
THIRD READING

Bill No: SB 1148
Author: Laird (D)
Amended: 5/2/22
Vote: 21

SENATE BUS., PROF. & ECON. DEV. COMMITTEE: 13-0, 4/4/22
AYES: Roth, Archuleta, Bates, Becker, Dodd, Eggman, Hurtado, Jones, Leyva,
Min, Newman, Ochoa Bogh, Pan
NO VOTE RECORDED: Melendez

SENATE ENVIRONMENTAL QUALITY COMMITTEE: 7-0, 4/27/22
AYES: Allen, Bates, Dahle, Gonzalez, Skinner, Stern, Wieckowski

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SUBJECT: Cannabis: licenses: California Environmental Quality Act

SOURCE: Author

DIGEST: This bill provides that the California Environmental Quality Act (CEQA) does not apply to the issuance of a state license to engage in commercial cannabis activity if the applicant is in compliance with all local ordinances that regulate commercial cannabis activity and if the local jurisdiction has filed a notice of exemption or a notice of determination following the adoption of a negative declaration or certification of an environmental impact report pursuant to CEQA that is specific to the applicant's commercial cannabis activity or license.

ANALYSIS:

Existing law:

- 1) Establishes the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) to regulate the cultivation, distribution, transport, storage, manufacturing, processing, and sale of both medicinal cannabis and adult-use cannabis. (Business and Professions Code (BPC) § 26000)

- 2) Establishes the Department of Cannabis Control (DCC) to regulate cannabis with the sole authority to create, issue, deny, renew, discipline, suspend, or revoke licenses for microbusinesses, transportation, storage unrelated to manufacturing activities, distribution, testing, and sale of cannabis and cannabis products within the state. Requires DCC to administer the portions of MAUCRSA related to and associated with the cultivation of cannabis and with the manufacturing of cannabis products. Delegates to DCC authority to create, issue, deny, and suspend or revoke cultivation or manufacturing licenses for violations of MAUCRSA. (BPC §§ 26010, 26012)
- 3) Establishes criteria for providing evidence of CEQA compliance or CEQA exemption for a cultivation license from CDFA. (Title 3, California Code of Regulations (CCR) § 8102 (r)).
- 4) Authorizes, until June 30, 2022, a licensing authority, in its sole discretion, to issue a provisional license if the applicant has submitted a complete license application to the licensing authority, including evidence that compliance with CEQA or local cannabis ordinances is underway, if applicable, as specified. (BPC § 26050.2)
- 5) Establishes criteria for providing evidence of CEQA compliance or CEQA exemption for DCC. (16 CCR §§ 5010, 5010.2)
- 6) Establishes criteria for providing evidence of CEQA compliance or CEQA exemption for a manufacturing license from the Department of Public Health (CDPH). (17 CCR § 40132)
- 7) Permits a licensing authority, in its sole discretion, issue a provisional license to an applicant if the applicant has submitted a completed license application to the licensing authority, including the following, if applicable:
 - a) If compliance with CEQA (Division 13 (commencing with Section 21000) of the Public Resources Code) is not complete, evidence that compliance is underway.
 - b) If compliance with local ordinances enacted pursuant to Section 26200 is not complete, evidence that compliance is underway. (BPC § 26050.2)
- 8) States that an agency must review a project under CEQA because licenses issued by DCC involve discretionary review (Public Resources Code (PCR) § 21080)

This bill provides that CEQA does not apply to the issuance of a state license to engage in commercial cannabis activity if the applicant is in compliance with all local ordinances that regulate commercial cannabis activity and if the local jurisdiction has filed a notice of exemption or a notice of determination following the adoption of a negative declaration or certification of an environmental impact report pursuant to CEQA that is specific to the applicant's commercial cannabis activity or license.

Background

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 Department of Consumer Affairs, the CDPH, and the Department of Food and Agriculture, 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.

Less than a year later 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.

SB 1459: Temporary Cannabis Licenses and the Creation of Provisional Cannabis Licenses. MAUCRSA authorized the licensing authorities to issue four-month temporary licenses to applicants, with opportunities for 90- day extensions, through December 31, 2018. The temporary license required 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 intermediary step while the state and local jurisdictions managed their own efforts to come into compliance with the cannabis regulatory structure. However, many local jurisdictions found themselves unprepared to fulfill their obligations by the time the temporary licenses expired.

SB 1459 (Canella, Chapter 857, Statutes of 2018) allowed an applicant who held a temporary license to obtain a provisional license, with all the rights and responsibilities of an annual license, without proof of full CEQA compliance until January 1, 2020. The provisional license is subject to annual licensing fees, track and trace, and all other statutory and regulatory obligations, although the decision to issue or deny this license will not be subject to a hearing or appeal, similar to the issuance of the temporary license.

