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AB-2606 California Agave Commission. (2023-2024)

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Assembly Bill No. 2606

CHAPTER 725

An act to add Chapter 30 (commencing with Section 79911) to Part 2 of Division 22 of the Food and Agricultural Code, relating to food and agriculture, and making an appropriation therefor.

[Approved by Governor September 27, 2024. Filed with Secretary of State September 27, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2606, Aguiar-Curry. California Agave Commission.

Under existing law, the Legislature finds and declares that the agricultural and seafood industries are vitally important elements of the state's economy. Existing law provides for various commissions and councils to promote the marketing and production of agricultural or seafood commodities.

This bill would create the California Agave Commission in the state government with a prescribed membership, and would specify the powers, duties, and responsibilities of the commission's board of directors. The bill would authorize the commission's board of directors to, among other things, conduct research for specified purposes. The bill would authorize the commission to levy an annual assessment on growers and processors, as defined, and would authorize the commission to expend revenues from those assessments and all other moneys received by the commission, including from penalties for failing to pay the assessment and the civil penalties described below, for purposes of implementing the bill, thereby making an appropriation.

The bill would provide that the commission would not be established, and these provisions would not be implemented, except as necessary to conduct an election, until the growers and processors of agave vote in favor of establishing the commission, as prescribed. The bill would also provide for the suspension of the operation of the commission and for concluding the operation of the commission under certain circumstances. The bill would authorize the commission to levy a civil penalty, as specified, on a person for willfully rendering or furnishing false reports, secreting, destroying, or altering records, failing to render or furnish a report, or failing or refusing to furnish to the commission information concerning the name and address of persons from whom agave is received and the quantity received. The bill would authorize the commission to bring certain civil actions to enforce the bill's provisions.

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.

Vote: majority Appropriation: yes Fiscal Committee: yes Local Program: no

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

SECTION 1. Chapter 30 (commencing with Section 79911) is added to Part 2 of Division 22 of the Food and Agricultural Code, to read:

CHAPTER 30. California Agave Commission
Article 1. Declarations and General Provisions

79911. The cultivation of agave for processing into agave products and the marketing of agave and agave products constitute an important industry of this state, which provides substantial and necessary revenues for the state and employment for its residents.

79912. The cultivation of agave in California is consistent with and supportive of California's environmentally sensitive policies relating to sustainable farming practices, including water conservation, through the cultivation of drought tolerant crops.

79913. The establishment of the commission is necessary for the efficient management of activities authorized in this chapter. The commission is also necessary to enhance the competitiveness of the industry within the state, national, and international marketplace.

79914. The purposes of this chapter are hereby declared to be in the public interest. This chapter is enacted in the exercise of the police power of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state.

79915. The commission form of administration created by this chapter is uniquely situated to provide those engaged in the activities specified in this chapter the opportunity to avail themselves of the benefits of collective action in the broad fields of research, education, promotion, and marketing.

79916. No action taken by the commission, or by any individual in accordance with this chapter or with bylaws or procedures established pursuant to this chapter, shall be deemed 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.

79917. It is the intent of the Legislature that members of the commission represent and further the interests of the agave industry and that this representation and furtherance serve the public interest. Accordingly, the Legislature finds that with respect to persons who are elected or appointed to the commission, the agave industry is tantamount to, and constitutes, the public generally within the meaning of Section 87103 of the Government Code.

Article 2. Definitions

79921. Unless the context otherwise requires, the definitions in this article govern the construction of this chapter.

79922. (a) "Agave" means the species of plants in the genus Agave of the family Asparagaceae cultivated for their juice and fiber.

(b) Agave cultivated solely for ornamental purposes is not subject to this chapter.

79923. "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.

79924. "Commission" means the California Agave Commission.

79925. "Cultivate" or "cultivated" means to plant, tend, harvest, or improve agave. Cultivated acreage does not include acreage removed from cultivation due to weather, disease, or other circumstances beyond the control of the grower.

