

STATE OF CALIFORNIA
Budget Change Proposal - Cover Sheet
 DF-46 (REV 10/20)

Fiscal Year 2023-24	Business Unit 1115	Department California Department of Cannabis Control	Priority No. 1
Budget Request Name 1115-010-BCP-2023-GB		Program 1460	Subprogram 1460010

Budget Request Description
 Cannabis Interstate Commerce (SB 1326)

Budget Request Summary

The Department of Cannabis Control (Department) is requesting \$264,000 Cannabis Control Fund in 2023-24 and \$256,000 ongoing for 1.0 position to fulfill the workload associated with Chapter 396, Statutes of 2022 (SB 1326).

Requires Legislation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Code Section(s) to be Added/Amended/Repealed N/A	
Does this BCP contain information technology (IT) components? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <i>If yes, departmental Chief Information Officer must sign.</i>	Department CIO N/A	Date N/A

For IT requests, specify the project number, the most recent project approval document (FSR, SPR, S1BA, S2AA, S3SD, S4PRA), and the approval date.

Project No. N/A **Project Approval Document:** N/A
Approval Date: N/A

If proposal affects another department, does other department concur with proposal? Yes No
Attach comments of affected department, signed and dated by the department director or designee.

Prepared By Brandon Creel, Budget Officer	Date 1/10/2023	Reviewed By Melissa Eidson, Deputy Director of Administration	Date 1/10/2023
Department Director Nicole Elliott, Director	Date 1/10/2023	Agency Secretary Lourdes M. Castro Ramirez, Secretary	Date 1/10/2023

Department of Finance Use Only

Additional Review: Capital Outlay ITCU FSCU OSAE Dept. of Technology

PPBA Charlene Manning	Date submitted to the Legislature 1/10/2023
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A. Budget Request Summary

The Department of Cannabis Control (Department) is requesting \$264,000 Cannabis Control Fund in 2023-24 and \$256,000 ongoing for 1.0 position to fulfil the workload associated with Chapter 396, Statutes of 2022 (SB 1326). This will allow the Department to create an interstate cannabis commerce regulatory framework and assist with the development of interstate agreements, as necessary.

B. Background/History

Chapter 70, Statutes of 2021 (AB 141) established the Department of Cannabis Control on July 12, 2021, by consolidating the three state cannabis licensing authorities (the Department of Consumer Affairs's Bureau of Cannabis Control, the California Department of Food and Agriculture's CalCannabis Cultivation Licensing Division, and the California Department of Public Health's Manufactured Cannabis Safety Branch) into a single, new state department. The Department is responsible for regulating all aspects of the commercial cannabis industry, and has the authority to create, issue, deny, renew, discipline, condition, suspend, and revoke licenses for cannabis cultivators, manufacturers, distributors, retailers, microbusinesses, testing laboratories, and temporary cannabis events. Cannabis activity conducted without a license is illegal, subject to fines and penalties at both the state and local levels.

SB 1326 authorizes the Governor to enter into an agreement with one or more other states authorizing interstate commercial cannabis activity (either medicinal, or adult-use, or both). SB 1326 creates a limited exception to California's existing state-law prohibition against exporting cannabis to other states. The bill requires that such agreements mirror existing California law regarding certain issues, such as health and safety standards, track-and trace participation, and packaging and labeling standards. Out-of-state licensees conducting business in California would still be required to obtain a California license and, if applicable, local authorization. The intent of this bill is to strengthen California's legal cannabis market by allowing the legal market to begin to access interstate markets.

Because California law prior to the enactment of SB 1326 did not allow interstate cannabis commerce under any circumstances, the Department does not currently regulate interstate commerce except to the extent that illicit interstate commerce may be subject to enforcement action by the Department. States that have now legalized interstate commerce have this universal, state-level prohibition against interstate cannabis commerce that has created a fragmented patchwork of legal commercial cannabis across the country: every legal state has its own closed-loop legal cannabis market in which all legal in-state demand seeks to match legal in-state supply (vice versa). Significant time and effort will be required to expand California's existing cannabis-regulation framework to cover interstate cannabis commerce. Incorporating interstate commerce into the California Cannabis Track-and-Trace System may prove especially challenging. Other challenges would include the need to confirm uniform and consistent testing standards; other public health and safety standards; and provisions for product recalls, site inspections, and other potential enforcement and consumer-protection efforts that might require coordination across state lines.

The Department will need to undertake further rulemaking to clarify the relationship between California's existing cannabis-regulation framework and potential interstate cannabis commerce. The Department may also need to impose new or increased fees on licensees to recover increased compliance and enforcement costs stemming from increased volume and complexity of work relating to interstate cannabis commerce.