After the expiration of the provisional license, an annual license was contemplated as required to continue operations. The bill gave applicants, local jurisdictions, and the state additional time to comply with CEQA.

“Complete” License Application: Local Authorization and CEQA. As a condition of receiving a provisional license, SB 1459 required a completed application. This is important for both local authorization and CEQA purposes.

On the local authorization side, the statutory requirement for a license application is permissive as to the applicant providing proof to the licensing authority of a license, permit, or other authorization from the local jurisdiction verifying that the applicant is in compliance with local requirements. While a local jurisdiction must provide the DCC a copy of any ordinance or regulation related to commercial cannabis activity, the DCC is not mandated to independently verify compliance.

Current law presumes that an applicant is in compliance with all local ordinances unless the licensing authority is notified otherwise by the local jurisdiction. Upon receipt of an application containing a local endorsement, the licensing authority is required to notify the local jurisdiction, and must deny an application if the local jurisdiction notifies the state that the applicant is noncompliant. If an application does not contain evidence of local compliance, the licensing authority still has to notify the local jurisdiction, and the jurisdiction has 60 days to notify the licensing authority whether or not an applicant is compliant.

On the CEQA side, a “complete” application for all license types requires evidence of compliance with, or exemption from, CEQA. 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, such a review

may need to be performed at the state level, causing the state to be the “lead agency”. The scope of the required CEQA review varies from case-to-case, based on the nature of the application and any prior environmental reviews that have been conducted, and these can often be extensive and time-consuming.

Extension of Provisional License Program. In 2019, AB 97 (Committee on Budget, Chapter 40, Statutes of 2019) extended the provisional license program for two years until January 1, 2022.

Cannabis Consolidation Efforts and Provisional and Annual Licenses Today. In an effort to improve access to licensing and simplify regulatory oversight of commercial cannabis activity, the Governor signed AB 141 (Committee on Budget, Chapter 70, Statutes of 2021) to consolidate the three cannabis licensing entities that are currently housed at the Bureau, the Department of Food and Agriculture, and CDPH into a single DCC. Establishment of a standalone department with an enforcement arm is designed to centralize and align critical areas to build a successful legal cannabis market, by creating a single point of contact for cannabis licensees and local governments. The intent is to ultimately simplify and centralize State regulatory efforts; improve coordination, including enforcement; reduce barriers to participation in the legal market; and incentivize greater local participation. As part of AB 141, DCC is prohibited from renewing a provisional license after January 1, 2025 and sunsets the provisional licensing program on January 1, 2026.

Public Resources Code and CEQA Review. Currently, Public Resources Code (PCR) Section 21080 states that an agency must review a project under CEQA because licenses issued agencies involve discretionary review, which includes DCC. This is despite the typical practice of CEQA review at the local level. This bill eliminates duplicative CEQA reviews at the local and state level, with the intended outcome of increasing government efficiency.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

SUPPORT: (Verified 5/6/22)

Good Farmers, Great Neighbors
Kiva Confections
The Parent Company

OPPOSITION: (Verified 5/6/22)

None received

ARGUMENTS IN SUPPORT: Kiva Confections writes in support: “When applicants apply for a state cannabis license, they generally work with their local jurisdiction first to obtain the appropriate approvals. This process typically includes some discretionary approval by the local jurisdiction, like a cannabis business permit. If the local jurisdiction subjects the proposed project to such discretionary approval, state law also requires that the local jurisdiction review the project under the California Environmental Quality Act (CEQA). This review process is critical to analyzing the proposed project’s potential environmental impacts and allows stakeholders to comment on the effects a project may have in their communities. Because licenses issued by the DCC also involve discretionary review, the DCC must also review the project under CEQA, despite vigorous CEQA activity at the local level.”

Good Farmers, Great Neighbors writes in support: “The California Cannabis Market has evolved into a patchwork of inconsistent and contradictory series of local ordinances and regulations related to land-use approvals for cannabis businesses to comply. There is no comparable industry who has faced such headwinds and can only market its products to intra-state consumers. After four years of operating in the regulated market and the advent of passage of federal legalization legislation in the U.S. Congress, it is imperative to eliminate requirements that will dampen the prospects of California based cannabis companies to compete in an interstate commerce future landscape.”

The Parent Company (Caliva) writes in support: “SB 1148 restores the previous authority to local governments under specified circumstances. The bill clearly levels the playing field for cannabis businesses so that they are treated the same as non-cannabis businesses when it comes to compliance with CEQA.”

Prepared by: Dana Shaker / B., P. & E.D. /
5/11/22 15:08:36

**** END ****