

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 1861 (Addis)
Version: January 18, 2024
Hearing Date: June 25, 2024
Fiscal: Yes
Urgency: No
AM

SUBJECT

Pest control: Pierce's disease

DIGEST

This bill extends the sunset date on the Pierce's Disease Control Program in the California Department of Food and Agriculture to March 1, 2031.

EXECUTIVE SUMMARY

The Pierce's Disease Control Program (PDC) Program was enacted in 2001 to fight the spread of GWSS, which carries the bacterium *Xylella fastidiosa* and, which in turn, causes Pierce's Disease (PD) in grapes, almonds, oleander, and citrus fruits. A plant that develops PD will either die or become unproductive because its ability to draw in moisture is hindered. The principal policy matter drawing this bill into the purview of the Senate Judiciary Committee is the inclusion of a provision that restricts access to public records. California generally recognizes that public access to information concerning the conduct of the people's business is a fundamental and necessary right. At the same time, the state recognizes that this right must be balanced against the right to privacy. By extending the PDC Program, the bill extends certain statutes that contain a limitation on the access to public records. The bill is sponsored by the California Association of Winegrape Growers, Family Winemakers of California, and Wine Institute. The bill is supported by the California Agricultural Commissioners and Sealers. No timely opposition was received by this Committee. The bill passed the Senate Agriculture Committee on a vote of 5 to 0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the Pierce's Disease Control (PDC) Program in the California Department of Food and Agriculture (CDFA), which becomes inoperative on March

1, 2026 and is repealed on January 1, 2027. (Food & Ag. Code § 6047.1 et. seq.; § 6047.19(c).)

- a) Requires the Secretary of Food and Agriculture (Secretary) to create the Pierce's Disease and Glassy-winged Sharpshooter Board (Board), as provided, and specifies the powers of the Board. (Food & Ag. Code § 6047.3 & 6047.4.)
- 2) Provides that data and related information and materials produced during the course of research conducted pursuant to the PDC Program that are in the possession of CDFA, the Board, or any entity engaged in research funded by the PDC Program, is confidential and cannot be released for any purpose, except to the extent that they are included in any final publication of research, or except when required by a court order after a hearing in a judicial proceeding involving the PDC Program. (Food & Ag. Code § 6047.5(b).)
 - 3) Provides that all proprietary information obtained by the Board or CDFA from producers, processors, or any other source is confidential and cannot be disclosed, except when required by a court order issued upon a showing of good cause and that the information is necessary to a judicial proceeding involving the PDC Program.
 - a) Disclosure permitted above must be conducted in camera by the court.
 - b) Requires the court, in its discretion, to issue orders restraining a party or parties to a judicial proceeding involving the PDC Program from disseminating any proprietary information to the public or any other person not a party to that judicial proceeding. (Food & Ag. Code § 6047.13(a).)
 - 4) Provides, pursuant to the California Constitution, that the people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies are required to be open to public scrutiny. (Cal. const. art. I, § 3(b)(1).)
 - a) Requires a statute to be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. (Cal. const. art. I, § 3(b)(1).)
 - b) Requires a statute that limits the public's right of access to be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest. (Cal. const. art. I, § 3(b)(1).)
 - 5) Governs the disclosure of information collected and maintained by public agencies pursuant to the CPRA. (Gov. Code §§ 792.000 et seq.)
 - a) States that, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. (Gov. Code § 7921.000.)

- b) Defines “public records” as any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. (Gov. Code § 7920.530.)
 - c) Defines “public agency” as any state or local agency. (Gov. Code § 7920.525(a).)
- 6) Provides that all public records are open to inspection at all times during the office hours of a state or local agency and every person has a right to inspect any public record, unless the record is exempt from public disclosure. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law. (Gov. Code § 7922.525.)
- a) Some records are prohibited from being disclosed and other records are permissively exempted from being disclosed. (See e.g. Gov. Code §§ 7920.505 & 7922.200.)
 - b) There are several general categories of documents or information that are permissively exempt from disclosure under the CPRA essentially due to the character of the information. The exempt information can be withheld by the public agency with custody of the information, but it also may be disclosed if it is shown that the public’s interest in disclosure outweighs the public’s interest in non-disclosure of the information. (*CBS, Inc. v. Block* (1986) 42 Cal.3d 646, at 652.).

This bill:

- 1) Extends the Pierce’s Disease Control (PDC) Program to March 1, 2031.
- 2) Deletes the requirement for CDFA to submit a bi-annual report to the Legislature, and instead requires an annual report to be publicly available on CDFA’s website on or before December 31 each year.

COMMENTS

1. Stated need for the bill

The author writes:

California’s wine industry is a notable economic driver in our state, creating jobs, encouraging tourism, and ensuring the preservation of agricultural land.

Unfortunately, vineyards are susceptible to a bacterial infection called Pierce’s disease that is spread by the invasive glassy-winged sharpshooter.

