



Key ag bills introduced in Legislature

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Several pieces of legislation that could have far-reaching impact on California farmers and ranchers have been introduced in the state Senate and Assembly.

The California Farm Bureau Federation has been actively pursuing legislative solutions to concerns raised by its members by working closely with legislative leaders and policy makers to help shape some of the newest bills being considered to protect family farmers and ranchers.

One piece of legislation that will affect agricultural landowners is Senate Bill 1436, which removes the sunset provision for accidental take of species listed under the California Endangered Species Act. That provision is set to expire Jan. 1, 2009. SB 1436, introduced by state Sen. Denise Ducheny, D-San Diego, and co-sponsored by the CFBF and California Cattlemen's Association, would extend it indefinitely.

Current law allows the accidental taking of species listed under the California Endangered Species Act during routine and ongoing agricultural activities such as harvesting and ordinary pasture maintenance and renovation.

To be considered an accidental take, a farmer or rancher had to have had no knowledge that the listed species could reside on his property, or if there was knowledge, he has to show that the accidental taking occurred even though he exercised due care to protect the species.

That part of the law, along with an incidental-take program, which allows authorized take of listed species, form the agricultural portion of the California Endangered Species Act. They serve as incentives for farmers and ranchers to enhance wildlife habitat through their agricultural activities and specialized conservation programs.

Noelle Cremers, CFBF director of natural resources and commodities who was instrumental in developing the language of SB 1436, said accidental take is a critical component for future habitat enhancement projects on private farms and ranches.

"Regulations restricting activities for endangered species haven't proven successful in protecting species," she said. "Instead, we think that there are voluntary conservation measures and voluntary partnerships with landowners that can better protect listed species. This accidental-take provision is one way of improving relations between the agency and landowners."

The Senate Natural Resources and Water Committee is expected to consider the bill this month.

In the area of labor, SB 1539 provides clarification and guidance for compliance with and enforcement of meal-period requirements. The bill, introduced by state Sen. Ronald Calderon, D-Montebello, applies to workplaces in every industry, no matter their size or union status.

The law now requires an employer to provide an employee who works more than five hours with an unpaid 30-minute off-duty meal period. But different interpretations of the law have led to much confusion about what it means to "provide" employees with a meal period: Does an employer comply simply by making meal periods available to employees, or must it ensure employees actually take and

do no work during them?

"If the latter, then an employer is deemed to have failed to provide a meal period to an employee who chose to skip all or part of a meal period the employee was nonetheless allowed to take," said Carl Borden, CFBF associate counsel. "In that case, the employer must pay the employee a wage equal to one hour of pay at the employee's regular pay rate, in addition to wages for the time worked. This is the current position of the Division of Labor Standards Enforcement, which enforces the law."

The bill also clarifies that the meal period must begin after an employee has worked no more than six hours. Currently, the DLSE says the meal period must start after an employee has worked no more than five hours, Borden said.

In addition, the bill describes situations in which on-duty meal periods are allowed, fleshing out the existing exception for cases where the nature of the work prevents an employee from being relieved of all duty.

For farm employers, the bill applies to employees who do not work in the field, such as packinghouse workers, clerical staff, sales people and some truck drivers. That's because a somewhat different rule requires farm employers to "authorize and permit" field workers to take meal periods, Borden said.

"SB 1539 will give needed relief to employers and employees regarding meal periods in the state's workplaces," said Borden. "It guarantees meal periods to employees who want to take them, while saving employers from having to force employees to take meal periods they'd rather skip. Getting these issues properly clarified is something Farm Bureau members over the years have said they've wanted."

Some 29 employer groups, including CFBF, are cosponsoring the bill. Its first hurdle will be the Senate Labor and Industrial Relations Committee. No date has been set for when the committee will consider the bill.

Assembly Bill 2168, introduced by Assemblymember Dave Jones, D-Sacramento, would make it easier for farm stands to sell processed product. Currently, farm stands on property controlled by a grower are allowed to sell fresh product without meeting the requirements in the California Retail Food Code. If growers want to sell processed product made from their crop, such as jam, they would have to meet all the requirements set forth in the retail food code.

The requirements are extensive and often impossible for farmers to achieve, said Cremers. AB 2168 would allow growers to sell processed products as long as they follow certain food safety guidelines without being subject to the entire food code. The guidelines would be similar to those that apply to farmers markets. Growers would be allowed to sell processed food that's considered non-hazardous.

The limited exemption would also allow growers running "U-pick" operations to sell bottled water or soft drinks to their customers without meeting all the requirements in the retail food code.

"There's a huge demand for locally grown food right now and farm stands and U-pick operations are meeting that demand, and we want to make sure that farmers are able to sell directly to consumers and have that direct marketing opportunity," said Cremers. "We want to make sure that it's doable and feasible for the farmer. But we're doing it in a way that still ensures safe food. We're just making it easier for farmers to comply."

The bill, sponsored by CFBF, is expected to be considered this month by the Assembly Committee on Agriculture.

Addressing issues concerning the use of biotech crops, AB 541 would provide statutory protection for growers who unknowingly possess insignificant or accidental amounts of patented seed or plant material. The newly amended bill, first introduced last year by Assemblymember Jared Huffman, D-San Rafael, also establishes a sampling protocol designed to protect growers when determining whether or not a patent infringement has occurred.

"I call it the 'innocent farmer provision,'" said Cynthia Cory, CFBF director of environmental affairs. "It protects the farmer because it basically says you can't be held liable if something accidentally does

get on your farm. But it doesn't protect the guy who tries to cheat either."

Cory added that while there has never been a verified incident of a farmer in California losing market over accidental introduction of biotech crops in his or her commodity, the current bill represents a win-win for growers who want to use the technology and those who don't without restricting choice.

"It is important that those who wish to take advantage of these new technological advances and those who do not are both equally protected," said Cory. "AB 541 will provide those protections in production agricultural settings."

No hearing date has been set for the bill.

Regarding spillage from cargo loads, AB 2714, introduced by Assemblymember Rick Keene, R-Chico, addresses the unintended loss of small, insignificant amounts of material from vehicles, such as chaff from a load of hay or straw.

The problem was brought to the forefront by CFBF's hay advisory committee, which asked the Farm Bureau to do something about it. In response to the committee's request, CFBF is sponsoring the bill.

"This has been a costly issue for a number of our members hauling hay on the highways, especially in the North Bay area," said Andrea Fox of CFBF's governmental affairs division. "We are working with (Keene's) staff and the California Highway Patrol to draft appropriate and mutually agreeable language to amend the California Vehicle Code to alleviate this problem for our members."

Under current law, drivers could be cited for loss of load if any contents escape from their vehicles, with the exception of clear water or feathers from live birds. The bill would change that part of the vehicle code to address the "loss of load" issue presented by the incidental loss of hay or straw chaff when being transported on the highway.

"We're not talking about a hay storm or losing half a bale of hay as they're going down the highway; that's a completely different thing," Fox said.

The bill has not been scheduled for consideration.

CFBF is also actively engaged in trying to find a comprehensive, statewide solution to the metal theft issues facing California farmers and ranchers. The organization is working with a number of legislators to get that solution put into law.

(Ching Lee is a reporter for Ag Alert. She may be contacted at clee@cfbf.com.)

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