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AMENDED IN SENATE MAY 5, 2004

AMENDED IN SENATE MARCH 25, 2004

SENATE BILL

No. 1650

Introduced by Senator Chesbro

(Principal coauthor: Assembly Member Wiggins)

**(Coauthors: Senators *Bowen, Ducheny, Hollingsworth, Margett,*
~~and Morrow~~ *Morrow, and Soto*)**

(Coauthors: Assembly Members Aghazarian, Berg, Bermudez,
Cogdill, Leslie, Matthews, Maze, Mountjoy, *Nakanishi*, Parra,
Reyes, and Wolk)

February 20, 2004

An act to amend Sections 6046, 6047.1, 6047.2, 6047.3, 6047.35, 6047.4, 6047.5, 6047.13, and 6047.19 of, to add Sections 6047.20, 6047.21, 6047.22, 6047.23, 6047.24, 6047.25, 6047.26, 6047.27, 6047.28, and 6047.29 to, the Food and Agricultural Code, relating to pest control, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1650, as amended, Chesbro. Pest control: Pierce's disease.

(1) 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 Food and Agriculture Fund. Existing law allows money in this account to be expended as specified to combat Pierce's disease and its vectors. Existing law declares that these provisions shall become inoperative on January 1, 2006.

This bill would change the date on which these provisions become inoperative to March 1, 2011.

(2) Existing law creates in the Department of Food and Agriculture the Pierce's Disease and Glassy-winged Sharpshooter Board, which consists of specified numbers of representatives of producers and processors, as defined, in the grape industry that are appointed by the Secretary of Food and Agriculture. Existing law sets forth the powers of the board and provides for an annual assessment to be paid by the processors into the Department of Food and Agriculture Fund for the purposes of, among other things, research and other activities related to the transmittal of the plant killing Pierce's disease bacterium, and its vectors, particularly the glassy-winged sharpshooter. Existing law repeals these provisions on March 6, 2006.

This bill would extend the repeal date of these provisions to March 1, 2011, except that this bill would make these provisions inoperative as of March 1, 2006, unless the secretary finds, in a referendum conducted by him or her, or a person designated by him or her, that a favorable vote has been given. The bill would require, no later than April 15, 2005, the secretary to establish a list of those individuals eligible to vote on the continued implementation of these provisions, as specified, and would establish requirements and procedures for a referendum.

The bill would authorize expenditure of funds collected pursuant to these provisions for costs to conduct a referendum and for research and other activities related to Pierce's disease and its vectors. Because assessments collected pursuant to these provisions are deposited in the Department of Food and Agriculture Fund, which is continuously appropriated, by authorizing expenditure of these funds for a new purpose, this bill would make an appropriation.

(3) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.



The people of the State of California do enact as follows:

1 SECTION 1. Section 6046 of the Food and Agricultural Code
2 is amended to read:

3 6046. (a) There is hereby created in the Department of Food
4 and Agriculture the Pierce’s Disease Control Program.

5 (b) The Governor shall appoint a statewide coordinator, and the
6 secretary shall provide an appropriate level of support staffing and
7 logistical support for combating Pierce’s disease and its vectors.

8 (c) (1) There is hereby created the Pierce’s Disease
9 Management Account in the Food and Agriculture Fund.

10 (2) The account shall consist of money transferred from the
11 General Fund and money made available from federal, industry,
12 and other sources. Money made available from federal, industry,
13 and other sources shall be available for expenditure without regard
14 to fiscal year for the purpose of combating Pierce’s disease or its
15 vectors. State general funds to be utilized for research shall only
16 be expended when the secretary has received commitments from
17 nonstate sources for at least a 25-percent match for each state
18 dollar to be expended.

19 (d) The funds appropriated pursuant to this section to the Food
20 and Agriculture Fund for the purpose of combating Pierce’s
21 disease and its vectors shall be used for costs that are incurred by
22 the state or by local entities during and subsequent to the fiscal year
23 of the act that added this section for the purpose of research and
24 other efforts to combat Pierce’s disease and its vectors.

25 (e) Whenever, in any county, funds are allocated by the
26 Department of Food and Agriculture for local assistance regarding
27 Pierce’s disease and its vectors, those funds shall be made available
28 to a local public entity, or local public entities, designated by that
29 county’s board of supervisors.

