

Assembly Bill No. 1976

Passed the Assembly August 31, 2016

Chief Clerk of the Assembly

Passed the Senate August 23, 2016

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2016, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 67039, 67051, 67052, 67052.3, 67053, 67054, 67059, 67081, and 67132 of, to add Sections 58853 and 63906 to, and to repeal Section 67051.1 of, the Food and Agricultural Code, relating to food and agriculture.

LEGISLATIVE COUNSEL'S DIGEST

AB 1976, Irwin. Food and agriculture: marketing advisory and promotional boards, councils, and commissions.

Existing law establishes the California Avocado Commission within the state government, and requires the commission to establish no fewer than 3 districts and no more than 5 districts within the state, each representing approximately the same percentage of avocado production in California. Existing law requires the commission to consist of a specified number of producers who are not handlers, based on the number of districts the commission establishes, 4 handlers who are elected on a statewide basis, one public member, and the Secretary of Food and Agriculture, and requires there to be 2 alternate handler members. Existing law requires a vacancy of a member position on the commission to be filled by the alternate member. Existing law authorizes certain handlers who handle a specified percentage of volume of avocados to appoint one handler member to the commission and the other handlers to nominate and elect the remaining handler members.

This bill would instead require that a vacancy of a member position be filled by a majority vote of the commission. The bill would decrease the number of handlers on the commission to 2 members and the number of alternate handler members to one member. The bill would remove the authorization for specified handlers to appoint a handler member.

Existing law requires producer members and alternate producer members, at the time of the election, to have a financial interest in producing, or causing to be produced, avocados for market within the district in which the producer stands for election. Existing law prohibits a producer who chooses to stand for election in a particular district from standing for election in any other

district for a period of 4 years from the date of his or her most recent election to the commission.

This bill would delete this prohibition on the producer. The bill would specify that, for these purposes, a producer or grower would not include a person who has an average annual production of less than 10,000 pounds of avocados in the 3 preceding marketing years. The bill would require that, to be nominated and elected to the commission, a handler or alternate handler handle no less than 1% of the total industry volume of avocados in the preceding marketing year.

Existing law provides that a quorum of the commission is 11 voting members if the commission consists of 3 or 5 districts, and is 10 voting members if the commission consists of 4 districts. Existing law authorizes the commission to recommend to the secretary that the operations of the commission be suspended upon a specified finding of 11 voting members if the commission consists of 3 or 5 districts, or 10 voting members if the commission consists of 4 districts.

This bill would instead provide that a quorum of the commission is 9 voting members if the commission consists of 3 or 4 districts, and is 10 voting members if the commission consists of 5 districts. The bill would make a similar change to the authorization of the commission to recommend suspension of its operations.

Existing law requires the secretary to establish a list of producers in each district and, in establishing the lists, requires handlers to file, within 90 days following receipt of a written request by the secretary, certain information about each producer from whom the handler purchased or handled avocados.

This bill would require handlers to file the information, including the grove location of each producer instead of district numbers, within 60 days.

Existing law, the California Marketing Act of 1937, authorizes the Secretary of Food and Agriculture to issue marketing orders which regulate producer marketing, the processing, distributing, or handling in any manner of any commodity by any and all persons that are engaged in the producer marketing, processing, distributing, or handling of the commodity within this state. The act requires that any marketing order issued pursuant to the act provide for the establishment of an advisory board to assist the secretary in the administration of any marketing order, as

prescribed. Existing law also establishes various commissions and councils to advance the interests of the state's agricultural and seafood industries to provide benefit to the entire industry and all the people of this state.

Existing law, the Bagley-Keene Open Meeting Act, requires, with specified exceptions, that all meetings of a state body, as defined, be open and public and all persons be permitted to attend any meeting of a state body. Existing law requires a state body subject to the open meeting requirements of the act that conducts a meeting or proceeding by teleconference to post agendas at all teleconference locations and requires each teleconference location to be accessible to the public. The act also requires the state body to provide an opportunity for members of the public to address the state body directly from any teleconference location.

This bill would require that, for a meeting held by teleconference by a marketing order advisory board or an agricultural or seafood industry council or commission, a member of the advisory board, council, or commission participating by teleconference be listed in the minutes of the meeting and would require the member to provide notice of his or her participation by teleconference at least 24 hours before the meeting. The bill would require the advisory board, council, or commission to designate a primary physical meeting location and would require at least one member of the advisory board, council, or commission to be in attendance at the primary physical meeting location. The bill would require the teleconference phone number and other specified information to be included in the agenda and would require the agenda to be open to the public. The bill would require the advisory board, council, or commission to adopt certain teleconferencing guidelines prior to holding a meeting by teleconference.