79926. "Ex officio members" means nonvoting members of the commission board of directors.

79927. "Grower" means a person who commercially cultivates agave, or causes agave to be cultivated, not in a container and on two acres or more during the marketing season.

79928. "Market" or "marketing" means to sell agave and agave products into commercial channels of trade.

79929. "Marketing season" or "fiscal year" are synonymous terms and mean the period beginning April 1 of any year and extending through March 31 of the following year.

79930. "Process" or "processing" means to engage in the business of a processor.

79931. (a) "Processor" means a person licensed to commercially process agave and who processes agave in an amount of more than three tons in the state in the preceding marketing season.

(b) When the processor is a corporation or a limited liability company, all of the directors, officers, managers, and members of the corporation or limited liability company shall be treated as individuals when determining compliance with this chapter.

79932. "Public member" means a person appointed to the commission board of directors pursuant to the procedures specified in this chapter.

79933. "Secretary" means the Secretary of Food and Agriculture.

Article 3. California Agave Commission

79936. (a) There is in state government the California Agave Commission. Except as provided in this section, the commission board of directors shall be composed of six growers, two processors, and one public member. The public member shall be appointed to the commission by the secretary from nominees recommended by the commission.

(b) The commission board of directors may modify the number of members who serve on the commission board of directors by a two-thirds vote that is concurred in by the secretary, if proper notice is provided to all persons subject to this chapter before the action.

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

79937. (a) The secretary may require the commission to correct or cease any existing activity or function that is determined by the secretary to not be in the public interest or to be in violation of this chapter.

(b) If the commission refuses or fails to cease those activities or functions or to make corrections as required by the secretary, the secretary may, upon written notice, suspend all or a portion of the activities or functions of the commission until the cessation or correction of activities or functions as required by the secretary have been accomplished by the commission.

(c) Actions of the commission in violation of the secretary's written notice shall be without legal force or effect. The secretary, to the extent feasible, shall issue the written notice before the commission enters into a 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, and the secretary's reasons for requiring a cessation or correction of specific existing or proposed activities or functions, and may make recommendations that will make those activities or functions acceptable to the secretary.

79938. 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, in a court of competent jurisdiction, which may issue a temporary restraining order, permanent injunction, or other applicable relief.

79939. The commission shall reimburse the secretary for all expenditures incurred by the secretary in carrying out their duties and responsibilities under this chapter. However, a court may, if it finds that the secretary acted arbitrarily or capriciously in restricting the activities or functions of the commission, relieve the commission of the responsibility for payment of the secretary's legal costs with regard to that action.

79940. Except for the ex officio members of the commission board of directors, each member of the commission board of directors shall have an alternate member elected in the same manner as the member. An alternate member, in the absence of the member for whom they are an alternate, shall serve in place of the member. An alternate member may also serve in place of any other absent member of the same classification if the member's alternate is also absent. However, an alternate member may not serve in place of more than one absent member at a meeting. An alternate member serving in place of a member shall have, and may exercise, all rights, privileges, and powers of the member when serving. In the event of death, removal, resignation, or the disqualification of a member, the alternate for the member, or another alternate of the same classification if the alternate member for the member is absent, shall act as the member until a qualified successor is elected.

79941. Any vacancy on the commission board of directors, including, but not limited to, the failure of any person elected or appointed to the commission board of directors as a member or alternate member to continue in their position due to a change in

status making them ineligible to serve, or due to death, removal, or resignation, shall be filled by the election of another person, or appointment in the case of a public member, for the unexpired portion of the term, with elected positions to be filled by a majority vote of the commission board of directors. However, the person elected or appointed shall fulfill all the qualifications set forth in this article as required for the office they are to occupy. The qualifications of any person to fill a vacancy shall be certified in writing to the secretary. The secretary shall notify the commission if the secretary determines that the person is not qualified.

