
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 1616 **Hearing Date:** July 11, 2023
Author: Lackey
Version: February 17, 2023
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *California Cannabis Tax Fund: Board of State and Community Corrections grants*

HISTORY

Source: California Cannabis Industry Association

Prior Legislation: AB 2925 (Cooper), Ch. 394, Stats. 2022
AB 195 (Comm. on Budget), Ch. 56, Stats. 2022
AB 1872 (Comm. on Budget), Ch. 93, Stats. 2020
SB 94 (Comm. on Budget & Fiscal Review), Ch. 27, Stats. 2017
Proposition 64, as approved by the voters on November 8, 2016

Support: California State Association of Counties; League of California Cities; Rural County Representatives of California; The Parent Company

Opposition: ACLU California Action; Asian Americans Advancing Justice - Asian Law Caucus; California Public Defenders Association; Drug Policy Alliance; Ella Baker Center for Human Rights

Assembly Floor Vote: 79 - 0

PURPOSE

The purpose of this bill is to repeal the current prohibition on the Board of State and Community Corrections (BSCC) from making grants to local governments that ban both indoor and outdoor commercial cannabis cultivation, or retail sale of cannabis products and instead requires the BSCC to prioritize local governments whose programs seek to address the unlawful cultivation and sale of cannabis.

Existing law 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. (Bus. & Prof. Code, § 26000.)

Existing law establishes the Department of Cannabis Control (DCC) to regulate cannabis with the sole authority to create, issue, deny, renew, discipline, condition, suspend, or revoke licenses for commercial cannabis activity. (Bus. & Prof. Code, §§ 26010, 26012.)

Existing law defines “commercial cannabis activity” as the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery,

or sale of cannabis and cannabis products, or acting as a cannabis event organizer for temporary cannabis events. (Bus. & Prof. Code, § 26001, subd. (l).)

Existing law requires the DCC to establish a scale of application, licensing, and renewal fees, based upon the cost of enforcing the provisions of the Act, as specified. (Bus. & Prof. Code, § 26180.)

Existing law requires the Department of Finance (DOF) to estimate annually the revenues received from the cannabis excise tax and provide those estimates to the Controller no later than June 15 of each year, which are to be used to distribute the funds, as specified. (Rev. & Tax. Code, § 34019, subd. (a).)

Existing law provides that before any of the excise tax funds are dispersed to the appropriate entities, the Controller is required to disperse those tax funds for the reasonable costs of the DCC, the Department of Tax and Fee Administration (DTFA), the Department of Fish and Wildlife (DFW), the Governor's Office of Business and Economic Development (GO-Biz), the Controller, the DOF, the Legislative Analyst's Office, and the Division of Labor Standards Enforcement and the Division of Occupational Safety and Health within the Department of Industrial Relations (DIR), except the Controller may not disburse those tax funds for Fiscal Years 2022-23 2023-24 for DTFA, DCC, DFW, SWCB, the Controller, or those within DIR. (Rev. & Tax. Code, § 34019, subd. (a)(1).)

Existing law requires the Controller to disperse \$10,000,000 annually to a public university or universities until FY 2028-29 to research and evaluate the implementation and effect of MAUCRSA, as specified. (Rev. & Tax. Code, § 34019, subd. (b).)

Existing law requires the Controller to disperse \$3,000,000 annually to the California Department of the Highway Patrol (CHP) until FY 2022-23 to establish and adopt protocols to determine whether a driver is operating a vehicle while impaired, including impairment by the use of cannabis or cannabis products, and to establish and adopt protocols setting forth best practices to assist law enforcement agencies, as specified. (Rev. & Tax. Code, § 34019, subd. (c).)

Existing law requires the Controller to disperse \$10,000,000 until the 2022-23 FY, at which time the disbursement is to be \$50,000,000 each year to the GO-Biz to administer a community reinvestment grants program to local health departments. Allocates at least 50 percent to qualified non-profits organizations as specified, to support job placement, mental health treatment, substance use disorder treatment, system navigation services, among others. (Rev. & Tax. Code, § 34019, subd. (d).)

Existing law requires the Controller to disburse \$2 million annually to the University of California San Diego Center for Medicinal Cannabis Research to further its objectives. (Rev. & Tax. Code, § 34019, subd. (e).)

