Assembly Bill No. 2695

Passed the Assembly August 17, 2010

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Chief Clerk of the Assembly

Passed the Senate August 12, 2010

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Secretary of the Senate

This bill was received by the Governor this _____ day of _____, 2010, at _____ o'clock ___M.

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Private Secretary of the Governor

CHAPTER _____

An act to add Chapter 27 (commencing with Section 79401) to Part 2 of Division 22 of the Food and Agricultural Code, relating to agriculture, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 2695, Hernandez. California Nursery Producers Commission.

(1) Existing law establishes various commissions to promote agricultural products from the state.

This bill would create the California Nursery Producers Commission in state government with a prescribed membership, and would specify the powers, duties, and responsibilities of the commission. The commission would be authorized to carry out programs of outreach, education, promotion, marketing, and research relating to nursery products. The bill would authorize the commission to levy an annual assessment, not to exceed a specified amount, on producers of nursery products, and would authorize the expenditure of those funds for purposes of implementing and administering the bill's provisions, thereby making an appropriation.

The bill, except as necessary to conduct an election, would not become operative until eligible producers, by referendum, vote in favor of the bill's provisions, as prescribed. The bill would authorize the commission to levy a civil penalty not exceeding $1,000 on a person who willfully renders or furnishes false reports or records, fails to render or furnish a report or record, or secretes, destroys, or alters records, as specified. The bill would authorize the commission to bring civil actions and other remedies to enforce the bill's provisions and regulations adopted pursuant to these provisions. The bill would also provide for the continuation and suspension of the operation of its provisions and for concluding the operations of the commission.

(2) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings

demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

Appropriation: yes.

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

SECTION 1. Chapter 27 (commencing with Section 79401) is added to Part 2 of Division 22 of the Food and Agricultural Code, to read:

CHAPTER 27. CALIFORNIA NURSERY PRODUCERS COMMISSION

Article 1. Declaration and General Provisions

79401. The production of nursery products constitutes an important industry of this state that provides substantial and necessary revenues for the state, products that are a foundation for its residents' food supply, and employment for its residents.

79402. The maintenance of the nursery industry of California is necessary to assure the public and the state's and nation's crop agriculture industry of a continuous supply of vital nursery products and the maintenance of needed levels of income for those engaged in the nursery industry and in its supplier, distribution, and related service chain.

79403. The production of nursery products in California is currently the state's number two agricultural crop with 2008 farm gate sales of four billion dollars ($4,000,000,000) and has the potential to become the leading segment of the state's agricultural industry. To realize this potential, there is a need to engage in research beneficial to the industry, to educate the public relative to nursery products, and to promote and market nursery products. The activities made possible by the establishment of the commission will meet these needs and further the interests of the industry and the state.

79404. The nursery industry has been negatively impacted by invasive pests and diseases that also adversely affect the state's environment, urban quality, and agricultural production. The activities authorized by this commission will improve the quality of nursery products and limit these negative impacts.

79405. The establishment of the commission is necessary for the efficient development and management of a research, public education, and marketing program that will enhance the reputation of the California nursery industry, create a more receptive environment for the industry and its products, aid its growth at both wholesale and retail, and increase competitiveness of the California nursery industry within the national and international marketplace. In addition, the commission is necessary to carry out the California nursery industry's commitment to responsible stewardship, environmental protection, and increasingly efficient cultural practices.

79406. (a) The Legislature finds and declares that the commission is intended to operate in conjunction with other nursery-related laws and programs in the state, including, but not limited to, the licensing laws and regulations applicable to nurseries (Chapter 1 (commencing with Section 6701) of Part 3 of Division 4), the inspection and cleanliness laws applicable to nurseries (Article 1 (commencing with Section 6901) of Chapter 2 of Part 3 of Division 4), the shipment and pest certification laws applicable to nurseries (Article 2 (commencing with Section 6921) and Article 4 (commencing with Section 6961) of Chapter 2 of Part 3 of Division 4), the grades and standards laws and regulations applicable to nurseries (Chapter 5 (commencing with Section 53301) of Division 18), and specific nursery stock programs such as the California Grape Rootstock Improvement Commission (Chapter 12.6 (commencing with Section 74701)).

(b) The legislature finds and declares that the commission enhances the existing comprehensive statutory and regulatory structure affecting all aspects of nursery products production in California.

(c) The commission shall periodically meet and confer with all other nursery-related programs administered by the department to ensure coordination of policies and programs.

