



Paul A. Smith

# 2015 MEDICAL MARIJUANA UPDATE

MENDOCINO COUNTY



# RCRC's Adopted Policy Principles for Medical Marijuana

## RCRC 2015-16 POLICY PRINCIPLES

### MEDICAL MARIJUANA CULTIVATION

**Local Preemption.** Many RCRC member counties have enacted cultivation ordinances to address issues surrounding medical marijuana grows. While each ordinance varies, most address the size, scale, and conditions whereby grows can occur. Enforcement is conducted primarily by code enforcement officers with accompanying law enforcement. The courts have upheld counties' authority to enact these ordinances, noting that Proposition 215 and subsequent medical marijuana legislation are not comprehensive and do not preclude local land use authority.

RCRC opposes efforts in the Legislature or through the statewide initiative process to weaken or eliminate the ability of counties to set regulatory standards associated with a county's land use authority. Regulatory standards afforded counties must include:

- The ability to regulate including banning grows and/or dispensaries;
- The ability to impose stricter local standards than what is afforded in State law/regulation/permit;
- Assurance that no new "rights" are enshrined in law as the State permits medical marijuana activities;
- The preservation of local enforcement tools (e.g. nuisance abatement);
- The ability to have policies restricting the use of marijuana by employees, to address legitimate employer concerns such as the Federal Drug Free Workplace Act;
- Explicit provisions of law, in the absence of comprehensive State standards, which provide the ability of counties to impose pre-retail transportation standards; and,
- The power to tax and/or exact fees associated with local medical marijuana activities.

**State Regulatory Program.** RCRC supports a State regulatory scheme, consistent with the local control principles outlined above for medical marijuana products; empowered state agency requires:

- Licenses to grow, transport, distribute and sell medical marijuana products;
- As a condition of issuing a state license, demonstration of a local jurisdiction's approval - via certified copies of documents - to operate within the local jurisdiction's borders;
- The establishment of uniform standards for the potency of medical marijuana products;
- Proper labeling of medical marijuana products and other products used for cultivation in accordance with uniform potency standards;
- Maximum standards in the potency of medical marijuana products;
- Proper labeling of THC levels and other products used for cultivation;

- The allowance of appellation verification statements to be permitted ("branding");
- The prohibition of mobile deliveries and online sales;
- The imposition of security requirements upon grows and dispensaries;
- The restriction of licenses for previous criminal convictions (other than minor crimes associated with marijuana) and a strong revocation process for violations of corresponding state medical marijuana laws;
- The issue of tax compliance is addressed and minimizes the use of cash transactions;
- Authorization for the State to impose taxes and/or fees upon medical marijuana. The State should give priority for the use of these funds to localities for the costs of regulation or enforcement;
- The ability of State agencies' to apply current permit requirements and other regulations relating to water quality and usage, land conversion, pesticide/herbicide usage, and other environmentally-sensitive activities associated with cultivation;
- Statewide enforceable standards of what constitutes driving while impaired; and,
- Proper state enforcement of work and worker safety standards.


**State Oversight Board.** Any State medical marijuana oversight board must include in its composition several rural county supervisors and/or rural county representatives in order to reflect the unique issues that occur in the cultivation of marijuana in rural areas.

**The "Collective Model."** The current legal structure for growing and using medical marijuana involves the collective model whereby individuals band together to cultivate medical marijuana. RCRC believes that this model does not exist in current 'real world' medical marijuana practices. A complete restructuring must occur and RCRC encourages the State to craft a multi-tiered model for those who collectively cultivate, transport/distribute, sell, and use marijuana.

**Environmental Enforcement.** Despite the best efforts of counties to utilize their operational and/or land use authority, counties lack the tools, resources, or legal authority to fully address the environmental degradation that is occurring with unregulated grows - the negative impact on water quality and water supply, the destruction of habitat, and the improper use of pesticides/fertilizers, among others is rampant. RCRC believes that environmental damage must be addressed by a variety of state agencies including, but not limited to the Board of Forestry, the California Department of Fish and Wildlife, Regional Water Quality Control Boards as well as other traditional state law enforcement agencies (i.e. California Highway Patrol, Department of Justice). RCRC supports a requirement that state environmental agencies coordinate with local government to ensure uniform application in enforcement efforts.