30 (f) Funds appropriated for local assistance shall not be
31 allocated to the local public entity until the local public entity
32 creates a Pierce’s disease work plan that is approved by the
33 department. Any funds allocated by the department to a designated
34 local public entity shall be utilized for activities consistent with the
35 local Pierce’s disease work plan or other programs or work plans
36 approved by the department. It shall be the responsibility of the
37 designated local public entity to develop and implement the local
38 Pierce’s disease work plan. Upon request, the department shall



1 provide consultation to the local public entity regarding its work
2 plan.

3 (g) The work plan created by the designated local public entity
4 shall include, but is not limited to, all of the following:

5 (1) In coordination with the department, the development and
6 delivery of producer outreach information and training to local
7 communities, groups, and individuals to organize their
8 involvement with the work plan and to raise awareness regarding
9 Pierce’s disease and its vectors.

10 (2) In coordination with the department, the development and
11 delivery of ongoing training of the designated local public entity’s
12 employees in the biology, survey, and treatment of Pierce’s disease
13 and its vectors.

14 (3) The identification within the designated local public entity
15 of a local Pierce’s disease coordinator.

16 (4) The proposed treatment of Pierce’s disease and its vectors.
17 Treatment programs shall comply with all applicable laws and
18 regulations and shall be conducted in an environmentally
19 responsible manner.

20 (5) In coordination with the department, the development and
21 implementation of a data collection system to track and report new
22 infestations of Pierce’s disease and its vectors in a manner
23 respectful of property and other rights of those affected.

24 (6) On an annual basis, while funds appropriated by this section
25 are available for encumbrance, the department shall review the
26 progress of each local public entity’s activities regarding Pierce’s
27 disease and its vectors and, as needed, make recommendations
28 regarding those activities to the local public entity.

29 (h) Notwithstanding Section 7550.5 of the Government Code,
30 the department shall report to the Legislature on January 1, 2001,
31 and each January 1 while this section is operative, regarding its
32 expenditures, progress, and ongoing priorities in combating
33 Pierce’s disease and its vectors in California.

34 (i) This article shall become inoperative on March 1, 2011, and
35 as of January 1, 2012, is repealed, unless a later enacted statute that
36 is enacted before January 1, 2012, deletes or extends the dates on
37 which it becomes inoperative and is repealed.

38 SEC. 1.5. Section 6047.1 of the Food and Agricultural Code
39 is amended to read:

40 6047.1. The Legislature finds and declares the following:



1 (a) The state’s agricultural business economy could be
2 seriously damaged if measures are not taken to prevent the
3 transmittal of the plant killing bacterium that causes Pierce’s
4 disease and to contain its vectors, particularly the glassy-winged
5 sharpshooter. Furthermore, progress made by winegrape growers
6 and others in the adoption of integrated pest management and
7 sustainable farming practices is threatened by these destructive
8 pests and diseases.

9 (b) The funding to accomplish the purposes of this article shall
10 be derived from an assessment on all grapes grown in California
11 and crushed for wine, wine vinegar, juice concentrate, or beverage
12 brandy.

13 (c) This article is not intended to establish a precedent, or to
14 supersede, or to reduce or in any way alter government funding of
15 the effort to combat Pierce’s disease and other pests in this state.

16 (d) The purposes of this article are enhanced by the many and
17 varied efforts of other agricultural commodities’ industries to
18 combat this bacterium and its vectors.

19 (e) This article is enacted for the protection of the winegrape
20 industry and is also declared to be enacted in the public interest and
21 in the exercise of the police power of the state for the purpose of
22 protecting the health, peace, safety, and general welfare of the
23 people of this state.

24 (f) The assessments shall be collected and expended for
25 purposes consistent with Section 6046.

26 SEC. 2. Section 6047.2 of the Food and Agricultural Code is
27 amended to read:

28 6047.2. For the purposes of this article, the following
29 definitions shall govern its construction:

30 (a) “Board” means the Pierce’s Disease and Glassy-winged
31 Sharpshooter Board.

32 (b) “Department” means the Department of Food and
33 Agriculture.

34 (c) “Marketing season” begins July 1 of each year and ends
35 June 30 of the next year.

36 (d) “Producer” means a grower, including a cooperative, of
37 grapes in California for wine, wine vinegar, juice, concentrate, or
38 beverage brandy.



1 (e) “Processor” means a processor who crushes grapes in
2 California for wine, wine vinegar, juice, concentrate, or beverage
3 brandy.

4 (f) “Person” means a producer, processor, or any other entity
5 that holds title to grapes subject to assessment.