79942. A grower member and their alternate on the commission board of directors shall be an individual, partner, or employee of a grower who has a financial interest in cultivating agave, or causing agave to be cultivated. The grower member and their alternate shall comply with this section during the entire term of their office in order to remain on the commission board of directors.

79943. A processor member and their alternate on the commission board of directors shall be an individual, partner, or employee of a processor who has a financial interest in processing agave, or causing agave to be processed. The processor member and their alternate shall comply with this section during the entire term of their office in order to remain on the commission board of directors.

79944. The public member and their alternate on the commission board of directors shall have all the powers, rights, and privileges of any other member on the commission board of directors. The public member shall not have any financial interest in the cultivating or processing of agave or the marketing of agave products but may be an individual who provides services to individuals who do have a financial interest. The public member and their alternate shall comply with this section during the entire term of their office.

79945. (a) The term of office of each member of the commission board of directors and their alternate, except an ex officio member, shall be three years from the date of their election or appointment and until their successor is elected.

(b) An alternate shall serve the same term as the member for whom they serve as alternate.

79946. 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.

79947. A quorum of the commission board of directors is a majority of the members authorized to vote. Except as otherwise provided in this chapter, the vote of a majority of these members present at a meeting at which there is a quorum shall constitute an act of the commission.

79948. The secretary or their representatives shall be notified and may attend each meeting of the commission board of directors and any meetings of a committee established by the commission, except the secretary is not authorized to attend an executive session of the commission board of directors called for the purpose of discussing potential or actual litigation against the department.

79949. A member of the commission board of directors or of any committee established by the commission, shall not receive a salary. Except for ex officio government members, members and alternates may receive reasonable and necessary traveling expenses and meal allowances, as established by the commission board of directors, 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.

79950. If the secretary is required to concur in a decision of the commission, the secretary shall indicate their response within 15 working days from notification of the decision. The response may be a request that additional information be provided.

79951. All moneys received by a person from assessments levied under the authority of this chapter or otherwise received by the commission shall be deposited into banks designated by the commission board of directors and shall be disbursed by order of the commission board of directors through an agent or agents designated for that purpose. Any authorized agent or agents shall be bonded by a fidelity bond, executed by a surety company authorized to transact business in the state, in favor of the commission, in the amount of not less than twenty-five thousand dollars (\$25,000).

79952. The state shall not be 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 shall be limited to the funds collected by the commission. Members and alternate members of the commission board of directors, employees, and agents of the commission shall not be personally liable for the contracts of the commission, and members and alternate members of the commission board of directors and employees of

the commission shall not be responsible individually in any way to a grower, processor, or any other person for error in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, or employee, except for their own individual acts of dishonesty or crime. Members and alternate members of the commission board of directors shall not be held responsible individually for any act or omission of any other member or alternate member. The liability of the members and alternate members of the commission board of directors shall be several and not joint, and a member or alternate member shall not be liable for the default of any other member or alternate member.

Article 4. Powers and Duties

79956. The powers and duties of the commission board of directors shall include, but are not limited to, all of the following:

(a) Adopt and from time to time alter, rescind, modify, and amend bylaws and procedures for carrying out this chapter, including procedures for related appeals. These actions shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) Administer and enforce this chapter and perform all acts and exercise all powers incidental to, or in connection with, or determined reasonably necessary for, proper or advisable effectuation of the purposes of this chapter.

(c) Appoint officers from the members of the commission board of directors, including a chair, one or more vice chairs, and any other officers as it determines necessary. The officers shall have the powers and duties delegated to them by the commission board of directors.

(d) Employ a person to serve at the pleasure of the commission as president and chief executive officer, and other personnel, including legal counsel, necessary to carry out this chapter. Alternatively, the commission may retain a management firm or staff from any board, commission, or committee of the state to perform the functions prescribed by this subdivision under control of the commission board of directors. If a person subject to this subdivision engages in conduct that the secretary determines to be in violation of this chapter, or is not in the public interest, the secretary shall notify the commission of the conduct and request that corrective, and if appropriate, disciplinary action, be taken by the commission board of directors. If the commission board of directors fails or refuses to correct the situation or to take disciplinary action satisfactory to the secretary, the secretary may suspend or discharge the person subject to this subdivision.

