

- **Board of Directors**
Communications and Legislation Committee

May 8, 2007 Board Meeting

8-6

Subject

Express opposition, unless amended, to SB 201 (Florez, D-Shafter) Good Agricultural Practices

Description

Summary

Staff recommends the Board adopt an “oppose unless amended” position on Senate Bill 201 by Senator Dean Florez ([Attachment 1](#)). The bill would impose health protection measures regarding the irrigation of leafy green vegetables. Although the objective to protect the public from pathogen outbreaks such as those experienced in the past year is laudable, imposing unwarranted requirements for use of recycled water is of particular concern.

Existing Law

Existing law requires the Department of Food and Agriculture to regulate field crop products within the state. The law also recognizes the interest of the public in the sanitary conditions under which the food crops are harvested for human consumption.

Proposed Legislation

SB 201 would establish water-related practices, including testing by the grower of all waters used to irrigate leafy green vegetables. Testing would be required once prior to the growing season, biweekly during the growing season and once immediately prior to harvest. If recycled water is used for irrigation of the fields, the grower must conduct additional tests in accordance with specific regulations to be issued by the Department of Public Health (DPH).

The bill would also prohibit several practices, unrelated to water use and treatment, in the growth, harvest, shipping and processing of leafy green vegetables. Misdemeanor penalties would be established for violation of the proposed law and regulations adopted by the DPH. Growers, handlers, shippers and processors would be allowed to petition for a three-year variance to use alternate agricultural practices that provide equivalent consumer protection.

The Department of Health Services (soon to be known as the Department of Public Health) has already established water quality standards and treatment reliability criteria for water recycling under Title 22, Chapter 4, of the California Code of Regulations. The bill would require the grower to conduct additional testing in accordance with DPH regulations.

The bill may hinder the efforts of California water districts to increase the use of recycled water by imposing unnecessary testing requirements for its use for agricultural irrigation. Existing regulations for the use of recycled water are already conservatively protective of public health. For instance, disinfected tertiary treated recycled water is required if the recycled water comes in contact with the edible portion of the crop. Tertiary treated water is safer to use than untreated surface water and, therefore, does not warrant extra testing. For irrigation of crops where the edible portion is produced above the ground and no contact with the recycled water occurs, disinfected secondary treated recycled water can be used. Currently agriculture uses 46 percent of the 500,000 acre-feet of recycled water produced annually in California. In Metropolitan’s service area, agricultural irrigation uses about 18 percent of the 186,000 acre-feet of recycled water produced.

Proposed Amendments

Staff recommends an amendment to remove the requirement for additional testing of recycled water beyond that required of other waters. This change would avoid adding unnecessary cost to the use of recycled water.

Policy

By Minute Item 42287, dated February 11, 1997, the Board adopted legislative policy principles for water recycling.

By Minute Item 42820, dated February 10, 1998, the Board added support of legislation and regulations that facilitate expanded uses of recycled water.

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because it involves continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not subject to CEQA pursuant to Sections 15378(b)(2) and 15061(b)(3) of the State CEQA Guidelines.

CEQA determination for Option #2:

None required

Board Options

Option #1

Adopt the CEQA determination and authorize opposition for SB 201, unless amended, as described in this letter.

Fiscal Impact: None

Business Analysis: May discourage and reduce the use of recycled water in California. Opposition to the bill would be consistent with current board-adopted policy principles.

Option #2

Take no position on SB 201.

Fiscal Impact: None

Business Analysis: May be inconsistent with Metropolitan's role as a steward of the region's water resources

Staff Recommendation

Option #1


Linda Waade
Deputy General Manager, External Affairs

5/2/2007
Date


Jeffrey Nightlinger
General Manager

5/2/2007
Date

AMENDED IN SENATE APRIL 12, 2007

SENATE BILL

No. 201

Introduced by Senator Florez

February 7, 2007

An act to add Article 6 (commencing with Section 113600) to Chapter 11 of Part 6 Division 104 of the Health and Safety Code, relating to agriculture.

LEGISLATIVE COUNSEL'S DIGEST

SB 201, as amended, Florez. Agriculture: leafy green vegetable crop safety.

