

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2021-2022 Regular Session**

AB 1959 (Committee on Agriculture)

Version: May 19, 2022

Hearing Date: June 28, 2022

Fiscal: Yes

Urgency: No

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**SUBJECT**

Food and agriculture: omnibus bill

**DIGEST**

The bill requires all proprietary information obtained by the California Department of Food and Agriculture (CDFA) related to a specified produce safety program to be confidential and not disclosed except when required by a court order in a judicial proceeding. This bill also deletes the sunset clause on the law that allows the use of carbon monoxide (CO) for the control of burrowing rodent pests (BRP), thereby extending the authorization indefinitely.

**EXECUTIVE SUMMARY**

This bill requires all proprietary information obtained by the CDFA related to a specified produce safety program to be confidential and not disclosed except when required by a court order in a judicial proceeding. As noted by the author, existing law already exempts similar information from disclosure when in the possession of various commissions and is a common practice throughout the Food and Agriculture Code.

This bill was previously analyzed by the Senate Agriculture Committee regarding the indefinite extension of the use of carbon monoxide for the control of burrowing rodent pests and the produce safety program. This analysis, however, is limited to the issues within the Committee's jurisdiction – specifically, the prohibition on disclosing proprietary information obtained by the produce safety program. The bill passed the Senate Agriculture Committee on a vote of 5 to 0.

The bill is author sponsored. There is no known support or opposition.

**PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Existing law establishes fruit, nut, and vegetable standards and requires the Secretary of Food and Agriculture and county agricultural commissioners to enforce those provisions. (Food & Agr. Code § 4250 et. seq.)
- 2) Provides that the Secretary of Food and Agriculture and specified other agents of the CDFA are authorized to enforce and make inspections of grade, standards of quality, and other provisions of any raw unprocessed fruit, nut, or vegetable marketing, food safety, or enforcement program adopted under state or federal authority. (Food & Agr. Code § 42653.)
- 3) Authorizes the use of CO for the control of BRP under specified conditions, and repeals these provisions on January 1, 2023. (Food & Agr. Code § 6025.4.)
- 4) Provides, pursuant to the California Constitution, that the people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies are required to be open to public scrutiny. (Cal. Const. art. I, § 3 (b)(1).)
  - a) Requires a statute that limits the public's right of access to be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest. (Cal. const. art. I, § 3(b)(1).)
- 5) Governs the disclosure of information collected and maintained by public agencies pursuant to the California Public Records Act (CPRA). (Gov. Code §§ 6250 et seq.)
  - b) Provides that all public records are accessible to the public upon request, unless the record requested is exempt from public disclosure. (Gov. Code § 6253.)
  - c) Defines "public records" as any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. (Gov. Code § 6252(e).)
  - d) Defines "public agency" as any state or local agency. (Gov. Code § 6252(d).)
  - e) Recodifies the CPRA in Division 10 of Title 1 (§§ 7920.000 - 7931.000) of the Government Code effective January 1, 2023.

This bill:

- 1) Provides that all proprietary information obtained for the purposes of the produce safety program, regardless of the source of that information, is confidential and is prohibited from being disclosed except when required by court order in a judicial proceeding.

- 2) Removes the sunset on the authorization to use CO for the control of BRP under specified conditions.

### COMMENTS

#### 1. Stated need for the bill

The author writes:

This bill deletes the sunset clause on the law that allows the use of carbon monoxide (CO) for the control of burrowing rodent pests (BRP). With increased restriction on rodenticides, the need to continue the use of CO for BRP control is important. Adding conforming privacy protection to recent updates to Food and Agriculture code related to the federal Food Safety Modernization Act (FSMA) will ensure that proprietary and privacy information is not inadvertently revealed.

#### 2. This bill limits 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 § 6250.) In 2004, the right of public access was enshrined in the California Constitution with the passage of Proposition 59 (Nov. 3, 2004, statewide gen. elec.),<sup>1</sup> 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).) Additionally, it required 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).) A public record is defined as any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any public agency regardless of physical form or characteristics. (Gov. Code § 6252(e).)

This bill limits the access to public records by prohibiting the disclosure of proprietary information obtained for the purposes of the produce safety program within CDFA, as provided. According to CDFA, the "California Produce Safety Program is a unit operating under the California Department of Food and Agriculture's Inspection Services Division. It exists to help bring California produce farms into compliance with the U.S. Food and Drug Administration's Produce Safety Rule."<sup>2</sup> CDFA "is responsible

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

<sup>2</sup> Cal. Dept. of Food and Agr., About Produce Safety Program, available at <https://www.cdfa.ca.gov/producesafety/about.html>.

for hiring and training produce safety inspectors and other Produce Safety Program staff to carry out Produce Safety Rule education and on-farm inspections.<sup>3</sup> Existing law already provides that information related to the proprietary information of various other products are confidential and not to be disclosed.<sup>4</sup> In light of the sensitive nature of the information that the CDFA can obtain under the produce safety program and that the Legislature has already made similar information confidential when obtained by various commissions, this limitation seems warranted.

**SUPPORT**

None known

**OPPOSITION**

None known

**RELATED LEGISLATION**

Pending Legislation: None known.

Prior Legislation: None known.

**PRIOR VOTES:**

Senate Agriculture Committee (Ayes 5, Noes 0)

Assembly Floor (Ayes 75, Noes 0)

Assembly Appropriations Committee (Ayes 12, Noes 0)

Assembly Agriculture Committee (Ayes 10, Noes 0)

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<sup>3</sup> *Ibid.*

<sup>4</sup> See e.g. §§ 65076 (Cattle Council), 67104 (Avocado Commission), 68104 (Kiwifruit Commission), 69045 (Pistachio Commission), 77154 (Walnut Commission), 75134 (Egg Commission), 75633 (Apple Commission), 77484 (Strawberry Commission) 77988 (Cut Flower Commission), 78288 (Asparagus Commission), and 79274 (Blueberry Commission) Food. & Agr. Code.