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**SENATE COMMITTEE ON ENVIRONMENTAL QUALITY**

**Senator Allen, Chair**

**2021 - 2022 Regular**

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**Bill No:** SB 59  
**Author:** Caballero  
**Version:** 4/12/2021  
**Urgency:** No  
**Consultant:** Genevieve M. Wong

**Hearing Date:** 4/26/2021  
**Fiscal:** Yes

**SUBJECT:** Cannabis licenses: provisional licenses: local equity applicants

**DIGEST:** Extends the operation of the provisional license program for medicinal and adult use cannabis activities for an additional 6 years, until July 1, 2028; authorizes new provisional licenses to be issued for an additional 6 months, until July 1, 2022, except that new provisional licenses may be issued after that date to “qualified equity applicants,” thereby also extending a CEQA exemption for the issuance of such provisional licenses; and authorizes licensing authorities to reinstate provisional licenses issued before that date until July 1, 2028.

**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, mitigated declaration, 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)

- a) Authorizes, until January 1, 2022, a licensing authority to issue a provisional license if the applicant has submitted a completed license application to the licensing authority, including evidence that compliance with CEQA or local cannabis ordinances is underway, if applicable. Exempts from CEQA the issuance of such provisional licenses. (BPC §26050.2)
- b) Exempts from CEQA, until July 1, 2021, the adoption of any ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval or permits, licenses, or other authorizations to engage in commercial cannabis activity if the discretionary review includes the environmental review required under CEQA.
- c) Defines, for the purposes of the California Cannabis Equity Act, local equity program as a program adopted or operated by a local jurisdiction that focuses on inclusion and support of local individuals and communities in California's cannabis industry who are linked to populations or neighborhoods that were negatively or disproportionately impacted by cannabis criminalization, as specified. (BPC § 26240 *et seq.*)

This bill enacts the California Legacy Cannabis Preservation and Equity Act of 2021, which would extend the operation of the provisional license program until July 1, 2028, with the following modifications:

- a) Prohibits the issuance of a new provisional license on or after July 1, 2022, unless the applicant is a qualified equity applicant.
- b) Authorizes the licensing authority to reinstate a provisional license issued before July 1, 2022, to an applicant for the same activity previously licensed at the location.

## 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 must prepare a negative declaration (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. For example, it would be prudent for a lead agency to know that a proposal to mitigate a significant impact (i.e. alleviate temporary traffic congestion, due to construction of a development project, by detouring traffic to an alternative route) may trigger a new significant impact (i.e. the detour may redirect the impact onto a sensitive resource, such as a habitat of an endangered species). The environmental impact caused by the proposed mitigation measure should be evaluated as well. 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 within 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.

- 3) *Temporary cannabis licenses.* MAUCRSA authorized licensing authorities to issue four-month temporary licenses to applicants, with opportunities for 90-day extensions, through December 31, 2018. The temporary license required only proof of local authorization and entitled the holder to engage in commercial cannabis activity without completing the annual licensing application requirements, including CEQA review. The state issued temporary licenses at no cost, and temporary licensees did not have access to the track and trace system, though they were obligated to maintain paper records.

The temporary license was intended as an intermediate step while the state and local jurisdictions managed their efforts to come into compliance with the cannabis regulatory structure. However, many local jurisdictions were not prepared to fulfill their obligations when it came time for the temporary licenses to expire.

- 4) *Provisional cannabis licenses.* Provisional licenses were created by an urgency measure as a bridge between temporary and annual licenses to accommodate unanticipated delays associated with CEQA, issuance of conditional use permit processes, and building permits (SB 1459 (Cannella, Chapter 857, Statutes of 2018)). Initially, a licensing authority could only issue a provisional license to a temporary license holder. However, the following year, AB 97 (Chapter 40, Statutes of 2019) changed the requirements, authorizing a licensing authority to issue provisional licenses to

applicants that had submitted a completed license application, including evidence that compliance with CEQA and certain local ordinances are either completed or underway. In most cases, this CEQA review is performed at the local level, with the local jurisdiction acting as the "lead agency," which determines the potential environmental impacts of the project. However, if the local jurisdiction does not undertake CEQA review, the state may need to do so.

