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AB-402 Weeds: Broomrape Program. (2023-2024)

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Assembly Bill No. 402

CHAPTER 651

An act to amend Section 221 of, and to add and repeal Chapter 1.5 (commencing with Section 7401) of Part 4 of Division 4 of, the Food and Agricultural Code, relating to weeds, and making an appropriation therefor.

[Approved by Governor October 10, 2023. Filed with Secretary of State October 10, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

AB 402, Aguiar-Curry. Weeds: Broomrape Program.

Existing law establishes within state government the Department of Food and Agriculture in order to promote and protect the agricultural industry of the state. Existing law provides for the regulation of weeds and pest seeds generally. Existing law provides that a violation of the Food and Agricultural Code is a misdemeanor, unless a different penalty is expressly provided.

This bill would establish the Broomrape Board within the Department of Food and Agriculture to advise the Secretary of Food and Agriculture and make recommendations on all matters relating to broomrape, as specified. The bill would require the secretary to appoint at least 12 members to the board, consisting of at least 3 representatives from each specified geographical district and that are persons recommended by the tomato industry and approved by the secretary. The bill would authorize the secretary to appoint a public member and ex officio nonvoting members to the board, as specified.

The bill would require the board to recommend specified actions to the secretary, including, among other things, conducting research related to broomrape, surveying, detecting, analyzing, and treating causes of broomrape, and establishing an annual assessment rate or schedule of rates to be paid equally by producers and handlers of tomatoes. The bill would require the secretary, upon receipt of a recommendation from the board for the adoption of regulations, to accept or reject the recommendation or request that the board provide additional information. By authorizing new regulations, the bill would expand the scope of a crime and create a state-mandated local program. The bill would authorize the secretary to appoint a statewide coordinator to establish the board and enact any activities authorized by these provisions. The bill would create the Broomrape Management Account, a continuously appropriated account, in the Department of Food and Agriculture Fund and would specify the funds to be deposited into the account, thereby making an appropriation. The bill would require any funds within the account to be used to reimburse the secretary for the costs of carrying out recommendations of the board. The bill would exempt the account from specified budget reporting requirements. The bill would require any costs incurred by the department in establishing, administering, and enforcing the provisions of this bill to be reimbursed solely by the assessment.

The bill would authorize the secretary to adjust the assessment rate or schedule of rates from time to time when recommended by the board and would require the assessments collected from producers to be paid by handlers to the secretary. The bill would provide that any assessment that is imposed on the producer or handler is a personal debt of the person assessed and would require the payment of a specified penalty if the assessment is not paid. The bill would require any funds received pursuant to the above provisions to be deposited and handled in a manner determined by the board and to be expended for the purposes, administration, and enforcement of the broomrape program.

The bill would make the above provisions inoperative on July 1, 2028, and would require any funds received pursuant to the above provisions that remain on that date to be refunded on a pro rata basis to all persons from whom assessments were collected during the 12-month period before that date, unless the secretary finds the amounts returnable are minimal and therefore impractical to refund, or the person who paid the assessment cannot be located, in which case the bill would authorize the use of the funds for broomrape control or related research activities. The bill would repeal the broomrape program on January 1, 2029.

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.

Vote: majority Appropriation: yes Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 221 of the Food and Agricultural Code is amended to read:

221. (a) The "Department of Food and Agriculture Fund," which is a special fund, is continued in existence. Any moneys that are directed by law to be paid into the fund shall be paid into it and, unless otherwise specifically provided, shall be expended solely for the enforcement of the law under which the moneys were derived. The expenditure from the fund for the enforcement of any law shall not, unless otherwise specifically provided, exceed the amount of moneys that is credited to the fund pursuant to the law.

(b) Notwithstanding Section 13340 of the Government Code, all moneys deposited in the fund under the provisions enumerated in subdivision (c) are hereby continuously appropriated to the department without regard to fiscal years for expenditure in carrying out the purposes for which the moneys were deposited and for making the refunds authorized by Section 302.

