

Introduced by Senator Hernandez

February 18, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

SB 625, as introduced, Hernandez. California Nursery Producers Commission.

(1) Existing law establishes in state government the California Nursery Producers Commission with a prescribed membership, and specifies the powers, duties, and responsibilities of the commission. The commission is authorized, subject to the approval of eligible producers, by referendum, to carry out programs of outreach, education, promotion, marketing, and research relating to nursery products, to levy an annual assessment, not to exceed a specified amount, on producers of nursery products, and to authorize the expenditure of those funds for purposes of implementing and administering the bill's provisions, thereby making an appropriation.

This bill would repeal these provisions and reestablish the California Nursery Producers Commission with the same membership, powers, duties and responsibilities. The bill would not, except as necessary to conduct an election, become operative until eligible producers, by referendum, vote in favor of these provisions, as prescribed.

(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.

The bill would make legislative findings to that effect.

(3) This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.

State-mandated local program: no.

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

1 SECTION 1. Chapter 27 (commencing with Section 79401)
2 of Part 2 of Division 22 of the Food and Agricultural Code is
3 repealed.

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

6
7 CHAPTER 27. CALIFORNIA NURSERY PRODUCERS COMMISSION

8
9 Article 1. Declaration and General Provisions

10
11 79401. The production of nursery products constitutes an
12 important industry of this state that provides substantial and
13 necessary revenues for the state, products that are a foundation for
14 its residents' food supply, and employment for its residents.

15 79402. The maintenance of the nursery industry of California
16 is necessary to assure the public and the state's and nation's crop
17 agriculture industry of a continuous supply of vital nursery products
18 and the maintenance of needed levels of income for those engaged
19 in the nursery industry and in its supplier, distribution, and related
20 service chain.

21 79403. The production of nursery products in California is
22 currently the state's number two agricultural crop with 2008 farm
23 gate sales of four billion dollars (\$4,000,000,000) and has the
24 potential to become the leading segment of the state's agricultural
25 industry. To realize this potential, there is a need to engage in
26 research beneficial to the industry, to educate the public relative
27 to nursery products, and to promote and market nursery products.
28 The activities made possible by the establishment of the

1 commission will meet these needs and further the interests of the
2 industry and the state.

3 79404. The nursery industry has been negatively impacted by
4 invasive pests and diseases that also adversely affect the state's
5 environment, urban quality, and agricultural production. The
6 activities authorized by this commission will improve the quality
7 of nursery products and limit these negative impacts.

8 79405. The establishment of the commission is necessary for
9 the efficient development and management of a research, public
10 education, and marketing program that will enhance the reputation
11 of the California nursery industry, create a more receptive
12 environment for the industry and its products, aid its growth at
13 both wholesale and retail, and increase competitiveness of the
14 California nursery industry within the national and international
15 marketplace. In addition, the commission is necessary to carry out
16 the California nursery industry's commitment to responsible
17 stewardship, environmental protection, and increasingly efficient
18 cultural practices.

19 79406. (a) The Legislature finds and declares that the
20 commission is intended to operate in conjunction with other
21 nursery-related laws and programs in the state, including, but not
22 limited to, the licensing laws and regulations applicable to nurseries
23 (Chapter 1 (commencing with Section 6701) of Part 3 of Division
24 4), the inspection and cleanliness laws applicable to nurseries
25 (Article 1 (commencing with Section 6901) of Chapter 2 of Part
26 3 of Division 4), the shipment and pest certification laws applicable
27 to nurseries (Article 2 (commencing with Section 6921) and Article
28 4 (commencing with Section 6961) of Chapter 2 of Part 3 of
29 Division 4), the grades and standards laws and regulations
30 applicable to nurseries (Chapter 5 (commencing with Section
31 53301) of Division 18), and specific nursery stock programs such
32 as the California Grape Rootstock Improvement Commission
33 (Chapter 12.6 (commencing with Section 74701)).

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

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

1 79407. The Legislature further finds and declares that the
2 programs specified in Section 79406, including this commission,
3 greatly benefit the nursery industry, and as such, advance the
4 interests of the State of California by providing substantial
5 employment for the state's citizens, producing needed tax and fee
6 revenues for the support of state and local government, encouraging
7 responsible stewardship of valuable agricultural resources and the
8 environment, and producing substantial quantities of nursery
9 products for the state, nation, and world.

