

AMENDED IN SENATE JANUARY 4, 2016

AMENDED IN ASSEMBLY MAY 5, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 21**

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**Introduced by Assembly Member Perea Members Bonta, Cooley,  
Jones-Sawyer, Lackey, and Wood  
(Coauthor: Assembly Member Daly)  
(Principal coauthor: Senator McGuire)**

December 1, 2014

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An act to amend Sections 38501 and 38561 of the Health and Safety Code, relating to greenhouse gases. Section 11362.777 of the Health and Safety Code, relating to medical marijuana, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 21, as amended, Perea Bonta. ~~California Global Warming Solutions Act of 2006: scoping plan. Medical marijuana: cultivation licenses.~~

*Existing law, the Compassionate Use Act of 1996, an initiative measure enacted by the approval of Proposition 215 at the November 5, 1996, statewide general election, authorizes the use of marijuana for medical purposes. Existing law, enacted by the Legislature, provides for the licensing and regulation by both state and local entities of medical marijuana and its cultivation. Existing law provides that if a city, county, or city and county does not have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana, commencing March 1, 2016, the Department of Food and Agriculture*

is the sole licensing authority for medical marijuana cultivation applicants in that city, county, or city and county.

This bill would delete the provision that grants the department the sole licensing authority under those circumstances.

This bill would declare that it is to take effect immediately as an urgency statute.

~~The California Global Warming Solutions Act of 2006 establishes the State Air Resources Board as the state agency responsible for monitoring and regulating sources emitting greenhouse gases. The act requires the state board to adopt a statewide greenhouse gas emissions limit, as defined, to be achieved by 2020, equivalent to the statewide greenhouse gas emissions levels in 1990.~~

~~The act also requires the state board to prepare and approve a scoping plan for achieving the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions.~~

~~This bill would require the state board in preparing its scoping plan to consult with specified state agencies regarding matters involving energy efficiency and the facilitation of the electrification of the transportation sector.~~

~~This bill also would make various findings and declarations:~~

~~Vote: majority  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: *yes-no*. State-mandated local program: no.~~

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 11362.777 of the Health and Safety Code  
2     is amended to read:

3     11362.777. (a) The Department of Food and Agriculture shall  
4     establish a Medical Cannabis Cultivation Program to be  
5     administered by the secretary *and*, except as specified in  
6     subdivision (c), shall administer this section as it pertains to the  
7     cultivation of medical marijuana. For purposes of this section and  
8     Chapter 3.5 (commencing with Section 19300) of the Business  
9     and Professions Code, medical cannabis is an agricultural product.

10    (b) (1) A person or entity shall not cultivate medical marijuana  
11    without first obtaining both of the following:

12    (A) A license, permit, or other entitlement, specifically  
13    permitting cultivation pursuant to these provisions, from the city,  
14    county, or city and county in which the cultivation will occur.

1 (B) A state license issued by the department pursuant to this  
2 section.

3 (2) A person or entity shall not submit an application for a state  
4 license issued by the department pursuant to this section unless  
5 that person or entity has received a license, permit, or other  
6 entitlement, specifically permitting cultivation pursuant to these  
7 provisions, from the city, county, or city and county in which the  
8 cultivation will occur.

9 (3) A person or entity shall not submit an application for a state  
10 license issued by the department pursuant to this section if the  
11 proposed cultivation of marijuana will violate the provisions of  
12 any local ordinance or regulation, or if medical marijuana is  
13 prohibited by the city, county, or city and county in which the  
14 cultivation is proposed to occur, either expressly or otherwise  
15 under principles of permissive zoning.

16 (c) (1) Except as otherwise specified in this subdivision, and  
17 without limiting any other local regulation, a city, county, or city  
18 and county, through its current or future land use regulations or  
19 ordinance, may issue or deny a permit to cultivate medical  
20 marijuana pursuant to this section. A city, county, or city and  
21 county may inspect the intended cultivation site for suitability prior  
22 to issuing a permit. After the city, county, or city and county has  
23 approved a permit, the applicant shall apply for a state medical  
24 marijuana cultivation license from the department. A locally issued  
25 cultivation permit shall only become active upon licensing by the  
26 department and receiving final local approval. A person shall not  
27 cultivate medical marijuana prior to obtaining both a permit from  
28 the city, county, or city and county and a state medical marijuana  
29 cultivation license from the department.

30 (2) A city, county, or city and county that issues or denies  
31 conditional licenses to cultivate medical marijuana pursuant to this  
32 section shall notify the department in a manner prescribed by the  
33 secretary.

