



**Agriculture, Environment and Natural Resources (AENR)
Policy Committee & Government Finance &
Administration (GFA) Policy Committee**

Thursday, July 28, 2016 · 1:00 p.m. – 3:00 p.m.

Via Conference Call: 1(800) 867-2581 Password: 3929280

**And In-Person: CSAC Offices, 1100 K Street, Peterson/Wall Conference
Room, 1st Floor**

**Supervisor Diane Dillon, Napa County, AENR Chair
Supervisor Pam Giacomini, Shasta County, AENR Vice-Chair
Supervisor Henry Perea, Fresno County, GFA Chair
Supervisor Erin Hannigan, Solano County, GFA Vice Chair**

AGENDA

- 1:00 p.m.** **I. Welcome and Introductions**
*Supervisor Diane Dillon, Napa County, AENR Chair
Supervisor Henry Perea, Fresno County, GFA Chair*
- ** AENR and GFA Committee Referral****
- 1:05** **II. Proposition 64: Adult Use of Marijuana Act (AUMA)**
- *Staff Overview*
 - *Proponent Presentation*
 - *Opponent Presentation*
 - *Committee Discussion & Action*
- **AENR Committee Referral****
- 2:20** **III. Proposition 67: Referendum to Overturn Ban on Single-
Use Plastic Bags**
- *Staff Overview*
 - *Proponent Presentation*
 - *Opponent Presentation*
 - *Committee Discussion & Action*
- 2:40** **IV. Proposition 65: Carry-Out Bags. Charges**
- *Staff Overview*
 - *Proponent Presentation*
 - *Opponent Presentation*
 - *Committee Discussion & Action*
- 3:00 p.m.** **VII. Closing Comments & Adjournment**

ATTACHMENTS

Attachment One Proposition 64: Adult Use of Marijuana Act
..... (AUMA) Memo

Attachment Two Proposition 65: Carry Out Bags: Charges
Memo

Attachment Three Proposition 67: Plastic Bag Ban Referendum
Memo

Attachment One

Proposition 64: Adult Use of Marijuana Act (AUMA) Memo



July 20, 2016

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To: CSAC Agriculture, Environmental and Natural Resources Policy Committee
CSAC Government, Finance and Administration Policy Committee
From: Cara Martinson, CSAC Legislative Representative

RE: Proposition 64: Adult Use of Marijuana Act (AUMA)

Summary. Proposition 64, the Adult Use of Marijuana Act (AUMA), would allow adults age 21 and older to possess, transport, purchase, consume and share up to one ounce of marijuana and eight grams of non-medical marijuana. AUMA has six major components, including: adult use of non-medical marijuana; adult use of medical marijuana; and regulation of non-medical marijuana; taxation; local control provisions and criminal penalties. The following memo outlines in greater detail these provisions and their impact on local government.

Staff Recommendation. CSAC staff is recommending a neutral position on Proposition 64 (AUMA). While AUMA will have a significant impact on local government, the measure is reflective of CSAC's input and fundamentally respects key aspects of local control and regulation. Staff had a discussion regarding our participation and input into the measure with the CSAC Executive Committee in 2015, and, as a result, provided detailed feedback to ballot drafters on key aspects critical to local government.

While CSAC did not, and has not, indicated any level of support or opposition to the measure, staff was able to provide comments and suggested language on several key issues critical to county government. Several points that were emphasized included the need for adequate funding and resources on the medical marijuana provisions; strong focus on local control and local regulation on both the medical and non-medical consumption; the need for local revenue generating authority; and, the need for adequate resources to address environmental and cultivation issues.

Background. *Legalization Efforts.* California is one of the latest states to enter into the recreational marijuana legalization debate. Voters in Alaska, Colorado, Oregon, Washington and the District of Columbia have legalized small amounts of marijuana for adult recreational use. Colorado and Washington measures passed in 2012, and Alaska, Oregon and District of Columbia in the fall of 2014. No state legislature, to date, has legalized recreational marijuana separate from a voter initiative.

