
SENATE COMMITTEE ON ENVIRONMENTAL QUALITY

Senator Allen, Chair

2021 - 2022 Regular

Bill No: SB 1148
Author: Laird
Version: 4/18/2022
Urgency: No
Consultant: Genevieve M. Wong

Hearing Date: 4/27/2022
Fiscal: Yes

SUBJECT: Cannabis: licenses: California Environmental Quality Act

DIGEST: Exempts from CEQA the issuance of a Department of Cannabis Control license to engage in commercial cannabis activity if the local jurisdiction, as the lead agency, has filed a notice of exemption (NOE) or a notice of determination (NOD) following the adoption of a negative declaration (ND) or certification of an environmental impact report (EIR) that is specific to the applicant's commercial cannabis activity or license.

ANALYSIS:

Existing law:

- 1) Under the California Environmental Quality Act (CEQA), requires lead agencies with the principal responsibility for carrying out or approving a proposed discretionary project to prepare a negative declaration (ND), mitigated ND (MND), or environmental impact report (EIR) for this action, unless the project is exempt from CEQA (CEQA includes various statutory exemptions, as well as categorical exemptions in the CEQA Guidelines). (Public Resources Code (PRC) §21000 et seq.)
- 2) Under the Control, Regulate and Tax Adult Use of Marijuana Act of 2016 (AUMA), authorizes a person who obtains a state license under AUMA to engage in commercial adult-use cannabis activity pursuant to that license and applicable local ordinances. (Proposition 64)
- 3) Under the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), consolidates the licensure and regulation of commercial medicinal and adult-use cannabis activities. MAUCRSA regulates the cultivation, distribution, transport, storage manufacturing, processing, and sale of both medicinal cannabis and adult-use cannabis. (Business and Professions Code. (BPC) §26000)

- 4) Prohibits a person or entity from engaging in commercial cannabis activity without a state license issued by the Department of Cannabis Control (DCC) and requires DCC to establish procedures for the issuance and renewal of licenses. (BPC §§26037.5, 26050)
- 5) For provisional licenses:
 - a) Authorizes DCC, until June 30, 2022, to issue a provisional license if the applicant has submitted a completed license application including all of the following, if applicable:
 - i) If compliance with CEQA is not complete, evidence that compliance is underway.
 - ii) If compliance with local ordinances is not complete, evidence that it is underway.
 - iii) If for a cultivation license, a streambed alternation agreement.
 - b) Authorizes DCC, until January 1, 2025, to renew provisional licenses if there is demonstrated compliance with streambed alternation agreements, if applicable, and DCC determines the licensee meets certain requirements demonstrating CEQA compliance. (BPC §§26050.2(c)-(e))
 - c) Prohibits DCC from renewing a provisional license for cultivation activities under certain circumstances. (BPC §26050.2(f))
 - d) Authorizes DCC to allow a provisional licensee to move locations if the new location meets certain requirements relating to CEQA, Lake and Streambed Alteration Program, and water supply. (BPC §26050.2(h))
 - e) Exempts from CEQA the issuance of a provisional license. (BPC §26050.2(l))
 - f) Makes provisional licenses not in effect after January 1, 2026. (BPC §26050.2(o))
 - g) Prohibits additional exemptions from CEQA to be adopted with respect to licenses issued pursuant to MAUCRSA. (BPC §26050.2(q))
- 6) For annual state licenses, prohibits the DCC from approving a state license if approval of the state license violates a local ordinance or regulation. (BPC §26055(d))

- 7) Requires DCC, when issuing cannabis cultivation licenses, to consider issues, including, but not limited to, water use and environmental impacts. Prohibits DCC from issuing a new license or increasing the total number of plant identifiers within a watershed area if the State Water Resources Control Board or the Department of Fish and Wildlife finds that cannabis cultivation is causing significant adverse impacts on the environment in the watershed or other geographic area. (BPC §26060(a))

This bill exempts from CEQA the issuance of a state license to engage in commercial cannabis activity if the local jurisdiction, as the lead agency, has filed a notice of exemption (NOE) or a notice of determination (NOD) following the adoption of a negative declaration (ND) or certification of an environmental impact report (EIR) that is specific to the applicant's commercial cannabis activity or license.

