

In the wake of the [enactment by the legislature of a regulatory structure for medical marijuana](#), it looks like voters in 2016 will probably be able to decide whether to legalize recreational use as well. Leading advocates for legalization of recreational marijuana have [submitted a language for a ballot initiative to the California Secretary of State](#) (pdf) – [given the money and political support behind this initiative](#), it seems likely to get the signatures necessary to get on the 2016 ballot. It also comes with an [endorsement from Lieutenant Governor Gavin Newsom](#).

The proposed initiative comes with a [lot of support](#) from leading environmental groups in the state, who argue that this legalization initiative will protect the environment both from the harm of illegal grows and from the impacts of legalizing the industry. How does the initiative handle environmental impacts of a major agricultural industry?

In many ways, it is very similar to the medical marijuana bills recently enacted by the legislature – indeed much of the language is identical to the standards in those [bills](#), there is a lot of cross-referencing between the two regulatory systems, and the regulatory structure of both systems is basically the same. Just like the medical marijuana bill, it requires the state to set pesticide usage standards on marijuana cultivation to protect both consumers and workers. It likewise requires existing state agencies to use their current broad regulatory authority to address the impacts of marijuana cultivation on waterways and wetlands. It requires licensing agencies to ensure cultivators are in compliance with various state laws like the state Endangered Species Act, the California Environmental Quality Act, and laws that protect timberlands from conversion to agricultural uses.

The biggest difference between the initiative and the medical marijuana bill is that the initiative includes a fifteen percent excise tax on marijuana sales, with some of the revenues of that tax earmarked for managing the environmental impacts of marijuana cultivation (both from past illegal grows and from future, presumably legal grows). The [absence of such a tax in the medical marijuana legislation](#) was a major disappointment for environmental groups, who saw funds for enforcement, remediation, and facilitation with compliance as a central component of reducing the environmental impacts of marijuana. Of course, such a tax required a two-thirds majority in the state legislature; on a ballot initiative, it will only require a simple majority of voters.

The parallels between this initiative and the medical marijuana bill means that it also shares the [main flaw of that medical marijuana bill](#): It regulates marijuana

cultivation as an agricultural activity, which may mean that marijuana cultivation can take advantage of all of the various loopholes from state and federal environmental laws that agriculture in general has. (It is possible that a provision in the initiative requiring compliance with a range of state environmental laws might be read as eliminating the agricultural loopholes for marijuana cultivation.) As I noted earlier, this is particularly an issue in protecting rare native species and ecosystems from the impacts of converting native habitat to marijuana cultivation, something that might be all too common with the great increase in investment into marijuana that legalization will surely bring. For a full summary of the loopholes and issues relevant for marijuana cultivation, see my earlier [post](#).

The main question to my mind from an environmental perspective is whether the failure to close these loopholes is more than offset by the [gains of having recreational marijuana cultivation legalized and regulated](#), and a dedicated tax stream committed to enforcement, remediation, and facilitation of compliance.