

Senate Bill No. 1650

CHAPTER 485

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.

[Approved by Governor September 10, 2004. Filed
with Secretary of State September 10, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1650, 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.

Appropriation: yes.

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

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

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

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

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

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

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

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

(f) Funds appropriated for local assistance shall not be allocated to the local public entity until the local public entity creates a Pierce's disease



work plan that is approved by the department. Any funds allocated by the department to a designated local public entity shall be utilized for activities consistent with the local Pierce's disease work plan or other programs or work plans approved by the department. It shall be the responsibility of the designated local public entity to develop and implement the local Pierce's disease work plan. Upon request, the department shall provide consultation to the local public entity regarding its work plan.

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

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

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

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

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

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

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

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

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



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

6047.1. The Legislature finds and declares the following:

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

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

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

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

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

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

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

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

(a) "Board" means the Pierce's Disease and Glassy-winged Sharpshooter Board.

(b) "Department" means the Department of Food and Agriculture.

(c) "Marketing season" begins July 1 of each year and ends June 30 of the next year.

(d) "Producer" means a grower, including a cooperative, of grapes in California for wine, wine vinegar, juice, concentrate, or beverage brandy.

(e) "Processor" means a processor who crushes grapes in California for wine, wine vinegar, juice, concentrate, or beverage brandy.

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

(g) "Purchase" means the taking by sale, discount, negotiation, mortgage, pledge, lien, issue or reissue, gift, or any other voluntary



transaction creating an interest in property. For purposes of this paragraph, “sale” shall consist of the passing of title from the seller to the buyer for a price.

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

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

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

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

(j) “Secretary” means the Secretary of Food and Agriculture.

SEC. 3. Section 6047.3 of the Food and Agricultural Code is amended to read:

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

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

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

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

(e) It is hereby declared, as a matter of legislative determination, that persons appointed to the board 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. Accordingly, the Legislature finds that, with respect to persons who are appointed to the board, the industry concerned is tantamount to, and constitutes, the



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

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

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

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

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

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

- (A) Selection of officers.
 - (B) Terms of office for board members.
 - (C) Annual assessment rate.
 - (D) Annual budget.
 - (E) Expenditures authorized under Section 6047.5.
- (2) Receive money from the assessment and other sources.
- (3) Adopt, amend, and rescind all proper and necessary bylaws and procedures.

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

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

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

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

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

- (1) Reasonable administrative expenses of the board and the department, subject to the limitation in Section 6047.12.
- (2) The collection, enforcement, deposit, and handling of the assessments.



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

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

(b) Except as provided in subdivision (c), data and related information and materials produced during the course of research conducted pursuant to this article that are in the possession of the department, the board, or any entity engaged in research funded pursuant to this article, shall be confidential and shall not 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 this article.

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

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

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

6047.13. (a) All proprietary information obtained by the board or the department from producers, processors, or any other source, including, but not limited to, the name, addresses, and assessments collected from individual producers and processors in the possession of the board or the department, including processors' lists of their producers and the assessment of individual producers, is confidential and shall not 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 this article.

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

(c) The court shall, in the court's discretion, issue a temporary order restraining a party or parties to a judicial proceeding involving this



article from disseminating any proprietary information to the public or any other person not a party to that judicial proceeding.

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

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

6047.19. (a) On or before December 31st of every other year, the secretary, after consultation with the board, shall report on the status of this chapter to the chairs of the policy and fiscal committees that have the appropriate subject matter jurisdiction in the Assembly and the Senate.

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

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

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

6047.20. This article shall become 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 pursuant to this article.

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

(b) If any provision of this section 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.

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

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

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

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

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

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