79407. The Legislature further finds and declares that the programs specified in Section 79406, including this commission, greatly benefit the nursery industry, and as such, advance the interests of the State of California by providing substantial employment for the state's citizens, producing needed tax and fee revenues for the support of state and local government, encouraging responsible stewardship of valuable agricultural resources and the

environment, and producing substantial quantities of nursery products for the state, nation, and world.

79408. The successes that the nursery industry of California has achieved have resulted from a commitment to industry-funded research that has led to significant improvements in the quality and quantity of the nursery products available to consumers and increasingly more efficient and environmentally protective cultural practices. The establishment of the commission will continue and enhance this research effort and move the nursery industry toward its potential, resulting in increased consumer value and enhanced grower returns.

79409. The production of nursery products in this state is hereby declared to be affected with a public interest. This chapter is enacted in the exercise of the police power of this state for the purposes of protecting the health, peace, safety, and general welfare of the people of this state.

79410. Opportunity exists for continued growth and expansion of the nursery industry by creating new markets. The success of such an expansion program is uniquely dependent upon effective research and public education, since the creation of new markets is essentially a matter of educating and informing people of the use, value, and availability of nursery products and enhancing the reputation of the California nursery products industry. The expansion of the nursery industry also provides an important and expanding source of jobs for many people in this state, including many residing in historically depressed areas of the state, and it serves to ensure the preservation of an agrarian society. The expansion also provides pathways for the unemployed, the poor, unskilled laborers, rehabilitated inmates, and other disadvantaged groups to learn valuable professional nursery skills and obtain seasonal or permanent employment with career potential.

79411. The commission's activities are necessary for the efficient development of a national and international program and exists as an integral part of a broader framework of state and federal statutes and regulations designed to: collectively enhance the quality and reputation of California nursery products; create a more receptive environment for nursery products; improve the capability of nursery products producers to function within the overall regulatory environment; increase the competitiveness of the nursery products industry within the national and international marketplace;

implement the industry's commitment to responsible stewardship of agricultural land and the environment and increasingly efficient cultural practices; and further the goals and interests of the state by preserving the economic well-being of the agricultural economy.

79412. The commission form of administration created by this chapter is uniquely situated to provide those engaged in the production of nursery products the opportunity to avail themselves of the benefits of collective action in the broad fields of research, education, and the development, maintenance, and expansion of markets.

79413. No action taken by the commission, or by any individual in accordance with this chapter or with the regulations adopted under this chapter, is a violation of the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), the Unfair Practices Act (Chapter 4 (commencing with Section 17000) of Part 2 of Division 7 of the Business and Professions Code), or any statutory or common law against monopolies or combinations in restraint of trade. The Legislature intends this program to be among those contemplated by the United States Congress in the enactment of Section 610(i) of Title 7 of the United States Code.

79414. It is hereby declared as a matter of legislative determination that commission members and alternates are intended to represent and further the interest of a particular industry concerned and that this representation and furtherance is intended to serve a public interest. Accordingly, the Legislature finds that with respect to persons who are elected or appointed to the commission, the particular industry concerned is tantamount to and constitutes the public generally within the meaning of Section 87103 of the Government Code.

Article 2. Definitions

79421. Unless the context otherwise requires, the definitions in this article govern the construction of this chapter.

79422. "Books and records" means books, records, contracts, documents, memoranda, papers, correspondence, or other written data pertaining to matters relating to the activities subject to this chapter.

79423. "Commission" means the California Nursery Producers Commission.

79424. "Department" means the Department of Food and Agriculture.

79424.5. (a) "Districts" consists of the following:

(1) District 1, which includes the Counties of Imperial, Orange, and San Diego.

(2) District 2, which includes the Counties of Inyo, Kern, Kings, Los Angeles, Riverside, San Bernardino, San Luis Obispo, Santa Barbara, Tulare, and Ventura.

(3) District 3, which includes the Counties of Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Mono, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tuolumne, Yolo, and Yuba.

(b) Notwithstanding subdivision (a), the boundaries of any district may be changed by a two-thirds vote of the members of the commission, which is concurred in by the secretary, when necessary to maintain similar total production among the districts and to ensure proper representation. These boundaries need not coincide with county lines.

79425. "Ex officio member" means a nonvoting member of the commission.

79426. "Market" or "marketing" means to sell nursery products to a person other than another producer.