Analysis of Problem

Resource History (Dollars in thousands)

Program Budget	2021-2022	2022-2023*
Authorized Expenditures	\$157,765	\$173,623
Expenditures	\$118,508	\$173,623
Revenues	\$151,184	\$148,921
Authorized Positions	624.0	626.0
Filled Positions	423.0	532.0
Vacancies	201.0	94.0

* Projected year end data

C. State Level Consideration

The Department of Cannabis Control's mission is to develop and implement progressive cannabis policies and license and regulate commercial cannabis activity in a way that best protects public health, safety, the environment, and local communities throughout the State of California.

The State of California has many important requirements and guidelines imposed by MAUCRSA and the implementing regulations. For the Department to efficiently regulate the various commercial cannabis licenses designated by the Legislature, the Department must maintain the proper level of staffing and funding. Without adequate staffing and funding, the Department cannot effectively regulate its commercial cannabis licensee population or protect the public safety. The requested resources are necessary for the Department to adequately and efficiently fulfill its statutory mandates.

SB 1326 requires that an interstate agreement "shall include provisions determined by the Governor to promote the inclusion and support of individuals and communities in the cannabis industry who are linked to populations or neighborhoods that were negatively or disproportionately impacted by cannabis criminalization." SB 1326 does not provide further specificity as to the implementation of these equity-based goals. Therefore, it will be necessary to make a wide range of policy and strategic choices regarding the incorporation of equity-based principles into the preparation, negotiation, and implementation of all future agreements contemplated by SB 1326. This will require consultation with stakeholders, close coordination with the Department's Deputy Director for Equity & Inclusion, and coordination and negotiation with similar officials in counterparty states. This work will be essential to California's embrace of interstate cannabis commerce is consistent with California's commitment to equity in the cannabis space and creates new opportunities for California's equity operators.

D. Justification

The implementation of SB 1326 and related state-to-state trade agreements is expected to cause significant, ongoing workloads in at least the following respects:

Preparation

SB 1326 requires significant preparatory work before the Department can begin to work on the state-to-state trade agreements at the heart of that legislation. Most notably, in the absence of an unexpected change in federal law or policy, no such agreement can take effect unless

Analysis of Problem

and until California's Attorney General issues an opinion concluding that such an agreement will not result in significant legal risk to the State of California. Although the arguments that this question should be resolved in favor of such agreements are strong, the underlying analysis presents significant and novel legal questions at the cutting edge of American federalism. Accordingly, although it is anticipated that a formal request for the Attorney General opinion will be submitted before this position is filled, it is expected that this position will be responsible for further follow-up work with the Attorney General's Office (potentially including presentation of additional analysis and argument) to enable successful resolution of the opinion request.

Legal Research

It will be necessary for this position to undertake significant and complex legal research and analysis related to anticipated state-to-state trade agreements. These agreements present complex and serious issues under the U.S. Constitution's Compact Clause, dormant Commerce Clause, and other aspects of American federalism; thus, it will be necessary for this position to thoroughly and carefully analyze the legal landscape relevant to these agreements, to make certain that eventual agreements can withstand anticipated legal challenges.

Local Outreach

It will be necessary for this position to work closely with key decisionmakers and stakeholders both inside and outside the Administration to establish clear guardrails for the content and negotiation of these agreements. SB 1326 leaves many unanswered questions regarding the content and implementation of these agreements. Some of these questions are likely to be very complex from a legal perspective: how, for example, should an interstate-trade agreement make it so that the "cultivation and retail sale" of California cannabis is adequately taxed, as Proposition 64 requires? Likewise, some of these questions are likely to be politically salient: what steps are necessary, for example, to make certain that an agreement advances California's equity goals? Research, analysis, and engagement related to these legally and politically complex questions is expected to generate substantial workload.

As described above, please note that implementation of SB 1326 presents novel and complex legal questions at the cutting edge of American federalism and it is overwhelmingly likely that the best answers to those questions will shift significantly over time. Thus, the above responsibilities will require significant ongoing management; the Department does not anticipate that any of this will be a one-time task.

Out-of-State Engagement

This position must engage with other states potentially receptive to interstate cannabis commerce, work with those states to resolve any antecedent legal barriers to the negotiation of state-to-state agreements, and then actually engage in the negotiation of state-to-state trade agreements. This process of negotiation will (for many of the reasons mentioned above) present complex and sensitive legal and political issues and will require significant investments of time on an ongoing basis.

Barriers to Agreement Negotiations and Implementation

This position must identify, analyze, and propose solutions to any third-party barriers to the negotiation and implementation of such agreements. These barriers may take the form of action from third-party states: it is unclear whether and how an agreement between California and Utah (for example) can succeed if Arizona and Nevada object. These barriers may also take the form of federal action, which will likely require impeccable analysis of federal and constitutional law and careful engagement with the federal government.