Existing law provides that the Secretary of Food and Agriculture shall establish, by regulation, uniform standards for field crop producers, establish inspection districts within the state, and provide sampling, inspection, and certification service for field crop products within the state, as specified. Existing law also states legislative findings and declarations that the people have a primary interest in the sanitary conditions under which food crops are grown and harvested for human consumption and in the health and related sanitary conditions under which the workers are employed in the growing and harvesting of food crops.

This bill would describe various practices which shall not be engaged in by growers, handlers, shippers, or processors of leafy green vegetables including ~~using water diverted from a creek, tributary, or stream to irrigate fields,~~ using uncomposed, incompletely composed, or nonthermally treated manure as a fertilizer or soil amendment in fields, maintaining toilet facilities or other receptacles for human excreta in fields, using irrigation water that exceeds acceptable contamination levels, or selling, transferring, or otherwise putting into the production,

distribution, and marketing chain, any leafy green vegetable that exceeds acceptable contamination levels, as specified. This bill would provide that a violation of these provisions, or any regulation adopted by the State Department of Public Health pursuant thereto, is a misdemeanor punishable for each occurrence by a fine not exceeding five thousand dollars (\$5,000), imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, and in addition, the State Department of Public Health may impose a fine not exceeding twenty-five thousand dollars (\$25,000) per occurrence.

This bill would also require the State Department of Public Health to adopt regulations developing Hazard Analysis and Critical Control Point guidelines, and Good Agricultural Practices for growers, handlers, shippers, and processors of leafy green vegetables, as specified. This bill would also require the department to develop model documents and checklists to assist growers, handlers, shippers, and processors to comply with these provisions.

This bill would provide that these provisions shall become inoperative during the period that a marketing order concerning the same subject is in effect and state the intent of the Legislature to codify any such marketing order.

Because this bill would create new crimes and would require local officials to perform additional duties, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

- 1 SECTION 1. Article 6 (commencing with Section 113600) is
- 2 added to Chapter 11 of Part 6 of Division 104 of the Health and
- 3 Safety Code, to read:

1 Article 6. Leafy Green Vegetable Crop Safety

2
3 113600. The provisions of this article are intended to apply
4 specifically to growers, handlers, shippers, and processors of leafy
5 green vegetables.

6 113600.2. For the purposes of this article, the following
7 definitions apply:

8 (a) “Grower” means any person engaged within this state in the
9 business of producing or causing to be produced leafy green
10 vegetables.

11 (b) “Handler” means any person who, as owner, agent, or broker,
12 purchases, or otherwise acquires from a grower, possession or
13 control of any leafy green vegetable for the purpose of marketing
14 it.

15 (c) “Leafy green vegetable” means, but is not limited to, iceberg
16 lettuce, romaine lettuce, green leaf lettuce, red leaf lettuce, butter
17 lettuce, baby leaf lettuce or immature lettuce or leafy greens,
18 escarole, endive, spring mix, and spinach.

19 (d) “Manure” means any substances composed primarily of
20 animal excrement, plant remains, or mixtures of those substances.

21 (e) “Processor” means any person who engages in the operation
22 of receiving, grading, coring, shredding, packing, canning,
23 fermenting, distilling, extracting, preserving, grinding, crushing,
24 processing, changing the form of any leafy green vegetable, or any
25 other activities that are performed for the purpose of preparing it
26 for market or marketing that commodity. It does not, however,
27 include a person that is engaged in manufacturing a different
28 product from any commodity which has been changed in form.

29 (f) “Shipper” means any person, other than a common carrier,
30 who is engaged within this state in transporting leafy green
31 vegetables, whether as owner, agent, or otherwise. “Shipper” does
32 not include a retailer, except a retailer who purchases or acquires
33 from, or handles or processes leafy green vegetables on behalf of,
34 any grower.

35 ~~113600.4. Water diverted from a creek, tributary, or stream~~
36 ~~shall not be used to irrigate fields in which green leafy vegetables~~
37 ~~are grown.~~

38 113600.6. Uncomposted, incompletely composted, or
39 nonthermally treated manure may not be used as a fertilizer or soil
40 amendment in fields in which leafy green vegetables are grown.

1 113600.8. No toilet facilities or receptacle of any kind for
2 human excreta and other human wastes shall be maintained in any
3 field in which leafy green vegetables are grown, consistent with
4 Article 4 (commencing with Section 113310) of Chapter 11 of
5 Part 6 of Division 104 of the Health and Safety Code.