10 79408. The successes that the nursery industry of California
11 has achieved have resulted from a commitment to industry-funded
12 research that has led to significant improvements in the quality
13 and quantity of the nursery products available to consumers and
14 increasingly more efficient and environmentally protective cultural
15 practices. The establishment of the commission will continue and
16 enhance this research effort and move the nursery industry toward
17 its potential, resulting in increased consumer value and enhanced
18 grower returns.

19 79409. The production of nursery products in this state is
20 hereby declared to be affected with a public interest. This chapter
21 is enacted in the exercise of the police power of this state for the
22 purposes of protecting the health, peace, safety, and general welfare
23 of the people of this state.

24 79410. Opportunity exists for continued growth and expansion
25 of the nursery industry by creating new markets. The success of
26 such an expansion program is uniquely dependent upon effective
27 research and public education, since the creation of new markets
28 is essentially a matter of educating and informing people of the
29 use, value, and availability of nursery products and enhancing the
30 reputation of the California nursery products industry. The
31 expansion of the nursery industry also provides an important and
32 expanding source of jobs for many people in this state, including
33 many residing in historically depressed areas of the state, and it
34 serves to ensure the preservation of an agrarian society. The
35 expansion also provides pathways for the unemployed, the poor,
36 unskilled laborers, rehabilitated inmates, and other disadvantaged
37 groups to learn valuable professional nursery skills and obtain
38 seasonal or permanent employment with career potential.

39 79411. The commission's activities are necessary for the
40 efficient development of a national and international program and

1 exists as an integral part of a broader framework of state and federal
2 statutes and regulations designed to: collectively enhance the
3 quality and reputation of California nursery products; create a more
4 receptive environment for nursery products; improve the capability
5 of nursery products producers to function within the overall
6 regulatory environment; increase the competitiveness of the nursery
7 products industry within the national and international marketplace;
8 implement the industry's commitment to responsible stewardship
9 of agricultural land and the environment and increasingly efficient
10 cultural practices; and further the goals and interests of the state
11 by preserving the economic well-being of the agricultural economy.

12 79412. The commission form of administration created by this
13 chapter is uniquely situated to provide those engaged in the
14 production of nursery products the opportunity to avail themselves
15 of the benefits of collective action in the broad fields of research,
16 education, and the development, maintenance, and expansion of
17 markets.

18 79413. No action taken by the commission, or by any individual
19 in accordance with this chapter or with the regulations adopted
20 under this chapter, is a violation of the Cartwright Act (Chapter 2
21 (commencing with Section 16700) of Part 2 of Division 7 of the
22 Business and Professions Code), the Unfair Practices Act (Chapter
23 4 (commencing with Section 17000) of Part 2 of Division 7 of the
24 Business and Professions Code), or any statutory or common law
25 against monopolies or combinations in restraint of trade. The
26 Legislature intends this program to be among those contemplated
27 by the United States Congress in the enactment of Section 610(i)
28 of Title 7 of the United States Code.

29 79414. It is hereby declared as a matter of legislative
30 determination that commission members and alternates are intended
31 to represent and further the interest of a particular industry
32 concerned and that this representation and furtherance is intended
33 to serve a public interest. Accordingly, the Legislature finds that
34 with respect to persons who are elected or appointed to the
35 commission, the particular industry concerned is tantamount to
36 and constitutes the public generally within the meaning of Section
37 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.

1 79428. “Person” means any individual, partnership, corporation,
2 limited liability company or partnership, firm, company, or other
3 entity doing business in California.

4 79429. “Producer” means any person that operates under a
5 California state nursery license (producer category), and that
6 produces, or causes to be produced, nursery products for the
7 purposes of transferring title to another person. “Producer” does
8 not include a licensed producer nursery that produced and sold
9 nursery products for a gross dollar value of less than two million
10 five hundred thousand dollars (\$2,500,000) in the preceding
11 marketing season.

12 79430. “Nursery products” means any plant for planting,
13 propagation, or ornamentation, but does not include flowers as
14 defined in Section 77911 or grape rootstock as defined in Section
15 74718.

16 79431. “Research” means any research relating to invasive
17 pests, the production, harvest, postharvest handling, or marketing
18 of nursery products, nursery product components, or practices
19 employed by nurseries, and research relating to public education
20 regarding nurseries and nursery products, including, but not limited
21 to, basic and applied research.