In order to ensure that California wineries receive continued protection from Pierce's disease and invasive species, AB 1861 will extend the sunset date for the Pierce's Disease Control Program and the Pierce's Disease/Glassy-Winged Sharpshooter Board. The board and the program help protect our wineries by conducting research, responding to outbreaks, and providing orchard and bulk citrus inspections. In doing so, California wineries are protected and can continue to operate in a safer, more informed capacity.

2. Bill extends statutes that provide a limitation on the access to public records

The principal policy matter drawing this bill into the purview of the Senate Judiciary Committee is the inclusion of a provision that restricts access to public records. Access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. (Gov. Cod § 7921.000.) In 2004, the right of public access was enshrined in the California Constitution with the passage of Proposition 59 (Nov. 3, 2004, statewide general election),¹ which amended the California Constitution to specifically protect the right of the public to access and obtain government records: "The people have the right of access to information concerning the conduct of the people's business, and therefore . . . the writings of public officials and agencies shall be open to public scrutiny." (Cal. Const., art. I, sec. 3 (b)(1).) In 2014, voters approved Proposition 42 (Jun. 3, 2014, statewide direct primary election)² to further increase public access to government records by requiring local agencies to comply with the CPRA and the Ralph M. Brown Act³, and with any subsequent statutory enactment amending either act, as provided. (Cal. Const., art. I, sec. 3 (b)(7).)

Under the CPRA, public records are open to inspection by the public at all times during the office hours of the agency, unless exempted from disclosure. (Gov. Cod § 7922.252.) A public record is defined as any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any public agency regardless of physical form or characteristics. (Gov. Code § 7920.530.) There are several general categories of documents or information that are permissively exempt from disclosure under the CPRA essentially due to the character of the information. The exempt information can be withheld by the public agency with custody of the information, but it also may be disclosed if it is shown that the public's interest in disclosure outweighs the public's interest in non-disclosure of the information. (*CBS, Inc. v. Block* (1986) 42 Cal.3d 646, at 652.). Additionally some records are prohibited from disclosure or are specifically stated to not be public records. (*see* Gov. Code § 7924.110(a).)

¹ Prop. 59 was placed on the ballot by a unanimous vote of both houses of the Legislature. (SCA 1 (Burton, Ch. 1, Stats. 2004))

² Prop. 42 was placed on the ballot by a unanimous vote of both houses of the Legislature. (SCA 3 (Leno, Ch. 123, Stats. 2013))

³ The Ralph M. Brown Act is the open meetings laws that applies to local agencies. (Gov. Code §§ 59450 et. seq.)

Section 6047.5 of the Food and Agriculture Code provides that data and related information and materials produced during the course of research conducted pursuant to the PDC Program that are in the possession of CDFG, the Board, or any entity engaged in research funded pursuant to the PDC Program, is confidential and cannot be released for any purpose, except as specified. Additionally, Section 6047.13 of the Food and Agriculture Code provides that all proprietary information obtained by the Board or CDFG from producers, processors, or any other source is confidential and cannot be disclosed, except when required by a court order issued upon a showing of good cause and that the information is necessary to a judicial proceeding involving the PDC Program. By extending the PDC Program, this bill extends this limitation on the access to public records.

The bill provides findings and declarations regarding the need for this limitation on the access to public records, stating it is necessary to protect the personal and financial information of a person who provides information to the PDC Program. In light of the sensitive nature of the information shared with the PDC program, this limitation on the access to public records seems warranted.

3. Statements in support

The California Agricultural Commissioners and Sealers Association writes in support, stating:

Existing law establishes the Pierce's Disease Control Program in the Department of Food and Agriculture, and the Pierce's Disease Management Account in the Department of Food and Agriculture Fund. Existing law allows certain money in this account to be expended to combat Pierce's disease and its vectors, including the glassy-winged sharpshooter, and for purposes relating to other designated pests and diseases, as provided. Existing law requires the department to submit an annual report to the Legislature regarding its expenditures, progress, and ongoing priorities in combating Pierce's disease and its vectors in California. Existing law makes these provisions inoperative on March 1, 2026, and repeals them on January 1, 2027.

This bill would extend to March 1, 2031, the date on which the above provisions become inoperative, and would repeal those provisions on January 1, 2032.

This critical funding provides resources and tools necessary to address the introduction and spread of Pierce's Disease and its vectors. These invasive species can cause devastating impacts to California agriculture and it is imperative that we continue in our efforts.

SUPPORT

California Association of Winegrape Growers (sponsor)
Family Winemakers (sponsor)
Wine Institute (sponsor)
California Agricultural Commissioners and Sealers Association

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation: SB 449 (McGuire, Ch. 371, Stats. 2019), among other things, extended the date the PDC Program becomes inoperative to March 1, 2026, the date on which the above provisions become inoperative, and repealed those provisions on January 1, 2027.

PRIOR VOTES

Senate Agriculture Committee (Ayes 5, Noes 0)
Assembly Floor (Ayes 73, Noes 0)
Assembly Appropriations Committee (Ayes 15, Noes 0)
Assembly Agriculture Committee (Ayes 9, Noes 0)