6 113601. No grower of leafy green vegetables shall use water
7 that exceeds acceptable contamination levels, as established by
8 regulation by the State Department of Public Health, to irrigate
9 any field in which leafy green vegetables are grown.

10 113601.2. No grower shall knowingly sell, transfer, or
11 otherwise put into the production, distribution, and marketing chain
12 that ends with the consumer, any leafy green vegetable that exceeds
13 acceptable contamination levels, as established by the Department
14 of Public Health by regulation.

15 113601.4. No handler or shipper shall knowingly handle or
16 transport any leafy green vegetable intended for human
17 consumption unless it has verified, in a manner prescribed by
18 regulations adopted by the State Department of Public Health, that
19 the leafy green vegetable was produced under water and soil
20 conditions that are within acceptable contamination levels, and
21 that the produce itself has been tested for contaminants and is
22 within acceptable level, as established by regulation.

23 113601.6. Any document or record required to be maintained
24 by any provision of, or any regulation adopted pursuant to, this
25 article shall be maintained in a manner that allows for its inspection
26 by the State Department of Public Health and county health
27 inspectors. No grower, handler, shipper, or processor of leafy green
28 vegetables shall falsify any record related to compliance with the
29 requirements of any provision of, or any regulation adopted
30 pursuant to, this article.

31 113601.8. The State Department of Public Health shall adopt
32 regulations developing Hazard Analysis and Critical Control Point
33 (HACCP) guidelines for growers of leafy green vegetables. These
34 guidelines shall require growers to develop HACCP plans which
35 shall be reviewed by the department at least every 12 months.

36 113602. The State Department of Public Health shall adopt
37 regulations requiring the implementation of Good Agricultural
38 Practices (GAP) for growing, handling, shipping, and processing
39 leafy green vegetables that provide for all of the following:

1 (a) (1) Testing by the grower of an appropriate sample of all
2 water used to irrigate fields in which leafy green vegetables are
3 grown for various contaminants, including E. coli, using specified
4 bacterial sampling procedures, once prior to the leafy green
5 vegetable growing season, biweekly during the growing season,
6 and once immediately prior to harvest.

7 (i) If irrigation water is supplied by a municipal water district,
8 water quality reports issued by that agency shall be obtained,
9 reviewed, and maintained by the grower on a quarterly basis.

10 (ii) If recycled water is used for irrigation, any water quality
11 report issued by the agency that supplies the water shall be
12 obtained, reviewed, and maintained by the grower. The grower
13 shall also test the water at the point of use for various contaminants,
14 including E. coli, weekly during the growing season.

15 (2) Maintenance, by growers, of records of all tests conducted,
16 and of all reports received, concerning irrigation water quality for
17 inspection by county health inspectors and agricultural
18 commissioners for a specified period of time, not less than three
19 years, as determined by the department.

20 (3) Notification of the Department of Public Health by a grower
21 if unacceptable irrigation water contamination levels are detected
22 by a test conducted by the grower or an independent tester, or
23 reported to the grower by a municipal water district or agency
24 supplying recycled water.

25 (4) Corrective action that may be taken by a grower to disinfect
26 irrigation water determined to contain unacceptable levels of
27 contamination.

28 (b) Periodic testing by the grower of an appropriate sample of
29 the soil in all fields in which leafy green vegetables are grown for
30 various contaminants, including E. coli, using specified bacterial
31 sampling procedures.

32 (1) Maintenance, by growers, of records of all soil tests
33 conducted for inspection by county health inspectors and
34 agricultural commissioners for a specified period of time, not less
35 than three years, as determined by the department.

36 (2) Notification of the department by a grower if unacceptable
37 soil contamination levels are detected.

38 (3) Corrective action that may be taken by a grower to disinfect
39 soil determined to contain unacceptable levels of contamination.

1 (c) (1) Testing by the grower of an appropriate sample of all
2 leafy green vegetables produced in each field for various
3 contaminants, including E. coli, using specified bacterial sampling
4 procedures, periodically, as is determined to be necessary by the
5 department, and immediately prior to harvest.

6 (2) Maintenance, by growers, of records of all produce tests
7 conducted for inspection by county health inspectors and
8 agricultural commissioners for a specified period of time not less
9 than three years, as determined by the department.

10 (3) Notification of the department by a grower if unacceptable
11 produce contamination levels are detected.