22 79432. “Secretary” means the Secretary of Food and
23 Agriculture.

24 79433. “Sell” or “sold” means to transfer or cause the transfer
25 of title to nursery products for valuable consideration.

26
27 Article 3. California Nursery Producers Commission
28

29 79441. (a) There is in the state government the California
30 Nursery Producers Commission. The commission shall be
31 composed of 14 producers nominated and elected by and from
32 producers, and one public member.

33 (b) Eligible persons from within the respective districts shall
34 elect four producers from District 1, four producers from District
35 2, and four producers from District 3. All eligible persons shall
36 elect two members at large.

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

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

4 79442. (a) The secretary may require the commission to correct
5 or cease any existing activity or function that is determined by the
6 secretary not to be in the public interest or that is in violation of
7 this chapter.

8 (b) If the commission refuses or fails to cease those activities
9 or functions or to make the corrections as required by the secretary,
10 the secretary may, upon written notice, suspend all or a portion of
11 the activities or functions of the commission until the time that the
12 cessation or correction of activities or functions as required by the
13 secretary has been accomplished by the commission.

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

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

27 79443. When the secretary is required to concur in a decision
28 of the commission, the secretary shall give his or her response to
29 the commission within 15 working days from notification of the
30 decision. The secretary shall set forth in writing with specificity
31 the reasons for any refusal to concur. The secretary's response
32 may be a requirement that additional information be provided.

33 79444. The commission shall reimburse the secretary for all
34 expenditures incurred by the secretary in carrying out his or her
35 duties and responsibilities pursuant to this chapter. However, a
36 court may, if it finds that the secretary acted arbitrarily or
37 capriciously in restricting the activities or functions of the
38 commission, relieve the commission of the responsibility for
39 payment of the secretary's legal costs with regard to that action.

1 79445. Except for ex officio members, an alternate for each
2 member shall be nominated and elected, and for the public member
3 appointed, in the same manner as the member. An alternate shall,
4 in the absence of the member for whom he or she is an alternate,
5 serve in place of the member and shall have, and be able to
6 exercise, all the rights, privileges, and powers of the member when
7 serving on the commission. In the event of a change in status
8 making a member ineligible to serve, or due to death, removal,
9 resignation, or disqualification of a member, the alternate shall act
10 as a member of the commission for the unexpired portion of the
11 term.

12 79446. Except as provided in Section 79441, any vacancy on
13 the commission occurring by the failure of any person elected to
14 or serving on the commission as an alternate to continue in his or
15 her position due to a change in status making him or her ineligible
16 to serve, or due to death, removal, or resignation, shall be filled
17 by another eligible person for the unexpired portion of the term
18 by a majority vote of the members of the commission. The person
19 shall fulfill all the qualifications set forth in this article as required
20 for the person whose office he or she is to occupy.

21 79447. Any vacancy on the commission occurring by the failure
22 of the public member to continue in his or her position due to a
23 change in status making him or her ineligible to serve, or due to
24 death, removal, resignation, or disqualification, may be filled upon
25 appointment by the secretary, from nominees recommended by
26 the commission, of another eligible person for the unexpired
27 portion of the term. The person shall fulfill all the qualifications
28 set forth in this article as required for the member whose office he
29 or she is to occupy.

30 79448. Any producer member and his or her alternate on the
31 commission shall be an individual producer or an employee or
32 representative of a producer that has a financial interest in
33 producing nursery products or causing nursery products to be
34 produced. The qualifications of producer members and their
35 alternates shall be maintained during their entire term of office.
36 The absence of any producer member from two consecutive
37 meetings or lapse in qualifications shall be grounds for the
38 commission to declare the seat vacant.

39 79449. The public member and his or her alternate shall not
40 have any financial interest in the nursery industry. The public

1 member and his or her alternate shall have all the powers, rights,
2 and privileges of any other member or alternate, respectively, on
3 the commission, except that the public member and his or her
4 alternate member shall not have a vote on issues regarding the
5 assessments established pursuant to Article 6 (commencing with
6 Section 79501).

7 79450. Commission members and alternates shall serve
8 three-year terms and until their successors are elected, and
9 qualified, except, that of the first members of the commission,
10 one-third shall serve one year, one-third shall serve two years, and
11 one-third shall serve three years. The determination of the term of
12 each member shall be made by lot. The public member and his or
13 her alternate shall serve three-year terms and until their successors
14 are appointed and qualified.