Existing law requires the Controller to disburse the remaining tax funds deposited into sub-trust accounts as follows:

- 60% into the Youth Education, Prevention, Early Intervention and Treatment Account, disbursed to the Department of Health Care Services for programs for youth that are designed to educate about and to prevent substance use disorders and to prevent harm

from substance use. Requires the programs to emphasize accurate education, effective prevention, early intervention, school retention, and timely treatment services for youth, their families, and their caregivers.

- 20% into the Environmental Restoration and Protection Account, disbursed to the DFW and the Department of Parks and Recreation to fund activities related to the natural resources and wildlife implications of legal cannabis.
- 20% into the State and Local Government Law Enforcement Account, disbursed to the CHP to conducting training programs for detecting, testing, and enforcing laws against driving under the influence of alcohol and other drugs, including driving under the influence of cannabis as well as to fund education regarding cannabis-impaired driving; and to the BSCC to award grants to local governments to assist with law enforcement, fire protection, or other local programs addressing public health and safety associated with locally legalized cannabis. Prohibits the BSCC from making any grants to local governments that ban both indoor and outdoor commercial cannabis cultivation, or ban retail sale of cannabis or cannabis products. (Rev. & Tax. Code, § 34019, subd. (f).)

This bill repeals language prohibiting the BSCC from making grants to local governments that ban both indoor and outdoor commercial cannabis cultivation, or ban retail sales of cannabis and cannabis products.

This bill requires the BCCC, in awarding specified grant monies, to prioritize local governments whose programs seek to address the unlawful cultivation and sale of cannabis.

COMMENTS

1. Need For This Bill

According to the author:

Districts like mine urgently need resources to combat the predominance of illicit cannabis grows. When this criminal activity is allowed to thrive, communities wonder what protections we have for public safety, our natural resources and for individual's labor. These bad actor are some of the most exploitive forces imaginable. We are allowing these criminal enterprises to plunder our operational autonomy. We need to crackdown on the illicit market to better protect California consumers and ensure that we are not forfeiting revenue. This bill will provide resources to the jurisdictions that need it the most.

2. Background

In November 2016, California voters passed Proposition 64, the "Control, Regulate and Tax Adult Use of Marijuana Act," which decriminalized and legalized adult-use cannabis. In June 2017, SB 94 (Committee on Budget and Fiscal Review, Chapter 27, Statutes of 2017) was enacted and integrated the Medical Cannabis Regulation and Safety Act with Proposition 64 to create the Medical and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), the current regulatory structure for both medicinal and adult-use cannabis.

In 2020, Governor Newsom proposed consolidation of the three licensing and regulatory programs within separate state agencies to form a single department with a goal of streamlining and simplifying access to licensing and regulatory oversight of cannabis. (Office of Governor

Newsom, *California State Budget 2020-21*, p. 111 available at <<https://www.egudget.ca.gov/2020-21/pdf/Enacted/BudgetSummary/FullBudgetSummary.pdf>>.) In 2021, DCC was formally established with both licensing, regulatory and enforcement authority. (Office of Governor Newsom, *California State Budget 2021-22*, p. 175 available at <<https://www.egudget.ca.gov/2021-22/pdf/Enacted/BudgetSummary/FullBudgetSummary.pdf>>.)

3. Cannabis Tax Fund

Proposition 64 established the Cannabis Tax Fund (Fund) for the collection of state cannabis excise tax. The excise tax and cultivation tax revenues are deposited into the Fund and are then allocated for a variety of purposes in order of priority. As part of MAUCRSA, the allocation of funding is set in statute, and the Legislature is prohibited from making changes until 2028. Monies from the fund are distributed in three allocations. This bill affects funding specified in Allocation 3.

Allocation 1 is dedicated to regulatory and administrative costs, reimbursing certain state agencies for reasonable costs associate with implementing, administering, and enforcing MAUCRSA. (Rev. & Tax. Code, § 34019, subd. (a)(1).) The DCC is not eligible to be reimbursed through Tier 1 and is funded by license fees.

