

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

AB 2606 (Aguiar-Curry)
Version: June 27, 2024
Hearing Date: July 2, 2024
Fiscal: Yes
Urgency: No
AM

SUBJECT

California Agave Commission

DIGEST

This establishes the California Agave Commission, as provided.

EXECUTIVE SUMMARY

Existing law provides for over two-dozen commissions and councils established to market California-based meat, fruit, vegetable, and fish products. This bill seeks to establish the California Agave Commission. According to the author and sponsor of the bill, many farmers are pursuing limited water-use crops, including agave, to retain economic opportunity and preserve farmland and jobs. Agave in particular, has proven to be a promising alternative as it requires 10 percent or less of the water needed by many traditional crops, while producing new, high-value products, such as California-grown agave spirits. Despite the growth of the agave industry, there is no state entity that directly helps address key challenges facing the agave industry or provides a voice for agave farmers. The bill is sponsored by the California Agave Council. No timely opposition was received by this Committee. The bill passed the Senate Agricultural Committee on a vote of 5 to 0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Finds and declares that the agricultural and seafood industries are vitally important elements of the state's economy and are supported by state established commissions and councils specified in this division that are mandated to enhance and preserve the economic interests of the State of California and are intended to do all of the following:

- a) Implement public policy through their expressive conduct, and that the programs conducted by these commissions and councils are among the broad range of state-mandated regulatory programs that are funded by the public through user fees assessed in accordance with each person's relationship to a particular program;
 - b) Reflect a continuing commitment by the State of California to its agricultural and seafood industries that are integral to its economy;
 - c) Represent a policy of support for persons engaged in the agricultural and seafood industries, which are critically important elements of the state's economy;
 - d) Provide benefit to the entire industry and all of the people of this state; and
 - e) Enhance the image of California agricultural and seafood products to increase the overall demand for these commodities. (Food & Ag. Code § 63901.)
- 2) Authorizes any agricultural or seafood commission or council to petition the Secretary of Food and Agriculture to adopt and administer any activity authorized pursuant to the California Marketing Act of 1937. (Food & Ag. Code § 63905(a).)
 - 3) Authorizes over two dozen agricultural and seafood councils and commissions for commodities ranging from wine grapes to blue berries to spiny lobsters and olive oil. (Food & Ag. Code §§ 64001 through 79902.)
 - 4) Provides that it is unlawful for any person to do any of the following:
 - a) Refuse to render a report, statement, or record required by a commission or council authorized by 3);
 - b) Furnish a false report, statement, or record required a commission or council authorized by 3);
 - c) When engaged in the handling of peppers, to fail or refuse to furnish a commission or council created by 3), or their duly authorized agents, information concerning the names and addresses of persons from whom peppers have been received and the quantity so received; and
 - d) Secrete, destroy, or alter records required to be kept by law. (*Ibid.*)
 - 5) Requires a commission or council established by 3) to establish procedures for the purpose of according individuals aggrieved by its actions or determinations an informal hearing before the commission or council, or before a committee of the commission or council designated for this purpose, and that appeals from decisions of the commission or council may be made to the Secretary of Food and Agriculture and that the Secretary's determination maybe subject to judicial review upon a petition filed with the appropriate superior court. (*Ibid.*)
 - 6) Authorizes councils and commissions described in 3) to commence civil actions and utilize all remedies provided in law or equity for the collection of assessments and civil penalties, and for obtaining injunctive relief or specific performance regarding

the rules and regulations adopted pursuant to the authorizing statutes of the commission or council. (*Ibid.*)