In November 2016, California, Maine, Massachusetts and Nevada will have adult-use measures on the ballot. However, this is not the first time that marijuana legalization for non-medical use has come before the voters in California. Proposition 19, the Regulate, Control & Tax Cannabis Act was an initiative on the November 2, 2010 statewide ballot. It was defeated, with 53.5% of California voters voting "No" and 46.5% voting "Yes." Much like AUMA, if passed the ballot measure would have legalized various marijuana-related activities, allowed local governments to regulate these activities, permitted local governments to impose and collect marijuana-related fees and taxes, and authorized various criminal and civil penalties.

Medical Marijuana. California has been at the forefront of medicinal marijuana access, the first state to legalize medical marijuana nearly 20 years ago. Voters passed Proposition 215, the Compassionate Use Act, in 1996. The measure amended state law to allow persons to grow or possess marijuana for

medical use when recommended by a physician. Proposition 215 also allowed caregivers to grow and possess marijuana for a person for whom marijuana is recommended. In 2003, the Legislature passed Senate Bill 420 (Chapter 875 of 2003) which established the Medical Marijuana Program Act (MMPA). The MMPA, among other things, requires the California Department of Public Health to establish and maintain a program for the voluntary registration of qualified marijuana patients and their primary caregivers through a statewide identification card system. In addition, it authorized the formation of medical marijuana cooperatives—non-profit organizations that cultivate and distribute marijuana for medical uses to their members through dispensaries. While these initial efforts developed a very basic framework for medical marijuana, they lacked any formal statewide regulatory structure and enforcement mechanisms.

Since that time, many counties exercised their police powers and passed their own ordinances relative to medical marijuana land use policies, cultivation, and business licensing and regulation. The six north state counties, including Sonoma, Humboldt, Mendocino, Lake, Trinity and Del Norte developed their own specific north state policy to call for certain uniform state regulation while at the same time allowing local governments the flexibility to address individual community needs. Other counties, such as Los Angeles, have been at the forefront of non-medical marijuana regulation. The Los Angeles County Board of Supervisors voted recently to propose a local ballot measure this fall that seeks to take a potentially significant new source of government revenues, from marijuana sales, and use it to address its homeless population. The county proposal calls for a 10% levy on the gross receipts of businesses that produce or distribute marijuana and related products. It would apply to medical marijuana operations as well as the non-marijuana industry if California voters decide to legalize it in November.

In 2015, the Legislature enacted a package of bills establishing a new regulatory framework for medical marijuana cultivation and use in California. Three separate bills comprise the Medical Marijuana Regulation and Safety Act (MMRSA) – AB 243 (Wood), AB 266 (Bonta), and SB 643. Each deals with different aspects of regulation. Combined, MMRSA implements a new structure for licensing and enforcement of medical marijuana cultivation, product manufacturing, testing, transportation, storage, and distribution.

More specifically, the MMRSA does the following:

- Authorizes state and local governments to collect specified fees and taxes, as well as issue penalties for violations. Allows state departments to establish licensing fees to cover regulatory costs.
- Requires the 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.
- Creates the Bureau of Medical Cannabis Regulation (BMCR) within the Department of Consumer Affairs. Also tasks five other departments with various responsibilities relative to regulation.
- Assigns various responsibilities to both state and local governments.

The bills develop a much more comprehensive approach to medical marijuana in California. However, it is anticipated that the regulations will not be developed until January 1, 2018.

Federal 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).

Ballot Measure Summary. *Executive Summary.* Proposition 64, the AUMA, would allow adults 21 and older to possess, transport, purchase, consume and share up to one ounce, or 28.5 grams of marijuana, 8 grams of "concentrated cannabis" or edibles, and up to six living cannabis plants of non-medical marijuana for recreational use. AUMA includes regulatory, local control, taxation and revenue provisions as well as criminal penalties. AUMA would allow local governments to regulate non-medical marijuana businesses through zoning and other laws, including requiring businesses to obtain local permits or licenses in addition to state licenses. The measure aligns with recently chaptered medical marijuana legislation and allows local governments to establish their own taxes on medical and non-medical marijuana. Other provisions relate to rights of employers, driving under the influence, and marijuana business locations.

