Additionally, the administration has not yet requested funding to support anticipated development and operation of an IT project to track products, licenses, and enforcement actions.



Department of Fish and Wildlife

Primary Responsibility: Monitor and reduce environmental impacts of marijuana cultivation.

Proposed Funding:

- 2016-17: \$7.7 million General Fund (includes \$1.9 million for one-time equipment purchase).
- 2017-18 and thereafter: \$5.8 million General Fund.

Proposed Staffing:

- 2016-17 and thereafter: 31 new permanent positions.

Primary Activities



Expand Watershed Enforcement Program and Participate in Multiagency Task Force (\$4.7 Million, 26 Positions). Perform specialized environmental investigations targeting legal and illegal marijuana cultivation sites. Team would include DFW law enforcement officers and environmental scientists, and work in collaboration with staff from other state and local agencies. Activities to include intelligence gathering and follow-up for legal actions and prosecutions, site-specific environmental assessments, and eradication and/or remediation of cultivation sites. Expands existing pilot program currently operating in seven counties—with an existing staff of 13—to cover entire state.



Protect Instream Flows (\$0.9 Million, 5 Positions). Research and identify amount of instream flows needed for fish spawning, migration, and rearing in areas where marijuana cultivation is occurring. Develop criteria and policies to ensure needed flows are maintained, including working with SWRCB staff to inform decisions on water rights registrations and permitting.



State Water Resources Control Board

Primary Responsibility: Regulate the environmental impacts of marijuana cultivation on water quality and instream flows.

Proposed Funding:

- 2016-17 and thereafter: \$5.7 million (\$5.2 million General Fund, \$472,000 Waste Discharge Permit Fund).
- 2017-18: Additional \$1 million General Fund one time for consulting services.

Proposed Staffing:

- 2016-17 and thereafter: 35 positions.

Primary Activities



Protect and Enforce Water Quality and Participate in Multiagency Task Force (\$1.8 Million, 13 Positions). Perform inspections and investigations of marijuana grow sites and develop evidence to support water quality enforcement actions. Engage in stakeholder outreach and coordinate with other federal, local, and state agencies (such as DFW) to develop and implement a permit system that would provide a pathway for medical marijuana cultivators to come into compliance with state regulations regarding water quality and supply. Expand existing pilot program currently operating in seven (primarily northern) counties—with an existing staff of 11—to cover more of the state.



Protect Instream Flows (\$3.9 Million, 22 Positions). Establish interim instream flow requirements to provide immediate protection of fishery resources. Work with DFW to develop criteria for regional instream flow policies until the longer and more in-depth process for setting ongoing instream flow requirements can be completed. Expand the registration program and processing of water right registrations and applications for permits associated with medical marijuana cultivation.



Department of Consumer Affairs

Primary Responsibility: License medical marijuana distributors, transporters, and dispensaries, and conduct enforcement of BMMR licensees.

Proposed Funding:

- 2015-16: \$1.6 million MMRSF.
- 2016-17: \$3.8 million MMRSF (includes \$350,000 for study).
- 2017-18: \$4.1 million MMRSF (includes \$492,000 for study).
- 2018-19 and 2019-20: \$492,000 MMRSF for study (total funding level to be revisited based on workload).

Proposed Staffing:

- 2015-16: 9.7 positions.
- 2016-17 and 2017-18: 25 positions.
- 2018-19 and thereafter: To be revisited based on workload.

Primary Activities



License Medical Marijuana Distributors, Transporters, and Dispensaries. Establish a new regulatory program for marijuana distributors, transporters, and dispensaries under BMMR. Budget-year funding would support initial BMMR startup activities, including (1) developing regulations, such as licensing requirements and fee structure; (2) conducting outreach to local law enforcement; and (3) developing the initial planning documents for an interagency IT solution to support marijuana licensing and enforcement. Out-year activities to also include licensing entities that transport, store, distribute, and sell marijuana, as well as taking enforcement actions against BMMR-licensed entities that violate the law.



Conduct Study. Contract with the California Marijuana Research Program to study marijuana's impacts on motor skills.



California Department of Food and Agriculture

Primary Responsibility: Regulate medical marijuana cultivation and issue licenses to growers.

Proposed Funding:

- 2015-16: \$3.3 million MMRSF (reimbursed from DCA, includes \$2 million one time for environmental impact report).
- 2016-17 and thereafter: \$3.4 million MMRSF.

Proposed Staffing:

- 2015-16: 5.5 positions.
- 2016-17 and thereafter: 18 positions.

Primary Activities



Regulate Cultivation of Medical Marijuana (\$3.4 Million, 18 Positions). Establish new regulatory program to (1) license and establish fees for both indoor and outdoor cultivation, (2) establish a “seed-to-sale” program using unique identifiers to track the movement of medical marijuana products through the distribution chain, (3) perform an environmental impact report, and (4) work in consultation with DFW and SWRCB to develop environmental stewardship guidelines for growers. Activities to include (1) performing inspections of cultivators, (2) taking enforcement actions against cultivators as necessary, and (3) ensuring weighing or measuring devices used in connection with the sale or distribution of medical marijuana meet required standards.