79427. "Marketing season" or "fiscal year" are synonymous terms and mean the period beginning May 1 of any year and extending through April 30 of the following year.

79428. "Person" means any individual, partnership, corporation, limited liability company or partnership, firm, company, or other entity doing business in California.

79429. "Producer" means any person that operates under a California state nursery license (producer category), and that produces, or causes to be produced, nursery products for the purposes of transferring title to another person. "Producer" does not include a licensed producer nursery that produced and sold nursery products for a gross dollar value of less than two million

five hundred thousand dollars ($2,500,000) in the preceding marketing season.

79430. “Nursery products” means any plant for planting, propagation, or ornamentation, but does not include flowers as defined in Section 77911 or grape rootstock as defined in Section 74718.

79431. “Research” means any research relating to invasive pests, the production, harvest, postharvest handling, or marketing of nursery products, nursery product components, or practices employed by nurseries, and research relating to public education regarding nurseries and nursery products, including, but not limited to, basic and applied research.

79432. “Secretary” means the Secretary of Food and Agriculture.

79433. “Sell” or “sold” means to transfer or cause the transfer of title to nursery products for valuable consideration.

Article 3. California Nursery Producers Commission

79441. (a) There is in the state government the California Nursery Producers Commission. The commission shall be composed of 14 producers nominated and elected by and from producers, and one public member.

(b) Eligible persons from within the respective districts shall elect four producers from District 1, four producers from District 2, and four producers from District 3. All eligible persons shall elect two members at large.

(c) The public member shall be appointed to the commission by the secretary from nominees recommended by the commission.

(d) The secretary and other appropriate individuals, as determined by the commission, shall be ex officio members of the commission.

79442. (a) The secretary may require the commission to correct or cease any existing activity or function that is determined by the secretary not to be in the public interest or that is in violation of this chapter.

(b) If the commission refuses or fails to cease those activities or functions or to make the corrections as required by the secretary, the secretary may, upon written notice, suspend all or a portion of the activities or functions of the commission until the time that the

cessation or correction of activities or functions as required by the secretary has been accomplished by the commission.

(c) Actions of the commission in violation of the written notice are without legal force or effect. The secretary, to the extent feasible, shall issue the written notice prior to the commission entering into any contractual relationship affecting the existing or proposed activities or functions that are the subject of the written notice.

(d) Upon service of the written notice, the secretary shall notify the commission in writing of the specific acts that the secretary determines are not in the public interest or are in violation of this chapter, his or her reasons for requiring a cessation or correction of specific existing or proposed activities or functions, and recommendations that will make the activities or functions acceptable.

79443. When the secretary is required to concur in a decision of the commission, the secretary shall give his or her response to the commission within 15 working days from notification of the decision. The secretary shall set forth in writing with specificity the reasons for any refusal to concur. The secretary's response may be a requirement that additional information be provided.

79444. The commission shall reimburse the secretary for all expenditures incurred by the secretary in carrying out his or her duties and responsibilities pursuant to this chapter. However, a court may, if it finds that the secretary acted arbitrarily or capriciously in restricting the activities or functions of the commission, relieve the commission of the responsibility for payment of the secretary's legal costs with regard to that action.

79445. Except for ex officio members, an alternate for each member shall be nominated and elected, and for the public member appointed, in the same manner as the member. An alternate shall, in the absence of the member for whom he or she is an alternate, serve in place of the member and shall have, and be able to exercise, all the rights, privileges, and powers of the member when serving on the commission. In the event of a change in status making a member ineligible to serve, or due to death, removal, resignation, or disqualification of a member, the alternate shall act as a member of the commission for the unexpired portion of the term.

79446. Except as provided in Section 79441, any vacancy on the commission occurring by the failure of any person elected to or serving on the commission as an alternate to continue in his or her position due to a change in status making him or her ineligible to serve, or due to death, removal, or resignation, shall be filled by another eligible person for the unexpired portion of the term by a majority vote of the members of the commission. The person shall fulfill all the qualifications set forth in this article as required for the person whose office he or she is to occupy.

79447. Any vacancy on the commission occurring by the failure of the public member to continue in his or her position due to a change in status making him or her ineligible to serve, or due to death, removal, resignation, or disqualification, may be filled upon appointment by the secretary, from nominees recommended by the commission, of another eligible person for the unexpired portion of the term. The person shall fulfill all the qualifications set forth in this article as required for the member whose office he or she is to occupy.