The following are notable provisions of Adult Use:

- Allows adults age 21 and older to possess, transport, purchase, consume and share up to an ounce of nonmedical marijuana and eight grams of nonmedical marijuana concentrates.
- Adults can also grow up to six plants at their household for non-medical use, but plants must be out of public view and secure from children.
- Local governments may ban outdoor home cultivation.
- Using marijuana in public remains illegal.
- Driving while impaired by marijuana remains illegal.

Medical Marijuana. Numerous key details of AUMA's regulatory system are modeled after the medical legislation, MMRSA. It should be noted that AUMA is drafted to incorporate non-medical marijuana into the framework established for medical marijuana regulation, renaming the Bureau of Medical Cannabis Regulation as the Bureau of Marijuana Control, while leaving the roles of the agencies unchanged. Generally speaking and with a few exceptions, medical marijuana will be controlled and regulated according to MMRSA, and AUMA will regulate its nonmedical counterpart.

The following are notable provisions of medical marijuana within AUMA:

- Mandates that all patients obtain medical marijuana based on doctor's recommendations that meet the standards of the recently signed MMRSA legislation.
- Counties are required to develop compliant protocols by January 1, 2018.
- Caps fees for voluntary ID cards at \$100. MediCal beneficiaries receive a 50% fee reduction and the fee is waived entirely for medically indigent adults who participate in the California Medical Services Program. This is different from current law, which does not cap fees. Counties currently charge fees that range from \$104-224. However, if non-medical marijuana is legalized, it is unclear how many patients will continue to apply for ID cards.

- Exempts patients with ID cards from the state sales tax when purchasing marijuana.
- Requires counties to identify patients using unique identifiers instead of names, and subjects any databases to the privacy protections of the Confidentiality of Medical Information Act (state equivalent of federal HIPPA). Neither the state nor any county health department may disclose, or be ordered by a state court to disclose, patient information sooner than 10 days after providing the patient with notice of the request to disclose their information unless the patient consents.
- In all other respects, maintains existing privileges for medical marijuana patients.

Regulation of non-medical marijuana. AUMA maintains consistency with recently passed medical legislation, MMRSA, including the designation of the same regulatory agencies to serve as lead regulators. AUMA appoints the Department of Consumer Affairs (DCA) to serve as the lead regulatory agency for all marijuana, both nonmedical and medical.

The following are notable regulatory provisions of AUMA:

- Designates the Department of Public Health (DPH) to oversee testing and manufacturing for all marijuana, while the Department of Food & Agriculture (DFA) will oversee cultivation, again mirroring the medical legislation.
- Establishes a number of license types, with small, medium and large-scale licenses for cultivation.
- Delays issuance of large cultivation licenses, which permit a licensee to cultivate 22,000 square feet or greater, for the first five years that AUMA is in effect, allowing smaller growers to establish themselves in the market.
- Beginning in 2023, large cultivation licenses may be issued at the discretion of state regulators. If issued, however, large-scale cultivators will be subject to similar restrictions on vertical integration as contained in the medical marijuana legislation, meaning large-scale cultivators cannot also be distributors of marijuana.
- Requires DCA, DPH, and DFA to follow criteria established in AUMA when determining whether to issue a non-medical marijuana business license. Explicitly empowers state regulators to deny a license or license renewal to prevent “creation or maintenance of unlawful monopoly power”. Also prohibits licensees from engaging in anti-competitive behavior and provides that violators will be liable for monetary penalties. Businesses will need to apply for each license separately. However, holders of a micro-business license, who are limited to producing non-medical marijuana on 10,000 square feet, may engage in all business activities, including sale and distribution. Holders of a large cultivation license will not be permitted to hold a distribution license.
- Prohibits the retail sale of marijuana by businesses that sell alcohol or tobacco.
- Permits licensed businesses, subject to local approval, to sell non-medical marijuana for the purposes of on-site consumption by adults. Those businesses may not sell or permit the consumption of alcohol and tobacco.
- Provides existing medical marijuana businesses will get priority for the new licenses to establish product market.
- Requires the Bureau to establish appellations of origin for marijuana grown or cultivated in a particular California county.