(e) Fix the compensation for all employees.

(f) Appoint committees composed of members, alternates, and nonmembers of the commission board of directors to advise in carrying out this chapter.

(g) Establish offices and incur expenses, invest funds, enter into contracts and agreements, and create liabilities and borrow funds in advance of receipt of assessments as determined necessary for the proper administration and enforcement of this chapter and the performance of its duties.

(h) Keep accurate books, records, and accounts of all of its dealings, which shall be subject to an annual audit by an auditing firm selected by the commission board of directors with the concurrence of the secretary. The audit shall be made a part of an annual report to all growers and processors subject to this chapter, and, notwithstanding Sections 9795 and 10231.5 of the Government Code, copies of the audit shall be submitted to the Legislature and the department. In addition, the secretary may, as they determine necessary, conduct, or cause to be conducted, a fiscal and compliance audit of the commission.

(i) Present facts to, and negotiate with, state, federal, and foreign agencies on matters that affect the purposes of this chapter.

(j) Make, in the name of the commission, contracts to render service in formulating and conducting plans and programs, and any other contracts or agreements determined to be necessary for the purposes specified in this chapter.

(k) Conduct, and contract with others to conduct, research, including the study, analysis, dissemination, and accumulation of information obtained from research or elsewhere for purposes described in this chapter that is primarily for the benefit of growers and processors. In connection with the research, accept contributions of, or to match, private, state, or federal funds that may be available for these purposes, and to employ or make contributions of funds to other persons or state or federal agencies conducting the research.

(l) Collect information and publish and distribute to growers and processors, a bulletin or other communication for dissemination of information relating to this chapter.

(m) Establish an assessment rate to defray operating costs.

(n) Establish an annual budget according to accepted accounting practices. The budget shall be concurred in by the secretary before the disbursement of funds, except for disbursements made pursuant to subdivision (e).

- (o) Submit to the secretary for their concurrence, an annual statement of contemplated activities authorized under this chapter.
- (p) 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.
- (q) Prescribe the form and manner by which proponents and opponents of the commission may contact growers if all expenses associated with the contacts are paid in advance.
- (r) Engage in communications with the public regarding activities authorized in this section.
- (s) Conduct activities related to education, marketing, and promotion of agave and agave products.

Article 5. Implementation and Voting Procedures

79961. (a) No later than 90 days from the request of proponents of the commission, the secretary shall establish a list of growers and processors eligible to vote on the implementation of this chapter. The proponents shall provide the secretary with a list of growers and processors of agave to assist in identifying eligible voters. In establishing the list, the secretary shall require that (1) growers submit their names and mailing addresses and planted acreage, (2) processors submit their names and mailing addresses and the names and addresses of growers from whom agave is received, and the paid weight to the growers during the preceding marketing season. The request for the information shall be in writing. The information shall be filed with the secretary within 10 days following receipt of the written request for information.

(b) A grower or processor whose name does not appear on the secretary's list may have their name placed on the list by filing with the secretary a signed statement identifying themselves as a grower or processor. Failure to be on the list does not exempt the grower or processor from paying assessments under this chapter.

79962. The commission shall not be established, and this chapter shall not be implemented, except as necessary to conduct an implementation referendum vote, until the secretary finds all of the following in a referendum vote conducted by the secretary:

(a) At least 40 percent of the total number of growers from the list established by the secretary pursuant to this article participate, and that either of the following occurs:

(1) Sixty-five percent of the growers who voted in the referendum voted in favor of establishing the commission, and those growers cultivated a majority of the total quantity of agave cultivated in the preceding marketing season by all of the growers voting in the referendum.