15 79451. The commission may sue and be sued regarding any
16 matter related to the purposes of this chapter and contract and be
17 contracted with.

18 79452. A majority of the members of the commission shall
19 constitute a quorum of the commission for the transaction of
20 business. The vote of a majority of the members present at a
21 meeting at which there is a quorum constitutes the act of the
22 commission. The commission may continue to transact business
23 at a meeting at which a quorum is initially present, notwithstanding
24 the withdrawal of members, provided any action is approved by
25 the requisite majority of the required quorum.

26 79453. The secretary or his or her representatives shall be
27 notified and may attend each meeting of the commission and any
28 committee meetings of the commission. However, the secretary
29 or his or her representative is not entitled to attend an executive
30 session of the commission or a committee of the commission called
31 for the purpose of discussing potential or actual litigation against
32 the department.

33 79454. No member or alternate of the commission or member
34 of a committee established by the commission who is a nonmember
35 of the commission shall receive a salary. Each member of the
36 commission and each alternate serving in place of a member, except
37 ex officio members who are officers or employees of a public
38 agency, and each member of a committee established by the
39 commission who is a nonmember of the commission, may receive
40 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

1 the commission. These actions of the commission shall not be
2 subject to Chapter 3.5 (commencing with Section 11340) of Part
3 1 of Division 3 of Title 2 of the Government Code.

4 79463. The commission may administer and enforce this
5 chapter and do and perform all acts and exercise all powers
6 incidental to, or in connection with, or deemed reasonably
7 necessary for, proper or advisable effectuation of the purposes of
8 this chapter.

9 79464. The commission may appoint its own officers, including
10 a chairperson, one or more vice chairpersons, and other officers
11 as it deems necessary. The officers have the powers and duties
12 delegated to them by the commission.

13 79465. (a) The commission may employ a person to serve at
14 the pleasure of the commission as president of the commission,
15 and other personnel, including legal counsel of its choice, necessary
16 to carry out this chapter. If any person employed by the commission
17 engages in any conduct that the secretary determines is not in the
18 public interest or that is in violation of this chapter, the secretary
19 shall notify the commission of the conduct and request that
20 corrective and, if appropriate, disciplinary action, be taken by the
21 commission. If the commission fails or refuses to correct the
22 situation or to take disciplinary action satisfactory to the secretary,
23 the secretary may suspend or discharge the person.

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

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

31 79466. The commission may fix the compensation for all
32 employees of the commission.

33 79467. The commission may appoint committees composed
34 of both members and nonmembers of the commission to advise
35 the commission in carrying out this chapter.

36 79468. The commission may establish offices and incur
37 expenses, enter into any and all contracts and agreements, create
38 liabilities, develop, own, and control the use of any intellectual
39 property, and borrow funds in advance of receipt of assessments
40 as may be necessary in the opinion of the commission for the

1 proper administration and enforcement of this chapter and the
2 performance of its duties.

3 79469. The commission shall keep accurate books, records,
4 and accounts of all of its dealings, which shall be subject to an
5 annual audit by an auditing firm selected by the commission with
6 the concurrence of the secretary. A summary of the audit shall be
7 reported to all persons subject to this chapter, a copy of which
8 shall also be submitted to the department. In addition, the secretary,
9 as he or she determines necessary, may conduct or cause to be
10 conducted a fiscal and compliance audit of the commission. Except
11 in the first year of operation, the commission shall prepare and
12 make available an annual report within 90 days of the beginning
13 of the fiscal year of all activities and the financial status of the
14 commission to all persons subject to this chapter.

15 79470. The commission may present facts to, and negotiate
16 with, local, state, federal, and foreign agencies and governments
17 on matters that affect the California nursery industry, including,
18 but not limited to, the maintenance and expansion of present
19 markets, the creation of new and larger markets for nursery
20 products, invasive pest issues, plant health, interstate and foreign
21 export requirements, registration of pesticides, actions applicable
22 to the state and federal environmental laws and regulations,
23 applicable governmental regulations and statutes, and international
24 trade agreements.

25 79471. The commission may conduct outreach, advertise, and
26 educate and instruct the public and the retail and wholesale trade
27 with respect to the quality, features, uses, and value of nursery
28 products and the practices and methods of production used by
29 nurseries.