(c) All moneys deposited in the fund under the provisions enumerated below are hereby exempted from Sections 13320 to 13324, inclusive, of the Government Code:

(1) Article 7 (commencing with Section 5821) and Article 7.5 (commencing with Section 5850) of Chapter 8 of Part 1 of Division 4, Chapter 1 (commencing with Section 6701) of Part 3 of Division 4, and Chapter 5 (commencing with Section 53301) of Division 18.

(2) Article 5 (commencing with Section 6001) of Chapter 9 of Part 1 of Division 4.

(3) Article 8.5 (commencing with Section 6047.1) of Chapter 9 of Part 1 of Division 4.

(4) Article 5 (commencing with Section 6981) of Chapter 2 of Part 3 of Division 4.

(5) Chapter 1.5 (commencing with Section 7401) of Part 4 of Division 4.

(6) Chapter 4 (commencing with Section 14200), Chapter 5 (commencing with Section 14501), and Chapter 6 (commencing with Section 14901) of Division 7.

(7) Part 1 (commencing with Section 16301) and Part 2 (commencing with Section 17401) of Division 9.

(8) Sections 19225, 19227, 19312, and 19315.

(9) Division 10 (commencing with Section 20001).

(10) Division 11 (commencing with Section 23001).

(11) Part 4 (commencing with Section 27501) of Division 12.

(12) Division 16 (commencing with Section 40501).

(13) Chapter 9 (commencing with Section 44971) of Division 17.

(14) Chapter 1 (commencing with Section 52001) of Division 18.

(15) Chapter 2 (commencing with Section 52251) of Division 18.

(16) Chapter 3 (commencing with Section 52651) of Division 18.

(17) Chapter 4 (commencing with Section 52851) of Division 18.

(18) Chapter 6 (commencing with Section 55401), Chapter 7 (commencing with Section 56101), and Chapter 7.5 (commencing with Section 56701) of Division 20.

(19) Section 58582.

(20) Chapter 1 (commencing with Section 61301), Chapter 2 (commencing with Section 61801), and Chapter 3 (commencing with Section 62700) of Part 3 of Division 21.

(21) Division 24 (commencing with Section 81000).

(22) Chapter 5.5 (commencing with Section 12531) of Division 5 of the Business and Professions Code.

(23) Chapter 7 (commencing with Section 12700) of Division 5 of the Business and Professions Code.

(24) Chapter 14 (commencing with Section 13400) and Chapter 15 (commencing with Section 13700) of Division 5 of the Business and Professions Code.

SEC. 2. Chapter 1.5 (commencing with Section 7401) is added to Part 4 of Division 4 of the Food and Agricultural Code, to read:

CHAPTER 1.5. Broomrape Program

Article 1. General Provisions

7401. The Legislature hereby finds and declares all of the following:

(a) Broomrape is an invasive weed that presents a clear and present danger to California's agricultural industry due to its harmful impact on crop yields and land values of commercial food crops including, but not limited to, lettuce, tomato, cauliflower, potato, hemp, eggplant, pomegranate, peppers, beans, peas, carrot, celery, mustard, spinach, sunflower, safflower, and fennel. Susceptible food crops, with an economic value at nearly six billion dollars (\$6,000,000,000), may experience up to 70 percent annual crop losses in areas infested with broomrape. Broomrape also impacts commercial seed production and can make agricultural land unusable for planting susceptible crops for decades.

(b) Broomrape represents a clear and present danger to California's natural environment, with susceptible hosts comprising native California flora, including rare or endangered species, such as showy Indian clover (*T. amoenum*), Buck's clover (*T. buckwestiorum*), and Monterey clover (*Trifolium trichocalyx*). The potential long-term damage to California's native biodiversity and environment from this pest may be irreparable and action must be taken to ensure the maintenance, restoration, enhancement, or protection of the environment by developing and involving regulatory procedures for protection of the environment.