6 (g) “Purchase” means the taking by sale, discount,
7 negotiation, mortgage, pledge, lien, issue or reissue, gift, or any
8 other voluntary transaction creating an interest in property. For
9 purposes of this paragraph, “sale” shall consist of the passing of
10 title from the seller to the buyer for a price.

11 (h) “Purchased grapes” means grapes grown in California,
12 crushed by a processor for wine, wine vinegar, juice, concentrate,
13 or beverage brandy, and purchased from a person considered a
14 separate entity from the purchaser.

15 (i) “Grapes not purchased” means all other grapes grown in
16 California and crushed by a processor for wine, wine vinegar,
17 juice, concentrate, or beverage brandy, including, but not limited
18 to, the following:

19 (1) Grapes grown by a person who is not considered a separate
20 entity from the processor or who is a member of the processor
21 cooperative.

22 (2) Grapes not purchased and crushed to the account of a person
23 who retains ownership of the grapes.

24 (j) “Secretary” means the Secretary of Food and Agriculture.
25 SEC. 3. Section 6047.3 of the Food and Agricultural Code is
26 amended to read:

27 6047.3. (a) Within 90 days after the effective date of this
28 section, the secretary shall create in the department the Pierce’s
29 Disease and Glassy-winged Sharpshooter Board, which shall
30 consist of at least 14, but not more than 15 members, of which eight
31 shall be representatives of producers who are not also processors
32 and six shall be representatives of processors who are also
33 producers.

34 (b) The secretary shall appoint the members of the board from
35 recommendations received from the industry. In making the
36 appointments, the secretary shall select no more than one person
37 from a producer or processor entity and shall ensure that there is
38 representation on the board from each of the major grape
39 production areas in the state.



1 (c) The secretary may appoint one additional member to the
2 board, from nominees received from the board, who shall serve as
3 the public member. The public member shall represent the
4 interests of the public in all matters coming before the board and
5 shall have the same voting and other rights and immunities as other
6 members of the board.

7 (d) The secretary and other appropriate individuals, as
8 determined by the board, shall be nonvoting ex officio members
9 of the board.

10 (e) It is hereby declared, as a matter of legislative
11 determination, that persons appointed to the board are intended to
12 represent and further the interests of the industry concerned, and
13 that this representation and furtherance is intended to serve the
14 public interest. Accordingly, the Legislature finds that, with
15 respect to persons who are appointed to the board, the industry
16 concerned is tantamount to, and constitutes, the public generally
17 within the meaning of Section 87103 of the Government Code.

18 SEC. 4. Section 6047.35 of the Food and Agricultural Code
19 is amended to read:

20 6047.35. Notwithstanding any other provision of law, the
21 secretary, upon the recommendation of the board, may contract
22 with any nonprofit authoritative scientific body with expertise in
23 agricultural issues in order to expedite research relating to the
24 eradication of Pierce's disease.

25 SEC. 5. Section 6047.4 of the Food and Agricultural Code is
26 amended to read:

27 6047.4. (a) The powers of the board shall be the following:

28 (1) Submit recommendations to the secretary on, but not
29 limited to, the following:

30 (A) Selection of officers.

31 (B) Terms of office for board members.

32 (C) Annual assessment rate.

33 (D) Annual budget.

34 (E) Expenditures authorized under Section 6047.5.

35 (2) Receive money from the assessment and other sources.

36 (3) Adopt, amend, and rescind all proper and necessary bylaws
37 and procedures.

38 (4) Coordinate its activities with the secretary's science
39 advisory board and agricultural/governmental advisory task force.



1 (b) A majority of the members of the board shall constitute a
2 quorum of the board. The vote of a majority of the members
3 present at a meeting at which there is a quorum constitutes an act
4 of the board, except for actions taken pursuant to subdivision (a)
5 of Section 6047.7, which shall require a majority of the vote of the
6 board. The board may continue to transact business at a meeting
7 where a quorum is initially present, notwithstanding the
8 withdrawal of members, provided any action is approved by the
9 requisite majority of the required quorum.

10 (c) As authorized by the board, members of the board may
11 receive per diem and mileage in accordance with the rules of the
12 Department of Personnel Administration for attendance at
13 meetings and other approved board activities.

14 SEC. 6. Section 6047.5 of the Food and Agricultural Code is
15 amended to read:

16 6047.5. (a) Expenditure of the funds pursuant to this article
17 shall be restricted to the following:

18 (1) Reasonable administrative expenses of the board and the
19 department, subject to the limitation in Section 6047.12.