- Permits licensed retailers to deliver non-medical marijuana to adult customers, except where a local jurisdiction chooses to ban that activity.

Revenue and Taxation. As with MMRSA, AUMA provides broad and explicit taxing authority to counties in addition to establishing statewide taxes on non-medical marijuana. According to an analysis from the Legislative Analyst's Office, the measure could raise state and local tax revenues of over \$1 billion annually. In addition, the measure could potentially save state and local governments \$100 million annually, due to reduced costs in enforcing certain marijuana-related offenses, including reduced legal and incarceration costs.

The following are notable taxation and revenue provisions of AUMA:

- Allows local government to establish their own taxes on medical and non-medical marijuana consistent with existing state law. Explicit authority is granted to counties to levy a tax on cultivating, manufacturing, producing, processing, preparing, storing, providing, donating, selling or distributing marijuana, pursuant to existing voter-approval requirements
- On the state level, a 15% excise tax on all retail sales of marijuana, both non-medical and medical. However, medical marijuana purchased by patients with ID cards will be exempted from regular sales taxes. Also imposes a tax on licensed marijuana growers, based on the weight of the plants grown. The rates are \$9.25 per ounce of marijuana flowers and \$2.75 per ounce of marijuana leaves.
- The majority of funds are disbursed into the following subaccounts: The Youth Education, Prevention, Early Intervention and Treatment Account, the State and Local Government Law Enforcement Account, and the Environmental Restoration and Protection Account.

The exact percentage allocations into each account and the purposes of the account are as follows:

- 60% of funds are disbursed to the Youth Education, Prevention, Early Intervention and Treatment Account, which establishes public health and education programs focused on minors that provide treatment and counseling, educate against and prevent substance abuse.
- 20% of funds are disbursed to the State and Local Government Law Enforcement Account, which is used to train local law enforcement to administer the new laws, with a focus on DUIs, grants to local governments and organizations that educate the public on traffic safety, and major grants to local governments for enforcement of laws related to regulation of adult use of marijuana.
- 20% of funds are disbursed to the Environmental Restoration and Protection Account, which is used for environmental cleanup, remediated and restoration of public lands damaged by cultivation, as well as environmental enforcement against illegal water diversion, illegal cultivation, distribution and use of marijuana on public lands.

Local Control Provisions. AUMA includes multiple local control provisions, respecting local government police powers to ban commercial marijuana activity within their respective jurisdiction by ordinance. However, no local jurisdiction may ban the consumption of marijuana within its jurisdiction, or the allowance of up to six plants for personal use. As mentioned above, AUMA also provides broad taxing authority for local governments. However, local government fee authority is not explicit in the Act and is derived from statutes related to local fee recovery authority.

The following are notable local control provisions of AUMA:

- Aligns with medical legislation, MMRSA, to provide local control over non-medical marijuana businesses within their jurisdiction (MMRSA allows for local regulation over medical activity), including the authority to ban commercial marijuana activity by ordinance.
- Allows local government to regulate non-medical marijuana businesses through zoning and other local laws, including requiring that the businesses obtain local permits or licenses in addition to state licenses.
- Allows local government to enact and enforce reasonable restrictions on home cultivation of marijuana and allows a local government to ban outdoor home cultivation.
- Empowers local government to enforce state regulations in their jurisdictions when authorized by the relevant state agency. Enforcement would be done by local authorities, but pursuant to state standards and protocols.
- Allows local government to establish their own taxes on medical and non-medical marijuana consistent with existing state law. Explicit authority to do so is granted to counties, as previously mentioned.

Criminal Penalties. AUMA eliminates or substantially reduces certain criminal penalties for marijuana offenses, beyond what is explicitly made legal by the AUMA. Certain crimes, such as selling marijuana to minors (under 18- year old) and manufacturing marijuana with a volatile substance without a license, will remain felonies.