79448. Any producer member and his or her alternate on the commission shall be an individual producer or an employee or representative of a producer that has a financial interest in producing nursery products or causing nursery products to be produced. The qualifications of producer members and their alternates shall be maintained during their entire term of office. The absence of any producer member from two consecutive meetings or lapse in qualifications shall be grounds for the commission to declare the seat vacant.

79449. The public member and his or her alternate shall not have any financial interest in the nursery industry. The public member and his or her alternate shall have all the powers, rights, and privileges of any other member or alternate, respectively, on the commission, except that the public member and his or her alternate member shall not have a vote on issues regarding the assessments established pursuant to Article 6 (commencing with Section 79501).

79450. Commission members and alternates shall serve three-year terms and until their successors are elected, and qualified, except, that of the first members of the commission, one-third shall serve one year, one-third shall serve two years, and one-third shall serve three years. The determination of the term of

each member shall be made by lot. The public member and his or her alternate shall serve three-year terms and until their successors are appointed and qualified.

79451. The commission may sue and be sued regarding any matter related to the purposes of this chapter and contract and be contracted with.

79452. A majority of the members of the commission shall constitute a quorum of the commission for the transaction of business. The vote of a majority of the members present at a meeting at which there is a quorum constitutes the act of the commission. The commission may continue to transact business at a meeting at which a quorum is initially present, notwithstanding the withdrawal of members, provided any action is approved by the requisite majority of the required quorum.

79453. The secretary or his or her representatives shall be notified and may attend each meeting of the commission and any committee meetings of the commission. However, the secretary or his or her representative is not entitled to attend an executive session of the commission or a committee of the commission called for the purpose of discussing potential or actual litigation against the department.

79454. No member or alternate of the commission or member of a committee established by the commission who is a nonmember of the commission shall receive a salary. Each member of the commission and each alternate serving in place of a member, except ex officio members who are officers or employees of a public agency, and each member of a committee established by the commission who is a nonmember of the commission, may receive reasonable and necessary traveling expenses and meal allowances as approved by the commission for each day spent in actual attendance at, or in traveling to and from, meetings of the commission or committees of the commission, or on special assignment for the commission.

79455. All funds received by any person from the assessments levied under this chapter or otherwise received by the commission shall be deposited in banks that the commission may designate and shall be disbursed by order of the commission through an agent or agents as it may designate for that purpose. The agent or agents shall be bonded by a fidelity bond, executed by a surety company authorized to transact business in this state, in favor of the

commission, in an amount of not less than twenty-five thousand dollars ($25,000).

79456. The state is not liable for the acts of the commission or its contracts. Payments of all claims arising by reason of the administration of this chapter or acts of the commission are limited to the funds collected by the commission. No member or alternate of the commission, or any employee or agent thereof, is personally liable for the contracts or other liabilities of the commission. No member or alternate of the commission, or any employee or agent thereof, is responsible individually in any way to any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, or employee, except for his or her own individual acts of dishonesty or crime. No member or alternate of the commission, or any employee or agent thereof, is responsible individually for any act or omission of any other member or alternate of the commission, or any employee or agent thereof. No member or alternate of the commission, or any employee or agent thereof, is liable for the default of any other member or alternate of the commission, or any employee or agent thereof.

Article 4. Powers and Duties

79461. The powers and duties of the commission shall include, but are not limited to, all of those contained in this article.

79462. The commission may adopt and from time to time alter, rescind, modify, and amend all proper and necessary bylaws, rules, regulations, and orders in accordance with commission procedures for purposes of carrying out this chapter, including rules for appeals from any bylaw, rule, regulation, operating procedure, or order of the commission. These actions of the commission shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

79463. The commission may administer and enforce this chapter and do and perform all acts and exercise all powers incidental to, or in connection with, or deemed reasonably necessary for, proper or advisable effectuation of the purposes of this chapter.

79464. The commission may appoint its own officers, including a chairperson, one or more vice chairpersons, and other officers

as it deems necessary. The officers have the powers and duties delegated to them by the commission.

79465. (a) The commission may employ a person to serve at the pleasure of the commission as president of the commission, and other personnel, including legal counsel of its choice, necessary to carry out this chapter. If any person employed by the commission engages in any conduct that the secretary determines is not in the public interest or that is in violation of this chapter, the secretary shall notify the commission of the conduct and request that corrective and, if appropriate, disciplinary action, be taken by the commission. If the commission fails or refuses to correct the situation or to take disciplinary action satisfactory to the secretary, the secretary may suspend or discharge the person.