Department of Public Health

Primary Responsibility: Develop and enforce regulations and standards for medical marijuana product manufacturers and testing laboratories.

Proposed Funding:

- 2015-16: \$457,000 MMRSF (reimbursed from DCA).
- 2016-17: \$3.4 million MMRSF (includes \$1.2 one time for laboratory equipment).
- 2017-18: \$2.5 million MMRSF.
- 2018-19: \$5.7 million MMRSF (includes \$270,000 one time for vehicle purchases).
- 2019-20: \$5.3 million MMRSF.

Proposed Staffing:

- 2015-16: 6 positions.
- 2016-17: 14 positions.
- 2017-18: 16 positions.
- 2018-19 and thereafter: 37 positions.

Primary Activities



License Medical Marijuana Manufacturers. Establish new regulatory program to annually licensing medical marijuana manufacturers and conduct investigations and inspections of manufacturers. Develop standards, regulations, and procedures governing a variety of manufacturing activities such as transportation processes and quality control procedures, as well as standards for production and labeling of all edible marijuana products. Work with CDFA on developing a data system to share information on licensees.



Department of Public Health

(Continued)



License and Register Medical Marijuana Testing

Laboratories. Establish new regulatory program to (1) annually license and register marijuana testing laboratories, (2) conduct research on marijuana product safety and survey other states' regulations and requirements, (3) develop and validate standard methods for testing medical marijuana including for potential contaminants, and (4) serve as a reference laboratory for medical marijuana manufacturing enforcement. Develop and enforce licensing fee program for testing laboratories. Work with CDFA to develop a data system to store and share information on licensed laboratories.



Department of Pesticide Regulation

Primary Responsibility: Develop pesticide use guidelines for the cultivation of medical marijuana.

Proposed Funding:

- 2016-17 and thereafter: \$700,000 Department of Pesticide Regulation Fund.

Proposed Staffing:

- 2016-17 and thereafter: 3 positions.

Primary Activities



Develop Guidelines for Safe Pesticide Use on Medical Marijuana (\$420,000, 3 Positions). Develop guidelines for the use of pesticides in medical marijuana cultivation and for pesticide residue levels in harvested marijuana. Two staff toxicologists to conduct risk assessments—scientific reports requiring the review and analysis of technical data on pesticides—for people exposed to pesticides in marijuana cultivation and processing facilities, and for consumers who smoke or eat medical marijuana products. One position to coordinate with the United States Environmental Protection Agency (U.S. EPA) to register pesticides for use in medical marijuana cultivation using an approach outside the typical U.S. EPA registration process.



Develop and Distribute Educational Materials (\$280,000). Contract with a vendor to assess current marijuana cultivation practices and develop safe pest management practices for medical marijuana. This information would be incorporated into pest management guidelines and other educational tools and materials to be used in outreach to growers.



Issues for Legislative Consideration

The new state-level activities required by MMRSA are significant in both scope and complexity. Below, we highlight several potential challenges and uncertainties associated with implementing MMRSA, which could result in unforeseen problems in the future. As such, close monitoring over the status, pace, and effectiveness of MMRSA implementation will be an important task for the Legislature in the coming years.

- Governor's Approach Appears Consistent With Legislation.*** Funds most initial startup activities required by legislation. Our review did not identify any major concerns or inconsistencies.
- Implementation Will Require Substantial Amount of Cross-Agency Coordination.*** The administration appears to be prioritizing communication and alignment of various efforts, but numerous activities will need to be coordinated across multiple departments. For example, at least three departments—CDFA, DPH, and DCA—will have to coordinate to develop regulations, licensing fee structures, and an IT system to track medical marijuana production from cultivation through distribution and sale.
- Implementation Will Require Substantial Amount of Coordination With Locals.*** The administration plans to actively engage with local governments, but aligning state and local policies and efforts will require ongoing communication and coordination. For example, DFW wardens will need to coordinate with local law enforcement and prosecutors to ensure investigations of cultivation sites are conducted safely, legally, and effectively.
- Ongoing Regulatory Costs Still Unclear.*** Amount of workload departments ultimately will experience depends on many unknown factors, including the ultimate size of the regulated medical marijuana industry, the number of authorized dispensaries, and the scale of environmental impacts. Follow-up proposals are expected in the coming years, including for what could be a significant new IT project.



Issues for Legislative Consideration

(Continued)

- ☑ ***Timely Implementation May Be a Challenge.*** Given scope of new responsibilities, departments may have difficulty promulgating regulations, developing fee structures, and crafting new policies and guidelines.

- ☑ ***Other Factors Could Change Landscape.*** The potential exists for factors outside of the Legislature's control to alter current plans for implementing MMRSA. For example, potential voter expansion of legalized marijuana use could change the regulatory role of the state, perhaps requiring additional resources or modified regulations. Alternatively, a change in federal drug policy could complicate the state's approach to overseeing medical marijuana production and use.



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