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AB-944 California Spiny Lobster Commission. (2017-2018)

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Assembly Bill No. 944

CHAPTER 503

An act to add and repeal Chapter 25.5 (commencing with Section 79150) of Part 2 of Division 22 of the Food and Agricultural Code, relating to food and agriculture, and making an appropriation therefor.

[Approved by Governor October 05, 2017. Filed with Secretary of State October 05, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 944, Limón. California Spiny Lobster Commission.

Existing law provides for various commissions to promote the marketing and production of agricultural or seafood commodities.

This bill would create the California Spiny Lobster Commission. The bill would specify the membership, powers, duties, and responsibilities of the commission. The commission would be authorized to approve the payment of a stipend to commission members, as specified. The commission also would be authorized to carry out programs of education, public information, promotion, marketing, and research relating to spiny lobster. The bill would authorize the commission to levy an assessment, as specified, on spiny lobster fishermen, as defined, and would authorize the expenditure of those moneys for the purposes of carrying out the commission's powers, duties, and responsibilities, thereby making an appropriation. The bill would require the Secretary of Food and Agriculture to review the annual budget and expenditures of the commission to ensure that only reasonable and necessary administrative costs are paid for the proper operation of the commission's activities. The bill, except as necessary to conduct an election, would not become operative until the fishermen of spiny lobster vote, by referendum, in favor of establishing the commission, as specified. The bill also would provide for the suspension of the operation of its provisions, for its repeal if certain time periods elapse after a referendum vote has failed, and, if the commission is established, for concluding the operations of the commission, as specified. The bill would create a misdemeanor for the rendering or furnishing of false reports; the secreting, destroying, or altering of records; the failure to furnish a report; or the failure or refusal to furnish to the commission information concerning the name and address of persons from whom spiny lobster are received or to whom they are provided.

By creating a new crime, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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. Chapter 25.5 (commencing with Section 79150) is added to Part 2 of Division 22 of the Food and Agricultural Code, to read:

CHAPTER 25.5. California Spiny Lobster Commission **Article 1. Declarations and General Provisions**

79150. The spiny lobster fishery includes both fishermen and handlers working together to provide a sustainable spiny lobster resource and to ensure a reliable supply of quality seafood product for domestic consumption and export, thereby maintaining strong local coastal economies, fair levels of income to the thousands of persons engaged directly and indirectly in commercial fishing enterprises, and historically significant cultural and community resources of California's coast.

79150.5. The production and marketing of seafood, including spiny lobster, constitute an important industry of this state that provides substantial and necessary revenues for the state and employment for its citizens.

79151. The production of spiny lobster for domestic consumption and export is one of the leading segments of the state's commercial fishing industry. To maintain this significant contribution to the state's economy and public well-being, there is a need to make regulators aware of unique economic factors affecting the spiny lobster fishery and how these factors can be integrated with appropriate management measures to protect a sustainable spiny lobster resource. In addition, there is a need to make consumers and the general public aware of the nutritional value of seafood, the high quality of spiny lobster produced by the industry, and the opportunities available to balance spiny lobster production and protection of the natural marine resources of California. The activities made possible by the establishment of a commission will meet this need and further the interests of the industry and the state.

79151.5. The establishment of a commission is necessary for the efficient creation and management of a research program to develop improved harvesting and processing practices, an integrated approach to fishery management, and more efficient resource assessment, monitoring, and protection tools.

79152. The successes that the spiny lobster fishery in California has enjoyed have come in large part through a commitment by the industry to support appropriate management regulations guiding the harvesting of spiny lobster and to fund research into resource assessment and enhancement methodology that has led to significant improvements in understanding the biology of the spiny lobster resource. The establishment of a commission will continue and enhance this research effort and the ability of the industry to promote responsible fishery management regulations, all of which will move the industry toward a sustainable position, resulting in increased consumer value and enhanced economic returns.

