

**REPORT OF THE
CHIEF LEGISLATIVE ANALYST**

DATE: May 15, 2013

TO: Honorable Members of the Rules, Elections, and Intergovernmental Relations
Committee

FROM: Gerry F. Miller 
Chief Legislative Analyst

Council File No: 13-0002-S35
Assignment No: 13-03-0183

SUBJECT: HR 689 - Rescheduling Marijuana

CLA RECOMMENDATION: Matters such as those pertaining to a City position on legislation which would legalize the use of medical cannabis, is a policy decision subject to the sole discretion of the City Council.

SUMMARY

Resolution (Parks-Perry) indicates, in part, that H.R. 689 (Blumenauer) seeks to require the Secretary of Health and Human Services to submit a recommendation which would reschedule marijuana under the Controlled Substances Act in a category other than Schedule I or II. Further, the subject Resolution states that currently, marijuana is a Schedule I substance, and like drugs listed as Schedule I or II are considered high risk with highly restricted or no accepted medical uses. H.R. 689 suggests, per the Resolution, that not only should marijuana be rescheduled, but it also be given State control, and the lack of Federal control that would be a result, would be opposite to standard practices for other prescription drugs in the United States. The Resolution concludes that the City of Los Angeles should not support measures which would treat marijuana differently than any other prescription drug, and therefore urges opposition to H.R. 689.

BACKGROUND

H.R. 689 (Blumenauer), otherwise known as the "States' Medical Marijuana Patient Protection Act" was introduced on February 14, 2013. The bill states that the Secretary of Health and Human Services, with the assistance of the National Academy of Sciences, provide a recommendation on the listing of marijuana in the Controlled Substances Act, with a classification other than Schedule I or II. Scheduling a drug or substance requires a specific finding by the Food and Drug Administration (FDA) and the Drug Enforcement Agency (DEA). Subsequent to the findings, drugs included in the Controlled Substances Act are then classified into one of five Schedules (I-V). Thus, Schedules I and II have high potential for abuse, have no permitted medical uses (Schedule I) or restricted medical uses (Schedule II), and have a high probability for dependency. Substances placed in Schedules III-V have descending potential for abuse, all have accepted medical uses, and have descending risks for dependency. Marijuana is currently a Schedule I drug. H.R. 689 requires that the Secretary of Health and Human Services recommend a listing other than Schedule I and II, which could lower the potential for abuse, grant legal medical uses by Federal Standards, and would show a relatively low risk for dependency.

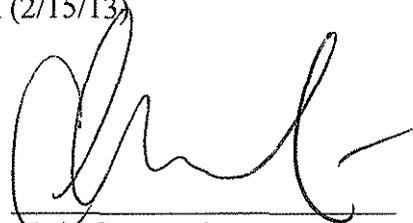
Additionally, there is a provision in H.R. 689 that would suspend portions of the Controlled Substances Act which currently prohibit the medical use of marijuana in States which maintain legal authority to do so, per State law. Further, this action would allow for the following: the prescription/recommendation of marijuana for medical use by medical professionals; the ability to obtain, transport and/or manufacture marijuana for medical purposes; and pharmacies or authorized entities to distribute marijuana to those whom it has been prescribed. Therefore, State control and regulation of medical marijuana would be permitted, contrary to existing law.

Recent polls show increasing public support of the legalization and medical use of marijuana. For States such as California, many argue that the matters of distribution, regulation, and taxation of medical marijuana should be at the sole discretion of the State. A recent CBS News poll indicated that 59% of adults surveyed indicate that States should have the ability to make their own decisions about marijuana policy. Some national polls show percentages as high as 68%. Those supporting State regulation would likely also support H.R. 689. Additionally, proponents of H.R. 689 argue that the passage of the bill would eliminate the existing conflict in Federal law and many State laws, and would allow States and local governments to regulate the distribution and address issues such as taxation, while allowing authorized medical use for patients in need. This would also allow those States which believe that marijuana use, even for medical purposes, should be prohibited to make that decision, and would allow for Federal enforcement of Federal law in said States.