(2) A majority of the growers who voted in the referendum voted in favor of establishing the commission, and those growers cultivated 65 percent or more of the total quantity of agave cultivated in the preceding marketing season by all of the growers voting in the referendum.

(b) At least 40 percent of the total number of processors from the list established by the secretary pursuant to this article participate, and that either of the following occurs:

(1) Sixty-five percent of the processors who voted in the referendum voted in favor of establishing the commission, and those processors processed a majority of the total quantity of agave processed in the preceding marketing season by all of the processors voting in the referendum.

(2) A majority of the processors who voted in the referendum voted in favor of establishing the commission, and those processors processed 65 percent or more of the total quantity of agave processed in the preceding marketing season by all of the processors voting in the referendum.

79963. The secretary shall establish a period in which to conduct the referendum that shall not be less than 10 days or more than 60 days in duration and may prescribe additional procedures necessary to conduct the referendum. If the initial period established is less than 60 days, the secretary may extend the period.

79964. Nonreceipt of a ballot shall not invalidate a referendum.

79965. If the secretary finds that a referendum vote in favor of establishing the commission has occurred, as provided in this article, the secretary shall certify the vote and give notice of the vote to growers and processors whose names and addresses are on file with the secretary.

79966. If the secretary finds that a referendum vote in favor of establishing the commission has not occurred, as provided in this article, the secretary shall certify the vote and declare this chapter inoperative. The secretary may conduct another implementation referendum vote one or more years after the previous vote has been taken.

79967. (a) Upon the establishment of the commission, the secretary shall contact growers and processors in a manner determined by the secretary for the purpose of nominating and electing persons to the commission board of directors.

(b) Subsequent to the first election of members of the commission board of directors, or appointment in cases of a public member, growers and processors shall be selected pursuant to nomination and election procedures established by the commission board of directors with the concurrence of the secretary.

79968. Before the referendum vote conducted by the secretary pursuant to this article, the proponents of the commission shall deposit with the secretary an amount of funds determined necessary by the secretary to defray the expenses of preparing the necessary lists and information and conducting the vote. Any funds not used for this purpose shall be returned to the proponents of the commission who deposited the funds with the secretary. Upon establishment of the commission, the commission board of directors may reimburse the proponents of the commission for any funds deposited with the secretary and for any legal expenses and costs incurred in establishing the commission.

Article 6. Assessments and Records

79971. (a) The commission board of directors shall, no later than the beginning of each marketing season, or as soon thereafter as possible, establish assessments to be paid by growers and processors for the marketing season.

(b) The assessment for growers that cultivate 2 to 10, inclusive, acres of agave for the marketing season shall not exceed one thousand dollars (\$1,000) and may be levied using a sliding scale. The assessment for growers that cultivate more than 10 acres of agave for the marketing season shall not exceed fifty thousand dollars (\$50,000) and may be levied using a sliding scale.

(c) The assessment for processors that process 3 to 10, inclusive, tons of agave for the marketing season shall not exceed one thousand dollars (\$1,000) and may be levied using a sliding scale. The assessment for processors that process more than 10 tons of agave for the marketing season shall not exceed fifty thousand dollars (\$50,000) and may be levied using a sliding scale.

(d) An assessment greater than the amounts established pursuant to this section shall not be charged unless it is approved in accordance with the voting requirements provided in Section 79962.

(e) The assessment shall not exceed the reasonable costs of achieving the purposes of this chapter.

79972. (a) Processors of agave shall keep a complete and accurate record of all agave processed by them with the names of the growers whose agave was processed.

(b) (1) Growers who process agave that they have cultivated shall keep a complete and accurate record of the agave processed.

(2) Growers shall, upon request of the commission, provide proof of commodity sale.

(c) The records described in subdivisions (a) and (b) shall contain information required by the commission. The records shall be preserved by growers and processors for a period of two years and shall be offered and submitted for inspection at any reasonable time upon written demand by the commission or its duly authorized agent.