- 7) Requires a court to issue a commission or council described in 3) any requested writ of attachment or injunctive relief upon a prima facie showing by verified complaint that a named defendant has violated any rule or regulation of the commission or council, including, but not limited to, the nonpayment of assessments, and that no bond is required to be posted by the commission or council as a condition for the issuance of any writ of attachment or injunctive relief. (*Ibid.*)
- 8) Requires that upon entry of any final judgment on behalf of a commission or council established by 3) against any defendant, the court must enjoin the defendant from conducting any type of business regarding the commodity governed by the commission or council until there is full compliance and satisfaction of the judgment. (*Ibid.*)
- 9) Requires, upon a favorable verdict for a commission or council established pursuant to 3), the commission or council to receive reimbursement for any reasonable attorney's fees and other actual related costs. (*Ibid.*)
- 10) Provides that venue for any actions authorized by 6) may be established at the domicile or place of business of the defendant or in the county of the principal office of the commission or council, but that the commission or council may be sued only in the county of its principal office. (*Ibid.*)
- 11) Authorizes the Secretary of Food and Agriculture to, upon written notice, suspend all or a portion of the activities or functions of a commission or council established pursuant to 3) until the cessation or correction of activities or functions as required by the Secretary have been accomplished by the commission or council. (*Ibid.*)
- 12) Authorizes a commission or council authorized by 3) to seek judicial relief from the Secretary of Food and Agriculture's written notice, or from noncompliance by the commission or council with the written notice, in a court of competent jurisdiction, which may issue a temporary restraining order, permanent injunction, or other applicable relief. (*Ibid.*)
- 13) Provides that a commission or council created pursuant to 3) may sue or be sued and enter into contracts. (*Ibid.*)
- 14) Limits the liability of the State of California for any act or omission by a commission or council established pursuant to 3) and provides that any damages incurred by the commission or council are to be paid by the funds the commission or council collects. (*Ibid.*)

This bill:

- 1) Establishes the California Agave Commission (Commission).
- 2) Provides that the Commission is to have a board of directors consisting of the following:
 - a) six agave growers;
 - b) two agave processors; and
 - c) one member of the public.
- 3) Authorizes the Secretary of Food and Agriculture (Secretary) to 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 bill.
- 4) Provides that, 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.
- 5) Provides that actions of the Commission that are in violation of the Secretary's written notice are deemed to have no legal effect.
- 6) Requires the Secretary to 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 bill, 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.
- 7) Requires the Commission to reimburse the Secretary for all expenditures incurred by the Secretary in carrying out their duties and responsibilities, as specified.
- 8) Requires, except for the ex officio members of the Commission board of directors, each member of the commission board of directors to have an alternate member elected in the same manner as the member.
- 9) Requires 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, to 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.

- 10) Requires, for their entire term of office, a grower member and their alternate on the Commission board of directors to be an individual, partner, or employee of a grower who has a financial interest in growing agave, or causing agave to be grown.
- 11) Requires, for their entire term of office, a producer member of the Commission to be an individual, partner, or employee of a processor who has a financial interest in processing agave, or causing agave to be processed.
- 12) Specifies that the public member of the Commission possess all the powers, rights, and privileges of any other member on the Commission board of directors.
- 13) Establishes three year terms for all members of the Commission board of directors.
- 14) Provides that the Commission may sue and be sued and enter into contracts.
- 15) Establishes quorum and other procedural rules for the operation of meetings of the board of directors of the Commission.
- 16) Provides that the State of California is not liable for any act or omission of the Commission and that any damages incurred by the Commission are to be paid by the funds collected by the Commission from agave growers and producers.
- 17) Authorizes the Commission to do the following:
 - a) administer and enforce the provisions of this bill;
 - b) appoint officers from the members of the commission board of directors;
 - c) 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 bill;
 - d) fix the compensation for all employees;
 - e) appoint committees composed of members, alternates, and nonmembers of the commission board of directors to advise in carrying out this bill;
 - f) 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 bill and the performance of its duties;
 - g) keep accurate books, records, and accounts of all of its dealings;
 - h) present facts to, and negotiate with, state, federal, and foreign agencies;
 - i) make, in the name of the California Agave 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 of this bill;
 - j) conduct, and contract with others to conduct, research, including the study, analysis, dissemination, and accumulation of information obtained from research or elsewhere for purposes of this bill;

- k) collect information and publish and distribute to growers, processors, and the public a bulletin or other communication for dissemination of information;
 - l) establish an assessment rate to defray operating costs;
 - m) establish an annual budget according to accepted accounting practices;
 - n) submit to the Secretary of Food and Agriculture an annual statement of contemplated activities;
 - o) investigate and prosecute civil violations of this bill and file complaints with appropriate law enforcement agencies or officers for suspected criminal violations of this bill;
 - p) prescribe the form and manner by which proponents and opponents of the California Agave Commission may contact growers if all expenses associated with the contacts are paid in advance; and
 - q) conduct activities related to education, marketing, and promotion of agave and agave products.
- 18) Requires the Secretary to establish a list of growers and processors eligible to vote on the implementation of this bill, as specified.
- 19) Provides that the Commission is not formally established, and that the terms of this bill (except for this procedure) does not take effect until at least 40 percent of the total number of growers and processors from the list established by the Secretary participate in a vote to implement the Commission and either of the following occurs:
- a) Sixty-five percent of the growers and producers who voted in the referendum voted in favor of establishing the Commission, and those growers and producers grow or produced a majority of the total quantity of agave cultivated or processed in the preceding marketing season by all of the growers or processors voting in the referendum; or
 - b) A majority of the growers and processors who voted in the referendum voted in favor of establishing the Commission, and those growers and producers grow or produce 65 percent or more of the total quantity of agave cultivated or processed in the preceding marketing season by all of the growers voting in the referendum.
- 20) Requires the Commission board of directors to, no later than the beginning of each marketing season, or as soon thereafter as possible, establish the assessment to be paid by growers and processors for the marketing season.
- 21) Provides that all proprietary information obtained by the Commission or the Secretary from any source, including the names and addresses of growers and processors, is confidential and cannot be disclosed except if required by court order in a judicial proceeding.