Provisional licenses are only valid for up to 12 months but can be renewed by the licensing authority. The issuance of provisional licenses are not subject to CEQA. SB 1459 initially sunset the program on January 1, 2020, however, AB 97, to give local jurisdictions more time to process provisional licenses into annual licenses, extended that date and these provisional license provisions are now scheduled to sunset on January 1, 2022.

- 5) *Local ordinances, rules, and regulations.* With the creation of MAUCRSA, SB 94 (Committee on Budget and Fiscal Review, Chapter 27, Statutes of 2017), also added a CEQA exemption for local ordinances, rules, and regulations. The exemption was originally intended to sunset on July 1, 2019, but was later extended by AB 97 (Committee on Budget, Chapter 40, Statutes of 2019) to July 1, 2021, an additional two years.
- 6) *Voter intent.* The original language of Proposition 64 includes various references to environmental review, indicating that it was the voters' desire and intent to legalize adult use of cannabis and to enact a regulated, revenue-generating commercial cannabis industry while still protecting the environment. For example, Section 3 of Proposition 64 stated that it was the intent of the People to "[t]ake nonmedical marijuana production and sales out of the hands of the illegal market and bring them under a regulatory structure that prevents access by minors, and protects public safety, public health, *and the environment.*" Other Proposition 64 provisions further underscore this voter intent that environmental review and protection be a part of the process, such as BPC §26056.5's requirement that the Bureau of Marijuana Control "devise protocols that each licensing authority shall implement to ensure compliance with state laws and regulations relating to environmental impacts, natural resource protection, water quality, water supply, hazardous materials, and pesticide in accordance with regulations, including, but not limited to [CEQA] ... ."

## Comments

- 1) *Purpose of Bill.* According to the author, “SB 59 extends the current expiration of provisional cannabis licenses to 2028 in order to ensure that California’s legal, regulated cannabis market stays just that, while the regulatory authority goes through agency level consolidation.”
- 2) *What do we lose with a CEQA exemption?* If a project is exempt from CEQA, certain issues will not get addressed. For example, environmental impacts including matters such as air quality, water quality, noise, cumulative impacts, and growth inducing impacts will not be considered, and neither will their potential mitigation measures or available alternatives.

Two statutory CEQA exemptions that are currently operative are: (1) issuing provisional licenses, and (2) local ordinance approvals. For both types of exemptions, the impacts, including cumulative impacts, relating to cultivation, distribution, transport, storage manufacturing, processing, and sale of cannabis activities will be unknown and therefore unmitigated.

- *Provisional licenses.* SB 59 seeks to extend that issuance of provisional licenses for an additional six years for “qualified equity applicants,” and for an additional six months for those that are not qualified equity applicants. Although CEQA’s environmental review must be underway for provisional licenses, without having completed CEQA, it is unknown if that environmental review is sufficient. An extension of the program increases the number of licensees engaging in cannabis activity without verified environmental review and increases the length of time that existing licensees operate without verified environmental review. This could result in permanent, unknown, and unmitigated damage. According to stakeholders, approximately 75% of regulated commercial cannabis businesses are operating under a provisional license.
- *Local Ordinances, rules, and regulations.* If local ordinances, rules, and regulations are exempt from CEQA, a local jurisdiction will not know of the significant and potentially permanent environmental consequences of that ordinance, whether that ordinance covers cultivation, retail sale, manufacturing, or a combination of various commercial cannabis activities. If impacts are not known, they cannot be mitigated or avoided. CEQA ensures that projects, such as the approval of local ordinances, are approved in accordance with informed and responsible decisionmaking.

The simultaneous operation of both exemptions has eliminated environmental review on both the micro and macro level for the past 3+ years. It should be

noted that SB 59 does not extend the sunset of the local CEQA exemption; therefore, effective July 1, 2022, environmental review would at least be required on the macro-level.

- 3) *Exempt, extend, miss, repeat.* As indicated above, the Legislature has already provided extensions for both the provisional license program and the local CEQA exemption.

*The provisional license program: if not now, when?* As introduced, SB 59 originally extended the provisional license program and local CEQA exemption again, but for an additional 6 years. In response to discussions with this committee's staff and concerns that were raised by the Senate Business and Profession and Economic Development Committee, recent author amendments narrowed the bill to preserve the validity of existing provisional licenses for an additional 6 years, until 2028; to give would-be applicants an additional 6 months to apply for the provisional license program if they had not already done so in the prior 4 years of the programs existence; and to remove the CEQA exemption for local ordinances.