Background

- 1) *Overview of CEQA Process.* CEQA provides a process for evaluating the environmental effects of a project, and includes statutory exemptions, as well as categorical exemptions in the CEQA guidelines. If a project is not exempt from CEQA, an initial study is prepared to determine whether a project may have a significant effect on the environment. If the initial study shows that there would not be a significant effect on the environment, the lead agency prepares an ND. If the initial study shows that the project may have a significant effect on the environment, the lead agency must prepare an environmental impact report (EIR).

Generally, an EIR must accurately describe the proposed project, identify and analyze each significant environmental impact expected to result from the proposed project, identify mitigation measures to reduce those impacts to the extent feasible, and evaluate a range of reasonable alternatives to the proposed project. Prior to approving any project that has received environmental review, an agency must make certain findings. If mitigation measures are required or incorporated into a project, the agency must adopt a reporting or monitoring program to ensure compliance with those measures.

What is analyzed in an environmental review? An environmental review analyzes the significant direct and indirect environmental impacts of a proposed project and may include water quality, surface and subsurface hydrology, land use and agricultural resources, transportation and circulation, air quality and greenhouse gas emissions, terrestrial and aquatic biological

resources, aesthetics, geology and soils, recreation, public services and utilities such as water supply and wastewater disposal, and cultural resources. The analysis must also evaluate the cumulative impacts of any past, present, and reasonably foreseeable projects/activities within study areas that are applicable to the resources being evaluated. A study area for a proposed project must not be limited to the footprint of the project because many environmental impacts of a development extend beyond the identified project boundary. Also, CEQA stipulates that the environmental impacts must be measured against existing physical conditions within the project area, not future, allowable conditions.

CEQA provides hub for multi-disciplinary regulatory process. An environmental review provides a forum for all the described issue areas to be considered together rather than siloed from one another. It provides a comprehensive review of the project, considering all applicable environmental laws and how those laws interact with one another. CEQA provides the opportunity to analyze a broad spectrum of a project's potential environmental impacts and how each impact may intertwine with one another.

- 2) *Cannabis Regulatory Background.* Cannabis was first legalized in California for medical consumption by Proposition 215, also known as the Compassionate Use Act, in 1996. Proposition 215 protected qualified patients and primary caregivers from prosecution related to the possession and cultivation of cannabis for medicinal purposes.

The Legislature passed the Medical Cannabis Regulation and Safety Act (MCRSA) in 2015. MCRSA established, for the first time, a comprehensive statewide licensing and regulatory framework for the cultivation, manufacture, transportation, testing, distribution, and sale of medicinal cannabis to be administered by the Bureau of Cannabis Control (BCC) within Department of Consumer Affairs (DCA), the Department of Public Health (DPH), and the California Department of Food and Agriculture (CDFA), with implementation relying on each agency's area of expertise.

Shortly following the passage of MCRSA in November 2016, California voters passed Proposition 64, the "Control, Regulate and Tax Adult Use of Marijuana Act" (Prop 64), which legalized adult-use cannabis.

In June 2017, the California State Legislature passed a budget trailer bill, SB 94 (Committee on Budget and Fiscal Review, Chapter 27, Statutes of 2017), that integrated MCRSA with Prop 64 to create MAUCRSA. MAUCRSA generally divided responsibility for the state licensure and regulation of

commercial cannabis activity among the BCC in DCA, CDFA, and DPH.

In June 2021, the California State Legislature passed another budget trailer bill, AB 141 (Committee on Budget, Chapter 70, Statutes of 2021) consolidating the responsibilities of the state agencies into the Department of Cannabis Control (DCC) within the Business, Consumer Services, and Housing Agency, except where specified. Among other changes to MAUCRSA, AB 141 also amended the requirements for the issuance of provisional licenses.

The DCC issues licenses based on the type of cannabis activity. If the applicant wishes to perform more than one activity, multiple licenses may be required. Different DCC licenses include growing cannabis (cultivation), transporting cannabis (distribution), making cannabis products (manufacturing), testing cannabis or cannabis products (testing laboratory), selling cannabis (retail), and holding an event where cannabis will be sold (event organizers). Within each licensing category, there are different license types.

Comments

- 1) *Purpose of Bill.* According to the author, “As the legal cannabis market struggles, we must ensure those coming into the legal market transition from provisional licenses to annual licenses with ease. To aid this transition, Senate Bill 1148 streamlines the review and approval of cannabis licenses by eliminating a redundant review after a local jurisdiction completes CEQA. A robust CEQA review by local jurisdictions will remain a vital piece to obtain an annual license, and the Department of Cannabis Control will continue to complete CEQA review where local approval of a project is ministerial.