Analysis of Problem

Issues above will likely need to be iterated across multiple, serial agreements with an increasing number of states. This will generate significant, long-term workload.

For all the foregoing reasons (including the complex and serious Compact Clause and dormant Commerce Clause issues mentioned above), the negotiation and implementation is very likely to draw extremely serious challenges in this litigation. Resolving and managing this litigation will require significant long-term workload.

All the foregoing is likely to require further legislative amendment and refinement, which is also expected to generate ongoing, long-term workload.

E. Outcomes and Accountability

With the approval of this request, the Department will be able to fulfill the new statutory mandates under Chapter 396, Statutes of 2022 (SB 1326).

Projected Outcomes

Workload Measure	2022-23	2023-24	2024-25	2025-26	2026-27	2027-28
Perform significant preparatory work before beginning work on the state-to-state trade agreements, including necessary engagement with the Attorney General on legal risks to California.	N/A	26	26	26	26	26
Undertake significant and complex legal research and analysis related to anticipated state-to-state trade agreements.	N/A	3	3	3	3	3
Engage with other states potentially receptive to interstate cannabis commerce, work with those states to resolve any antecedent legal barriers to the negotiation of state-to-state agreements.	N/A	3	3	3	3	3
Work closely with key decisionmakers and stakeholders both inside and outside the Administration to establish clear guardrails for the content and negotiation of these agreements.	N/A	9	9	9	9	9
Resolve and manage litigation resulting from trade negotiations and implementation of agreements.	N/A	4	4	4	4	4

Analysis of Problem

F. Analysis of All Feasible Alternatives

Alternative #1: Approve \$267,000 in 2023-24 and \$256,000 ongoing and 1.0 position.

Advantages: This will provide the Department the resources necessary to meet the mandates of SB 1326.

Disadvantages: This alternative increases the obligation to the Cannabis Control Fund.

Alternative #2: Do not approve the requested resources.

Advantages: No increased obligation to the Cannabis Control Fund.

Disadvantages: The alternative will limit the Department's ability to meet the mandates of SB 1326.

Alternative #3: Defer the requested resources until such time that the Governor has entered into an agreement with another state.

Advantages: No immediate impact to the Cannabis Control Fund.

Disadvantages: This position is necessary in advance of an agreement being signed to develop the framework for interstate agreements and assist in the development and negotiation of potential agreements. The Department would have to redirect existing staff resources already dedicated to other statutory mandates within the Department.

G. Implementation Plan

2022-2023

- Request formal opinion from Attorney General to satisfy requirement in SB 1326.
- Outreach to other states with adult-use and medicinal cannabis models.
- Research, analysis, and drafting re: model interstate agreement.

2023-2024

- Hire and onboard position.
- Work with Attorney General to assist with resolution of formal opinion requests.
- Work with Governor's Office on guardrails for entering interstate agreement.
- Work with the Department and the California Department of Tax and Fee Administration (CDTFA) to verify agreements address operational needs.
- -Begin negotiating interstate agreements with interested states.

2024-2025

- Finalize any work with Governor's Office re: guardrails for interstate commerce.
- Finalize any work with policy and program staff with the Department and CDTFA.
- Analyze if clean-up legislation is needed to SB 1326
- Continued outreach to other states.
- Analyze third-party cannabis transport and begin negotiating with transport third parties, if necessary.

2025-2026

- Continue negotiating interstate agreement with one or more interested states.
- Finalize and implement one or more agreements.
- Defend against any litigation challenging interstate agreement.

Analysis of Problem

- Oversight and technical assistance to Administration regarding implementation of the agreement(s).

2026-2027 and Ongoing

- Continue negotiating and refining agreements.
- Continued oversight and technical assistance to Administration on the implementation of agreements.
- Research and analyze need for further legislation and other action for interstate commerce.

H. Recommendation

The Department recommends the approval of Alternative 1, for 1.0 position and \$264,000 in 2023-24 and \$256,000 ongoing.

Attorney IV Workload

Task Performed	Number of Tasks Performed	Hours to Perform	Total Hours
Request formal opinion from Attorney General on risks of interstate commerce, provide supporting information, and meet on an ongoing basis to make certain the opinion is completed.	6	20.0	120
Outreach to other states with adult-use and medicinal cannabis models.	20	20.0	400
Research, analysis, and drafting model interstate agreement.	3	100.0	300
Work with Governor's Office on guardrails for negotiating and finalizing interstate agreements.	1	100.0	100
Work with program and policy staff at the Department and CDTFA to make sure interstate agreements address operational needs.	4	25.0	100
Draft clean-up legislation to SB 1326 to address any operational or implementation needs in consultation with Governor's Office.	4	15.0	60
Negotiate interstate agreement(s) with interested states.	3	50.0	150
Analyze third-party state's cannabis transportation and begin negotiating with third-party states about interstate transport of cannabis.	2	50.0	100
Finalize and implement interstate agreement(s).	2	50.0	100
Continued oversight and technical assistance to Administrative entities regarding implementation of agreement(s).	1	200.0	200
Defend against litigation challenging interstate agreement(s), if any.	1	200.0	200
Total hours	-	-	1,830
Hours per year, per PY	-	-	1,776
Total PYs	-	-	1.0