Some stakeholders are opposed to these changes, asking for more time for possible applicants to apply for the provisional license program. However, if there is already a tremendous backlog for processing provisional licensees into annual licenses – hence, the need for the bill – wouldn't adding more applicants to the pool only exacerbate the problem? If the primary issue is that the validity of existing provisional license holders will be in limbo if the program expires at the end of this year, this bill, in its current form, addresses that issue. It provides a path that preserves existing provisional licenses and the stability of the cannabis industry.

*Do local jurisdictions need more time?* The City of Los Angeles has asked for an additional 6 months for the local exemption because, despite a CEQA exemption, it still faces political challenges. As noted above, the local jurisdictions have had since 2017 to approval local cannabis ordinances, rules, and regulations without having to comply with CEQA.

*Do extensions honor voter intent?* An argument could be made that the repeated extensions of both exemptions is not consistent with the voters' intent when approving Proposition 64.

**DOUBLE REFERRAL:**

This measure was heard in Senate Business Professions and Economic Development Committee on April 5, 2021, and passed out of committee with a vote of 12-0.

**Related/Prior Legislation**

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.

**SOURCE:** California Cannabis Industry Association and International Cannabis Farmers Association (co-sponsors)

**SUPPORT:**

All Cali Farm  
Assured Partners  
Body and Mind  
Buildaberg  
California Cannabis Industry Association  
California Norml  
California State Association of Counties  
Cannabis Business Association of Mendocino County  
Cannabis Business Association of Sonoma County  
Cannacraft



County of Yolo  
Cresco Labs, INC  
Curaleaf  
El Dorado County Growers Alliance  
Finkle Law Office  
Flow Cannabis Company  
Ghost Dance Ranch  
Golden State Public Affairs  
Good Farmers Great Neighbors  
Healing Herb Farms  
Henry's Original  
International Cannabis Farmers Association  
Khemia  
Leef Holdings  
Mammoth Distribution  
Manifest7  
Mendocino Grasslands  
Mendocino; County of  
Monterey County Board of Supervisors  
Monterey County Cannabis Industry Association  
Monterey; County of  
Natura  
North Bay Leadership Council  
North County Farmer's Guild  
Nurturing Seed Farm  
Osiris Ventures Dba Norcal Cannabis  
Plant Humboldt Cannabis Nursery  
Pro Farms  
Rogoway Law Group  
Sacred Garden LLC  
Sol Grow  
Sonoma Valley Cannabis Enthusiasts  
Sparc  
Spring Creek Farms  
Sungrown Consulting  
Terra Growth  
Vicente Sederberg LLP

**OPPOSITION:**

California Coastal Protection Network  
California Native Plant Society  
Defenders of Wildlife  
Sierra Club

**ARGUMENTS IN SUPPORT:** According to the California Cannabis Industry Association, one of the co-sponsors of the bill,

“Absent an extension of the provision license program, the risk to California’s legal cannabis market is significant. If provisional licenses fall out of the legal marketplace, existing businesses will be left with few options, including moving to the illicit market or shuttering operations. This will decimate the critical progress made by the State and local jurisdictions to bring the industry into compliance thus far.

“SB 59 will prevent costly disruptions in compliant business activity and will ensure that cannabis businesses continue on a path to achieving fully CEQA compliance. As a direct result of the continuation of business, the State will continue to receive much needed cannabis tax revenue, and maintain a stable regulated supply chain, so that both patients and consumers continue to have access to safe, compliant, cannabis and cannabis products.”

**ARGUMENTS IN OPPOSITION:** According to a coalition letter submitted by California Coastal Protection Network, California Native Plant Society, Defenders of Wildlife, and Sierra Club California,

“We believe a 6 year extension is much too long, And our research suggests there are nearly 5500 provisional licenses for cultivation currently active in California that would be eligible for reinstatement.

“While we much prefer CEQA compliance beginning in 2022, we understand that the provisional license program expires January 1, 2022, and without an extension operators that have not transitioned to annual licenses will be operating illegally.

“As such, we request that the bill be amended to only extend the provisional license program only 2 years, July 1, 2024, and provide resources necessary, such as an appropriation for a grant program that local jurisdictions can use to attain the staff, contracts, and resources needed to expeditiously transitional provisional licenses to annual licenses. With these resources in place, there is less need for a lengthy extension to ensure compliance.”

-- END --