# RCRC's Core Policy Principles on Medical Marijuana

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

AMENDED IN ASSEMBLY SEPTEMBER 11, 2015  
 AMENDED IN ASSEMBLY SEPTEMBER 4, 2015  
 AMENDED IN ASSEMBLY SEPTEMBER 1, 2015  
 AMENDED IN ASSEMBLY AUGUST 18, 2015  
 AMENDED IN ASSEMBLY AUGUST 17, 2015  
 AMENDED IN SENATE JUNE 3, 2015  
 AMENDED IN SENATE MAY 6, 2015  
 AMENDED IN SENATE APRIL 6, 2015

**SENATE BILL** No. 643

Introduced by Senator McGuire

February 27, 2015

An act to amend Section 2220.05 of Sections 144, 2220.05, 2241.5, 2242.1 of, to add Sections 19302.1, 19319, 19320, 19322, 19323, 19324, 19325 to, to add Article 25 (commencing with Section 27 and Chapter 5 of Division 2 of, and to add Article 6 (commencing with Section 19331), Article 7.5 (commencing with Section 19335 and Section 19345) to Chapter 3.5 of Division 8 of, the Business and Professions Code, relating to medical marijuana.

LEGISLATIVE COUNCIL'S DIGEST

SB 643, as amended, McGuire. Medical marijuana.

~~Existing~~  
 (1) Existing law, the Compassionate Use Act of 1993, requires that a measure enacted by the approval of Proposition 2

AMENDED IN SENATE SEPTEMBER 11, 2015  
 AMENDED IN SENATE SEPTEMBER 4, 2015  
 AMENDED IN SENATE SEPTEMBER 1, 2015  
 AMENDED IN SENATE AUGUST 17, 2015  
 AMENDED IN SENATE JULY 2, 2015  
 AMENDED IN ASSEMBLY JUNE 1, 2015  
 AMENDED IN ASSEMBLY APRIL 22, 2015  
 AMENDED IN ASSEMBLY APRIL 8, 2015

CALIFORNIA LEGISLATURE—2015-16 REGULAR SESSION

**ASSEMBLY BILL** No. 243

Introduced by Assembly Member Wood  
 (Coauthors: Assembly Members Rendon and Williams)  
 (Principal coauthor: Assembly Member Rendon)  
 (Coauthor: Assembly Member Williams)

February 5, 2015

An act to amend Section 2220.05 of add Article 6 (commencing with Section 19331), Article 13 (commencing with Section 19350), and Article 17 (commencing with Section 19360) to Chapter 3.5 of Division 8 of the Business and Professions Code, to add Section 12029 to the Fish and Game Code, to add Sections 11362.769 and 11362.777 to the Health and Safety Code, and to add Section 13276 to the Water Code, relating to medical marijuana, and declaring the urgency thereof, to take effect immediately, marijuana, and making an appropriation therefor.

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AMENDED IN SENATE SEPTEMBER 11, 2015  
 AMENDED IN SENATE SEPTEMBER 4, 2015  
 AMENDED IN SENATE SEPTEMBER 1, 2015  
 AMENDED IN SENATE AUGUST 17, 2015  
 AMENDED IN SENATE JULY 13, 2015  
 AMENDED IN SENATE JUNE 30, 2015  
 AMENDED IN ASSEMBLY JUNE 2, 2015  
 AMENDED IN ASSEMBLY MAY 11, 2015  
 AMENDED IN ASSEMBLY MAY 5, 2015  
 AMENDED IN ASSEMBLY APRIL 14, 2015

CALIFORNIA LEGISLATURE—2015-16 REGULAR SESSION

**ASSEMBLY BILL** No. 266

Introduced by Assembly Members Bonta, Cooley, Jones-Sawyer, and Lackey, and Wood  
 (Coauthor: Assembly Member Chin)

February 10, 2015

An act to amend Section 2220.05 of the Business and Professions Code, relating to medical marijuana. An act to amend Sections 27 and 205.1 of, to add Section 205.1 to, and to add Chapter 3.5 (commencing with Section 19300) to Division 8 of, the Business and Professions Code, to amend Section 9147.7 of the Government Code, to amend Section 147.5 of the Health and Safety Code, to amend Section 147.5 of the Labor Code, and to add Section 31020 to the Revenue and Code, relating to medical marijuana.