“The additional time and resources spent by applicants and DCC staff during this duplicative process slows licensure. Streamlining this process will improve the transition of provisional licenses to annual licenses. Shortening the time it takes to issue annual licenses will help ensure those in the legal cannabis market remain.”

- 2) *Streamlining for all types of commercial cannabis activity.* This bill would apply to all types of cannabis commercial activity. This includes cultivation, manufacturing, retail, distribution, laboratory testing, and event organizers. Each of these different types of activities could potentially have a range of environmental impacts, dependent on the particular activity. While impacts to water quality, water usage, streambed alternation, or, in the case of indoor

grows, energy consumption, as often associate with cultivation activities, retail and distribution activities might bring concern of greenhouse gas emissions.

- 3) *Achieving the author's intent.* According to the author's statement, the intent of SB 1148 is to streamline the approval process of commercial cannabis activity licenses by removing state-level CEQA when CEQA was already performed on the local level. However, the language of SB 1148 removes the DCC's state-level environmental review (exempts from CEQA) when issuing a cannabis activity license if the local jurisdiction either (1) filed an NOE that is specific to the applicant's commercial cannabis activity or license or (2) filed an NOD after adopting an ND or certifying an EIR .

If a local jurisdiction is filing an NOD after adopting an ND, it means that the jurisdiction, based on an initial study, has determined that the project will not have a significant impact on the environment.

If a local jurisdiction files an NOE, that means the local jurisdiction deemed the commercial cannabis activity to be exempt from CEQA and no environmental review was done for that particular applicant. Generally, when an NOE is filed, the local jurisdiction contains a brief description of why the jurisdiction thinks the particular exemption applies. Application of categorical exemptions can vary between jurisdictions, with some jurisdictions applying liberally. No entity is charged with ensuring the proper application of an exemption. Filing an NOE could also include a scenario where a local jurisdiction has made the issuance of certain cannabis activity permits to be ministerial, and pursuant to that issuance, has filed an NOE.

Does allowing the filing of an NOE as a basis for a state-level CEQA exemption further the author's intent? Would it be appropriate for a cannabis activity be exempt from state-level review because the local jurisdiction performed a brief, precursory review and declared it to be exempt?

The committee may wish to amend the bill to remove the filing of an NOE as a basis for eligibility of the state-level CEQA exemption.

- 4) *Putting trust in the locals.* While the intent of this bill is to remove redundant environmental review that has already been completed on the local level, others view this state-level environmental review as "vetting" the local's approval.

Stakeholder groups have raised concerns of removing the DCC's oversight of the local jurisdictions, especially in the context of cultivation, which can have significant environmental impacts. According to an example provided by

stakeholders, a local jurisdiction could have a deficient environmental review process in place. Under SB 1148, that potentially deficient environmental review process would be the basis for a CEQA exemption during the DCC-level of review.

On the other hand, if a local jurisdiction has developed an approval process for cannabis permits that does not comply with CEQA, that underlying approval process could, in theory, have been subject to a CEQA challenge and the issuance of a permit which was based on the underlying approval process could be challenged. Thus, SB 1148 shifts responsibility of vetting CEQA compliance from DCC to individuals.

- 5) *Concerns around cultivation.* Stakeholders appear most concerned with DCC issuing a cultivation license without conducting CEQA due to the environmental impacts that are often linked to cannabis cultivation. As discussed above, if a local jurisdiction's approval process fails to properly address the environmental impacts of an activity, the issuance of a local permit could also improperly address those impacts. For purposes of cultivation, this could include, but are not limited to, water usage, energy usage, water quality, use of pesticides, or protection of natural resources. Without the DCC as a backstop, it is argued, a cannabis cultivating activity could have significant, unaddressed environmental impacts. While the involvement of other agencies would provide some guardrails, it is the CEQA review process that provides the comprehensive overview and allows for the various impacts to be considered in context of one another.

On one hand, the CEQA exemption proposed by this bill could save the DCC time and resources when issuing annual licenses, especially as it begins to process potentially thousands of provisional licenses. On the other hand, such an exemption could allow for significant impacts to the environment to occur, especially for cannabis cultivation.

The committee may wish to require the author to explore alternative ways to expedite the issuance of cultivation licenses while still ensuring that appropriate environmental review occurred at the local level.

