

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

SB 1270 (Grove)
Version: March 18, 2024
Hearing Date: April 23, 2023
Fiscal: Yes
Urgency: No
AM

SUBJECT

Department of Food and Agriculture: farm products: licenses and complaints: fees

DIGEST

This bill establishes the Market Enforcement Advisory Committee within the California Department of Food and Agriculture (CDFA), and authorizes the Committee to meet via teleconferencing if certain conditions are met. The bill also increases licensing fees for processors of farm products and produce dealers and makes complaint filing fees be based on the value of the complaint instead of a flat fee.

EXECUTIVE SUMMARY

The Market Enforcement Branch (MEB) of CDFA was established to ensure stability in the agricultural marketplace and to protect against unfair business practices between producers, handlers, and processors of California farm products, including by requiring licensure to transact business in the state. This bill raises certain license fees and changes the filing fee for complaints from a flat fee to a tiered fee based upon the value of the complaint. Additionally, the bill establishes the Market Enforcement Advisory Committee (Committee) within CDFA to advise the Secretary on the regulation of producers, handlers, and processors. This bill provides that the Committee may meet via teleconference if certain conditions are met. The bill is author sponsored and supported by the California Association of Winegrape Growers and the California Farm Bureau. No timely opposition was received by the Committee. This bill passed the Senate Agriculture Committee on a vote of 3 to 0.

PROPOSED CHANGES TO THE LAW

- 1) Requires that all persons engaged in the processing or manufacturing, or purchasing for processing or manufacturing of any farm product be licensed by the California Department of Food and Agriculture. (CDFA). (Food & Ag. Code § 55401 et. seq.)

- a) Specifies various licensing fees for these purposes and authorizes the Secretary of CDFA to fix those fees at a lesser amount, and to adjust them from time to time. (Food & Ag. Code § 55861 & 55861.5.)
 - b) Authorizes the Secretary to appoint an advisory committee of producers and licensees to provide guidance in establishing these fees or may rely on input from any similar advisory committee already assembled by the Secretary. (Food & Ag. Code § 55861.5.)
- 2) Requires all persons buying, receiving on consignment, soliciting for sale on commission, or negotiating the sale for resale of any farm product to be licensed by CDFA. (Food & Ag. Code § 56271 et. seq.)
- a) Specifies various licensing fees for these purposes and authorizes the Secretary of CDFA to fix those fees at a lesser amount, and to adjust them from time to time. (Food & Ag. Code § 56571 & 56571.5.)
 - b) Authorizes the Secretary to appoint an advisory committee of producers and licensees to provide guidance in establishing these fees or, in the alternative, rely on input from any similar advisory committee already assembled by the Secretary. (Food & Ag. Code § 55861.5.)
 - c) Authorizes an aggrieved grower or licensee with a complaint that is not subject to the federal Packers and Stockyards Act, 1921 (7 U.S.C. Sec. 181 et seq.) or the federal Perishable Agricultural Commodities Act, 1930 (7 U.S.C. Sec. 499a et seq.) to seek resolution of that complaint with the department within nine months from the date a complete account of sales was due, and requires a filing fee of \$100. (Food & Ag. Code § 56382.5(a).)
- 3) 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).)
- 4) Establishes the Bagley-Keene Act, which requires state bodies to conduct their business in open public meetings, except as provided by the Act, and establishes requirements and procedures for such meetings. (Gov. Code § 11120 et seq.)
- a) "State bodies" covered by the Bagley-Keene Act include every state board, commission or body created by statute or required by law to conduct official meetings, every commission created by executive order, any board or body exercising the authority of a state body by delegation, any advisory body created by formal action of a state body, any state body that is supported by