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# Key Aspects of Package

## 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)

# Key Aspects of Package

## 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.




# Key Aspects of Package

## 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.

# Key Aspects of Package


## 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.
- 



# 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.
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# 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)

SB 643

# 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.



# 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 for Counties

## Licensure Exemptions



Personal Grows Exemption



Patient Caregivers Exemption

# 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)

AB 243

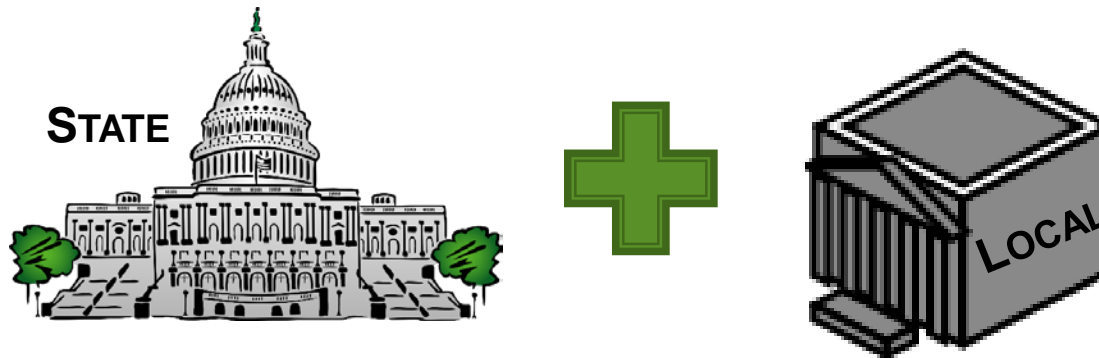


# Key “Must-Knows”



# Dual Licensing

Must have both a state license & local approval to operate



# Locals Goes 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)

AB 243



# 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

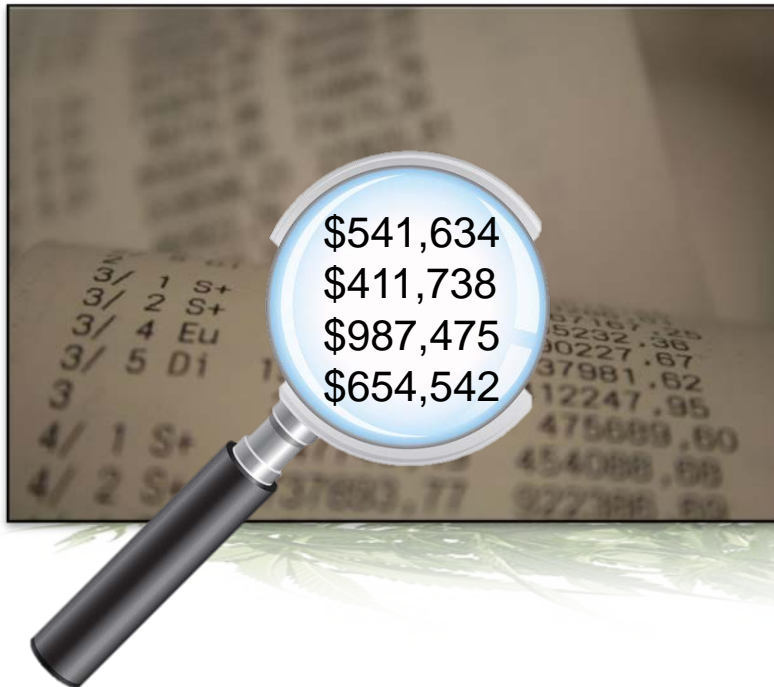
AB 266

# 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

# Local Role in Enforcement

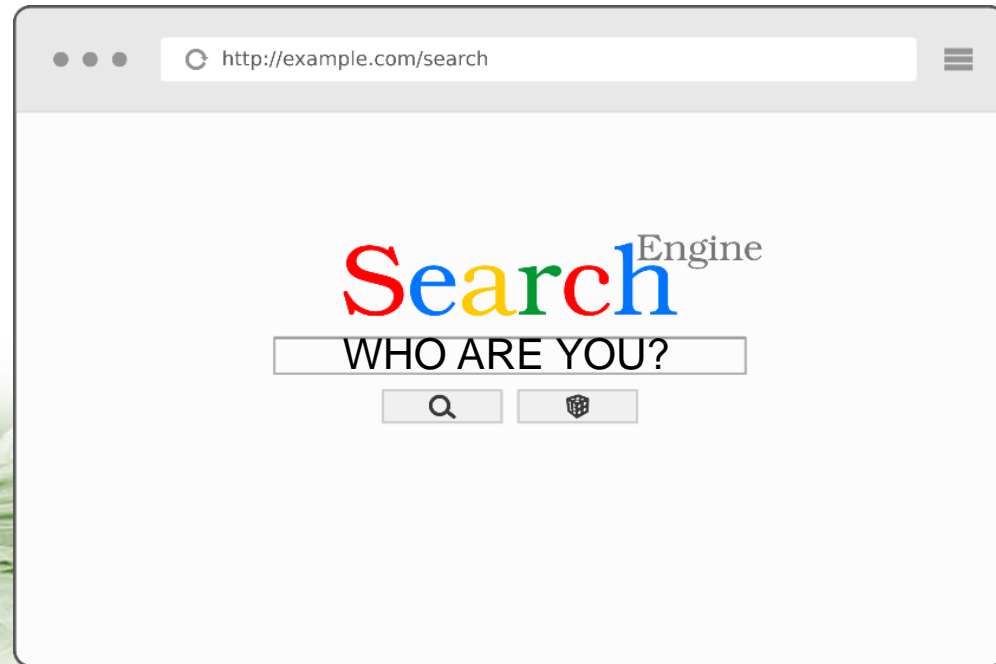
Examine books



Coordinated enforcement

# Background Checks/License Restrictions (Criminal Record)

- Prospective licensees must submit to State Department of Justice background checks



Business & Professions Code 19323

SB 643



## Background Checks/License Restrictions (Criminal Record)

- 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



## Other Relevant Aspects of the Legislative Package

- Employer Restrictions
- Transportation Standards
- Pesticide Standards
- Cross-Ownership Restrictions
- Mandatory Distribution
- Removal of “(c) (4)” in AB 243

# Regulatory Efforts



NCRWQCB



CVRWQCB



# 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

# RCRC Comments



August 20, 2015

Ms. Pamela C. Creedon  
Executive Officer  
Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670-6114

RE: **Order R5-2015-XXXX: Draft Waste Discharge Requirements General Order for Discharges of Waste Associated with Medicinal Cannabis Cultivation Activities**

Dear Ms. Creedon:

The Rural County Representatives of California (RCRC) represents thirty-four rural counties across California, twenty-three of which are included in the purview of the Central Valley Regional Water Quality Control Board (Regional Board). RCRC member counties take their enforcement role of local water quality objectives very seriously, particularly since our member counties are the stewards of much of the State's water supply. In the last several years, California's rural counties have seen a dramatic proliferation of marijuana cultivation and a continual expansion of the scale and volume of individual grow sites. The immediate threat to water quality posed by marijuana cultivation is of paramount importance to RCRC's member counties, many of which are currently grappling with how to effectively address the resulting environmental impacts.