30 79472. The commission may conduct outreach and educate
31 and instruct the wholesale and retail trade, including, but not
32 limited to, their physical and electronic channels of distribution to
33 markets with respect to proper methods of handling and selling
34 nursery products, and conduct consumer, trade, and trading partner
35 surveys and analyses.

36 79473. The commission may conduct, and contract with others
37 to conduct, research, including the study, analysis, dissemination,
38 and accumulation of information obtained directly or from research
39 or elsewhere, with respect to cultural, production and postharvest
40 practices, and the sourcing, marketing and distribution of nursery

1 products. The results of any research conducted by or on behalf
2 of the commission may be used by the commission in any way it
3 deems appropriate.

4 79474. The commission may contract to receive and render
5 services in formulating and conducting plans and programs and
6 enter into any other contracts or agreements that the commission
7 deems necessary to carry out this chapter.

8 79475. The commission may accept contributions of, or match
9 private, state, or federal funds, and employ or make contributions
10 of funds to other persons or local, state, or federal agencies for
11 proper or advisable effectuation of the purposes of this chapter.

12 79476. In its discretion, the commission may cooperate with
13 or provide funding to other private or governmental entities in the
14 resolution of emergencies arising in the industry and impacting
15 the health and safety of the public or to maintain the continued
16 stability and reputation of the nursery industry.

17 79477. The commission may collect information, including,
18 but not limited to, industry crop statistics, identity and size of
19 markets, and trading partners, and publish and distribute without
20 charge, a bulletin or other communication to producers of nursery
21 products.

22 79478. The commission shall establish an assessment rate to
23 be paid by producers to defray operating costs of the commission.

24 79479. The commission shall establish an annual budget
25 according to generally accepted accounting practices. The budget
26 shall be concurred in by the secretary prior to disbursement of
27 funds, except for disbursements made pursuant to Section 79466.

28 79480. The commission shall submit to the secretary for his
29 or her concurrence an annual statement of contemplated activities
30 authorized pursuant to this chapter.

31 79481. The commission may investigate and prosecute civil
32 violations of this chapter and file complaints with appropriate law
33 enforcement agencies or officers for suspected criminal violations
34 of this chapter.

35 79482. The commission may appoint any person to serve as
36 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.

1 (b) A majority of the producers who voted in the referendum
2 voted in favor of this chapter, and the producers so voting marketed
3 65 percent or more of the total value of nursery products marketed
4 in the preceding marketing season by all of the producers voting
5 in the referendum.

6 79493. The secretary shall establish a period in which to
7 conduct the referendum, which shall not be less than 10 days or
8 more than 60 days in duration, and may prescribe additional
9 procedures necessary to conduct the referendum. If the initial
10 period established is less than 60 days, the secretary may extend
11 the period. However, the total referendum period may not exceed
12 60 days.

13 79494. Nonreceipt of a ballot by an eligible producer shall not
14 invalidate a referendum.

15 79495. If the secretary finds that a favorable vote has been
16 given as provided in this article, the secretary shall certify and give
17 notice of the favorable vote to all affected producers whose names
18 and addresses are on file with the secretary.

19 79496. If the secretary finds that a favorable vote has not been
20 given as provided in this article, the secretary shall certify and
21 declare all provisions of this chapter inoperative. The secretary
22 may conduct other implementation referendum votes one year or
23 more after the previous vote has been taken.

24 79497. (a) Prior to the referendum vote conducted by the
25 secretary pursuant to this article, the proponents of the commission
26 shall deposit with the secretary the amount that the secretary deems
27 necessary to defray the expenses of preparing the necessary lists
28 and information and conducting the vote.

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

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

37 79498. Upon certification of the commission, the secretary
38 shall contact all producers by mail or call meetings of producers
39 for the purpose of nominating and electing persons to the
40 commission. All producers on the secretary's list shall be given

1 written notice of the meetings at least 10 days prior to the meeting
2 date.

3 79499. Subsequent to the first election of members and alternate
4 members of the commission pursuant to this chapter, persons to
5 be elected to the commission shall be selected pursuant to
6 nomination and election procedures established by the commission
7 with the concurrence of the secretary.

8
9 Article 6. Assessments and Records
10

11 79501. (a) The commission shall establish the assessment for
12 the marketing season not later than May 1 of each year, or as soon
13 thereafter as possible. The assessment shall not be more than
14 six-tenths of one cent (\$0.006) per dollar of gross sales.

