Core County Policy Principles on Medical Marijuana

- Preserving local control
- Explicit county taxing authority
- Ending the collective model
- Addressing environmental impacts
2015 Medical Marijuana Legislative Package

SENATE BILL
Introduced by Senator McGuire
February 27, 2015

ASSEMBLY BILL
Introduced by Assembly Member Wood
(Coauthors: Assembly Members Rendon and Williams)
(Principal coauthor: Assembly Member Rendon)
(Coauthor: Assembly Member Williams)
February 5, 2015

ASSEMBLY BILL
Introduced by Assembly Members Bonta, Cooley, Jones-Sawyer, and Lackey, and Wood
(Coauthor: Assembly Member Chiu)
February 10, 2015
3-bill package unveiled about 10 hours before the Legislature’s adjournment

Most of language had existed in some form or another throughout the year in a number of different bills

Interlocking package – Need to review carefully all three bills simultaneously
Local Control—Key Clauses

- Business & Professions Code 19315 (a)
- Business & Professions Code 19316 (a)
- Business & Professions Code 19316 (c)
- Health & Safety Code 11362.777 (b) (3)
Local Control Provisions:

- “Nothing in this chapter shall be interpreted to supersede or limit existing local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local permit or licensing requirements.”

Business & Professions Code 19315 (a)
Local Control Provisions:

“Pursuant to Section 7 of Article XI of the California Constitution, a city, county, or city and county may adopt ordinances that establish additional standards, requirements, and regulations for local licenses and permits for commercial cannabis activity. Any standards, requirements, and regulations regarding health and safety, testing, security, and worker protections established by the state shall be the minimum standards for all licensees statewide.”

Business & Professions Code 19316 (a)
Local Control Provisions:

• “Nothing in this chapter, or any regulations promulgated thereunder, shall be deemed to limit the authority or remedies of a city, county, or city and county under any provision of law, including, but not limited to, Section 7 of Article XI of the California Constitution.”

Business & Professions Code 19316 (c)
Key Aspects of Package

Local Control Provisions:

- “A person or entity shall not submit an application for a state license issued by the department pursuant to this section if the proposed cultivation of marijuana will violate the provisions of any local ordinance or regulation, or if medical marijuana is prohibited by the city, county, or city and county in which the cultivation is proposed to occur, either expressly or otherwise under principles of permissive zoning.”

Health & Safety Code 11362.777 (b) (3)
Key Aspects of Package

- Explicit and broad county taxing authority
  - Referenced in Business & Professions Code 19348
- County authority to tax deliveries
  - Referenced in Business & Professions Code 19340 (c)
- Local fee and tax authority
  - Referenced in Business & Professions Code 19320 (d)
Key Aspects of Package

Ending the Collective Model – Strict Licensing Scheme

- Licensing authorities administering this chapter may issue state licenses only to qualified applicants engaging in commercial cannabis activity pursuant to this chapter. Upon the date of implementation of regulations by the licensing authority, no person shall engage in commercial cannabis activity without possessing both a state license and a local permit, license, or other authorization. A licensee shall not commence activity under the authority of a state license until the applicant has obtained, in addition to the state license, a license or permit from the local jurisdiction in which he or she proposes to operate, following the requirements of the applicable local ordinance.

Business & Professions Code 19320 (a)
Key Aspects of Package

Environmental Enforcement

- Establishment of the Medical Cannabis Fines & Penalties Account
- Fine & penalty monies dedicated to state and local environmental enforcement efforts
- Bureau of Marijuana Regulation shall establish a grant program to locals for regulation/enforcement assistance
- Water diversion protections
- Cultivation standards

SB 643 & AB 243
Key Aspects of Package

Licensure Exemptions

- Personal Grows Exemption
- Patient Caregivers Exemption

Business & Professions Code 19319 (a) & (b) in SB 643
Health & Safety Code 11362.777 (g) in AB 243
Local Control Applies To Those Exempt

- “...Exemption from the requirements of this section does not limit or prevent a city, county, or city and county from regulating or banning the cultivation, storage, manufacture, transport, provision, or other activity by the exempt person, or impair the enforcement of that regulation or ban.”

Health & Safety Code 11362.777 (g)
Even though exempt from state licensure

- Personal grows exceeding 100 square feet must have state authorization
- Patient caregiver grows exceeding 500 square feet must have state authorization

California Department of Food and Agriculture would provide authorization
Dual Licensing

Must have both a state license & local approval to operate

Business & Professions Code 19320 (a)

AB 243, AB 266, SB 643
Locals Go First for Cultivation

- Cultivation applicants must first obtain local license/permit before commencing an application for a state cultivation license

Health & Safety Code 11362.777 (b) (1)
The Status of “(c) (4)”

- “If a city, county, or city and county does not have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana, either expressly or otherwise under principles of permissive zoning, or chooses not to administer a conditional permit program pursuant to this section, then commencing March 1, 2016, the division shall be the sole licensing authority for medical marijuana cultivation applicants in that city, county, or city and county.”