(c) The state's agricultural economy and environment could be rapidly and seriously damaged if measures are not expanded to prevent the spread of broomrape, which can produce an estimated 10,000 to 100,000 seeds per infectious plant.

(d) Financial support for the purposes of this chapter shall be provided by commodities designated in this chapter or included by the board and concurred in by the secretary in accordance with procedures specified in this chapter, and by public funds when available.

(e) The necessity of controlling broomrape is recognized as being in the public interest.

(f) This chapter is enacted in the exercise of the police power of the state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state.

7402. There is hereby established in the department a Broomrape Program.

Article 2. Definitions

7405. Unless the context requires otherwise, the following definitions govern the construction of this chapter:

(a) "Board" means the Broomrape Board.

(b) "Broomrape" or "Orobanche" means a small parasitic herbaceous plant.

(c) (1) "Districts" consists of the following geographical areas:

(A) District 1: The Counties of Butte, Colusa, Glenn, Placer, Solano, Sutter, Yolo, and Yuba.

(B) District 2: The Counties of Alameda, Contra Costa, Sacramento, San Benito, San Joaquin, Santa Clara, and Stanislaus.

(C) District 3: The Counties of Fresno, Madera, Merced, Monterey, San Luis Obispo, Santa Barbara, and Santa Cruz.

(D) District 4: The Counties of Imperial, Kern, Kings, Riverside and Tulare, and that portion of the County of Los Angeles lying north of the San Gabriel Mountains.

(2) When necessary to accomplish the purposes of this chapter, additional areas of the state may be added to these districts or additional districts may be established through regulation when recommended by the board and approved by the secretary.

(d) "Handler" means a person or entity who receives tomatoes from a producer and who prepares the tomatoes for processing.

(e) "Person" means a producer, handler, or any other entity that holds title to tomatoes subject to assessment pursuant to this chapter.

(f) "Producer" means a person engaged in the commercial production of processing tomatoes in California.

Article 3. Broomrape Board

7410. There is hereby established in the department a Broomrape Board.

7411. (a) The secretary shall appoint at least 12 members to the board. The board shall consist of at least three representatives from each district and shall be comprised of persons recommended by the tomato industry and approved by the secretary.

(b) The term of service and other board related operational issues shall be established by the board and approved by the secretary.

(c) The secretary may appoint a public member to the board from a list of persons provided by the board who do not have a financial interest in any commodities subject to this chapter but may have general knowledge of commercial agricultural practices. The public member shall have the same voting and other rights and immunities as other members of the board.

(d) The secretary, in consultation with the board, may appoint nonvoting ex officio members to the board, including, but not limited to, county agricultural commissioners, pest control advisors, and representatives of the University of California and California State University system.

7412. Persons appointed to the board are intended to represent and further the interest of the particular agricultural commodities concerned, and that the representation and furtherance is intended to serve the public interest and accordingly is tantamount to, and constitutes, the public generally within the meaning of Section 87103 of the Government Code.

7413. A member or agent of the board shall not be personally liable for the actions of the board or the department. A member or agent of the board shall not be responsible individually in any way to any other person for errors in judgment, mistakes, or other acts, by either commission or omission, as a principal, agent, or employee except for their own individual acts of dishonesty or crime. A member or agent of the board is not responsible individually for an act or omission of any other member or agent of the board or the department. Liability is several and not joint, and a member or agent of the board is not liable for the default of any other member or agent of the board or the department.

Article 4. Powers and Duties

7420. The board shall recommend specific actions to the secretary, including, but not limited to, all of the following:

(a) Conducting research related to broomrape.

(b) Disseminating technical information and progress reports to stakeholders.

(c) Surveying, detecting, analyzing, and treating causes of broomrape.

(d) Funding activities, including, but not limited to, grants that may be required to accomplish the purposes of this chapter.

(e) Establishing an annual assessment rate or schedule of rates that shall be paid equally by producers and handlers.