(b) The commission may retain a management firm or the staff from any board, commission, or committee of the state or federal government to perform the functions prescribed by this section under the direction of the commission.

(c) If requested by an advisory board, board of directors, or any authorized agent, the commission may administer any governmental program related to the nursery products industry.

79466. The commission may fix the compensation for all employees of the commission.

79467. The commission may appoint committees composed of both members and nonmembers of the commission to advise the commission in carrying out this chapter.

79468. The commission may establish offices and incur expenses, enter into any and all contracts and agreements, create liabilities, develop, own, and control the use of any intellectual property, and borrow funds in advance of receipt of assessments as may be necessary in the opinion of the commission for the proper administration and enforcement of this chapter and the performance of its duties.

79469. The commission shall keep accurate books, records, and accounts of all of its dealings, which shall be subject to an annual audit by an auditing firm selected by the commission with the concurrence of the secretary. A summary of the audit shall be reported to all persons subject to this chapter, a copy of which shall also be submitted to the department. In addition, the secretary, as he or she determines necessary, may conduct or cause to be conducted a fiscal and compliance audit of the commission. Except

in the first year of operation, the commission shall prepare and make available an annual report within 90 days of the beginning of the fiscal year of all activities and the financial status of the commission to all persons subject to this chapter.

79470. The commission may present facts to, and negotiate with, local, state, federal, and foreign agencies and governments on matters that affect the California nursery industry, including, but not limited to, the maintenance and expansion of present markets, the creation of new and larger markets for nursery products, invasive pest issues, plant health, interstate and foreign export requirements, registration of pesticides, actions applicable to the state and federal environmental laws and regulations, applicable governmental regulations and statutes, and international trade agreements.

79471. The commission may conduct outreach, advertise, and educate and instruct the public and the retail and wholesale trade with respect to the quality, features, uses, and value of nursery products and the practices and methods of production used by nurseries.

79472. The commission may conduct outreach and educate and instruct the wholesale and retail trade, including, but not limited to, their physical and electronic channels of distribution to markets with respect to proper methods of handling and selling nursery products, and conduct consumer, trade, and trading partner surveys and analyses.

79473. The commission may conduct, and contract with others to conduct, research, including the study, analysis, dissemination, and accumulation of information obtained directly or from research or elsewhere, with respect to cultural, production and postharvest practices, and the sourcing, marketing and distribution of nursery products. The results of any research conducted by or on behalf of the commission may be used by the commission in any way it deems appropriate.

79474. The commission may contract to receive and render services in formulating and conducting plans and programs and enter into any other contracts or agreements that the commission deems necessary to carry out this chapter.

79475. The commission may accept contributions of, or match private, state, or federal funds, and employ or make contributions

of funds to other persons or local, state, or federal agencies for proper or advisable effectuation of the purposes of this chapter.

79476. In its discretion, the commission may cooperate with or provide funding to other private or governmental entities in the resolution of emergencies arising in the industry and impacting the health and safety of the public or to maintain the continued stability and reputation of the nursery industry.

79477. The commission may collect information, including, but not limited to, industry crop statistics, identity and size of markets, and trading partners, and publish and distribute without charge, a bulletin or other communication to producers of nursery products.

79478. The commission shall establish an assessment rate to be paid by producers to defray operating costs of the commission.

79479. The commission shall establish an annual budget according to generally accepted accounting practices. The budget shall be concurred in by the secretary prior to disbursement of funds, except for disbursements made pursuant to Section 79466.

79480. The commission shall submit to the secretary for his or her concurrence an annual statement of contemplated activities authorized pursuant to this chapter.

79481. The commission may investigate and prosecute civil violations of this chapter and file complaints with appropriate law enforcement agencies or officers for suspected criminal violations of this chapter.

79482. The commission may appoint any person to serve as an ex officio member.

Article 5. Implementation and Voting Procedures

79491. (a) Within 60 days of a request from any producer, the secretary shall establish a list of producers eligible to vote on implementation of this chapter. The secretary may require producers to submit the names and mailing addresses of other producers. The secretary also may require that the information provided include information on the value of nursery products produced and sold by each producer or, in the alternative, may establish procedures for receiving the information at the time of the referendum vote specified in this article. The request for the

information shall be in writing and shall be filed within 10 days following receipt of the request.