- 22) Requires that a person who fails to file a return or pay an assessment within the time required by the Commission to pay 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.
- 23) Authorizes the Commission to seek a civil penalty not to exceed \$1,000 against a person who does any of the following:
 - a) willfully renders or furnishes a false report, statement, or record required by the Commission, or in any way avoids the payment of an assessment on the product's highest value;
 - b) fails to render or furnish a report, statement, or record required by the Commission;
 - c) when engaged in growing 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; and
 - d) secrete, destroy, or alter records.
- 24) Authorizes the Commission to establish procedures for an informal hearing before the Commission or before a committee of the Commission to hear from individuals aggrieved by its actions or determinations.
- 25) Authorizes the Commission to commence civil actions and utilize all remedies provided in law or equity for the collection of assessments and civil penalties and for the obtaining for injunctive relief or specific performance regarding the rules and regulations adopted pursuant to the authorizing statutes of the Commission.
- 26) Requires a court to issue the California Agave Commission any requested writ of attachment or injunctive relief upon a prima facie showing by verified complaint that a named defendant has violated any rule or regulation of the commission or council, including, but not limited to, the nonpayment of assessments, and that no bond is required to be posted by the Commission as a condition for the issuance of any writ of attachment or injunctive relief.
- 27) Requires that upon entry of any final judgment on behalf of the California Agave Commission against any defendant, the court must enjoin the defendant from conducting any type of business regarding agave until there is full compliance and satisfaction of the judgment.
- 28) Requires, upon a favorable verdict for the California Agave Commission, the commission is entitled to receive reimbursement for any reasonable attorney's fees and other actual related costs.
- 29) Provides that venue for any actions authorized by 25) may be established at the domicile or place of business of the defendant or in the county of the principal office

of the California Agave Commission, but that the Commission may be sued only in the county of its principal office.

30) Requires any action pursuant to 25) to be commenced within two years of the discovery of the alleged violation.

31) Requires the Secretary of Food and Agriculture to hold a public hearing, five years after the implementation of this bill, to determine whether the California Agave Commission should continue to operate and this bill should continue to be implemented, as specified.

32) Adopts a severability clause.

COMMENTS

1. Stated need for the bill

The author writes:

Agave is a rapidly growing agricultural crop in California because it is resilient to many of the state's climactic extremes and can serve as an excellent replacement crop for drought or water-stricken production regions. While this is a nascent industry, agave spirits are quickly becoming one of the fastest growing spirits, according to the Distilled Spirits Council of U.S. AB 2606 establishes the California Agave Commission to give the agave industry an opportunity to self-organize and pool grower and distiller resources to invest collectively in education, research, and marketing.

2. Agave

The author and sponsor of the bill note that the increasing impacts of climate change and persistent droughts have reduced water availability throughout California, placing significantly more pressure on the state's agricultural sector and agriculture-dependent regions. The implementation of the Sustainable Groundwater Management Act has placed restrictions on groundwater use to maintain sustainable water-use strategies. They state that current and future water scarcity will lead to higher production costs, lower yields, fallowed fields, and rural job losses that disproportionately impact underrepresented farmers, farm employees, and their communities. They point to the economic opportunity of agave due to it only requiring 10 percent or less of the water needed by many traditional crops, while producing new, high-value products, such as California-grown agave spirits, which are similar to tequila, mezcal, and others made in Mexico. According to the Distilled Spirits Council, tequila and mezcal are the fastest-growing spirit categories in the United States today.

