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Marijuana law would propel California into unknown territory

Proposition 19 — called 'a common sense approach' by some and 'a jumbled legal nightmare' by others — leaves much uncertain. How would pot be controlled? Would buyers risk paying taxes?

By John Hoeffel, Los Angeles Times

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Vote yes on Proposition 19, the measure to legalize marijuana, and the unofficial state weed and largest cash crop will be controlled like alcohol, police will focus on serious crimes and California will get billions of dollars in new taxes. That's the pitch proponents make.

"It's a jumbled legal nightmare," opponents retort, disputing those claims and insisting that the measure would lead to stoned nurses in hospitals, drugged motorists on the road and more high teenagers.

Proposition 19, at three pages in the official voter information guide, is neither the longest nor the shortest initiative on the Nov. 2 ballot, but it would propel the state into unknown territory.

What is clear is that after midnight on election day, if the initiative has passed and you are at least 21 years old, you will be allowed under state law to smoke a joint in your home or other private place when no kids are around, keep a stash of up to an ounce and grow up to 25 square feet of marijuana plants.

That change, however, would not protect you from U.S. Drug Enforcement Administration agents, who could still enforce the federal Controlled Substances Act. And the new law could face a legal challenge, although the courts have ruled that states can decriminalize marijuana.

Beyond that, the potential effects of Proposition 19 become much murkier. The initiative would make California the first state to allow commercial cultivation and retail sales.

The measure's opponents say talk of legal sales and tax revenues is fanciful because the federal government wouldn't stand for it. U.S. Atty. Gen. Eric Holder promised this month to "vigorously enforce" federal drug laws, regardless of what California voters do. And former federal drug officials say it's unlikely any taxes would be paid because that would be admitting to a criminal violation.

But California's voters are not averse to casting their state into uncertainty. "It's part of California's culture," said Darryl Sragow, a former political consultant who now teaches political science at USC. "You've got to be a bit adventurous to get all the way here. You've got to be a

little bit of a risk taker."

When it comes to marijuana, voters were also warned in 1996 that Proposition 215, which allowed the drug to be used for medical reasons, would lead to chaos. The measure passed comfortably and has led to years of raids, trials and court battles, but the state's voters strongly support it.

About half of them now consistently tell pollsters they want to legalize marijuana, which opponents tacitly acknowledge by aiming their arguments not at legalization but at this particular initiative, ridiculing it as flawed. The argument signed by Sen. Dianne Feinstein in the voter guide begins: "Even if you support legalization of recreational marijuana, you should vote 'No' on Proposition 19."

Proponents say that prohibition has failed and that it's time for "a common sense approach to control marijuana," as retired San Jose Police Chief Joseph D. McNamara and others say in their voter-guide argument.

Opponents, backed by law enforcement organizations and the California Chamber of Commerce, challenge almost every claim made by proponents, starting with the title: The Regulate, Control and Tax Cannabis Act of 2010. They contend it would do no such thing.

The initiative leaves the issue of whether to allow legal sales up to the state's 481 cities and 58 counties, a wet-dry approach that mirrors how the state handles medical marijuana. But that makes it impossible to determine how carefully legal marijuana would be controlled.

If the past is any guide, most cities and counties would have nothing to do with it. Only 37 cities and 10 counties allow medical marijuana dispensaries, according to Americans for Safe Access, an advocacy group. In some places, notably Los Angeles, city officials lost control over them.

Oakland, the political hub of the state's marijuana legalization movement, would almost certainly be the first place to wrestle with regulations. A local initiative passed six years ago requires the city to allow sales "as soon as possible under California law."

San Francisco and Santa Cruz have passed legislation calling on the state to allow legal sales. And Oakland, Humboldt County, Berkeley and West Hollywood have endorsed Proposition 19.

"I think we will proceed cautiously," said West Hollywood Councilman John Duran, who noted that the city helped set up one of the state's first cannabis clubs, which closed in 2001 after a DEA raid. "We'd have to decide once again if this little city is ready to take on the United States. We did it before."

This city-county approach also makes it anyone's guess how much might be raised in tax revenues. Proposition 19 promises billions of dollars, and proponents cite a figure of \$1.4 billion, but that is an estimate for a legislative bill that would legalize pot sales statewide.

The state's nonpartisan legislative analyst concluded that, if a commercial marijuana industry were to emerge statewide, tax revenues could reach hundreds of millions a year. An analysis by the libertarian Cato Institute, which looked at taxing marijuana like tobacco, put it at \$352 million, less than 2% of California's \$19-billion budget shortfall.

Budget-crunched local governments increasingly see marijuana as a new revenue source. Ten cities, including San Jose, Sacramento and Stockton, are asking voters to approve taxes on marijuana, including higher levies on marijuana sold for recreational use. Long Beach is proposing to tax non-medical marijuana at 15%. These taxes, of course, could be collected only if these city councils decided to ignore Holder's threats and pass regulations for legal sales.

Oakland was the first California city to tax medical marijuana, and it has a measure on next month's ballot to raise that tax and add one for non-medical marijuana. If the new tax is passed, the city's four dispensaries, which anticipate \$40 million in sales this year, would pay \$2 million in taxes.

If Proposition 19 passes, and Oakland approves four more dispensaries, four 60,000-square-foot cultivation facilities and allows pot sales to adults, city officials estimate that pot tax revenues could hit \$13 million. That's almost enough to rehire the 80 police officers it laid off this year.

"There's a lot of opportunity for meeting a lot of needs," said David McPherson, a former police officer who is Oakland's tax administrator. "Like a lot of other cities, we're hurting."

The initiative promises to "implement a legal regulatory framework" that would "put dangerous underground street dealers out of business" and keep children from getting marijuana. The measure does include some new regulations, such as prohibiting use when minors are present, but would not establish rules to control marijuana like alcohol, which is subject to statewide regulation and enforcement.

What Proposition 19 would do, opponents say, is increase use, leading to more drugged drivers and to more children trying it. The measure's supporters scoff, saying marijuana is already so easy to get in California and so socially acceptable that anyone who wants to smoke is already doing it.

Researchers at Rand Corp., a nonpartisan research institute in Santa Monica, concluded that use would increase, but they could not say by how much. "It's going to change the stigma for some people, but more importantly, it's going to create availability," said Beau Kilmer, co-director of the Rand Drug Policy Research Center.

Rand also concluded that legal pot, if widely available, would be so cheap, it could squeeze Mexican cartels from the California marketplace — but would barely dent their overall drug business. The researchers said nothing about whether it would dislodge the drug gangs from the state's forest lands.

Proponents argue that the state would save millions of dollars on policing marijuana crimes. If

cultivation and sales were legal, the legislative analyst estimated potential savings could reach tens of millions by reducing the number of marijuana offenders in prisons and jails. The Cato Institute analysis estimated California spends \$960 million a year to enforce its marijuana laws.

Misdemeanor arrests for possessing an ounce or less of marijuana have risen steadily. Last year, there were 61,164 arrests, a quarter more than a decade earlier. Law enforcement officials say they devote few resources to chasing pot smokers and many of these charges stem from arrests for more serious crimes.

The state Chamber of Commerce says the initiative would allow smoking pot at work and would prevent employers from acting against a worker who is high unless the worker causes an accident. Proponents say the initiative would not change state laws that protect an employer's rights in the workplace.

This dispute, like others raised by the initiative, would almost certainly be settled in court.