79973. (a) All proprietary information obtained by the commission or the secretary from any source, including the names and addresses of growers and processors, shall be confidential and shall not be disclosed except if required by court order in a judicial proceeding.

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

79974. Growers and processors of agave that pay the assessment shall be trustees of the assessed funds until they are paid to the commission at the time and in the manner prescribed by the commission board of directors. Growers who process agave that they have cultivated shall be responsible for paying both assessments directly to the commission at the time and in the manner prescribed by the commission board of directors.

79975. Every grower and processor shall be personally liable for the payment of the assessments owed to the commission.

Article 7. Actions and Penalties

79981. (a) A person who fails to file a return or pay an assessment within the time required by the commission shall pay to the commission a penalty of 10 percent of the amount of the assessment determined to be past due and, in addition, interest on the unpaid balance at the rate of 1.5 percent per month.

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

79982. A civil penalty not exceeding one thousand dollars (\$1,000) may be levied by the commission on any person who does any of the following:

(a) Willfully render or furnish a false report, statement, or record required by the commission, or in any way avoids the payment of an assessment.

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

(c) When engaged in cultivating agave for processing into agave products, fails or refuses to furnish to the commission or its duly authorized agents, upon request, information concerning the name and address of the persons from whom agave was received and the quantity received.

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

79983. For purposes of according individuals aggrieved by its actions or determinations, the commission board of directors shall establish procedures for an informal hearing before the commission or before a committee of the commission established for this purpose. Appeals from the decision of the commission board of directors may be made to the secretary. The determination of the secretary shall be subject to judicial review upon petition filed with the appropriate superior court.

79984. (a) The commission may commence civil actions and use all remedies provided in law or equity for the collection of assessments and civil penalties, and for obtaining injunctive relief or specific performance, relating to this chapter and the procedures adopted under 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 procedures 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 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 of inadequate remedy at law specified by Section 526 or 527 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 the cultivating or processing of agave until there is full compliance with, and satisfaction of, the judgment.

(d) Upon a favorable judgment for the commission, the court may order that the commission be reimbursed for reasonable attorney's fees and other related costs actually incurred. Venue for these actions is 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.

79985. Any action by the commission for any penalty or other remedy that is prescribed under this chapter shall be commenced within two years from the date of discovery of the alleged violation. An action against the commission by a person shall be commenced within two years from the date of the alleged violation.

79986. The commission shall not be required to allege or prove that an adequate remedy at law does not exist in any action brought pursuant to this chapter.

79987. (a) This chapter shall be liberally construed.

(b) The provisions of this chapter are severable. If any provision of this chapter or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

79988. The termination of the operation of the commission and the implementation of this chapter shall not affect or waive any right, duty, obligation, or liability that has arisen or that may thereafter arise in connection with this chapter, release or extinguish any violation of this chapter, or affect or impair any right or remedies of the commission with respect to any violation.

Article 8. Continuation or Suspension and Termination

79991. (a) Five years after implementation of this chapter, the secretary shall hold a public hearing, after providing proper notice to persons subject to this chapter and any other persons or entities who have requested, in writing, notice of the hearing, to determine whether the commission shall continue to operate and this chapter shall continue to be implemented.

(b) If the secretary finds after the hearing that no substantial question exists among the growers and processors assessed pursuant to this chapter regarding whether the commission shall continue to operate, the secretary shall certify the finding and this chapter shall continue to be implemented.

(c) If the secretary finds after the hearing that a substantial question exists among the growers and processors assessed pursuant to this chapter regarding whether the commission shall continue to operate, the secretary shall conduct a referendum among growers and processors to determine whether the operation of the commission shall be terminated, in accordance with both of the following:

(1) The commission shall continue to operate unless the secretary determines from the referendum that a majority of the eligible growers and a majority of the eligible processors voting in the referendum voted in favor of terminating the commission.