20 (2) The collection, enforcement, deposit, and handling of the
21 assessments.

22 (3) Notwithstanding Section 6047.12, costs to conduct a
23 referendum.

24 (4) Subject to subdivision (d) of Section 6047.1, research and
25 other activities related to the transmittal of the plant killing
26 Pierce's disease bacterium and its vectors, particularly the
27 glassy-winged sharpshooter, including, but not limited to,
28 research of integrated pest management and other sustainable
29 industry practices. The disbursement of research funds collected
30 pursuant to Section 6047.7 shall be on a competitive bid basis,
31 shall be exempt from the requirements of Sections 12798 and
32 12798.6, and may be encumbered with existing resources beyond
33 the termination date of this statute.

34 (b) Except as provided in subdivision (c), data and related
35 information and materials produced during the course of research
36 conducted pursuant to this article that are in the possession of the
37 department, the board, or any entity engaged in research funded
38 pursuant to this article, shall be confidential and shall not be
39 released for any purpose, except to the extent that they are included
40 in any final publication of research, or except when required by a



1 court order after a hearing in a judicial proceeding involving this
2 article.

3 (c) The restrictions in this section shall not apply to research
4 conducted by the University of California or by other public
5 agencies or public institutions that are subject to interagency
6 agreements, except to the extent that they are consistent with
7 policies of the entity engaged in research funded pursuant to this
8 article on sponsored research and publication, which may allow
9 for, among other things, a short period of review by the board in
10 advance of publication.

11 (d) Processors subject to this article and expenditure of the
12 funds collected pursuant to this article are subject to audit by the
13 department.

14 SEC. 7. Section 6047.13 of the Food and Agricultural Code
15 is amended to read:

16 6047.13. (a) All proprietary information obtained by the
17 board or the department from producers, processors, or any other
18 source, including, but not limited to, the ~~names~~ *name*, addresses,
19 and assessments collected from individual producers and
20 processors in the possession of the board or the department,
21 *including processors' lists of their producers and the assessment*
22 *of individual producers*, is confidential and shall not be disclosed,
23 except when required by a court order issued upon a showing of
24 good cause and that the information is necessary to a judicial
25 proceeding involving this article.

26 (b) Disclosure, as permitted under this section, shall be
27 conducted in camera by the court.

28 (c) The court shall, in the court's discretion, issue a temporary
29 order restraining a party or parties to a judicial proceeding
30 involving this article from disseminating any proprietary
31 information to the public or any other person not a party to that
32 judicial proceeding.

33 (d) The temporary order shall terminate upon the entry of a
34 final order, a judgment, or a dismissal of the action.

35 SEC. 8. Section 6047.19 of the Food and Agricultural Code
36 is amended to read:

37 6047.19. (a) On or before December 31st of every other year,
38 the secretary, after consultation with the board, shall report on the
39 status of this chapter to the chairs of the policy and fiscal



1 committees that have the appropriate subject matter jurisdiction in
2 the Assembly and the Senate.

3 (b) The report shall include a financial accounting, including
4 the distribution of industry assessments and any unexpended
5 amount on deposit, of the department's efforts to contain Pierce's
6 disease and its vectors.

7 (c) This article shall remain in effect only until March 1, 2011,
8 and as of that date is repealed, unless a later enacted statute, that
9 is enacted before March 1, 2011, deletes or extends that date.

10 SEC. 9. Section 6047.20 is added to the Food and Agricultural
11 Code, to read:

12 6047.20. This article shall become inoperative, as of March 1,
13 2006, unless the secretary finds, in a referendum conducted by him
14 or her, or a person designated by him or her, that a favorable vote
15 has been given pursuant to this article.

16 SEC. 10. Section 6047.21 is added to the Food and
17 Agricultural Code, to read:

18 6047.21. (a) No later than April 15, 2005, the secretary shall
19 establish a list of those persons eligible to vote on the continued
20 implementation of this article.

21 (b) Eligibility shall be limited to the producers, processors, and
22 persons who paid the assessment on grapes crushed in the
23 immediately preceding season.

24 (c) (1) In establishing the list, the secretary may require
25 processors, producers, and others to submit the names, mailing
26 addresses, and assessment values of all producers who paid the
27 assessment on grapes crushed in the immediately preceding
28 marketing season.