In light of our environmental concerns, RCRC applauds the Regional Board for the proposed Waste Discharge Requirements (WDR) for cannabis cultivation and associated activities. The WDR is a vital first step in addressing the effects marijuana cultivation has on our State's water quality. While we realize your agency only has authority over quasi-legal grows, we believe the proposed WDR will - in concert with the already-approved North Coast WDR - set the tone for the rest of the State in addressing water quality concerns. We also believe the requirements in the proposal comprise a tenable water quality program for cultivators who want to make sure their operations are not having a negative impact on the State's water, as well as those who have sites in need of environmental cleanup and mitigation.

1215 K Street, Suite 1650, Sacramento, CA 95814 | www.rcrcnet.org | 916.447.4806 | Fax: 916.448.3154

ALPINE AMADOR BUTTE CALAVERAS COLUSA DEL NORTE EL DORADO GLENN HUMBOLDT IMPERIAL INYO LAKE LASSEN MADERA MARIPOSA MENDOCINO MERCED MODOC MONO NAPA NEVADA PLACER PLUMAS SAN BENITO SHASTA SIERRA SISKIYOU SUTTER TEHAMA TRINITY TULARE TUOLUMNE YUBA YUBA



May 7, 2015

Mr. Matthias St. John, Executive Director  
North Coast Regional Water Quality Control Board  
5550 Skyline Boulevard, Suite A  
Santa Rosa, CA 95403

RE: **Order No. 2015-0023: Draft Waiver of Waste Discharge Requirements for Discharges of Waste Resulting from Marijuana Cultivation and Associated Activities**

Dear Mr. St. John:

The Rural County Representatives of California (RCRC) represents thirty-four rural counties across California, eight of which are included in the purview of the North Coast Regional Water Quality Control Board (Regional Board). RCRC member counties take their enforcement role of local water quality objectives very seriously, particularly since RCRC member counties are the stewards of much of the State's water supply. In the last several years, Northern California's rural counties have seen a dramatic proliferation of marijuana cultivation and a continual expansion of the scale and volume of individual grow sites. The immediate threat to water quality posed by marijuana cultivation is of paramount importance to RCRC's member counties, many of which are currently grappling with how to effectively address the resulting environmental impacts.

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RCRC also appreciates the proposal's recognition of local governments and their role in environmental crime task forces on marijuana cultivation. The counties under the purview of the Regional Board have been enthusiastic about the work your agency has done on cultivation-related enforcement, and look forward to continuing this collaboration with your staff and other state and federal agencies once the WDR is in place. We encourage you to continue reaching out to county Boards of Supervisors and staff to expand the work already being done on this

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# The Saga Continues...