- public funds and which a member of a state body serves in their official capacity, and the State Bar of California. (§ 11121.)
- b) "State bodies" do not include specified legislative agencies, agencies subject to the Brown Act, and certain educational and health-related agencies. (§ 11121.1.)
- 5) Authorizes advisory boards created under the California Marketing Act of 1937 to, notwithstanding specified provisions of the Bagley-Keene Act, meet by teleconference if all of the following are met:
- a) The advisory board designates a primary physical meeting location where participants may physically attend the meeting and participate, and at least one member of the advisory board is in attendance at the primary physical meeting location.
 - b) A member of the advisory board participating by teleconference must be listed in the minutes of the meeting, and must provide notice of that member's participation by teleconference at least 24 hours before the meeting.
 - c) The teleconference phone number, and, if applicable, the website or other information indicating how the public can access the meeting remotely, must be included in the agenda, which shall be available to the public.
 - d) Prior to holding a meeting by teleconference, the advisory board must adopt teleconferencing guidelines to address issues that include, but are not limited to, cancellations as a result of technical difficulties, ensuring transparency, and public participation. (Food & Ag. Code § 58853.)

This bill:

- 1) Increases the licensing fees and filing described above, as provided.
- 2) Establishes within CDFAs the Market Enforcement Advisory Committee (Committee) that is to consist of up to 12 voting members, which shall include a balanced representation of growers, processors, and produce dealers, or representatives from organizations that advocate on behalf of these industry groups. The term of office for a member of the Committee is three years.
 - a) Authorizes the Secretary to appoint the members of the Committee after receiving recommendations from the industry, and to appoint one additional public member to the Committee, as provided.
- 3) Declares, as a matter of legislative determination, that persons appointed to the Committee are intended to represent and further the interests of the industry concerned, and that this representation and furtherance is intended to serve the public interest.
 - a) Accordingly, the Legislature finds that, with respect to persons who are appointed to the Committee, the industry concerned is tantamount to, and

constitutes, the public generally within the meaning of Section 87103 of the Government Code.

- 4) Provides the Committee is to advise the Secretary and make recommendations on all of the following:
 - a) All matters pertaining to the administration and enforcement of Chapter 6 (commencing with Section 55401) and Chapter 7 (commencing with Section 56101) of the Food and Agriculture Code and any rules or regulations adopted pursuant to those chapters.
 - b) Procedures established and performed by the Market Enforcement Branch of CDFA.
 - c) Annual budgets required to accomplish the purposes of the chapters described in a).
 - d) The setting of appropriate licensing and complaint fees necessary for the administration of the chapters described in a).

- 5) Specifies that the Committee may meet via teleconference if it meets the requirements prescribed in 5), above for advisory boards created under the California Marketing Act of 1937.

COMMENTS

1. Stated need for the bill

The author writes:

The Market Enforcement Branch of the California Department of Food and Agriculture provides important services to our farmers and growers, protecting more than \$40 billion in California agricultural commodities. This industry-supported fee update will keep the Market Enforcement Branch solvent so that it can continue safeguarding the integrity and stability of the agricultural marketplace.

2. Background

The Market Enforcement Branch (MEB) of CDFA was established by the Legislature in 1928, with the goal of stabilizing marketing conditions for most agricultural commodities. MEB licenses dealers and processors, conducts audits and investigations, helps to ensure timely payment for producers and dealers of farm products, and settles transaction complaints. All persons engaged in the processing or manufacturing, or purchasing for processing or manufacturing of any farm product are required to be licensed by CDFA. Additionally, all persons buying, receiving on consignment, soliciting for sale on commission, or negotiating the sale for resale of any farm product must be licensed by CDFA. The current licensing fees are based on annual volume of sales for each licensee: \$20,000 or less, fees are \$136; \$20,000 to \$49,999.99, fees are \$200;

\$50,000 to \$1,999,999.99 million, fees are \$300; and over \$2 million, fees are \$400. Agents of a licensed principal are required to pay a \$55 fee. Any aggrieved grower can file a complaint against a processor or broker/dealer for a filing fee of \$100 to work towards a settlement of the dispute. This bill raises those license fees and the filing fee.