3. This bill seeks to enact the Commission and models its structure and authority off existing commodity-based commissions

Existing law provides for the establishment and operation of numerous councils and commissions seeking to promote commodities including, among others, California peppers, California dairy, California iceberg lettuce, and California apples. These commissions and councils have been established over the years utilizing a nearly identical statutory framework that this bill is modeled after. The existing framework vests day-to-day governing authority with a board of directors, made up of commodity producers and the public, who are authorized to hire staff. The boards are supervised, to a degree, by the Secretary. Existing law requires the Secretary to develop a list of a commodity's producers who are then given an opportunity to vote whether or not to create the commission or council. If they vote to create the commission or council, it is authorized to charge a fee to the commodity producers to assist in the commission or council's operations and marketing work. The commission and council are authorized to sue and seek civil penalties against producers who do not assist in funding the commission or council. These groups are also allowed to collect production data from the commodity producers but cannot disclose the confidential and proprietary data outside of a court order in a judicial proceeding. Additionally, as these entities are quasi-governmental bodies, the council and commissions can sue and be sued and are subject to meeting requirements spelled out in statute.

The Commission established by this bill is essentially identical to the structure of the other commissions and councils described above. Specific to this Committee's jurisdiction, the bill:

- specifies that no action taken by the Commission, or by any individual in accordance with the bill or with bylaws or procedures established pursuant to the bill, are to 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;
- authorizes the Commission to sue and be sued;
- provides for the assessment of civil penalties for certain acts, and specifies the manner in which the Commission can enforce the penalties through a civil action in a court of competent jurisdiction;
- provides that documents received by the Commission are proprietary and confidential, and are not to be disclosed except by order of a court.

As noted above, these provisions are ones that are included under all other similar commodity commission statutes. The Commission is subject to review five years after its creation. Additionally, in the event agave growers and producers believe the

Commission is not providing value, or acting in a manner that is inconsistent with the industry's wishes, the producers can vote to end the Commission. Lastly, if Commission is seen as abusing its powers or behaving in a manner that is inconsistent with law, the Secretary has the authority to essentially halt the Commission's operations.

4. Limitation on 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 they are exempt 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 that is 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).)

California generally recognizes that public access to information concerning the conduct of the people's business is a fundamental and necessary right.⁴ At the same time, the

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.)

⁴ Cal. Const., art. I, § 3; Gov. Code, § 7921.000.

state recognizes that this right must be balanced against the right to privacy.⁵ The general right of access to public records may, therefore, be limited when records include personal information. The bill provides that the limitation on access to public records in the bill is needed to protect confidential and proprietary information provided to the California Agave Commission by growers and processors.

5. Statements in support

The California Agave Commission, the sponsor of the bill, writes:

In recent years agave has proven to be a promising high value climate resilient low water use crop alternative for California farmers. Our industry is young, but rapidly growing. Agave requires less than 10% water than other crops now grown in many of the impacted water regions of our state. Agave provides an economically and environmentally attractive alternative to the fallowing of thousands of acres of productive agricultural land that has already begun and is predicted to severely impact California's agriculture economy in the years ahead. In addition, due to the long history of agave grown in Mexico for distilled spirits, many of our Mexican American farm owners and workers bring with them the cultural experience and expertise that provides new business and job opportunities in our disadvantaged farming communities.

AB 2606 seeks to create the California Agave Commission, funded entirely by the industry, to help our industry grow. There is a long history of successful commodity commissions in the Food and Agricultural Code that allows for pooled resources to pursue initiatives in grower education, sustainable practices, plant health, research, and marketing. Long-standing commission law, of which AB 2606 is modeled after, identifies rules and procedures for establishment of the Commission, processes for continuation or cessation, voting and assessment standards – all guided by self-determination of California agave growers and distillers and overseen by the California Department of Food and Agriculture. In short, AB 2606 allows for the conditions of a mature and successful agave industry to grow.

SUPPORT

California Agave Council (sponsor)

OPPOSITION

None received.

⁵ Cal. Const., art. I, § 1.

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation: AB 2303 (Aguiar-Curry, Ch. 694, Stats. 2022) prescribed labeling requirements for agave spirits produced entirely in California.

PRIOR VOTES

Senate Agriculture Committee (Ayes 5, Noes 0)
Assembly Floor (Ayes 71, Noes 0)
Assembly Appropriations Committee (Ayes 14, Noes 0)
Assembly Judiciary Committee (Ayes 12, Noes 0)
Assembly Agriculture Committee (Ayes 8, Noes 0)