Following Allocation 1 distribution, Allocation 2 revenues are distributed to support academic research grants, including researching the efficacy of medicinal cannabis and the impacts of legalization. (Rev. & Tax. Code, § 34019, subd. (b).) Allocation 2 also allocates funds to GO-Biz to grant funds that reinvests in communities harmed by the War on Drugs. (Rev. & Tax. Code, § 34019, subd. (d).) Funding is also allocated to the CHP to advance California's impaired driving efforts. (Rev. & Tax. Code, § 34019, subd. (c).)

Allocation 3 monies are set aside for youth education, prevention, early intervention, and treatment; environmental protection; and public safety-related activities. (Rev. & Tax. Code, § 34019, subd. (f).) Specifically, Allocation 3 dedicates sixty percent of funds for programs for youth that are designed to educate about, prevent substance use disorders, and harm from substance use. (Rev. & Tax. Code, § 34019, subd. (f)(1).) As part of this allocation, funding has gone towards the Youth Education Prevention, Early Intervention and Treatment Account (YEPEITA), which dedicates funding to childcare slots, prevention programs, and public health efforts.

Twenty percent of Allocation 3 is directed to the DFW and the Department of Parks and Recreation for cleanup, remediation, and restoration of environmental damage from cannabis cultivation, including facilitating the investigation, enforcement, and prosecution of illegal activities. (Rev. & Tax. Code, § 34019, subd. (f)(2).) The final twenty percent is allocated for public safety-related activities, including to the CHP to conduct training programs for detecting, testing, and enforcing laws against driving under the influence, including by cannabis, and to the BSCC for grants to local governments to assist with law enforcement, fire protection, or other local programs addressing public health and safety associated with the implementation of the Cannabis Act. (Rev. & Tax. Code, § 34019, subd. (f)(3).) The BSCC is currently prohibited from making any grants to local governments, which have banned the cultivation, including personal cultivation or retail sale of cannabis. (*Ibid.*)

This bill repeals the current prohibition on providing grant monies to those local jurisdictions that have specifically banned indoor and outdoor commercial cannabis cultivation or retail sales

of cannabis or cannabis products and instead requires the BSCC to prioritize those local governments that have programs seeking to address the unlawful cultivation and sale of cannabis.

4. Proposition 64 Public Health and Safety Grant Program

As noted above, Revenue and Taxation Code section 34019, subdivision (f)(3)(C) provides that the BSCC will provide “grants to local governments to assist with law enforcement, fire protection, or other local programs addressing public health and safety associated with the implementation of the Control, Regulate and Tax Adult Use of Marijuana Act.”

As of spring 2023, there have been three rounds of Prop 64 PH&S funding. (BSCC, *Proposition 64 Public Health and Safety Grant Program* available at <<https://www.bscc.ca.gov/proposition-64-public-health-safety-grant-program/>>.) The three-year grant period of Cohort 1 began on October 1, 2020 and awarded \$9.9 million to 10 jurisdictions. (*Ibid.*) The three-year grant period for Cohort 2 began on May 1, 2021 and awarded \$20.9 million to 22 jurisdictions. (*Ibid.*) Finally, the five-year grant period for Cohort 3 began on May 1, 2023 and awarded \$93.7 million to 37 jurisdictions. (*Ibid.*)

The BSCC website provides detailed information about the projects being funded via the Prop 64 PH&S grant program. Of the 37 projects that received Cohort 3 funding, 14 had a lead public agency that was a city, city manager’s office, or county; 11 had a lead public agency that was a city police department or county sheriff’s office; 4 had a lead public agency that was a health-related agency or system; 2 had a lead public agency that was a probation department; and 2 had a lead public agency that was a fire department. (*Ibid.*) The other four projects had lead public agencies focused on community development, permitting, planning, or providing alcohol or drug services. (*Ibid.*)

A variety of projects have been funded through the PH&S grant program, although many of the Cohort 3 funded projects focus on drug education programs for youth. (BSCC, *Proposition 64 Public Health and Safety Grant Program, Cohort 3 Project Summaries* available at <<https://www.bscc.ca.gov/wp-content/uploads/Project-Summaries-per-Applications.pdf>>.) The City of Vallejo intends to use some of the \$1.4 million it received to fund youth employment opportunities. (*Id.* at p. 7.) The City of Oakland was awarded \$3 million to fund security measures to address an increase in armed burglaries of licensed cannabis operators as well as a public education campaign to support equity operators. (*Id.* at p. 4.) El Dorado County intends to use the \$2.9 million it received to fund two deputy positions to investigate illegal cannabis activity as well as create a youth academy to support at-risk youth. (*Id.* at p. 8). Other funded projects include those that assist with licensing and code compliance.