79152.5. The harvesting, processing, and marketing of spiny lobster in this state is hereby declared to be affected with a public interest. The provisions of this chapter are 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.

79153. No action taken by the commission, or by any individual in accordance with 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.

79153.5. This chapter shall be liberally construed. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

79154. Opportunity exists for increasing the stability and reliability of the spiny lobster fishery. The success of those efforts is uniquely dependent upon effective fishery and resource management, fishery biological research, industry engagement in management decisions, and fishery promotion. A stable and reliable spiny lobster fishery provides an important source of jobs for many people in this state and economic activity in many small coastal communities, and serves to ensure the preservation of historically and culturally significant coastal dependent industry.

79154.5. The commission form of administration created by this chapter is uniquely situated to provide those engaged in the spiny lobster fishery the opportunity to avail themselves of the benefits of collective action within the broad fields of fishery

management, resource protection and enhancement, harvesting and processing practices, and market development, expansion, and research necessary to achieve the purposes of this chapter.

Article 2. Definitions

79155. Unless the context otherwise requires, the definitions in this article govern the construction of this chapter.

79155.5. “Commission” means the California Spiny Lobster Commission.

79156. “Ex officio” means nonvoting members of the commission.

79156.5. “Fiscal year” and “marketing season” have the same meaning as the period of February 1 of any year and extending through January 31 of the following year.

79157. “Fisherman” or “fishermen” means a person licensed to commercially harvest fish pursuant to Section 7850 of the Fish and Game Code, who in addition holds a valid spiny lobster fishing permit, and has documented landings of spiny lobster in the previous marketing season.

79157.5. “Handler” means a person engaged with the following licensees:

- (a) Licensed pursuant to Section 8033 of the Fish and Game Code.
- (b) Licensed pursuant to Section 8034 of the Fish and Game Code.
- (c) Licensed pursuant to Section 8035 of the Fish and Game Code.
- (d) Licensed pursuant to subdivision (a) of Section 8032 of the Fish and Game Code.

79158. “Spiny lobster” means the *Panulirus interruptus* species.

79158.5. “Spiny lobster fishery” means any activity, including economic activity, involved in the harvesting, receiving, processing, manufacturing, or distributing of spiny lobster, parts of spiny lobster, or products therefrom, for commercial purposes.

Article 3. The California Spiny Lobster Commission

79160. (a) There is in the state government the California Spiny Lobster Commission. The commission shall be composed of six fishermen members and one public member. The secretary and other appropriate persons, as determined by the appointed commissioners, shall serve as ex officio members.

(b) The fishermen members of the commission shall be elected as follows:

(1) One fisherman member shall be elected by the fishermen in that county from each of the following counties:

- (A) County of San Diego.
- (B) County of Orange.
- (C) County of Ventura.
- (D) County of Santa Barbara.
- (E) County of Los Angeles.

(2) One at-large member who is a qualified fisherman from any county shall be elected by all fishermen statewide.

(c) Persons nominated for election to the commission as a fisherman member shall submit a petition signed by not less than five fishermen.

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

79160.5. (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, upon written notice, may suspend all or a portion of the activities or functions of the commission until the time that the cessation or correction of the 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.

79161. The commission or the secretary may bring an action for judicial relief from the secretary's written notice or from noncompliance by the commission with the written notice, as the case may be, in a court of competent jurisdiction, which may issue a temporary restraining order, permanent injunction, or other applicable relief.

79161.5. 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 the notification of the decision. The secretary's response may be a requirement that additional information be provided.

79162. 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, if it finds that the secretary acted arbitrarily or capriciously in restricting the activities or functions of the commission, may relieve the commission of the responsibility for the payment of the secretary's legal costs with regard to that action.

79162.5. Alternates for regular members may be elected in the same manner as members. An alternate, in the absence of the member for whom he or she is substituting, shall serve in place of a member and shall have and be able to exercise all the rights, privileges, and powers of a member when serving on the commission. In the event a change in status makes a member ineligible to serve or due to the death, removal, resignation, or disqualification of a member, an alternate shall act as a member of the commission until a qualified successor is elected or appointed.