29 (2) The information required by the secretary shall be filed
30 either with the annual assessment report or no later than 30 days
31 following receipt of a written notice from the secretary requesting
32 the information.

33 (d) Any producer whose ~~names~~ *name* does not appear on the
34 secretary's list may have his or her name added to the list by filing
35 with the secretary a signed statement identifying himself or herself
36 as a producer that paid an assessment during the most recent
37 marketing season.

38 SEC. 11. Section 6047.22 is added to the Food and
39 Agricultural Code, to read:



1 6047.22. For the purpose of voting in the referendum required
2 in Section 6047.20, only a person required to pay the assessment
3 pursuant to Section 6047.8 shall have the right to vote.

4 SEC. 12. Section 6047.23 is added to the Food and
5 Agricultural Code, to read:

6 6047.23. In determining whether this article shall become
7 inoperative, the secretary shall find that at least 40 percent of the
8 total number of persons from the list established by the secretary
9 participated in the referendum, and that either one of the following
10 occurred:

11 (a) 65 percent or more of the persons who voted in the
12 referendum voted in favor of this article, and the persons who
13 voted paid a majority of the assessment dollars on grapes in the
14 preceding marketing season that were paid by all the persons who
15 voted in the referendum.

16 (b) A majority of the persons who voted in the referendum
17 voted in favor of this article, and the persons who voted paid 65
18 percent or more of the assessment dollars on grapes in the
19 preceding marketing season that were paid by all the persons who
20 voted in the referendum.

21 SEC. 13. Section 6047.24 is added to the Food and
22 Agricultural Code, to read:

23 6047.24. In determining whether the referendum is approved
24 by producers pursuant to the provisions of this article, the secretary
25 shall consider the vote in favor of the referendum of any nonprofit
26 agricultural cooperative marketing association, which is
27 authorized by its members so to assent, as being the assent,
28 approval, or favor of the producers that are members of, or
29 stockholders in, that nonprofit agricultural cooperative marketing
30 association.

31 SEC. 13.5. Section 6047.25 is added to the Food and
32 Agricultural Code, to read:

33 6047.25. The secretary shall establish a period in which to
34 conduct the referendum that shall not be less than 10 days nor more
35 than 60 days in duration. The secretary may prescribe additional
36 procedures to conduct the referendum. If the initial period
37 established is less than 60 days, the secretary may extend the
38 period. However, the total referendum period may not exceed 60
39 days.



1 SEC. 14. Section 6047.26 is added to the Food and
2 Agricultural Code, to read:

3 6047.26. Nonreceipt of a ballot shall not invalidate a
4 referendum.

5 SEC. 15. Section 6047.27 is added to the Food and
6 Agricultural Code, to read:

7 6047.27. (a) If the secretary finds that a favorable vote has
8 not been given as provided in this article, this article shall become
9 inoperative as of March 1, 2006.

10 (b) If the secretary finds that a favorable vote has been given as
11 provided in this article, he or she shall certify and give notice of
12 the favorable vote to all persons whose names and addresses may
13 be on file with the secretary as provided in Section 6047.21.

14 SEC. 16. Section 6047.28 is added to the Food and
15 Agricultural Code, to read:

16 6047.28. (a) The provisions of this article are severable.

17 (b) If any provision of this section or its application is held
18 invalid, that invalidity shall not affect other provisions or
19 applications that can be given effect without the invalid provision
20 or application.

21 SEC. 17. Section 6047.29 is added to the Food and
22 Agricultural Code, to read:

23 6047.29. (a) The secretary shall appoint an advisory task
24 force consisting of scientific experts, including, but not limited to,
25 university researchers and agricultural representatives, for the
26 purpose of advising the secretary on the control and management
27 of Pierce's disease.

28 (b) Members of the advisory task force, or alternate members
29 when acting as members, may be reimbursed, upon request, for
30 necessary expenses incurred by them in the performance of their
31 duties.

32 (c) This section shall remain in effect until March 1, 2011, and
33 as of that date is repealed, unless a later enacted statute, that is
34 enacted before January 1, 2011, deletes or extends that date.

35 SEC. 18. This act is an urgency statute necessary for the
36 immediate preservation of the public peace, health, or safety
37 within the meaning of Article IV of the Constitution and shall go
38 into immediate effect. The facts constituting the necessity are:



1 In order to protect as soon as possible the winegrape industry
2 from the plant killing Pierce's disease bacterium, and its vectors,
3 it is necessary that this act take effect immediately.

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