3. Limitation on access to public meetings - Market Enforcement Advisory Committee

Bagley-Keene generally requires state bodies to conduct their meetings openly and make them accessible to the public. A state body includes boards, commissions, committees, councils, and any other public agency created by state statute or executive order, with some exceptions, and the State Bar. (§ 11121.) The law does not apply to individual officials, advisory committees with no decision-making authority, or the California State Legislature. The law also requires state bodies to provide advance notice of their meetings and agendas and to allow public comments on matters under consideration. (Gov. Code § 11125.) The act includes certain exceptions, such as closed sessions for discussing personnel issues or pending litigation, to protect the privacy and legal interests of individuals and the state. (§ 11126.)

This bill establishes the Market Enforcement Advisory Committee within CDFA to make recommendations to the Secretary regarding: (1) all matters pertaining to the administration and enforcement of laws regulating processors of farm products and produce dealers; (2) procedures established and performed by the MEB, including annual budgets; and (3) the setting of appropriate licensing and complaint fees. The bill provides that notwithstanding Bagley-Keene requirements, the Committee may meet via teleconference if certain conditions are met. These conditions are the same ones that advisory boards created under the California Marketing Act of 1937 are required to comply with in order to meet via teleconference. (Food & Ag. Code § 58853.) These requirements include:

- designating a primary physical meeting location where participants may physically attend the meeting and participate, and at least one member of the advisory board is in attendance at the primary physical meeting location;
- listing in the minutes of the meeting a member of the advisory board participating by teleconference, and providing notice of that member's participation by teleconference at least 24 hours before the meeting;
- including in the agenda, which shall be available to the public, the teleconference phone number, and, if applicable, the website or other information indicating how the public can access the meeting remotely; and
- adopting teleconferencing guidelines to address issues that include, but are not limited to, cancellations as a result of technical difficulties, ensuring transparency, and public participation prior to holding a meeting by teleconference.

The California Constitution requires a statute that limits the public's right of access to public meetings 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).) This bill states that in "order for the Market Enforcement Advisory Committee to hold meetings and make timely decisions, it is in the state's interest to establish alternative requirements for teleconferences for this committee in order to encourage participation by members. Many of these members are located in remote locations in the state that are difficult for the public to access and the members may need to participate from a nonstationary location." In light of the fact that existing law already allows similar committees under the California Marketing Act of 1937 to meet via teleconference if the prescribed requirements are met, the limitation in this bill appears reasonable.

4. Statements in support

The supporters of the bill write:

SB 1270 will update license and application fees and make complaint fees tiered based on the value of the complaint. MEB is supported by the agriculture industry and protects more than \$40 billion in California agricultural commodities. With the passage of SB 1270, MEB will continue to function as an important resource for growers and handlers.

SUPPORT

California Association of Winegrape Growers
California Farm Bureau

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 411 (Portantino, Ch. 605, Stats. 2023) among other things, authorized a legislative body of a local agency to use alternate teleconferencing provisions similar to the emergency provisions indefinitely and without regard to a state of emergency, as specified.

SB 537 (Becker, 2023) among other things, authorizes certain legislative bodies of local agencies to use alternate teleconferencing provisions similar to the emergency

provisions indefinitely and without regard to a state of emergency, as specified. This bill is currently pending on the Assembly Floor.

AB 1733 (Quirk, 2022) would have updated Bagley-Keene to accommodate teleconferenced meetings as a standard practice, as provided. This bill was never set for a hearing in the Assembly Governmental Organization Committee.

AB 2449 (Rubio, Ch. 285, Stats. 2022) allows, until January 1, 2026, members of a legislative body of a local agency to use teleconferencing without noticing their teleconference locations and making them publicly accessible under certain conditions.

PRIOR VOTES

Senate Agriculture Committee (3 Ayes, 0 Noes)