34 (3) A city, county, or city and county's locally issued conditional  
35 permit requirements must be at least as stringent as the  
36 department's state licensing requirements.

37 ~~(4) If a city, county, or city and county does not have land use~~  
38 ~~regulations or ordinances regulating or prohibiting the cultivation~~  
39 ~~of marijuana, either expressly or otherwise under principles of~~  
40 ~~permissive zoning, or chooses not to administer a conditional~~

1 ~~permit program pursuant to this section, then commencing March~~  
2 ~~1, 2016, the division shall be the sole licensing authority for~~  
3 ~~medical marijuana cultivation applicants in that city, county, or~~  
4 ~~city and county.~~

5 (d) (1) The secretary may prescribe, adopt, and enforce  
6 regulations relating to the implementation, administration, and  
7 enforcement of this part, including, but not limited to, applicant  
8 requirements, collections, reporting, refunds, and appeals.

9 (2) The secretary may prescribe, adopt, and enforce any  
10 emergency regulations as necessary to implement this part. Any  
11 emergency regulation prescribed, adopted, or enforced pursuant  
12 to this section shall be adopted in accordance with Chapter 3.5  
13 (commencing with Section 11340) of Part 1 of Division 3 of Title  
14 2 of the Government Code, and, for purposes of that chapter,  
15 including Section 11349.6 of the Government Code, the adoption  
16 of the regulation is an emergency and shall be considered by the  
17 Office of Administrative Law as necessary for the immediate  
18 preservation of the public peace, health and safety, and general  
19 welfare.

20 (3) The secretary may enter into a cooperative agreement with  
21 a county agricultural commissioner to carry out the provisions of  
22 this chapter, including, but not limited to, administration,  
23 investigations, inspections, licensing and assistance pertaining to  
24 the cultivation of medical marijuana. Compensation under the  
25 cooperative agreement shall be paid from assessments and fees  
26 collected and deposited pursuant to this chapter and shall provide  
27 reimbursement to the county agricultural commissioner for  
28 associated costs.

29 (e) (1) The department, in consultation with, but not limited  
30 to, the Bureau of Medical Marijuana Regulation, the State Water  
31 Resources Control Board, and the Department of Fish and Wildlife,  
32 shall implement a unique identification program for medical  
33 marijuana. In implementing the program, the department shall  
34 consider issues, including, but not limited to, water use and  
35 environmental impacts. In implementing the program, the  
36 department shall ensure that:

37 (A) Individual and cumulative effects of water diversion and  
38 discharge associated with cultivation do not affect the instream  
39 flows needed for fish spawning, migration, and rearing, and the  
40 flows needed to maintain natural flow variability.

1 (B) Cultivation will not negatively impact springs, riparian  
2 wetlands, and aquatic habitats.

3 (2) The department shall establish a program for the  
4 identification of permitted medical marijuana plants at a cultivation  
5 site during the cultivation period. The unique identifier shall be  
6 attached at the base of each plant. A unique identifier, such as, but  
7 not limited to, a zip tie, shall be issued for each medical marijuana  
8 plant.

9 (A) Unique identifiers will only be issued to those persons  
10 appropriately licensed by this section.

11 (B) Information associated with the assigned unique identifier  
12 and licensee shall be included in the trace and track program  
13 specified in Section 19335 of the Business and Professions Code.

14 (C) The department may charge a fee to cover the reasonable  
15 costs of issuing the unique identifier and monitoring, tracking, and  
16 inspecting each medical marijuana plant.

17 (D) The department may promulgate regulations to implement  
18 this section.

19 (3) The department shall take adequate steps to establish  
20 protections against fraudulent unique identifiers and limit illegal  
21 diversion of unique identifiers to unlicensed persons.

22 (f) (1) A city, county, or city and county that issues or denies  
23 licenses to cultivate medical marijuana pursuant to this section  
24 shall notify the department in a manner prescribed by the secretary.

25 (2) Unique identifiers and associated identifying information  
26 administered by a city or county shall adhere to the requirements  
27 set by the department and be the equivalent to those administered  
28 by the department.