BCP Fiscal Detail Sheet

BCP Title: Cannabis Interstate Commerce - SB 1326 Workload

BR Name: 1115-010-BCP-2023-GB

Budget Request Summary

Personal Services

Personal Services	FY23 Current Year	FY23 Budget Year	FY23 BY+1	FY23 BY+2	FY23 BY+3	FY23 BY+4
Positions - Permanent	0.0	1.0	1.0	1.0	1.0	1.0
Total Positions	0.0	1.0	1.0	1.0	1.0	1.0
Earnings - Permanent	0	151	151	151	151	151
Total Salaries and Wages	\$0	\$151	\$151	\$151	\$151	\$151
Total Staff Benefits	0	87	87	87	87	87
Total Personal Services	\$0	\$238	\$238	\$238	\$238	\$238

Operating Expenses and Equipment

Operating Expenses and Equipment	FY23 Current Year	FY23 Budget Year	FY23 BY+1	FY23 BY+2	FY23 BY+3	FY23 BY+4
5301 - General Expense	0	5	5	5	5	5
5302 - Printing	0	2	2	2	2	2
5304 - Communications	0	2	2	2	2	2
5306 - Postage	0	1	1	1	1	1
5322 - Training	0	1	1	1	1	1
5344 - Consolidated Data Centers	0	4	4	4	4	4
5346 - Information Technology	0	3	3	3	3	3
539X - Other	0	8	0	0	0	0
Total Operating Expenses and Equipment	\$0	\$26	\$18	\$18	\$18	\$18

Total Budget Request

Total Budget Request	FY23 Current Year	FY23 Budget Year	FY23 BY+1	FY23 BY+2	FY23 BY+3	FY23 BY+4
Total Budget Request	\$0	\$264	\$256	\$256	\$256	\$256

Fund Summary

Fund Source

Fund Source	FY23 Current Year	FY23 Budget Year	FY23 BY+1	FY23 BY+2	FY23 BY+3	FY23 BY+4
State Operations - 3288 - Cannabis Control Fund	0	264	256	256	256	256
Total State Operations Expenditures	\$0	\$264	\$256	\$256	\$256	\$256
Total All Funds	\$0	\$264	\$256	\$256	\$256	\$256

Program Summary

Program Funding

Program Funding	FY23 Current Year	FY23 Budget Year	FY23 BY+1	FY23 BY+2	FY23 BY+3	FY23 BY+4
1460010 - Department of Cannabis Control - Support	0	264	256	256	256	256
Total All Programs	\$0	\$264	\$256	\$256	\$256	\$256

Personal Services Details

Positions

Positions	FY23 Current Year	FY23 Budget Year	FY23 BY+1	FY23 BY+2	FY23 BY+3	FY23 BY+4
5780 - Atty IV (Eff. 07-01-2023)	0.0	1.0	1.0	1.0	1.0	1.0
Total Positions	0.0	1.0	1.0	1.0	1.0	1.0

Salaries and Wages

Salaries and Wages	FY23 Current Year	FY23 Budget Year	FY23 BY+1	FY23 BY+2	FY23 BY+3	FY23 BY+4
5780 - Atty IV (Eff. 07-01-2023)	0	151	151	151	151	151
Total Salaries and Wages	\$0	\$151	\$151	\$151	\$151	\$151

Staff Benefits

Staff Benefits	FY23 Current Year	FY23 Budget Year	FY23 BY+1	FY23 BY+2	FY23 BY+3	FY23 BY+4
5150350 - Health Insurance	0	19	19	19	19	19
5150500 - OASDI	0	12	12	12	12	12
5150630 - Retirement - Public Employees - Miscellaneous	0	48	48	48	48	48
5150800 - Workers' Compensation	0	5	5	5	5	5
5150820 - Other Post-Employment Benefits (OPEB) Employer Contributions	0	3	3	3	3	3
Total Staff Benefits	\$0	\$87	\$87	\$87	\$87	\$87

Total Personal Services

Total Personal Services	FY23 Current Year	FY23 Budget Year	FY23 BY+1	FY23 BY+2	FY23 BY+3	FY23 BY+4
Total Personal Services	\$0	\$238	\$238	\$238	\$238	\$238