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.

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

SECTION 1. The Legislature finds that this bill is necessary because of the unique circumstances affecting members of entities authorized in Division 21 (commencing with Section 58001) and Division 22 (commencing with Section 63901) of the Food and Agricultural Code as a result of involvement in the production, processing, or handling of agricultural products.

SEC. 2. Section 58853 is added to the Food and Agricultural Code, to read:

58853. (a) Notwithstanding Section 11123 of the Government Code, all of the following shall apply to a meeting held by teleconference under this chapter by an advisory board:

(1) A member of the advisory board participating by teleconference shall be listed in the minutes of the meeting and shall provide notice of his or her participation by teleconference at least 24 hours before the meeting.

(2) The advisory board shall designate a primary physical meeting location where participants may physically attend the meeting and participate. At least one member of the advisory board shall be in attendance at the primary physical meeting location.

(3) The teleconference phone number, and, if applicable, the Internet Web site or other information indicating how the public can access the meeting remotely, shall be included in the agenda, which shall be available to the public.

(b) Nothing in this section shall exempt the advisory board from providing information regarding the physical location of an advisory board meeting or any teleconference participation information, including the identity of an advisory board member who might be participating by teleconference.

(c) Prior to holding a meeting by teleconference pursuant to this section, the advisory board shall adopt teleconferencing guidelines to address issues that include, but are not limited to, cancellations as a result of technical difficulties, ensuring transparency, and public participation.

SEC. 3. Section 63906 is added to the Food and Agricultural Code, to read:

63906. (a) Notwithstanding Section 11123 of the Government Code, all of the following shall apply to a meeting held by teleconference under this division by a commission or council:

(1) A member of the commission or council participating by teleconference shall be listed in the minutes of the meeting and shall provide notice of his or her participation by teleconference at least 24 hours before the meeting.

(2) The commission or council shall designate a primary physical meeting location where participants may physically attend the meeting and participate. At least one member of the commission or council shall be in attendance at the primary physical meeting location.

(3) The teleconference phone number, and, if applicable, the Internet Web site or other information indicating how the public can access the meeting remotely, shall be included in the agenda, which shall be available to the public.

(b) Nothing in this section shall exempt the commission or council from providing information regarding the physical location of a commission or council meeting or any teleconference participation information, including the identity of a commission or council member who might be participating by teleconference.

(c) Prior to holding a meeting by teleconference pursuant to this section, the commission or council shall adopt teleconferencing guidelines to address issues that include, but are not limited to, cancellations as a result of technical difficulties, ensuring transparency, and public participation.

SEC. 4. Section 67039 of the Food and Agricultural Code is amended to read:

67039. “Producer” or “grower” means any person who is engaged within this state in the business of producing, or causing to be produced, avocados for market. “Producer” or “grower” does not include any person who has an average annual production of less than 10,000 pounds of avocados in the three preceding marketing years.

SEC. 5. Section 67051 of the Food and Agricultural Code is amended to read:

67051. (a) There is in the state government the California Avocado Commission.

(b) The commission shall be composed of the following members:

(1) (A) If the commission consists of three districts, nine producers who are not handlers, three elected from each district.

(B) If the commission consists of four districts, eight producers who are not handlers, two elected from each district.

(C) If the commission consists of five districts, 10 producers who are not handlers, two elected from each district.

(2) Two avocado handlers elected on a statewide basis.

(3) One public member who shall be appointed to the commission by the secretary from nominees recommended by the commission.

(4) The secretary who shall be a nonvoting ex officio member of the commission.

SEC. 6. Section 67051.1 of the Food and Agricultural Code is repealed.

SEC. 7. Section 67052 of the Food and Agricultural Code is amended to read:

67052. (a) Each district shall have one alternate producer member, to be elected in the same manner as producer members.

(b) The alternate producer member shall, in the absence of a producer member from the same district, sit in place of the absent producer member on the commission and shall have, and be able to exercise, all the rights, privileges, and powers of the producer member when sitting on the commission.

SEC. 8. Section 67052.3 of the Food and Agricultural Code is amended to read:

67052.3. (a) There shall be one alternate handler member to be elected in the same manner as the handler members.

(b) The alternate handler member shall, in the absence of a handler member, sit in place of the absent handler member on the commission and shall have, and be able to exercise, all the rights, privileges, and powers of the handler member when sitting on the commission.