The following are notable criminal penalty provisions of AUMA:

- Allows prosecutors to continue charging the most serious marijuana-related offenses as felonies, including providing marijuana to a minor, cultivating marijuana illegally on public lands and transporting marijuana across state lines for unlawful sale.
- Some offenses committed by adults, such as possessing more marijuana for personal use than AUMA permits, are converted to misdemeanors. These penalties become wobblers that may be charged as felonies based on aggravating circumstances, such a repeat offense...
- Allows those previously convicted of a marijuana-related crime, which under AUMA would no longer be crimes or have a reduced penalty, to petition the court for penalty reduction or record expungement.

The full text of the initiative can be found [here](#).

Existing Policy. CSAC does not have any specific policy dealing with the legalization of marijuana. However, CSAC has policy relative to medical marijuana and its environmental impacts. The following is CSAC’s Medical Marijuana Policy, adopted by the Board of Directors in 2014:

“CSAC believes that the constitutional police powers of counties to protect the health, safety, and general welfare of the public authorizes counties to take actions to address what an elected Board of Supervisors legislatively determines to be the negative secondary effects of medical marijuana dispensaries and cultivation. The proliferation of such dispensaries and cultivation has created a variety of problems in many areas of the State. Counties must be able to enact prohibitions or regulations in the face of threats to the public health, safety and general welfare. Such decisions represent legislative judgments made by locally elected legislative bodies about the wisdom and need for local control over

a particularly vexing and unusual land use. Under well settled constitutional separation of powers principles, deference must be afforded to the legislative judgments made by locally elected officials, who are in the best position to evaluate local conditions, community needs, and the public welfare. Accordingly, CSAC believes that any legislation to develop a statewide program for the regulation of medical marijuana dispensaries and cultivation must allow individual local governments the discretion to either adopt that program in full, to modify the program as they see fit, or to opt out of the program completely.

In addition, the cultivation of marijuana is often accompanied by land use and operational activities such as clearing of land, grading, road-building, water withdrawals from streams and application of herbicides, pesticides and fertilizers. These activities are routinely regulated and enforced by Federal, State and local agencies when they are associated with industries such as timber, ranching or farming, so as to reduce their potential impacts on the environment. CSAC believes responsible agencies should be given clear guidance and adequate resources to regulate and enforce existing environmental laws when they are associated with the cultivation of marijuana. CSAC also supports a requirement that state agencies coordinate with local governments to ensure uniform application in enforcement efforts.”

Local Government Impact. As noted above in the revenue and taxation section as well as the local control section of this analysis, there are numerous provisions within AUMA dealing specifically with local regulation, enforcement and taxation. The legalization of non-medical marijuana will undoubtedly have a significant impact on local government. However, AUMA was written with these issues in mind and many, if not the majority, of CSAC’s comments and suggestions were incorporated into the ballot measure that will go before the voters in November. It is clear that the development of a regulatory framework to control the legal use and production of marijuana would consume a tremendous amount of time and resources. It is also clear that the proliferation of medical marijuana is having a deleterious impact on our environment and some ways, communities. Clearly, there would also be social impacts associated with the legalization of marijuana for non-medical use, though what they would be can and will be the subject of considerable debate. Given the emotive significance of the issue and the social implications of such a significant policy shift, CSAC is recommending a neutral position as many of the issues concerning local control and regulation have been adequately addressed and included in the measure.

Support/ Opposition. *Support.* The major funder for AUMA is Napster founder and former Facebook president Sean Parker, and the measure is endorsed by Lt. Gov. Gavin Newsom, who convened a Blue Ribbon panel on marijuana legalization last year. It also has the support of the California Medical Association, California Democratic Party, California NAACP, ACLU of California, California Cannabis Industry Association, Drug Policy Alliance, MPP, Students for Sensible Drug Policy, and national NORML, among others.

Opposition. The opposition campaign for this initiative is led by Californians for Responsible Drug Policies. Organizations officially in opposition to the measure include the California Hospital Association, Small Growers Association, California Teamsters Union, California Correctional Supervisor’s Association and the California Police Chiefs Association.