79163. A vacancy on the commission occurring by the failure of a person elected to the commission as a member or 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 remaining 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.

79163.5. 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 shall be filled by another eligible person for the unexpired portion of the term by the secretary from nominees recommended by the commission. 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.

79164. A fisherman shall not be eligible to be elected to the commission as a member or alternate if he or she has been convicted of a violation of any law related to commercial fishing, not including any technical reporting or paperwork violation, within two years of seeking election to the commission and shall be immediately disqualified from serving on the commission if he or she is convicted during his or her term of service on the commission.

79164.5. The public member and his or her alternate member on the commission shall have all the powers, rights, and privileges of any other member or alternate, respectively, on the commission. The public member and his or her alternate member shall not have a financial interest in the spiny lobster fishery.

79165. (a) The term of office of all members and alternates on the commission, except ex officio members, shall be three years from the beginning of the fishery season in the year of their election and may serve not more than two consecutive terms. Following the final term, a member may serve until a qualified successor is elected.

(b) A member or alternate who has served the maximum number of sequential years authorized by this section shall be again eligible for election to the commission following a period of not less than 12 months during which he or she has not served as a member.

79165.5. The commission may sue and be sued and enter into contracts. Copies of its proceedings, records, and acts, when authenticated, shall be admissible in evidence in all courts of the state, and shall be prima facie evidence of the truth of all statements within the proceedings, records, and acts.

79166. A quorum of the commission shall be four voting members, including at least four fishermen members. Except as provided in Section 79196.5, the vote of a majority of members present at a meeting at which there is a quorum shall constitute the act of the commission.

79166.5. The secretary or his or her representative 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.

79167. A member or alternate of the commission or member of a committee established by the commission who is a nonmember of the commission shall not 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.

79167.5. (a) All moneys received by the commission or an agent of the commission from the assessments levied under this chapter or otherwise received by the commission shall be deposited in accounts that the commission may designate and the secretary shall approve. Commission moneys shall be expended for the purposes of this chapter only 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 thirty thousand dollars (\$30,000).

(b) Moneys that exceed the amount necessary for the annual operations of the commission and a prudent reserve may be invested by the commission.

79168. 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 moneys collected by the commission. A member or alternate of the commission, or any employee or agent thereof, shall not be personally liable for the contracts of the commission. A member or alternate of the commission, or any employee or agent thereof, shall not be 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. A member or alternate of the commission, or any employee or agent thereof, shall not be responsible individually for any act or omission of any other member or alternate of the commission, or any employee or agent thereof. Liability is several and not joint, and a member or alternate of the commission, or any employee or agent thereof, shall not be liable for the default of any other member or alternate of the commission, or any employee or agent thereof.

Article 4. Powers and Duties of the Commission

79170. 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 the purposes of carrying out this chapter, including rules for appeals from any bylaw, rule, regulation, operating procedure, or order of the commission.

79170.5. 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, to promote and maintain the spiny lobster commercial fishing industry.

79171. The commission may appoint its own officers, including a chair, one or more vice chairs, and other officers as it deems necessary. The officers shall have the powers and duties delegated to them by the commission.

79171.5. The commission may employ a person or firm to serve at the pleasure of the commission as executive officer 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.

79172. The commission may fix the compensation for all employees of the commission.

79172.5. The commission may appoint committees composed of both members and nonmembers of the commission to advise the commission in carrying out this chapter.

79173. The commission may establish offices and incur expenses, enter into any and all contracts and agreements, create liabilities, and borrow moneys 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.

79173.5. 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 entity or 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 appropriate, may conduct or cause to be conducted a fiscal and compliance audit of the commission.

79174. The commission may present facts to, and negotiate with, state, federal, and foreign agencies on matters that affect the spiny lobster fishery industry.