(f) Establishing an annual budget.

(g) Specifying other commodities produced in California that shall be subject to this chapter, increasing membership on the board to include producers and handlers of those commodities, and establishing an assessment rate consistent with expenditures needed to accomplish the purposes of this chapter.

(h) Adoption of regulations recommended by the board relating to broomrape.

7421. Upon receipt of a recommendation from the board for the adoption of regulations, the secretary shall do one of the following:

- (a) Initiate appropriate action to implement the recommendation of the board.
- (b) Decline to initiate action on the recommendation of the board and provide the board with a written statement of reasons for the decision.
- (c) Request that the board provide additional information regarding the recommendation.

7422. The secretary may appoint a statewide coordinator to establish the board and enact any activities specified in this chapter.

7423. The board shall authorize reimbursement of the secretary for all expenditures incurred by the secretary in carrying out the duties and responsibilities specified in this chapter.

7424. The secretary shall not receive reimbursement for costs that exceed expenditures authorized in the annual budget without first receiving authorization from the board.

Article 5. Fund and Assessments

7430. (a) There is hereby created the Broomrape Management Account in the Department of Food and Agriculture Fund.

(b) The Broomrape Management Account may consist of funds made available from federal, industry, and other nonpublic fund sources. Money made available from federal, industry, and other nonpublic sources shall be continuously appropriated and made available for expenditure without regard to fiscal year for the purposes of this chapter.

(c) Any funds within the Broomrape Management Account shall be used to reimburse the secretary for the costs of carrying out recommendations of the board.

7431. (a) The board shall recommend an assessment rate or schedule of rates for approval by the secretary.

(b) The secretary may adjust the assessment rate or schedule of rates from time to time when recommended by the board.

(c) The assessment rate or schedule of rates may vary from district to district and from commodity to commodity based on multiple factors, including the degree of vulnerability to damage from broomrape experienced by producers.

7432. The assessments collected from producers shall be paid by handlers to the secretary as provided by the secretary.

7433. (a) Any assessment that is imposed on the producer or handler pursuant to this article is a personal debt of the person assessed.

(b) Failure to collect the assessment does not exempt the person assessed from liability and does not relieve a person from the obligation to pay the assessment.

(c) Any person who fails to file a report or pay the assessment or otherwise comply with this chapter shall pay a penalty of 10 percent of the amount of the assessment determined to be due, and, in addition, shall pay 1.5 percent interest per month on the unpaid balance of the assessment and the penalty.

7434. (a) Any funds received pursuant to this article shall be deposited and handled in a manner determined by the board and shall be expended for the purposes, administration, and enforcement of this chapter.

(b) To the extent that revenue generated from Section 7430 is insufficient to repay the expenditures associated with this program, the Department of Food and Agriculture Fund shall be held harmless, and the secretary shall not be required to administer the provisions of this chapter.

7434.5. Any costs incurred by the department in establishing, administering, and enforcing the provisions of this chapter shall be solely reimbursed by the assessment. These costs include, but are not limited to, startup costs incurred by the department before collecting the assessment, the costs of developing any regulations pursuant to this chapter, and the ongoing costs associated with the statewide coordinator.

Article 6. Enforcement

7435. The secretary may establish regulations and enforcement provisions for purposes of this chapter consistent with the intent expressed in this division and any action shall be liberally construed to effectuate the intent of this chapter.

Article 7. Operation

7440. This chapter shall become inoperative on July 1, 2028, and, as of January 1, 2029, is repealed.

7441. Upon the inoperative date of this chapter, any remaining funds received pursuant to this chapter shall be refunded on a pro rata basis to all persons from whom assessments were collected during the 12-month period before the inoperative date, unless the secretary finds the amounts returnable are minimal and therefore impractical to refund, or the person who paid the assessment cannot be located, in which case the funds may be used for broomrape control or related research activities.

SEC. 3. 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.