SEC. 9. Section 67053 of the Food and Agricultural Code is amended to read:

67053. (a) Any vacancy on the commission occurring by the failure of any person elected to the commission as a member or alternate member to continue in his or her position due to a change in status making him or her ineligible to serve, or through death, removal, or resignation, shall be filled, for the unexpired portion of the term, by a majority vote of the commission.

(b) Any person filling a vacant member or alternate member position shall meet all the qualifications set forth in this article as required for the member whose office he or she is to fill.

SEC. 10. Section 67054 of the Food and Agricultural Code is amended to read:

67054. (a) Producer members and alternate producer members on the commission shall have a financial interest in producing, or causing to be produced, avocados for market. In order to be elected a member or alternate member, a producer shall, at the time of the election, have a financial interest in the production of avocados within the district in which the producer stands for election.

(b) A producer may stand for election in any district in which the producer has a financial interest in the production of avocados.

(c) Handler members and the alternate handler members shall have a financial interest in handling avocados for markets. To be nominated and elected, a handler or alternate handler shall handle no less than 1 percent of the total industry volume of avocados in the preceding marketing year. Any handler elected to the commission pursuant to this section shall be required to maintain his or her eligibility under this section during his or her entire term of office.

(d) The public member shall not have any financial interest in the avocado industry. Except for the nomination of another public member, the public member and his or her alternate member on the commission shall have all the powers, rights, and privileges of any other member on the commission.

SEC. 11. Section 67059 of the Food and Agricultural Code is amended to read:

67059. Unless otherwise specified, a quorum of the commission shall be any nine voting members if the commission consists of three or four districts and any 10 voting members if the commission consists of five districts. The vote of a majority of members present at a meeting at which there is a quorum shall constitute the act of the commission.

SEC. 12. Section 67081 of the Food and Agricultural Code is amended to read:

67081. (a) The secretary shall establish a list of producers in each district. In establishing the lists, the secretary shall require that handlers in the state submit the names, mailing addresses, grove location, and handled volume of each producer from whom

they purchased or handled avocados in the preceding marketing season. The request for information from handlers shall be in writing and shall be filed by the handlers within 60 days following receipt of the written request.

(b) Any producer of avocados whose name does not appear upon the secretary's list of producers may have his or her name established on the list by filing with the commission a signed statement, identifying himself or herself as a producer. Failure to be on the list does not exempt the producer from paying assessments under this chapter.

SEC. 13. Section 67132 of the Food and Agricultural Code is amended to read:

67132. Upon the finding of nine voting members of the commission if the commission consists of three or four districts, or of 10 voting members of the commission if the commission consists of five districts, that this chapter has not tended to effectuate its declared purposes, the commission may recommend to the secretary that the operations of the commission shall be suspended, provided that the suspension shall not become effective until the expiration of the current marketing season. The secretary shall, upon receipt of the recommendation, or upon a petition filed with him or her requesting the suspension, signed by 15 percent of the producers by number who produced not less than 15 percent of the volume in the immediately preceding year, cause a referendum to be conducted among the listed producers to determine if the operation of this chapter and the operations of the commission shall be suspended, and shall establish a referendum period, which shall not be less than 10 days nor more than 60 days in duration. The secretary is authorized to prescribe any additional procedure 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, on a list established by the secretary marketing 40 percent of the total volume marketed by all producers during the last completed marketing season, participate in the referendum, the secretary shall suspend this chapter upon the expiration of the current marketing season, if he or she finds either one of the following:

(a) Sixty-five percent or more of the producers who voted in the referendum voted in favor of the suspension, and the producers

so voting marketed 51 percent or more of the total quantity of avocados marketed in the preceding marketing season by all of the producers who voted in the referendum.

(b) Fifty-one percent or more of the producers who voted in the referendum voted in favor of suspension, and the producers so voting marketed 65 percent or more of the total quantity of avocados marketed in the preceding season by all of the producers who voted in the referendum.

SEC. 14. The Legislature finds and declares that Sections 2 and 3 of this act, which add Sections 58853 and 63906 to the Food and Agricultural Code, impose 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 these limitations and the need for protecting that interest:

In order for food and agriculture marketing order advisory boards and agricultural and seafood industry councils and commissions to hold meetings and make timely decisions, it is in the state's interest to revise the requirements for teleconferences for these boards, councils, and commissions in order to encourage participation by directors. Many of these directors are located in remote locations in the state that are difficult for the public to access and the directors may need to participate from a nonstationary location.

Approved _____, 2016

Governor