29 (g) This section does not apply to a qualified patient cultivating  
30 marijuana pursuant to Section 11362.5 if the area he or she uses  
31 to cultivate marijuana does not exceed 100 square feet and he or  
32 she cultivates marijuana for his or her personal medical use and  
33 does not sell, distribute, donate, or provide marijuana to any other  
34 person or entity. This section does not apply to a primary caregiver  
35 cultivating marijuana pursuant to Section 11362.5 if the area he  
36 or she uses to cultivate marijuana does not exceed 500 square feet  
37 and he or she cultivates marijuana exclusively for the personal  
38 medical use of no more than five specified qualified patients for  
39 whom he or she is the primary caregiver within the meaning of  
40 Section 11362.7 and does not receive remuneration for these

1 activities, except for compensation provided in full compliance  
2 with subdivision (c) of Section 11362.765. For purposes of this  
3 section, the area used to cultivate marijuana shall be measured by  
4 the aggregate area of vegetative growth of live marijuana plants  
5 on the premises. Exemption from the requirements of this section  
6 does not limit or prevent a city, county, or city and county from  
7 regulating or banning the cultivation, storage, manufacture,  
8 transport, provision, or other activity by the exempt person, or  
9 impair the enforcement of that regulation or ban.

10 *SEC. 2. This act is an urgency statute necessary for the*  
11 *immediate preservation of the public peace, health, or safety within*  
12 *the meaning of Article IV of the Constitution and shall go into*  
13 *immediate effect. The facts constituting the necessity are:*

14 *To allow local governments to protect the health of their citizens*  
15 *by regulating marijuana at the earliest possible date, it is necessary*  
16 *that this act take effect immediately.*

17 ~~SECTION 1. Section 38501 of the Health and Safety Code is~~  
18 ~~amended to read:~~

19 ~~38501. The Legislature finds and declares all of the following:~~

20 ~~(a) Global warming poses a serious threat to the economic~~  
21 ~~well-being, public health, natural resources, and the environment~~  
22 ~~of California. The potential adverse impacts of global warming~~  
23 ~~include the exacerbation of air quality problems, a reduction in~~  
24 ~~the quality and supply of water to the state from the Sierra~~  
25 ~~snowpack, a rise in sea levels resulting in the displacement of~~  
26 ~~thousands of coastal businesses and residences, damage to marine~~  
27 ~~ecosystems and the natural environment, and an increase in the~~  
28 ~~incidences of infectious diseases, asthma, and other human~~  
29 ~~health-related problems.~~

30 ~~(b) Global warming will have detrimental effects on some of~~  
31 ~~California's largest industries, including agriculture, wine, tourism,~~  
32 ~~skiing, recreational and commercial fishing, and forestry. It will~~  
33 ~~also increase the strain on electricity supplies necessary to meet~~  
34 ~~the demand for summer air-conditioning in the hottest parts of the~~  
35 ~~state.~~

36 ~~(c) California has long been a national and international leader~~  
37 ~~on energy conservation and environmental stewardship efforts,~~  
38 ~~including the areas of air quality protections, energy efficiency~~  
39 ~~requirements, renewable energy standards, natural resource~~  
40 ~~conservation, and greenhouse gas emissions standards for passenger~~

1 vehicles. The program established by this division will continue  
2 this tradition of environmental leadership by placing California at  
3 the forefront of national and international efforts to reduce  
4 emissions of greenhouse gases.

5 (d) National and international actions are necessary to fully  
6 address the issue of global warming. However, action taken by  
7 California to reduce emissions of greenhouse gases will have  
8 far-reaching effects by encouraging other states, the federal  
9 government, and other countries to act.

10 (e) By exercising a global leadership role, California will also  
11 position its economy, technology centers, financial institutions,  
12 and businesses to benefit from national and international efforts  
13 to reduce emissions of greenhouse gases. More importantly,  
14 investing in the development of innovative and pioneering  
15 technologies will assist California in achieving the 2020 statewide  
16 limit on emissions of greenhouse gases established by this division  
17 and will provide an opportunity for the state to take a global  
18 economic and technological leadership role in reducing emissions  
19 of greenhouse gases.

20 (f) It is the intent of the Legislature that the State Air Resources  
21 Board coordinate with state agencies, as well as consult with the  
22 environmental justice community, industry sectors, business  
23 groups, academic institutions, environmental organizations, and  
24 other stakeholders, in implementing this division.

25 (g) It is the intent of the Legislature that the State Air Resources  
26 Board consult with the Public Utilities Commission in the  
27 development of emissions reduction measures, including limits on  
28 emissions of greenhouse gases applied to electricity and natural  
29 gas providers regulated by the Public Utilities Commission in order  
30 to ensure that electricity and natural gas providers are not required  
31 to meet duplicative or inconsistent regulatory requirements.