A mandatory component of the Prop 64 PH&S Grants are Local Evaluation Plans (LEPs) which are intended to ensure that funded projects can be evaluated to determine their impact and effectiveness. LEPs describe how the project will be monitored and evaluated as well as show how evaluation results will be used for project improvement and decision making. In addition, the Prop 64 PH&S Grants are required to submit a 3-Year Local Evaluation Report to identify whether the project was successful in achieving its goals and objectives identified in their application for funding and LEP.

5. Interim Report on Local Control and Cannabis Bans

In March 2023, the UC Berkeley Cannabis Research Center published its interim report for a project funded by DCC on the causes and effects of local cannabis cultivation bans. The research conducted four in-depth studies of “ban counties” in Siskiyou, Napa, Yuba, and San Bernardino. (Getz, C., Petersen-Rockney, M., & Polson, M., *Interim Report: Cannabis Bans, Local Control, and the Effects and Efficacy of Proposition 64* (Mar. 2023) available at <https://crc.berkeley.edu/wp-content/uploads/2023/06/InterimReport_Prop64_UCOP.pdf>.) These four counties were selected “for geographic, ecological, industry, land use, political dynamics, and socio-demographic diversity. ... [and because] [e]ach county is home to incorporated cities that allow cannabis, and each county borders counties that permit cultivation, facilitating comparisons in ban/permit approaches.” (*Id.* at p. 3)

In the background on cannabis cultivation bans, the report provides:

Proposition 64 legalized commercial cannabis cultivation at the state level while allowing local municipalities – cities and counties – a high degree of local control to determine how, and even if, cannabis could be cultivated. Now, local cultivation bans are the most prevalent policy option, covering the majority of counties, cities, population, and land area in California. Since 2016, 69% of cities and counties have prohibited cultivation. While a majority of voters in California approved commercial cannabis cultivation in 2016, over 50% of California’s population lives in localities that have banned cultivation, denying a majority of California residents the opportunity to pursue commercial cultivation licenses and permits.

...

Wealthier residents who would like to cultivate commercially, medically, or personally may be able to move from ban jurisdictions to more permissive localities. However, for many growers, especially those who are experiencing poverty, who are minoritized, or who have been negatively impacted by the War on Drugs, moving is not a financial or social possibility. In short, commercial cultivation bans and de facto bans on personal cultivation are matters of economic, racial, and health justice.

When cannabis was fully prohibited, market prices were influenced by supply-side enforcement and the risks it imposed. Bans, however, simply restrict cultivation in particular geographic areas, with little effect on market prices. Price is now driven by total market production, much of which is legal. Enforcement, which was never particularly effective at reducing supply (McCoy and Block 2021), thus becomes merely punitive and restrictive, negatively affecting under-resourced farmers.

Limited county government capacity appears to be both a driver and a result of cannabis cultivation bans. Under-resourced and thinly stretched county governments, especially in low-revenue rural areas of California, lack the capacity to develop their own permitting, licensing, and compliance systems for cannabis cultivation. Many such counties in California have therefore banned cannabis cultivation, creating a landscape wherein cultivators are violating local codes.

Attempts to enforce against unpermitted cultivators draw limited public resources away from much-needed public services, such as the opioid crisis, and other government agencies and capacities, such as environmental protection. Bans are not the absence of a policy but are an *active policy* that has many causes, variables, effects, and costs.

(*Id.* at pp. 4-5.)