Requested Action. CSAC staff recommends that the CSAC AENR and GFA Committees recommend a position of “neutral” to the CSAC Executive Committee.

Staff Contact. Cara Martinson, CSAC Legislative Representative, can be reached at 916-327-7500, ext. 504, or cmartinson@counties.org.

Attachment Two
Proposition 65: Carry Out Bags: Charges



July 20, 2016

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To: CSAC Agriculture, Environment and Natural Resources Policy Committee
From: Cara Martinson, CSAC Legislative Representative

RE: Proposition 65: Carry Out Bags: Charges

Summary. This measure would redirect money collected by grocery and other retail stores through the sale of carryout bags, whenever any state law bans free distribution of a particular kind of carryout bag and mandates the sale of any other kind of carryout bag. Proposition 65 would require stores to deposit bag sale proceeds into a special fund administered by the Wildlife Conservation Board (WCB) to support specified categories of environmental projects.

Staff Recommendation. CSAC staff is recommending “no position” on this measure. While CSAC has supported bills in the past that dedicated reusable bag fees for environmental purposes, this measure raises Proposition 26 issues, requiring a 2/3 vote of the electorate for passage.

Background. Although plastic represents a relatively small fraction of the overall waste stream in California, plastic waste is the predominate form of marine debris. Plastics are estimated to comprise 60% to 80% of all marine debris and 90% of all floating debris. According to the California Coastal Commission, the primary source of marine debris is urban runoff, of which lightweight plastic bags and plastic film are particularly susceptible. According to the Department of Resources, Recycling and Recovery (Cal Recycle), a large amount of this plastic is accumulating in waterways and landscapes around the world, including the Pacific Ocean’s Gyre (also known as the Great Pacific Garbage Patch). In addition, cities and counties are responsible for reducing storm water pollution to the Maximum Extent Practicable (MEP) and eliminate discharge through a National Pollutant Discharge Elimination System (NPDES). Part of this includes removing trash, including plastic from our storm drains and gutters. Storm water permits are costly, and because of Proposition 218, local governments are unable to raise their fees without a vote of the people.

In November 2010, California voters passed Proposition 26 (Prop 26). Prop 26 redefines regulatory fees as taxes. This means that new regulatory fees must now be treated like taxes and must be approved by a legislative supermajority (at the state level) and a voter supermajority for local measures. In response to Prop 26, local governments have begun to restructure their bag ordinances by having the proceeds from the charge on paper or reusable bags go to the retailer instead of the government. To date, over 140 jurisdictions have enacted plastic bag bans in their communities. Proposition 65 was placed on the ballot through the initiative process and there is pending case law as to whether or not this triggers the Prop 26 supermajority vote. As such, this measure could jeopardize a statewide plastic bag ban if successful, but does not achieve a super-majority vote.

Ballot Measure Summary. Proposition 65 would redirect the fees collected by grocery and other retail stores through the sale of carryout bags. SB 270 (Padilla, 2014) established requirements for reusable bags and prohibited stores from distributing reusable bags and recycled paper bags for less than \$0.10 per bag. The fee associated with the statewide ban is allowed to be retained by stores that charge the fee to comply with the law. As you recall, Proposition 67 (see Proposition 67 Memo) is also on the November ballot as a referendum on SB 270.

Proposition 65 directs fees collected from bag sales to be used for environmental purposes and also provides for the Wildlife Conservation Board (WCB) to develop regulations implementing the law. All funds deposited in the Environmental Protection and Enhancement Fund shall be continuously appropriated to the WCB. WCB shall use the funds to support environmental protection and enhancement grants.

Projects and programs eligible for grant funds are as follows:

- Drought mitigation projects including, but not limited to, drought-stressed forest remediation and projects that expand or restore wetlands, fish or waterfowl habitat.
- Recycling.
- Clean drinking water supplies.
- State, regional, and local parks.
- Beach cleanup.
- Litter removal.
- Wildlife habitat restoration.