However, critics of the aforementioned view say that although some States and local governments have legalized medical use of marijuana, state oversight of even prescription drugs is an unprecedented act. Some argue that H.R. 689 exempts marijuana from control by the DEA and the FDA by implementing State control with regard to distribution and its manufacturing. This would theoretically mean that quality control and testing of the drug prior to distribution would be subject to State authority, instead of Federal control. Those same critics argue that if this were to be the case, marijuana, a drug with an unconfirmed medical value, would receive an exemption from the normal regulatory framework of existing prescription drugs, which is antithetical to the purpose of H.R. 689; that purpose being to treat marijuana like any other prescription drug in States in which it is legal to use.

BILL STATUS

2/14/13	Introduced
2/14/13	Referred to House Committee on Energy and Commerce Referred to Subcommittee on Health (2/15/13)
2/14/13	Referred to House Judiciary Committee



Chris Concepción
Analyst

Attachments: 1. Resolution (Parks-Perry)
2. H.R. 689

RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, H.R. 689 (Blumenauer), otherwise known as the "States' Medical Marijuana Patient Protection Act," would require the Secretary of Health and Human Services to submit to the Drug Enforcement Agency (DEA) and Food and Drug Administration (FDA), a recommendation related to marijuana within the Controlled Substances Act, other than Schedule I or Schedule II, and would prohibit the restriction of medical prescriptions and use of marijuana in states in which it is legal, per state law; and

WHEREAS, Schedule I and II contain listings of the most high risk substances, which either have no accepted medical uses in the United States (Schedule I) or have few accepted medical uses under highly restricted circumstances (Schedule II); and

WHEREAS, substances which are listed under Schedule I-V must meet certain criteria for classification, and although the decision of the DEA has been appealed in the past, cannabis is currently listed under Schedule I of the Controlled Substances Act, substances of this type are prohibited per Federal law; and

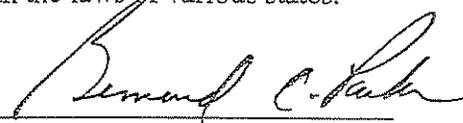
WHEREAS, H.R. 689 seeks to reschedule marijuana under Schedule III or lower, which would, in essence, permit States (not the DEA/FDA) to regulate the possession and distribution of marijuana, thus eliminating Federal control, a practice which would be opposite of the standard procedures of other prescription drugs in the United States (see attachment); and

WHEREAS, among the reasons that enactment of this legislation would be problematic, one is that a Federal department would be asked to legally find that marijuana does not meet the criteria of Schedule I or II drugs/chemicals, despite any evidence to the contrary; and

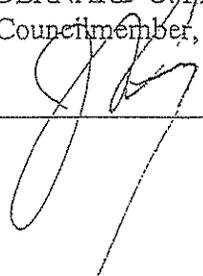
WHEREAS, since this bill would consequently create further loopholes and ambiguity, and would create a different regulatory framework which is inconsistent with any other pharmaceutical drug in the United States, it is important that local jurisdictions, such as the City of Los Angeles, oppose any measures, such as this bill, which would treat marijuana differently from an ordinary prescription drug and exempt any regulation, testing, etc., from DEA/FDA oversight;

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2013-2014 Federal Legislative Program, OPPOSITION to H.R. 689 which would provide for the rescheduling of marijuana, and for the medical use of marijuana, in accordance with the laws of various states.

PRESENTED BY:


BERNARD C. PARKS
Councilmember, 8th District

SECONDED BY:



113TH CONGRESS
1ST SESSION

H. R. 689

To provide for the rescheduling of marijuana and for the medical use of
marijuana in accordance with the laws of the various States.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 14, 2013

Mr. BLUMENAUER (for himself, Mr. ROHRBACHER, Mr. POLIS, Ms. LEE of California, Mr. MORAN, Mr. COHEN, Mr. FARR, Mr. GRIJALVA, Mr. NADLER, Mr. HASTINGS of Florida, Ms. SCHAKOWSKY, Mr. HONDA, and Mr. HUFFMAN) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide for the rescheduling of marijuana and for the
medical use of marijuana in accordance with the laws
of the various States.

1 *Be it enacted by the Senate and House of Representa-*

2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “States’ Medical Mari-
5 juana Patient Protection Act”.