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

20 79502. This chapter does not apply to nursery products
21 produced only for a producer's home use unless the use shall
22 constitute a transfer of title between separate business entities held
23 by a single owner.

24 79503. Any person requesting an exemption from this chapter
25 shall file an affidavit with the commission attesting that he or she
26 is not a producer, as defined in Section 79429, or produces nursery
27 products only for his or her own home use without transfer of title
28 between entities as specified in Section 79502. The affidavit shall
29 contain all the information required by the commission. The
30 commission shall review the affidavit, conduct any additional
31 investigation it deems appropriate, and approve or deny the
32 affidavit.

33 79504. Every person who produces nursery products for market,
34 whether or not the nursery products are valued at more than the
35 gross dollar value established pursuant to Section 79429, shall
36 keep a complete and accurate record of the nursery products
37 produced and sold and aggregated data on its customers and trading
38 partners classified into statistical summary information in
39 categories prescribed by the commission, and shall submit the
40 records to the commission upon request in the time and manner

1 specified by the commission. The records shall be in simple form
2 and contain the information that the commission prescribes. The
3 records shall be preserved by the person producing nursery products
4 for a period of three years and shall be offered and submitted for
5 inspection at any reasonable time upon written demand of the
6 commission or its duly authorized agent.

7 79505. (a) All information obtained by the commission or the
8 secretary from producers and other persons required to keep and
9 submit records pursuant to this article shall be confidential and
10 shall not be disclosed except when required by a court order after
11 a hearing in a judicial proceeding involving this chapter.

12 (b) In addition, and notwithstanding any other provision of law,
13 all proprietary or trade secret information developed or gathered
14 pursuant to this chapter, including, but not limited to, the names
15 and addresses of persons subject to this chapter, individual
16 quantities produced or sold, prices paid, and the products of
17 research obtained by the commission, or by the department on
18 behalf of the commission, from any source is confidential, shall
19 not be considered a public record as that term is defined in Section
20 6252 of the Government Code, and shall not be disclosed by the
21 commission or the secretary except when required by a court order
22 after a hearing in a judicial proceeding involving this chapter.

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

29 79506. Any assessment that is levied as provided for in this
30 chapter is a personal debt of every person assessed.

31 79507. Every producer shall be a trustee of the assessments
32 owed to the commission until they are paid to the commission at
33 the time and in the manner prescribed by the commission. Title to
34 the assessments shall pass immediately to the commission upon
35 the sale of nursery products resulting in an assessment, and the
36 producer shall hold the assessments in trust for the benefit of the
37 commission and shall remit them, with assessment reports, in the
38 time and manner specified by the commission.

39 79508. When the producer is a corporation, limited liability
40 company, general, limited, or limited liability partnership, or trust,

1 all of the directors and officers of the corporation, all of the
2 members and managers of the limited liability company, all of the
3 general and limited partners in the partnership, and all of the
4 trustees of the trust, in their capacity as individuals shall be
5 included, and any liability for violating this chapter, including, but
6 not limited to, failing to pay assessments or file required reports,
7 shall also include identical liability upon each director and officer
8 of the corporation, each member and manager of the limited
9 liability company, each general, limited, and limited liability
10 partner in the partnership, and each trustee of the trust.

11 79509. Any person who fails to file a return or pay any
12 assessment within the time required by the commission shall pay
13 to the commission a penalty of 10 percent of the amount of the
14 assessment determined to be due, and, in addition, shall pay 1.5
15 percent interest per month on the unpaid balance.

16 79510. In addition to any other penalty imposed, the
17 commission may require any person who fails to pay an assessment
18 or related charge pursuant to this article to furnish and maintain a
19 surety bond in a form and amount, and for a period of time,
20 specified by the commission as assurance that all payments to the
21 commission will be made when due.

22 23 Article 7. Violations 24

25 79511. All violations of this chapter shall be prosecuted in
26 accordance with the provisions of this article and, as appropriate,
27 Sections 79509 and 79510.

28 79512. A civil penalty not exceeding one thousand dollars
29 (\$1,000) may be levied by the commission upon a person who
30 does any of the following:

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

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

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

37 79513. The commission shall establish procedures for the
38 purpose of according individuals aggrieved by its actions or
39 determinations an informal hearing before the commission or
40 before a committee of the commission designated for that purpose.