- 6) *Improving efficiency for DCC.* SB 1148 places responsibility with DCC to determine whether the exemption applies by determining whether a local jurisdiction has filed a NOD. PRC §21152 requires local agencies file NODs with the county clerk. Does it make sense to require the DCC to individually check with local county clerks for each license application? Perhaps a more efficient approach would be to centralize the NODs into one database. The

Office of Planning and Research (OPR), through the State Clearinghouse, hosts CEQAnet, a database of CEQA and other environmental documents and notices.

The committee may wish to amend the bill to require that the NOD also be filed with OPR.

- 7) *Committee amendments: Staff recommends the committee adopt the bolded amendments contained in comments 3, 5, and 6, above.*

Related/Prior Legislation

SB 1186 (Wiener) restricts local jurisdictions from adopting or enforcing any regulation that prohibits the sale of medicinal cannabis to medicinal cannabis patients or their primary caregivers, or that otherwise imposes unreasonable restrictions; prohibits the application of CEQA as specified for local ordinances related to medicinal cannabis; and permits enforcement via civil remedies for specified parties. SB 1186 was referred to this committee as a committee of third referral but will not be heard due to limitations placed on committee hearings due to ongoing health and safety risks of the COVID-19 virus. SB 1186 was heard in the Senate Business and Professions and Economic Development Committee on April 5, 2022, and passed out of committee with a vote of 13-0. The bill is set to be heard in the Senate Governance and Finance Committee on April 21, 2022.

AB 97 (Chapter 40, Statutes of 2019) made various statutory changes related to cannabis that were necessary to implement the Budget Act of 2019, including, among others, extending the authority for licensing authorities to issue provisional licenses an additional two years, to January 1 2022; and amending the requirements of provisional license issuance.

SB 1459 (Cannella, Chapter 857, Statutes of 2018) established a provisional cannabis license that may be issued at the sole discretion of a licensing authority, as specified, until January 1, 2020, and exempted the issuance of the provisional license from CEQA until that date.

SB 94 (Chapter 27, Statutes of 2017) made various statutory changes relating to cannabis that were necessary to implement the Budget Act of 2017, including, among others, creating a temporary CEQA exemption for local ordinances until July 1, 2019.

DOUBLE REFERRAL:

This measure was heard in Senate Business, Professions and Economic Development Committee on April 5, 2022, and passed out of committee with a vote of 13-0.

SOURCE: Author

SUPPORT:

Body and Mind
Cannabis Distribution Association
Good Farmers Great Neighbors
Kiva Confections

OPPOSITION:

California Native Plant Society
Defenders of Wildlife
Trout Unlimited

ARGUMENTS IN SUPPORT: According to Cannabis Distribution Association, “[u]nder current law, cannabis business applicants must first work with their local jurisdiction to obtain approval prior to obtaining a license from the Department of Cannabis Control. The issuance of a cannabis license is a discretionary approval by the local jurisdiction and thus the jurisdiction must determine if the issuance of that license poses an impact to the environment under California’s Environmental Quality Act (CEQA). The process also requires the Department of Cannabis Control to review the issuance of the license under CEQA even if the permit had previously been evaluated at the local level.

“This bill would require local jurisdictions to evaluate the issuance of a license under CEQA, however it would allow exempt a cannabis licensee from CEQA if the local jurisdiction has determined through a “negative declaration” that the project poses no environmental impact. For projects that do not pose any environmental impact, it would expedite the approval of those licenses.”

ARGUMENTS IN OPPOSITION: According to Trout Unlimited, Defenders of Wildlife, and California Native Plant Society, “... this bill would allow the Department of Cannabis Control (DCC) to issue a license without adequate environmental review even if:

- A prospective licensee is not complying with local regulations including those intended to protect the environment and local neighborhoods;

- A local jurisdiction inappropriately exempted the project from CEQA;
- A local jurisdiction issued the local permit through a ministerial permit review ordinance whereby neither the permit nor the underlying permitting ordinance have been subjected to adequate environmental review;
- A local jurisdiction did conduct CEQA review but that review was either very inadequate or failed to sufficiently mitigate the adverse impacts of the operation.

“Given the significant adverse impact cannabis cultivation can have on the environment, it is essential (and in line with the voter intent behind the passage of Proposition 64) that the state ensure compliance with CEQA and that there has been a thorough and detailed review of the environmental impacts of cultivation activities. Our groups have significant concerns with changing the statute to exempt the state from ensuring that there has been adequate CEQA review of licenses. Under Proposition 64, the state plays a critical role in ensuring the CEQA findings made at the local level are adequate and comprehensive.”

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