12 (4) Corrective action that may be taken by a grower to disinfect
13 produce determined to contain unacceptable levels of
14 contamination.

15 (5) Procedures for withholding or destroying produce determined
16 to contain unacceptable levels of contamination.

17 (d) (1) Field sanitation, including worker hygiene, and
18 appropriate placement of toilet facilities accessible to persons
19 working in fields in which leafy green vegetables are grown.

20 (2) Exclusion of toilet facilities or receptacles of any kind for
21 human excreta and other human wastes from fields in which leafy
22 green vegetables are grown.

23 (3) Corrective action and documentary procedures that to be
24 taken in the event of a toilet waste spill.

25 (e) (1) Procedures to be followed by growers, handlers, shipper,
26 and processors if the department orders a recall affecting leafy
27 green vegetables.

28 (2) Establishment of written procedures by each grower, handler,
29 shipper, and processor to be used in response to a department recall
30 affecting leafy green vegetables, which procedures shall be
31 reviewed by the grower on an annual basis and be available for
32 inspection by county health inspectors and agricultural
33 commissioners.

34 (f) Documentation of any flooding event that occurs in a field
35 in which leafy green vegetables are grown and the establishment
36 of buffer zones between flooded areas from which crops cannot
37 be harvested and harvestable leafy green vegetable crops.

38 (g) Inspection of fields and leafy green vegetable crops prior to
39 harvest to determine whether there has been any intrusion upon
40 the growing area by wild or domestic animals, specification of

1 further testing that may be required if it is determined that there
2 has been an intrusion by a wild or domestic animal, documentation
3 of the evidence of any intrusion event, and procedures for
4 establishment of a buffer zone between areas in which there has
5 been an animal intrusion from which crops cannot be harvested
6 and harvestable leafy green vegetable crops.

7 (h) Appropriate buffer zones between specific adjacent land
8 uses and fields in which leafy green vegetables are grown
9 including, but not limited to, composting operations, grazing lands,
10 septic tanks, concentrated animal feeding operations, open land,
11 and water sources.

12 (i) Proper composting practices and documentation thereof.

13 (j) Proper use of soil amendments, including testing composted
14 materials prior to their application. The department shall require
15 growers of leafy green vegetables to maintain records detailing
16 their use of soil amendments including, but not limited to, the date
17 the amendment was applied, the total quantity of material used,
18 how the material was applied, the source of the soil amendment,
19 the composition of the amendment including the ratio of its
20 components, and whether the amendment was tested for pathogens.

21 (k) Maintenance of documents and records related to compliance
22 with the requirements of the regulations in a manner that allows
23 for inspection by county health inspectors and agricultural
24 commissioners for a specified period of time, not less than three
25 years, as determined by the department.

26 113602.2. The State Department of Public Health shall develop
27 model documents and checklists to assist growers, handlers,
28 shippers, and processors of leafy green vegetables to comply with
29 the provisions of, and regulations adopted pursuant to, this article.
30 The model documents and checklists developed by the department
31 shall provide for all of the following:

32 (a) Communication of contact information between growers,
33 handlers, shippers, and processors who regularly conduct business,
34 including, but not limited to, identification of food safety
35 supervisors and recall coordination team contacts, and a description
36 of the food safety and traceback procedures used by each field or
37 facility.

38 (b) Daily assessment of field or facility sanitation, including,
39 but not limited to, whether toilet facilities are properly maintained,

1 proper hygiene is practiced by workers, pest checks are performed,
2 and packaging materials and transportation containers are clean.

3 (c) Weekly, monthly, and quarterly assessment of a field or
4 facility, including, but not limited to, whether toilet facilities are
5 properly maintained, sanitation and maintenance of facilities,
6 refrigeration units, and water sources, whether the need for proper
7 hygiene and safety is regularly communicated to workers, whether
8 pesticide use records are maintained and submitted the county
9 agricultural commissioner's office, and whether water used to
10 irrigate fields is tested for various contaminants, as required by
11 regulation.

12 (d) Annual assessments of a field or facility, including, but not
13 limited to, sufficiency of the field or facility's food safety program,
14 whether a food safety supervisor has been designated, whether
15 water used to irrigate fields is tested for various contaminants, as
16 required by regulation, whether soil in all fields in which leafy
17 green vegetables are grown is tested for various contaminants, as
18 required by regulation, whether pesticide use permits have been
19 obtained, whether written policies and procedures exist for handling
20 packaging materials and transportation containers, and whether
21 written training programs for workers exist.