79174.5. (a) The commission may carry out spiny lobster fishery industry educational programs with respect to proper methods of handling and preserving the quality of spiny lobster to protect the public health, the economic viability of the spiny lobster fishery, and employee and fisherman safety and may conduct market surveys and analyses.

(b) The commission may carry out public information programs regarding, but not limited to, the condition of and efforts to sustain the spiny lobster resource and other programs to promote the spiny lobster fishery. Commission moneys shall not be expended to advertise brand-name spiny lobster products except when conducted on a generic basis.

(c) The commission may adopt a spiny lobster fishery logo or trademark or other promotional tools consistent with this chapter and other applicable laws.

79175. The commission may conduct, or contract with others to conduct, scientific research, including the study, analysis, dissemination, and accumulation of information obtained from research or elsewhere, regarding the importance of and methods for maintaining a sustainable spiny lobster fishery, fishery management, resource management, cost-efficient production practices, and the marketing and distribution of spiny lobster and spiny lobster 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.

79175.5. The commission may enter into contracts to acquire and render services in preparing plans and conducting programs and other contracts or agreements that the commission may deem necessary for carrying out this chapter.

79176. The commission may accept contributions of, or match private, state, or federal moneys, and employ or make contributions of moneys to other persons or state or federal agencies for the purposes of promoting and maintaining the spiny lobster fishery.

79176.5. The commission may collect information, including, but not limited to, spiny lobster fishery landing statistics, and publish and distribute without charge a bulletin, newsletter, or other communication to persons subject to this chapter.

79177. The commission shall establish an assessment rate to defray the operating costs of the commission.

79177.5. (a) The commission shall establish an annual budget and maintain records of expenditures according to generally accepted accounting practices. The budget shall be concurred in by the secretary before the disbursement of moneys, except for ongoing disbursements made in relation to employees of the commission.

(b) The secretary shall review the annual budget and expenditures to ensure that only reasonable and necessary administrative costs are paid for the proper operation of the commission's activities.

79178. The commission shall submit to the secretary for his or her concurrence an annual statement of contemplated activities authorized pursuant to this chapter.

79178.5. The commission and the secretary shall keep confidential and shall not disclose, except when required by a court order after a hearing in a judicial proceeding, all lists of persons subject to this chapter in their possession. However, the commission shall establish procedures to provide fishermen access to communication with other fishermen regarding nonproprietary matters affecting the commission and persons subject to its jurisdiction. The access shall not include the actual release of the names and addresses of the fishermen in the possession of the commission or the secretary.

79179. 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.

79179.5. The commission may administer any government program engaged in the activities authorized by this chapter and that directly affects the spiny lobster fishery, upon the request of an authorized agent of the program.

79179.7. The commission may approve payment of a stipend to commission members of not more than one hundred forty-five dollars (\$145) for each day a member is on official commission business pursuant to Section 79167, not to exceed seven hundred twenty-five dollars (\$725) in any single month.

Article 5. Implementation and Voting Procedures

79180. (a) Within 60 days of the effective date of this chapter, the secretary shall establish a list of fishermen eligible to vote on the implementation of this chapter. In establishing the list, the secretary may require that fishermen submit the names and mailing addresses of all fishermen. The secretary also may request the assistance of the Director of Fish and Wildlife for the names of all licensed fishermen engaged in the spiny lobster fishery during the previous season and the volume of landings of each fisherman. The request for information shall be in writing and the information provided shall be confidential and not made public. Notwithstanding Section 8022 of the Fish and Game Code or any other law, the Director of Fish and Wildlife shall comply with the request within 30 days of receipt.

(b) A fisherman 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 fisherman and submitting other supporting documentation. Failure to be on the list does not exempt the person from paying assessments and does not invalidate any industry votes conducted pursuant to this article.

(c) Proponents and opponents of establishing the commission pursuant to this chapter may contact fishermen on the lists through the secretary in a form and manner prescribed by the secretary, if all expenses associated with those contacts are paid in advance.