Some of the findings of the study are summarized as follows:

First, bans narrow the toolbox of options available to address cultivation, often leaving law enforcement as the only mechanism of attempting control, resulting in conflictive, oppositional dynamics. Second, even the most effective bans appear to simply push the problem elsewhere, either further underground (with negative ecological and social effects) or to other jurisdictions with less enforcement capacity. They do not appear to generally stop cultivation; rather, they often transform cultivation patterns and methods, albeit with less regulatory tools than permit programs would afford. Third, bans privilege certain definitions of “quality of life” that can exclude significant portions of local populations, who are either not opposed to cannabis cultivation or desire access to personal, medical, or adult-use cannabis. Finally, if the criteria of local quality of life revolves around reducing or stopping unlicensed cultivation, protecting environmental resources, and improving social inclusion, then cultivation bans often fail on their own aspirational terms.

(*Id.* at p. 6.)

The report concludes:

Our research illuminates some ways that the administration and enforcement of bans may mitigate the negative effects of bans. Taken as a whole, however, our work shows that bans often produce negative outcomes for social equity, environmental protection, and local communities. ... [G]oals of social equity and inclusion, environmental protection, and rural development could be met if there were statewide exemptions from bans for small-scale farmers, particularly those who grow in ecologically sustainable ways. Such reforms could provide cannabis for residents in “access deserts” and help fulfill the intent of Proposition 64 to build a cultivation sector of small and medium sized enterprises.

(*Ibid.*)

6. Argument in Support

According to the California Cannabis Industry Association, the bill’s sponsor:

The licensed cannabis industry continues to struggle with competition from an illicit market that is untaxed, unregulated, and untested. ...

In an investigative series published last year, the Los Angeles Times described the scale of the illicit market challenges as “immense” and highlighted the numerous consequences associated with illicit cannabis activity...

Such consequences have had a dramatic impact on public health and safety, and robbed the state of billions in tax revenue. Meanwhile, enforcement efforts to combat illicit market activity are spread across a variety of state and local law enforcement agencies with insufficient resources and competing priorities.

The Legislature has sought to bolster enforcement efforts but additional resources are desperately needed. ...

Under existing law, grant funding administered by the Board of State and Community Corrections (BSCC) is limited only to those cities and counties that authorize commercial cannabis cultivation or retail. While the original intent of these limitations was laudable and intended to incentivize jurisdictions to adopt commercial cannabis ordinances, the significant uptick in illicit market activity has had a chilling effect on jurisdictions most impacted by the illicit market. In other words, rather than implementing commercial cannabis programs, as hoped, cities and counties have opted to just say no to legal cannabis entirely.

With more than 60 percent of jurisdictions still banning commercial cannabis retail and legal cannabis sales on the decline, more funding is needed at the local level to combat the illicit market.

...

AB 1616 would provide much needed funding to local governments for enforcement programs that aim to reduce unlicensed cannabis activity, which poses a serious public health and safety threat.

7. Argument in Opposition

The ACLU California Action writes:

...AB 1616 is counter to the will of the voters, redirecting money from needed social services and education programs to old-school, failed criminalization measures in localities that declined to participate in legalization in the first place. By directing State money to enforcement-only localities, AB 1616 would increase arrests, fines, and incarcerations of predominantly Asian-American and Latine-American marijuana cultivators at the expense of localities that have legalized marijuana.

When voters passed Proposition 64 in 2016, they voted for a measure that specifically directed money raised via legalization towards “afterschool programs...; for job placement, job training, and mental health treatment; for drug prevention education for teens; to treat alcohol and drug addiction; and to fund training and research for law enforcement to crack down on impaired driving” – not the continued War on Drugs, which the official measure language termed an “enormous waste of law enforcement resources”... Accordingly, Proposition 64 prohibited funds raised via legalization from being used by localities that refused to legalize commercial cannabis.

AB 1616 would not only reverse voters' decision but would specify that grants of legalization funds be directed *towards* enforcement-focused programs.

The enforcement practices in many localities that have banned cannabis cultivation and sales are often racially biased. AB 1616 would fund those practices. In Siskiyou County, for instance, 93% of people arrested for illicit cultivation are Asian-American. ...

Some of these localities banned cannabis for explicitly racialized reasons. ...

AB 1616 would, for the first time, allow counties like Siskiyou to qualify for BSCC grants, funneling State dollars to their racialized crusades against marijuana. AB 1616 would do nothing to ease the rocky road of legalization. Instead, it would lead to increased incarceration and policing of cannabis, turning California away from full legalization.

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