(b) Any producer eligible to vote whose name does not appear on the appropriate list may have his or her name placed on the list by filing with the secretary a signed statement, identifying himself or herself as a person eligible to vote. Failure to be on the list does not exempt the person from providing information requested by the secretary or the commission or from paying assessments and does not invalidate any industry votes conducted pursuant to this article.

(c) Any producer eligible to vote may contact those on the list regarding the referendum in a form and manner prescribed by the secretary if all expenses associated with those contacts are paid in advance. Subsequent to the implementation of this chapter and the establishment of the commission, the commission shall prescribe the form and manner by which eligible producers may contact other eligible producers regarding the administration of this chapter.

79492. This chapter, except as necessary to conduct an implementation referendum vote, shall not become operative until the secretary finds, in a referendum vote conducted by the secretary, that at least 40 percent of the total number of producers from the list established by the secretary pursuant to this article participate, and that either of the following occurs:

(a) Sixty-five percent of the producers who voted in the referendum voted in favor of this chapter, and the producers so voting marketed a majority of the total value of nursery products marketed in the preceding marketing season by all of the producers voting in the referendum.

(b) A majority of the producers who voted in the referendum voted in favor of this chapter, and the producers so voting marketed 65 percent or more of the total value of nursery products marketed in the preceding marketing season by all of the producers voting in the referendum.

79493. The secretary shall establish a period in which to conduct the referendum, which shall not be less than 10 days or more than 60 days in duration, and may prescribe additional procedures necessary to conduct the referendum. If the initial period established is less than 60 days, the secretary may extend

the period. However, the total referendum period may not exceed 60 days.

79494. Nonreceipt of a ballot by an eligible producer shall not invalidate a referendum.

79495. If the secretary finds that a favorable vote has been given as provided in this article, the secretary shall certify and give notice of the favorable vote to all affected producers whose names and addresses are on file with the secretary.

79496. If the secretary finds that a favorable vote has not been given as provided in this article, the secretary shall certify and declare all provisions of this chapter inoperative. The secretary may conduct other implementation referendum votes one year or more after the previous vote has been taken.

79497. (a) Prior to the referendum vote conducted by the secretary pursuant to this article, the proponents of the commission shall deposit with the secretary the amount that the secretary deems necessary to defray the expenses of preparing the necessary lists and information and conducting the vote.

(b) Any funds not used in carrying out this article shall be returned to the proponents of the commission who deposited the funds with the secretary.

(c) Upon establishment of the commission, the commission may reimburse the proponents of the commission for any funds deposited with the secretary that were used in carrying out this article, and for any legal expenses and costs incurred in establishing the commission.

79498. Upon certification of the commission, the secretary shall contact all producers by mail or call meetings of producers for the purpose of nominating and electing persons to the commission. All producers on the secretary's list shall be given written notice of the meetings at least 10 days prior to the meeting date.

79499. Subsequent to the first election of members and alternate members of the commission pursuant to this chapter, persons to be elected to the commission shall be selected pursuant to nomination and election procedures established by the commission with the concurrence of the secretary.

Article 6. Assessments and Records

79501. (a) The commission shall establish the assessment for the marketing season not later than May 1 of each year, or as soon thereafter as possible. The assessment shall not be more than six-tenths of one cent ($0.006) per dollar of gross sales.

(b) The commission may establish an assessment rate that is different for various classes of trade, including, but not limited to, different rates for retail sales than for wholesale sales, provided that rate does not exceed the maximum assessment authorized in subdivision (a).

79502. This chapter does not apply to nursery products produced only for a producer's home use unless the use shall constitute a transfer of title between separate business entities held by a single owner.

79503. Any person requesting an exemption from this chapter shall file an affidavit with the commission attesting that he or she is not a producer, as defined in Section 79429, or produces nursery products only for his or her own home use without transfer of title between entities as specified in Section 79502. The affidavit shall contain all the information required by the commission. The commission shall review the affidavit, conduct any additional investigation it deems appropriate, and approve or deny the affidavit.

79504. Every person who produces nursery products for market, whether or not the nursery products are valued at more than the gross dollar value established pursuant to Section 79429, shall keep a complete and accurate record of the nursery products produced and sold and aggregated data on its customers and trading partners classified into statistical summary information in categories prescribed by the commission, and shall submit the records to the commission upon request in the time and manner specified by the commission. The records shall be in simple form and contain the information that the commission prescribes. The records shall be preserved by the person producing nursery products for a period of three years and shall be offered and submitted for inspection at any reasonable time upon written demand of the commission or its duly authorized agent.