79180.5. 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 fishermen from the list established by the secretary pursuant to this article participated and that either of the following occurred:

(a) Sixty-five percent of the fishermen who voted in the referendum voted in favor of establishing the commission, and the fishermen so voting landed a majority of the total quantity of spiny lobster landed in the preceding fishing season by all of the fishermen who voted in the referendum.

(b) A majority of the fishermen who voted in the referendum voted in favor of establishing the commission, and the fishermen so voting landed 65 percent or more of the total quantity of spiny lobster landed in the preceding fishing season by all of the fishermen who voted in the referendum.

79181. (a) 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, including measures to maximize the likelihood that all eligible persons receive referendum voting materials. 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.

(b) Nonreceipt of a ballot shall not invalidate a referendum.

79181.5. (a) If the secretary finds that a favorable vote has been given, pursuant to Section 79180.5, the secretary shall certify and give notice of the favorable vote to all affected fishermen whose names and addresses are on file with the secretary.

(b) If the secretary finds that a favorable vote has not been given, pursuant to Section 79180.5, the secretary shall certify and declare all provisions of this chapter inoperative. The secretary may conduct a second implementation referendum vote one year or later following certification of the first vote, subject to the time constraints imposed by subdivision (a) of Section 79182.5.

79182. (a) Before a 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) Upon the establishment of the commission, the commission may reimburse the proponents of the commission for any moneys deposited with the secretary that were used in carrying out this article and for any legal expenses and costs incurred in establishing the commission.

79182.5. (a) If the first referendum vote conducted pursuant to this article fails and a second referendum vote is not conducted and certified as of the date that is two years later, this chapter is repealed as of that date, unless a later enacted statute that is enacted before that date, deletes or extends that date.

(b) If a second referendum vote conducted pursuant to this article fails, this chapter is repealed as of the date that is six months later, unless a later enacted statute that is enacted before that date, deletes or extends that date.

(c) For purposes of this section, the date on which a referendum vote fails shall be considered to be the date on which the secretary certifies pursuant to subdivision (b) of Section 79181.5 that a favorable vote has not been given.

Article 6. Assessments and Records

79185. (a) The commission shall establish an assessment for the season not later than February 1 of each year. The assessment in the marketing season of the commission's operation shall be ten cents (\$0.10) for each pound of spiny lobster landed by fishermen in the state. Thereafter, the assessment may be modified annually but in no event shall exceed fifty cents (\$0.50) for each pound of spiny lobster landed, except as provided in subdivision (b).

(b) An assessment greater than the amount provided for in subdivision (a) shall not be levied unless it is approved by a majority of the commission and by eligible fishermen in accordance with voting requirements of Section 79180.5.

(c) Any assessment that is levied as provided for in this section is a personal debt of every person assessed.

79185.5. Every person who handles spiny lobster in any quantity shall keep a complete and accurate record of all transactions involving the purchase or sale of spiny lobster. The records shall be in a simple form and contain the information the commission prescribes. The records shall be preserved by the fisherman for a period of three years, and shall be offered and submitted for inspection at any reasonable time upon the written demand of the commission or its duly authorized agent.

79186. (a) All proprietary information obtained by the commission or the secretary from any source, including, but not limited to, the names and addresses of fishermen and the volume and value of landings made or purchased, is confidential and shall not be disclosed except when required by a court order after a hearing in a judicial proceeding.

(b) Information on the volume and value of landings, 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 fisherman information, may be disclosed by the commission.

79186.5. The first handler of spiny lobster being assessed shall deduct the assessment from amounts paid by him or her to the fisherman, and shall be a trustee of these assessments until they are paid to the commission at the time and in the manner prescribed by the commission. The failure to collect the assessment from a fisherman shall not exempt the handler from liability. In addition, the failure of a handler to remit the collected fisherman assessments to the commission shall not relieve the fisherman of this obligation.