22 (e) Establishment of a written training programs for workers
23 addressing topics including, but not limited to, food safety,
24 sanitation, worker hygiene, pesticide safety, good agricultural
25 practices, traceback procedures, and procedures be used in response
26 to, and to initiate a recall, and subsequent documentation of
27 completion of the programs by workers.

28 (f) Documentation of soil amendment use, as required by
29 regulation, including, but not limited to, the date the amendment
30 was applied, the total quantity of material used, how the material
31 was applied, the source of the soil amendment, the composition
32 of the amendment including the ratio of its components, and
33 whether, and if so, how the amendment was tested for pathogens.

34 (g) Documentation of composting procedures including, but not
35 limited to, the ratio of the components composted, the temperatures
36 at which it was maintained, and whether the compost was tested
37 for pathogens.

38 (h) Documentation of testing by the grower of water used to
39 irrigate fields, as required by regulation, including, but not limited
40 to, the source of irrigation water, whether drip, sprinkler, or

1 overhead irrigation is used, whether a filtration system used, and
2 if so, a description thereof, an assessment of potential
3 contamination risks, corrective action to disinfect any water
4 supplies, communication with water suppliers, and documentation
5 of any independent water tests conducted.

6 (i) Documentation of pesticide use including, but not limited
7 to, identification of the treated area, the time and date the pesticide
8 was applied, whether field entry was restricted, and if so, when,
9 the name of the pesticide product and its registration number, the
10 composition of the pesticide, and documentation of completion of
11 pesticide safety training by workers.

12 (j) Documentation of harvesting tool cleaning, including, but
13 not limited to, whether tools are kept clean and are being
14 maintained properly, whether there is a regular tool inspection and
15 repair program, whether stations are maintained for cleaning and
16 sanitizing tools periodically throughout the day, and whether clean,
17 sanitary gloves are provided for workers.

18 (k) Documentation of measures to ensure the security of food
19 products, packaging materials, and transportation containers,
20 including, but not limited to, whether there is controlled access to
21 the field or facility, whether there is a visitor policy in place,
22 whether all water sources are secure, whether all soil amendments
23 and pesticides are securely stored, whether an inventory of soil
24 amendments and pesticides is maintained, how workers are
25 screened before hiring, how workers are identified upon arrival at
26 the field or facility, and whether employees are trained to report
27 suspicious activities or suspected breaches of food security
28 practices.

29 113609. (a) A violation of any provision of, or any regulation
30 adopted pursuant to, this article is misdemeanor punishable for
31 each occurrence by a fine not exceeding five thousand dollars
32 (\$5,000), imprisonment in a county jail not exceeding one year,
33 or by both that fine and imprisonment. In addition, the State
34 Department of Public Health may impose a fine not exceeding
35 twenty-five thousand dollars (\$25,000) per occurrence.

36 (b) Nothing in this section is intended to or shall be construed
37 to abridge the right to bring a private cause of action for relief or
38 damages against a grower, handler, shipper, or processor based on
39 failure to meet the standards established by any provision of, or
40 any regulation adopted pursuant to, this article.

1 113610. *This article shall become inoperative during the period*
2 *that a marketing order establishing food safety guidelines for the*
3 *leafy green vegetable industry issued by the Secretary of Food and*
4 *Agriculture is in effect. It is the intent of the Legislature to codify*
5 *any such marketing order.*

6 SEC. 2. No reimbursement is required by this act pursuant to
7 Section 6 of Article XIII B of the California Constitution for certain
8 costs that may be incurred by a local agency or school district
9 because, in that regard, this act creates a new crime or infraction,
10 eliminates a crime or infraction, or changes the penalty for a crime
11 or infraction, within the meaning of Section 17556 of the
12 Government Code, or changes the definition of a crime within the
13 meaning of Section 6 of Article XIII B of the California
14 Constitution.

15 However, if the Commission on State Mandates determines that
16 this act contains other costs mandated by the state, reimbursement
17 to local agencies and school districts for those costs shall be made
18 pursuant to Part 7 (commencing with Section 17500) of Division
19 4 of Title 2 of the Government Code.