1 Appeals from decisions of the commission may be made to the
2 secretary. The determination of the secretary shall be subject to
3 judicial review upon petition filed with the appropriate superior
4 court.

5 79514. (a) The commission may commence civil actions and
6 utilize all remedies provided in law or equity for the collection of
7 assessments and civil penalties and for the obtaining of injunctive
8 relief or specific performance regarding this chapter and the
9 regulations adopted pursuant to this chapter. A court shall issue
10 to the commission any requested writ of attachment or injunctive
11 relief upon a prima facie showing by verified complaint that a
12 named defendant has violated this chapter or any other regulation
13 of the commission, including, but not limited to, the nonpayment
14 of assessments. No bond shall be required to be posted by the
15 commission as a condition for the issuance of any writ of
16 attachment or injunctive relief.

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

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

36 79515. Any action by the commission for any violation of this
37 chapter shall be commenced within two years from the date of
38 discovery of the alleged violation. Any action against the
39 commission by any person shall be commenced within two years
40 from the date of the act of which the person complains.

1 79516. The termination of this chapter shall not affect or waive
2 any right, duty, obligation, or liability that has arisen or that may
3 thereafter arise in connection with this chapter, release or
4 extinguish any violation of this chapter, or affect or impair any
5 right or remedies of the commission with respect to any violation.
6

7 Article 8. Continuation or Suspension and Termination
8

9 79521. In the fifth year of operation of this chapter, and every
10 five years thereafter, the secretary shall hold a hearing to determine
11 whether the operation of this chapter should be continued. If the
12 secretary finds after the hearing that a substantial question exists
13 among eligible producers regarding whether the operation of this
14 chapter should be continued, the secretary shall submit the chapter
15 to a reapproval referendum. If a reapproval referendum is required,
16 the operation of this chapter shall be continued in effect if the
17 secretary finds that a majority of the eligible producers voting in
18 the referendum voted in favor of continuing this chapter. No bond
19 or security shall be required for a referendum pursuant to this
20 section.

21 79522. If the secretary finds after conducting a hearing that no
22 substantial question exists, or after a referendum that a favorable
23 vote has been given, the secretary shall so certify and this chapter
24 shall remain operative. If the secretary finds that a favorable vote
25 has not been given after a referendum, he or she shall so certify
26 and declare the operation of this chapter and the commission
27 suspended upon the expiration of the then current marketing season.
28 Thereupon, the operations of the commission shall be concluded
29 and funds distributed in the manner provided in this article.

30 79523. (a) Upon a finding by a two-thirds vote of the
31 commission that the operation of this chapter has not tended to
32 effectuate its declared purposes, the commission may recommend
33 to the secretary that the operation of this chapter be suspended.
34 However, any suspension shall not become effective until the
35 expiration of the then current marketing season.

36 (b) The secretary shall, upon receipt of the recommendation, or
37 may, after a public hearing to review a petition filed with him or
38 her requesting a suspension signed by 15 percent of the producers
39 by number who produced and sold not less than 15 percent of the
40 total value of nursery products in the immediately preceding

1 marketing season, hold a referendum among producers to determine
2 if the operations of the commission shall be suspended. However,
3 the secretary shall not hold a referendum as a result of the petition
4 unless the petitioner shows by a preponderance of the evidence
5 that this chapter has not tended to effectuate its declared purposes.

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

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

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

25 79524. After the effective date of suspension of this chapter,
26 the operation of the commission shall be concluded and all moneys
27 held by the commission not required to defray the expenses of
28 concluding and terminating operations of the commission shall be
29 returned on a pro rata basis to all persons from whom assessments
30 were collected in the immediately preceding marketing season.
31 However, if the commission finds that the amounts returnable are
32 so small as to make impractical the computation and remitting of
33 the prorated refund to these persons, any funds remaining after
34 payment of all expenses of winding up and terminating operations
35 shall be withdrawn from the approved depository and paid into an
36 appropriate state or federal program conducting or funding
37 activities related to the subject matter of this chapter, or to a private
38 nonprofit organization which has received tax exempt status under
39 Section 501(c)(3) of the Internal Revenue Code and which benefits
40 the California nursery industry.

1 79525. Upon suspension of the operation of this chapter, the
2 commission shall mail a copy of the notice of suspension to all
3 eligible producers affected by the suspension whose names and
4 addresses are on file.

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

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