79187. When the handler is a corporation, all of the directors and officers of the corporation 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 to collect assessments, shall also include identical liability upon each director or officer of the corporation.

79187.5. Any person who fails to pay an assessment, including submitting any records required by the commission, 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 1¹/₂ percent interest per month on the unpaid balance.

79188. 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.

79188.5. It is a misdemeanor for any person to do any of the following:

(a) Willfully render or furnish a false report, statement, or record required by the commission, or in any way to affect the shipment and marketing of spiny lobster with the intent to avoid payment of assessments.

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

(c) When engaged in the fishing of spiny lobster or in the wholesale or retail trade of spiny lobster, to fail or refuse to furnish to the commission or its duly authorized agents, upon request, information concerning the name and address of the persons to whom spiny lobster were sold or from whom spiny lobster were received, and the quantity sold or received.

(d) Secrete, destroy, or alter records required to be kept under this chapter.

79189. 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 the decisions of the commission may be made to the secretary. The determination of the secretary shall be subject to judicial review upon a petition filed with the appropriate superior court.

79189.5. (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. A bond shall not 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 spiny lobster until the judgment is fully complied with and satisfied. The injunction shall be stayed for a period of 30 days. 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.

79190. Any action by the commission for any violation of this chapter shall be commenced within two years from the date of the 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.

79190.5. 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 7. Continuation or Suspension and Termination

79195. Every five years, commencing with the fifth year following certification of the commission, 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 persons 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 persons voting in the referendum voted in favor of continuing this chapter.

79195.5. If the secretary finds after conducting a hearing that no substantial question exists or that a favorable vote has been given, the secretary shall certify that this chapter remains operative. If the secretary finds that a favorable vote has not been given, he or she shall certify and declare that the operation of this chapter and the commission is suspended upon the expiration of the fishing season of the year in which the certification is made. Thereupon, the operations of the commission shall be concluded and moneys distributed in the manner provided in Section 79197. No bond or security shall be required for that referendum.

79196. The process specified in Section 79195 shall be conducted by the secretary every fifth year following the initial certification of the commission, unless a referendum is conducted as the result of a petition pursuant to Section 79196.5. In that case, the hearing, and the referendum if required, shall be conducted every fifth year following the industry petitioned referendum.

79196.5. (a) Upon a finding by a two-thirds vote of the membership of the commission that the operation of this chapter has not tended to achieve its declared purposes, the commission may recommend to the secretary that the operation of this chapter be suspended. However, a suspension shall not become effective until the expiration of the current fishing season.

(b) The secretary, upon receipt of the recommendation, shall or, after a public hearing to review a petition filed with him or her requesting a suspension signed by 20 percent of the fishermen who landed not less than 20 percent of the total quantity of spiny lobster in the immediately preceding fishing season, may hold a referendum among the fishermen 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 the weight of evidence that this chapter has not tended to achieve 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 fishermen 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 fishermen who voted in the referendum voted in favor of suspension, and the fishermen so voting sold or handled a majority of the total quantity of spiny lobster in the preceding fishing season by all of the fishermen who voted in the referendum.

(2) A majority of the fishermen who voted in the referendum voted in favor of suspension, and the fishermen so voting landed or handled 65 percent or more of the total quantity of spiny lobster in the preceding fishing season by all of the fishermen who voted in the referendum.

79197. 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 fishing season. However, if the commission finds that the amounts returnable are so small as to make impractical the computation and remittance of the prorated refund to these persons, any moneys remaining after the 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 conducted or used to fund activities related to the subject matter of this chapter.

79197.5. Upon the suspension of the operation of this chapter, the commission shall mail a copy of the notice of the suspension to all eligible persons affected by the suspension whose names and addresses are on file.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 3. The Legislature finds and declares that Section 1 of this act, which adds Sections 79178.5, 79180, and 79186 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 protect the personal and financial information of a person subject to the act, it is necessary that this act limit the public's right of access to that information.