Health & Safety Code 11362.777 (c) (4)
Mobile Deliveries

- The default is that mobile deliveries are allowed
- Can only be prohibited by enactment of local ordinance
- Mobile delivery must originate from a licensed dispensary

Business & Professions Code 19340

AB 266
Cities Have the Option to Enforce State Standards

- “For facilities issued a state license that are located within the incorporated area of a city, the city shall have full power and authority to enforce this chapter and the regulations promulgated by the bureau or any licensing authority, if delegated by the state.”
- Counties do not have explicit authority

Business & Professions Code 19316 (b)  AB 266
Local Role in Enforcement

Examine books

Coordinated enforcement

$541,634
$411,738
$987,475
$654,542
Prospective licensees must submit to State Department of Justice background checks.
Previous criminal violation that could trigger failure to obtain state license:
- Felony illegal involvement in controlled substance offenses
- Fraud, deceit & embezzlement
- Illegal patient recommendations
- Illegal cultivation activities
- Record of violations in last 3 years
- Specified serious felonies
- Specified violent felonies
- Failure to have tax registration

Business & Professions Code 19323 (b) (5)
“This chapter and Article 2 (commencing with Section 11357) and Article 2.5 (commencing with Section 11362.7) of Chapter 6 of Division 10 of the Health and Safety Code shall not interfere with an employer’s rights and obligations to maintain a drug and alcohol free workplace or require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growth of cannabis in the workplace or affect the ability of employers to have policies prohibiting the use of cannabis by employees and prospective employees, or prevent employers from complying with state or federal law.”

Business & Professions Code 19330
Transportation Standards

- Transporters must be licensed, bonded and insured
- Transporters must have a manifest at all times and available for inspection
- Detailed transportation standards will be developed at a later date
- Local governments cannot impede the movement of medical marijuana by licensed transporters as long as they remain on the public roads
Other Aspects of the Legislative Package

- Appellation/Organic Standards/“Agricultural Product”
- Pesticide Standards
- Cross-Ownership Restrictions
- Mandatory Distribution
Regulatory Efforts
Regional Regulatory Orders

- Central Valley Waiver of Waste Discharge Requirement
  - Proposed August, 2015
  - Heard on October 2, 2015
- North Coast Waiver of Waste Discharge Requirement
  - Adopted August, 2015
Key Elements

• Defer to county ordinances
• Impose monitoring & reporting requirements
• Establish regulatory fee schedules
• Fine & penalty scheme for non-compliance
• No county obligations
• Effective immediately upon adoption by each Board
The Saga Continues…

AB 1548 & AB 1549

LEGISLATIVE COUNCIL’S DIGEST

AB 1548, as introduced, Wood. California Cannabis Credit Union Act. Existing federal and state law regulates the activities of credit unions. The State Board of Equalization administers various taxes and fees, including the Sales and Use Tax Law. Existing law establishes the California Cannabis Credit Union Act.

This bill would establish the California Cannabis Credit Union Act. The bill would require the State Board of Equalization and the board to promulgate regulations necessary for its implementation. The bill would authorize the California Cannabis Credit Union to provide checking accounts, savings accounts, and other related accounts and services to businesses and individuals engaged in licensed cannabis activities and to provide personal, auto, and home loans to these businesses and individuals.


State-mandated local program: no.
Assembly Bill 1548 (Wood) – Cultivation Tax

- $9.25 per ounce on marijuana flowers
- $2.75 per ounce on marijuana leaves
- $1.25 per ounce on immature marijuana plants
- Tax collected at distributor level
- Board of Equalization administers and collects tax quarterly
- Proceeds would be used for environmental impacts
Assembly Bill 1549 – State Banking

• Currently a “spot bill” -- language will be added at a later date
• Goal is to create a state financial institution for the medical marijuana industry so basic banking services can be available
• Try to work through federal banking laws
Key Takeaways

- If a county has adopted an ordinance on medical marijuana (including a ban), this will still be protected under the legislation.
- If a county has not prohibited mobile deliveries, you may want to consider updating your ordinance.
- With the establishment of state licensing and local approval, counties that do not ban will need to commence the establishment of a local approval framework.
- If “(c) (4)” of AB 243 is not fixed quickly, a county may need to pass an ordinance on cultivation or the local approval authority for cultivation could be given to the State.
Questions?