79505. (a) All information obtained by the commission or the secretary from producers and other persons required to keep and

submit records pursuant to this article shall be confidential and shall not be disclosed except when required by a court order after a hearing in a judicial proceeding involving this chapter.

(b) In addition, and notwithstanding any other provision of law, all proprietary or trade secret information developed or gathered pursuant to this chapter, including, but not limited to, the names and addresses of persons subject to this chapter, individual quantities produced or sold, prices paid, and the products of research obtained by the commission, or by the department on behalf of the commission, from any source is confidential, shall not be considered a public record as that term is defined in Section 6252 of the Government Code, and shall not be disclosed by the commission or the secretary except when required by a court order after a hearing in a judicial proceeding involving this chapter.

(c) Information on volume shipments, crop value, and any other related information that is required for reports to governmental agencies, financial reports to the commission, or aggregate sales and inventory information, and any other information that gives only totals, but excludes individual information, may be disclosed by the commission in its sole discretion.

79506. Any assessment that is levied as provided for in this chapter is a personal debt of every person assessed.

79507. Every producer shall be a trustee of the assessments owed to the commission until they are paid to the commission at the time and in the manner prescribed by the commission. Title to the assessments shall pass immediately to the commission upon the sale of nursery products resulting in an assessment, and the producer shall hold the assessments in trust for the benefit of the commission and shall remit them, with assessment reports, in the time and manner specified by the commission.

79508. When the producer is a corporation, limited liability company, general, limited, or limited liability partnership, or trust, all of the directors and officers of the corporation, all of the members and managers of the limited liability company, all of the general and limited partners in the partnership, and all of the trustees of the trust, in their capacity as individuals shall be included, and any liability for violating this chapter, including, but not limited to, failing to pay assessments or file required reports, shall also include identical liability upon each director and officer of the corporation, each member and manager of the limited

liability company, each general, limited, and limited liability partner in the partnership, and each trustee of the trust.

79509. Any person who fails to file a return or pay any assessment within the time required by the commission shall pay to the commission a penalty of 10 percent of the amount of the assessment determined to be due, and, in addition, shall pay 1.5 percent interest per month on the unpaid balance.

79510. In addition to any other penalty imposed, the commission may require any person who fails to pay an assessment or related charge pursuant to this article to furnish and maintain a surety bond in a form and amount, and for a period of time, specified by the commission as assurance that all payments to the commission will be made when due.

Article 7. Violations

79511. All violations of this chapter shall be prosecuted in accordance with the provisions of this article and, as appropriate, Sections 79509 and 79510.

79512. A civil penalty not exceeding one thousand dollars ($1,000) may be levied by the commission upon a person who does any of the following:

(a) Willfully renders or furnishes a false report, statement, or record required by the commission.

(b) Fails to render or furnish a report, statement, or record required by the commission.

(c) Secretes, destroys, or alters records required to be kept under this chapter.

79513. The commission shall establish procedures for the purpose of according individuals aggrieved by its actions or determinations an informal hearing before the commission or before a committee of the commission designated for that purpose. Appeals from decisions of the commission may be made to the secretary. The determination of the secretary shall be subject to judicial review upon petition filed with the appropriate superior court.

79514. (a) The commission may commence civil actions and utilize all remedies provided in law or equity for the collection of assessments and civil penalties and for the obtaining of injunctive relief or specific performance regarding this chapter and the

regulations adopted pursuant to this chapter. A court shall issue to the commission any requested writ of attachment or injunctive relief upon a prima facie showing by verified complaint that a named defendant has violated this chapter or any other regulation of the commission, including, but not limited to, the nonpayment of assessments. No bond shall be required to be posted by the commission as a condition for the issuance of any writ of attachment or injunctive relief.

(b) A writ of attachment shall be issued pursuant to Chapter 5 (commencing with Section 485.010) of Title 6.5 of Part 2 of the Code of Civil Procedure, except that the showing specified in Section 485.010 of the Code of Civil Procedure is not required. Injunctive relief shall be issued pursuant to Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the showing of irreparable harm or inadequate remedy at law specified in Sections 526 and 527 of the Code of Civil Procedure is not required.

(c) Upon entry of any final judgment on behalf of the commission against any defendant, the court shall enjoin the defendant from conducting any type of business regarding nursery products until there is full compliance and satisfaction of the judgment. Upon a favorable judgment for the commission, it shall be entitled to receive reimbursement for any reasonable attorney's fees and other actual related costs. Venue for these actions may be established at the domicile or place of business of the defendant or in the county of the principal office of the commission. The commission may be sued only in the county of its principal office.