CALIFORNIA LEGISLATURE—2015-16 REGULAR SESSION  
**ASSEMBLY BILL**  
No. 1548  
Introduced by Assembly Member Wood  
(Coauthor: Senator Runner)  
September 11, 2015

An act to add Part 13.5 (commencing with Section 31001) to Division 2 of the Revenue and Taxation Code, relating to medical marijuana, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1548, as introduced, Wood, Medical marijuana: taxation: marijuana production and environment mitigation. Existing law, the Compassionate Use Act of 1996, an initiative measure enacted by the approval of Proposition 215 at the November 5, 1996, statewide general election, authorizes the use and cultivation of marijuana for medical purposes. Existing law makes it a crime to plant, cultivate, harvest, dry, or process marijuana, except as otherwise authorized by law. Under existing law, qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who associate in order collectively and cooperatively to cultivate marijuana for medical purposes, are not subject to criminal sanctions solely on the basis of that fact.

The Fee Collection Procedures Law, among other things, provides for the administration of fee programs by the State Board of Equalization, establishes procedures for collection, reporting, return, refund, and appeals, and authorizes the board to adopt regulations relating to administration and enforcement of the law. The Fee Collection Procedures Law establishes criminal penalties for specific

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CALIFORNIA LEGISLATURE—2015-16 REGULAR SESSION  
**ASSEMBLY BILL**  
No. 1549  
Introduced by Assembly Member Wood  
September 11, 2015

An act to add Division 5.1 (commencing with Section 16910) to the Financial Code, relating to the California Cannabis Credit Union.

LEGISLATIVE COUNSEL'S DIGEST

AB 1549, as introduced, Wood, California Cannabis Credit Union. 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 Infrastructure and Economic Development Bank in the Governor's Office of Business and Economic Development and, among other things, authorizes it to issue revenue bonds, as specified.

This bill would establish the California Cannabis Credit Union within the State Board of Equalization and require the board to promulgate these regulations necessary for its implementation. The bill would require individuals engaged in licensed cannabis activities to have banking services through the California Cannabis Credit Union like those provided by other credit unions. The bill would require the California Cannabis Credit Union to provide checking accounts, saving 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.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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AB 1548 & AB 1549

# Assembly Bill 1548 – Cultivation Tax

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

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- \$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



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- Creation of Marijuana Production & Environmental Mitigation Fund
- All tax proceeds deposited into this Fund
- Distributed as follows:
  - 35% California Department of Food & Agriculture – Local law enforcement for illegal cultivation
  - 35% Nature Resources Agency – Competitive grant program for environmental clean-up
  - 30% Department of Fish & Wildlife & State Water Resources Control Board to address 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

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

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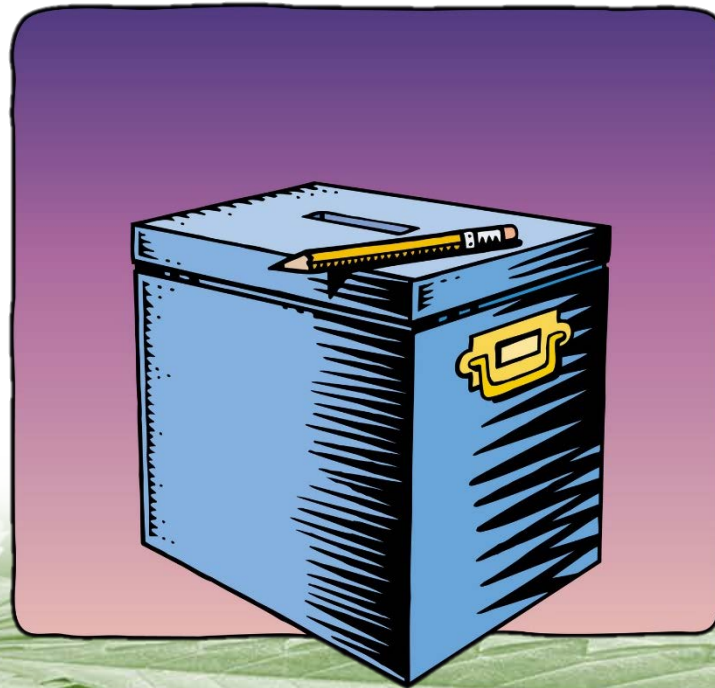
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# Ballot Measures



Paul A. Smith

Questions?