In addition, the measure would require the California State Auditor to conduct and post on its Internet website a biennial independent financial audit of the programs receiving grant funds. Proposition 65 also allows local governments to require funds generated or collected by their locally adopted bag ban ordinance to be deposited in the Environmental Protection and Enhancement Fund. Finally, the measure prohibits WCB from using more than 2% of the funds for administrative costs, and prohibits grant recipients from using more than 5% of the funds received for administrative costs.

Existing Policy. While CSAC does not have specific policy on plastic bag fees, CSAC does have policy to support for grants and loans to counties to assist with waste diversion.

Local Government Impact. The measure directs WCB to develop specific regulations to implement environmental protection and enhancement grants. However, it is unclear how much of the funds collected would be directed towards programs that directly benefit local governments. In addition, this measure has the potential to impact the statewide ban on plastic bags (pending approval of Proposition 67) due to Proposition 26 implications.

Support. The official proponent of the initiative is Doyle Johnson. However, according to a press release from the American Progressive Bag Alliance (APBA), they submitted approximately 600,000 signatures to county registrars for signature verification.

Opposition. Staff has been unable to determine any formal opposition to the initiative.

Action Requested. CSAC staff requests that the CSAC Agriculture, Environmental and Natural Resources Committee recommend “no position” on Proposition 65 to the CSAC Executive Committee.

Staff Contact. Cara Martinson, CSAC Legislative Representative can be reached at cmartinson@counties.org. 916-327-7500, ext. 504.

Attachment Three

Proposition 67: Plastic Bag Ban Referendum



July 20, 2016

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To: CSAC Agriculture, Environment and Natural Resources Policy Committee
From: Cara Martinson, Legislative Representative

Re: Proposition 67: Plastic Bag Ban Referendum

Summary: A majority of “no” votes on the referendum would repeal SB 270 (Chapter 850, Statutes of 2014), which prohibited certain stores from distributing lightweight, single-use plastic bags. SB 270 established requirements for reusable bags and prohibited stores from distributing reusable bags and recycled paper bags for less than \$0.10 per bag.

Staff Recommendation. Staff recommends “no position” on Proposition 67.

Background. Pollution. Although plastic represents a relatively small fraction of the overall waste stream in California, plastic waste is the predominate form of marine debris. Plastics are estimated to comprise 60% to 80% of all marine debris and 90% of all floating debris. According to the California Coastal Commission, the primary source of marine debris is urban runoff, of which lightweight plastic bags and plastic film are particularly susceptible. According to the Department of Resources, Recycling and Recovery (Cal Recycle), a large amount of this plastic is accumulating in waterways and landscapes around the world, including the Pacific Ocean’s Gyre (also known as the Great Pacific Garbage Patch). In addition, cities and counties are responsible for reducing storm water pollution to the Maximum Extent Practicable (MEP) and eliminate discharge through a National Pollutant Discharge Elimination System (NPDES). Part of this includes removing trash, including plastic from our storm drains and gutters. Storm water permits are costly and because of Proposition 218, local governments are unable to raise their fees without a vote of the people.

Legislative Efforts. SB 270, by Senators Padilla, de León and Lara, was adopted by the Legislature and signed by the Governor in 2014. This bill established a statewide ban on the distribution of single-use plastic grocery bags at most stores. It was passed after several years of efforts, including numerous other legislative attempts and was ultimately supported by environmental groups, grocers, retailers, various local governments and labor. CSAC did not ultimately take a position on SB 270 due to amendments that directed the fee placed on reusable bags to remain with retail establishments rather than dedicated to environmental programs. CSAC did support previous bag ban bills, including AB 2829 (Davis, 2008), AB 68 (Brownley, 2009), AB 87 (Davis, 2009) & AB 158 (Levine, 2013-14). These previous legislative attempts to ban plastic bags would have dedicated proceeds from the sale of reusable bags for environmental mitigation purposes. SB 270 does preempt local governments from passing an ordinance that differs from the statewide ban, while grandfathering in existing ordinances passed prior to September 2014. There currently are over 140 local city and county ordinances banning single-use carry out bags in California.