6 **SEC. 2. CONTROLLED SUBSTANCES ACT.**

7 (a) SCHEDULE.—

1 (1) Not later than 180 days after the date of
2 enactment of this Act, the Secretary of Health and
3 Human Services, in cooperation with the National
4 Academy of Sciences' Institute of Medicine, shall
5 submit to the Administrator of the Drug Enforce-
6 ment Administration a recommendation on the list-
7 ing of marijuana within the Controlled Substances
8 Act (21 U.S.C. 801 et seq.), and shall recommend
9 a listing other than "Schedule I" or "Schedule II".

10 (2) Not later than one year after the date of
11 enactment of this Act, the Administrator of the
12 Drug Enforcement Administration shall, based upon
13 the recommendation under paragraph (1), issue a
14 notice of proposed rulemaking for the rescheduling
15 of marijuana within the Controlled Substances Act,
16 which shall include a recommendation to list mari-
17 juana as other than a "Schedule I" or "Schedule II"
18 substance.

19 (b) LIMITATIONS ON THE APPLICATION OF THE CON-
20 TROLLED SUBSTANCES ACT.—

21 (1) IN GENERAL.—No provision of the Con-
22 trolled Substances Act shall prohibit or otherwise re-
23 strict in a State in which the medical use of mari-
24 juana is legal under State law—

1 (A) the prescription or recommendation of
2 marijuana for medical use by a medical profes-
3 sional or the certification by a medical profes-
4 sional that a patient has a condition for which
5 marijuana may have therapeutic benefit;

6 (B) an individual from obtaining, manufac-
7 turing, possessing, or transporting within their
8 State marijuana for medical purposes, provided
9 the activities are authorized under State law; or

10 (C) a pharmacy or other entity authorized
11 under local or State law to distribute medical
12 marijuana to individuals authorized to possess
13 medical marijuana under State law from ob-
14 taining, possessing or distributing marijuana to
15 such individuals.

16 (2) PRODUCTION.—No provision of the Con-
17 trolled Substances Act shall prohibit or otherwise re-
18 strict an entity authorized by a State or local gov-
19 ernment, in a State in which the possession and use
20 of marijuana for medical purposes is legal from pro-
21 ducing, processing, or distributing marijuana for
22 such purposes.

23 **SEC. 3. FEDERAL FOOD, DRUG, AND COSMETIC ACT.**

24 (a) IN GENERAL.—No provision of the Federal Food,
25 Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) shall pro-

1 hibit or otherwise restrict in a State in which the medical
2 use of marijuana is legal under State law—

3 (1) the prescription or recommendation of mari-
4 juana for medical use by a medical professional or
5 the certification by a medical professional that a pa-
6 tient has a condition for which marijuana may have
7 therapeutic benefit;

8 (2) an individual from obtaining, manufac-
9 turing, possessing, or transporting within their State
10 marijuana for medical purposes, provided the activi-
11 ties are authorized under State law; or

12 (3) a pharmacy or other entity authorized
13 under local or State law to distribute medical mari-
14 juana to individuals authorized to possess medical
15 marijuana under State law from obtaining, pos-
16 sessing, or distributing marijuana to such individ-
17 uals.

18 (b) PRODUCTION.—No provision of the Federal
19 Food, Drug, and Cosmetic Act shall prohibit or otherwise
20 restrict an entity authorized by a State or local govern-
21 ment, in a State in which the possession and use of mari-
22 juana for medical purposes is legal from producing, proc-
23 essing, or distributing marijuana for such purpose.

1 **SEC. 4. ADMINISTRATION OF REGISTRATION REQUIRE-**
2 **MENTS RELATED TO MARIJUANA RESEARCH.**

3 Not later than 180 days after the date of enactment
4 of this Act, the Attorney General shall delegate responsi-
5 bility under section 303(f) of the Controlled Substances
6 Act (21 U.S.C. 823(f)) for control over access to mari-
7 juana for research into its potential therapeutic and me-
8 dicinal uses to an entity of the Executive Branch that is
9 not focused on researching the addictive properties of sub-
10 stances. That entity shall take appropriate actions to en-
11 sure that an adequate supply of marijuana is available for
12 therapeutic and medicinal research.

13 **SEC. 5. RELATION OF ACT TO CERTAIN PROHIBITIONS RE-**
14 **LATING TO SMOKING.**

15 This Act does not affect any Federal, State, or local
16 law regulating or prohibiting smoking in public.

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