79515. Any action by the commission for any violation of this chapter shall be commenced within two years from the date of discovery of the alleged violation. Any action against the commission by any person shall be commenced within two years from the date of the act of which the person complains.

79516. The termination of this chapter shall not affect or waive any right, duty, obligation, or liability that has arisen or that may thereafter arise in connection with this chapter, release or extinguish any violation of this chapter, or affect or impair any right or remedies of the commission with respect to any violation.

Article 8. Continuation or Suspension and Termination

79521. In the fifth year of operation of this chapter, and every five years thereafter, the secretary shall hold a hearing to determine whether the operation of this chapter should be continued. If the secretary finds after the hearing that a substantial question exists among eligible producers regarding whether the operation of this chapter should be continued, the secretary shall submit the chapter to a reapproval referendum. If a reapproval referendum is required, the operation of this chapter shall be continued in effect if the secretary finds that a majority of the eligible producers voting in the referendum voted in favor of continuing this chapter. No bond or security shall be required for a referendum pursuant to this section.

79522. If the secretary finds after conducting a hearing that no substantial question exists, or after a referendum that a favorable vote has been given, the secretary shall so certify and this chapter shall remain operative. If the secretary finds that a favorable vote has not been given after a referendum, he or she shall so certify and declare the operation of this chapter and the commission suspended upon the expiration of the then current marketing season. Thereupon, the operations of the commission shall be concluded and funds distributed in the manner provided in this article.

79523. (a) Upon a finding by a two-thirds vote of the commission that the operation of this chapter has not tended to effectuate its declared purposes, the commission may recommend to the secretary that the operation of this chapter be suspended. However, any suspension shall not become effective until the expiration of the then current marketing season.

(b) The secretary shall, upon receipt of the recommendation, or may, after a public hearing to review a petition filed with him or her requesting a suspension signed by 15 percent of the producers by number who produced and sold not less than 15 percent of the total value of nursery products in the immediately preceding marketing season, hold a referendum among producers to determine if the operations of the commission shall be suspended. However, the secretary shall not hold a referendum as a result of the petition unless the petitioner shows by a preponderance of the evidence that this chapter has not tended to effectuate its declared purposes.

(c) The secretary shall establish a referendum period, which shall not be less than 10 days or more than 60 days in duration. The secretary may prescribe additional procedures as may be necessary to conduct the referendum. At the close of the established referendum period, the secretary shall tabulate the ballots filed during the period. If at least 40 percent of the total number of producers from the list established by the secretary participate in the referendum, the secretary shall suspend the operation of this chapter if he or she finds either one of the following has occurred:

(1) Sixty-five percent or more of the producers who voted in the referendum voted in favor of suspension, and the producers so voting sold a majority of the total value of nursery products in the preceding marketing season by all of the producers who voted in the referendum.

(2) A majority of the producers who voted in the referendum voted in favor of suspension, and the producers so voting sold 65 percent or more of the total value of nursery products in the preceding marketing season by all of the producers who voted in the referendum.

79524. After the effective date of suspension of this chapter, the operation of the commission shall be concluded and all moneys held by the commission not required to defray the expenses of concluding and terminating operations of the commission shall be returned on a pro rata basis to all persons from whom assessments were collected in the immediately preceding marketing season. However, if the commission finds that the amounts returnable are so small as to make impractical the computation and remitting of the prorate refund to these persons, any funds remaining after payment of all expenses of winding up and terminating operations shall be withdrawn from the approved depository and paid into an appropriate state or federal program conducting or funding activities related to the subject matter of this chapter, or to a private nonprofit organization which has received tax exempt status under Section 501(c)(3) of the Internal Revenue Code and which benefits the California nursery industry.

79525. Upon suspension of the operation of this chapter, the commission shall mail a copy of the notice of suspension to all eligible producers affected by the suspension whose names and addresses are on file.

SEC. 2. The Legislature finds and declares that Section 1 of this act, which adds Section 79505 to the Food and Agricultural Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to allow the California Nursery Producers Commission to fully accomplish its goals, it is imperative to protect the interests of those persons submitting information to the commission to ensure that any personal or sensitive business information that this act requires those persons to submit is protected as confidential information.

Approved _____, 2010

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Governor