32 (h) It is the intent of the Legislature that the State Air Resources  
33 Board design emissions reduction measures to meet the statewide  
34 emissions limits for greenhouse gases established pursuant to this  
35 division in a manner that cleans the environment in ways that are  
36 cost effective for California residents, minimizes costs and  
37 maximizes benefits for California's economy, improves and  
38 modernizes California's energy infrastructure and maintains electric  
39 system reliability, maximizes additional environmental and

1 economic co-benefits for California, and complements the state's  
2 efforts to improve air quality.

3 (i) ~~It is the intent of the Legislature that the Climate Action~~  
4 ~~Team established by the Governor to coordinate the efforts set~~  
5 ~~forth under Executive Order S-3-05 continue its role in~~  
6 ~~coordinating overall climate policy.~~

7 SEC. 2. ~~Section 38561 of the Health and Safety Code is~~  
8 ~~amended to read:~~

9 38561. (a) (1) ~~On or before January 1, 2009, the state board~~  
10 ~~shall prepare and approve a scoping plan, as that term is understood~~  
11 ~~by the state board, for achieving the maximum technologically~~  
12 ~~feasible and cost-effective reductions in greenhouse gas emissions~~  
13 ~~from sources or categories of sources of greenhouse gases by 2020~~  
14 ~~under this division.~~

15 (2) ~~The state board shall consult with all state agencies with~~  
16 ~~jurisdiction over sources of greenhouse gases, including the Public~~  
17 ~~Utilities Commission and the State Energy Resources Conservation~~  
18 ~~and Development Commission, in developing all elements of its~~  
19 ~~plan that pertain to energy-related matters including, but not limited~~  
20 ~~to, electrical generation, energy efficiency, load-based standards~~  
21 ~~or requirements, the provision of reliable and affordable electrical~~  
22 ~~service, petroleum refining, the facilitation of the electrification~~  
23 ~~of the transportation sector, and statewide fuel supplies to ensure~~  
24 ~~the greenhouse gas emissions reduction activities to be adopted~~  
25 ~~and implemented by the state board are complementary,~~  
26 ~~nonduplicative, and can be implemented in an efficient and~~  
27 ~~cost-effective manner.~~

28 (b) ~~The plan shall identify and make recommendations on direct~~  
29 ~~emissions reduction measures, alternative compliance mechanisms,~~  
30 ~~market-based compliance mechanisms, and potential monetary~~  
31 ~~and nonmonetary incentives for sources and categories of sources~~  
32 ~~that the state board finds are necessary or desirable to facilitate~~  
33 ~~the achievement of the maximum feasible and cost-effective~~  
34 ~~reductions of greenhouse gas emissions by 2020.~~

35 (c) ~~In making the determinations required by subdivision (b),~~  
36 ~~the state board shall consider all relevant information pertaining~~  
37 ~~to greenhouse gas emissions reduction programs in other states,~~  
38 ~~localities, and nations, including the northeastern states of the~~  
39 ~~United States, Canada, and the European Union.~~

1 ~~(d) The state board shall evaluate the total potential costs and~~  
2 ~~total potential economic and noneconomic benefits of the plan for~~  
3 ~~reducing greenhouse gases to California's economy, environment,~~  
4 ~~and public health, using the best available economic models,~~  
5 ~~emission estimation techniques, and other scientific methods.~~

6 ~~(e) In developing its plan, the state board shall take into account~~  
7 ~~the relative contribution of each source or source category to~~  
8 ~~statewide greenhouse gas emissions, and the potential for adverse~~  
9 ~~effects on small businesses, and shall recommend a de minimis~~  
10 ~~threshold of greenhouse gas emissions below which emissions~~  
11 ~~reduction requirements will not apply.~~

12 ~~(f) In developing its plan, the state board shall identify~~  
13 ~~opportunities for emissions reduction measures from all verifiable~~  
14 ~~and enforceable voluntary actions, including, but not limited to,~~  
15 ~~carbon sequestration projects and best management practices.~~

16 ~~(g) The state board shall conduct a series of public workshops~~  
17 ~~to give interested parties an opportunity to comment on the plan.~~  
18 ~~The state board shall conduct a portion of these workshops in~~  
19 ~~regions of the state that have the most significant exposure to air~~  
20 ~~pollutants, including, but not limited to, communities with minority~~  
21 ~~populations, communities with low-income populations, or both.~~

22 ~~(h) The state board shall update its plan for achieving the~~  
23 ~~maximum technologically feasible and cost-effective reductions~~  
24 ~~of greenhouse gas emissions at least once every five years.~~