Proposition 26. In November 2010, California voters passed Proposition 26 (Prop 26). Prop 26 redefines regulatory fees as taxes. This means that new regulatory fees must now be treated like taxes and must be approved by a legislative supermajority (at the state level) and a voter supermajority for local measures. In response to Prop 26, local governments have begun to restructure their local bag ordinances by having the proceeds from the charge on paper or reusable bags go to the retailer instead

of the government. CSAC supported previous legislative attempts to ban plastic bags before the issue of Prop 26 required either a supermajority vote or proceeds of sales to remain with the retailer.

Initiative Summary. A "yes" vote on Proposition 67 is a vote in favor of upholding or ratifying the contested legislation banning plastic bags. A majority of "no" votes on the referendum would repeal SB 270. SB 270 established requirements for reusable bags and prohibited stores from distributing reusable bags and recycled paper bags for less than \$0.10 per bag.

Specifically, SB 270 does the following:

- Prohibits stores from making single-use carryout bags available at the point of sale on the following timeline: On and after January 1, 2015, at either a grocery store or retailer with at least 10,000 square feet of retail space and a pharmacy.
- On and after July 1, 2016, at a convenience food store and food mart.
- Authorizes a store to make available a reusable grocery bag or recycled paper bag at the point of sale.
- Requires that these bags may not be sold to a consumer for less than \$0.10.
- Requires that all monies collected by stores pursuant to this bill be retained at the store and be used for costs associated with complying with this bill; actual costs of providing recycled paper bags and reusable grocery bags; and costs associated with a store's educational materials or educational campaign encouraging the use of reusable bags.
- Requires a store to provide a reusable bag or recycled paper bag at no charge to any customer using California Special Supplemental Food Program for Women, Infants and Children benefits, CalFresh benefits (federally known as Supplemental Nutrition Assistance Program [SNAP] benefits), California Food Assistance Program benefits, or cash aid benefits.
- Authorizes a city, county, city and county, or the state to impose civil liability of \$1,000 for the first violation of the proposed law, \$2,000 for the second violation, and \$5,000 for each subsequent violation. Collected penalties must be paid to whichever agency brought the action.
- Grandfathers in all local ordinances adopted before September 1, 2014, relating to reusable grocery bags, single-use carryout bags, or recycled paper bags.
- Preempts local ordinances adopted on or after September 1, 2014, relating to reusable grocery bags, single-use carryout bags, or recycled paper bags.
- Appropriated \$2 million from the Recycled Market Development Revolving Loan Subaccount for loans for the creation and retention of jobs and economic activity in the state for the manufacture and recycling of plastic reusable grocery bags that use recycled content. Required recipients of a loan to retain and retrain existing employees for the manufacturing of reusable grocery bags that meet the requirements of this bill.

Impact on Local Government. Plastic bag pollution poses several direct impacts on local government. As previously mentioned, there are currently over 140 jurisdictions that have taken action at the local level to ban plastic bags in their communities. SB 270 does grandfather in local ordinances prior to September 2014. While CSAC supported previous attempts to ban plastic bags, we do not have specific policy related to the direction of the fee on reusable bags.

Support. The following organizations are the main proponents of upholding the ban on plastic bags:

California League of Conservation Voters (CLCV)
Californians Against Waste (CAW)
Environment California
Heal the Bay
Natural Resources Defense Council (NRDC)
Sierra Club California
Surfrider Foundation

Opposition. The American Progressive Bag Alliance, an opponent of the measure, is leading the campaign to repeal SB 270. Other organizations in opposition include the Howard Jarvis Taxpayers Association and the California Manufacturer's and Technology Association.

Action Requested. Staff recommends that the CSAC Agriculture, Environment and Natural Resources Policy Committee recommend “no position” on Proposition 67 to the CSAC Executive Committee.

Staff Contact. Please contact Cara Martinson, CSAC Legislative Representative at 916-327-7500, ext. 504, or cmartinson@counties.org for questions or additional information.