(2) If the secretary finds that a vote to terminate the operation of the commission has been given, the secretary shall certify the vote and declare the implementation of this chapter is suspended upon the expiration of the current marketing season. Thereupon, the operation of the commission shall be concluded and funds distributed in the manner provided in Section 79994. A bond or security shall not be required for the referendum.

79992. Following a hearing, or a referendum resulting in a vote to continue the operation of the commission if required, the process specified in Section 79991 shall be conducted by the secretary every five years thereafter between April 1 and March 31 of the following year, unless a referendum is conducted as the result of a petition pursuant to Section 79993. In that case, the hearing, and referendum if required, shall be conducted every five years following the industry petitioned referendum.

79993. (a) Upon a finding by a two-thirds vote of the commission board of directors that the commission has not tended to effectuate its declared purposes, the commission may recommend to the secretary that the operation of the commission be suspended. Any suspension shall not become effective until expiration of the current marketing season.

(b) (1) The secretary shall, upon receipt of a recommendation, or may, after a public hearing to review a petition described in paragraph (2) requesting the suspension, cause a referendum to be conducted among the listed growers and processors to determine if the operation of the commission shall be suspended. The secretary shall not hold a referendum as a result of a petition described in paragraph (2) unless the petitioner shows by the weight of evidence that the implementation of this chapter has not effectuated its declared purposes.

(2) A petition filed requesting suspension of the operation of the commission shall be signed by at least 15 percent of the growers and at least 15 percent of the processors, by number, who also cultivate and process at least 15 percent of the total volume of agave in the preceding marketing season.

(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 necessary to conduct the referendum. At the close of the established referendum period, the secretary shall tabulate the ballots filed during the period. The secretary shall suspend the operation of the commission if the secretary finds both of the following:

(1) At least 40 percent of the total number of growers from the list established by the secretary participate, and that either of the following occurs:

(A) Sixty-five percent of the growers that voted in the referendum voted in favor of suspension, and the growers so voting grew a majority of the total quantity of agave cultivated in the preceding marketing season by all of the growers voting in the referendum.

(B) A majority of the growers that voted in the referendum voted in favor of suspension, and the growers so voting grew 65 percent or more of the total quantity of agave cultivated in the preceding marketing season by all of the growers voting in the referendum.

(2) At least 40 percent of the total number of processors from the list established by the secretary participate, and that either of the following occurs:

(A) Sixty-five percent of the processors that voted in the referendum voted in favor of suspension, and the processors so voting processed a majority of the total quantity of agave processed in the preceding marketing season by all of the processors voting in the referendum.

(B) A majority of the processors that voted in the referendum voted in favor of suspension, and the processors so voting processed 65 percent or more of the total quantity of agave processed in the preceding marketing season by all of the processors voting in the referendum.

79994. After the effective date of suspension of the operation of the commission, the operation of the commission shall be concluded and all moneys held by the commission, and moneys collected by assessment and not required to defray the expenses of concluding and terminating the operation of the commission, shall be returned on a pro rata basis to all persons from whom assessments were collected in the immediately preceding marketing season. However, if the commission board of directors finds that the amounts returnable are so small as to make impractical the computation and remitting of the pro rata refund to those persons, any moneys remaining after payment of all expenses of winding up and terminating the operation shall be withdrawn from the approved depository and paid into a related state or federal program or used to fund activities related to the subject matter of this chapter.

79995. Upon suspension of the operation of the commission, the commission shall mail a copy of the notice of suspension to growers and processors affected by the suspension whose names and addresses are on file.

SEC. 2. The Legislature finds and declares that Section 1 of this act, which adds Chapter 30 (commencing with Section 79911) to Part 2 of Division 22 of 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 confidential and proprietary information provided to the California Agave Commission by growers and processors, the limitations on the public's right of access imposed by Section 1 of this act are necessary.