



June 14, 2017

Senator Cathleen Galgiani
 Chair, Senate Agriculture Committee
 1020 N Street, Room 583
 Sacramento, CA 95814

Senator Hannah Beth Jackson
 Chair, Senate Judiciary Committee
 State Capitol, Room 2187
 Sacramento, CA 95814

RE: Opposition to Assembly Bill 243 (Cooper): California Beef Commission Law

Dear Senators Galgiani and Jackson,

On behalf of the undersigned organizations, we strongly oppose Assembly Bill 243 (AB 243), authored by Assemblymember Jim Cooper. AB 243 vastly amends the current process in place to manage the state's mandatory beef checkoff program in ways that weaken California cattle producers' standing and subjects them to uncapped taxation -- for many, potentially without representation. We are especially concerned that AB 243 is poised to unfairly, disproportionately and adversely impact the smaller, innovative producers who are striving to meet consumer demand for non-commodity beef products.

AB 243 weakens democratic processes and does not cap future fees.

According to the Assembly Agriculture Committee analysis, most California laws require a 65 percent vote to establish a commission like the one being proposed in AB 243.¹ AB 243 bypasses a vote of producers to establish the new commission through legislation, lowers the required voting participation threshold, and also lowers the approval threshold for increasing taxes.²

In 2012, the California Department of Food and Agriculture (CDFA) conducted a statewide vote of producers seeking support to increase the checkoff from \$1 to \$2 per head of cattle. The measure failed. Because there is not enough support among the state's producers to create either the California Beef Commission or to increase the tax amount, AB 243's proponents are turning to the legislature to

¹ Assembly Committee on Agriculture, AB 243 Cooper - As Amended April 18, 2017 bill analysis. Subject: California Beef Commission. April 26, 2017. http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180AB243

² Compare Sections 65062 and 65069(b) as proposed in AB 243 to Food and Agricultural Code 64672.

circumvent the wishes of many California cattle producers. This is especially problematic because AB 243 sets no limit as to how high the tax could be set in future years.

Other than a general reference to “producers,” details regarding eligibility for participating in any fee increase vote and the voting procedures are not defined in AB 243, leaving the matter of who votes, how eligibility is established and the process for accomplishing the referendum nearly entirely at the discretion of the Commission. During the 2012 referendum vote, some California ranchers claimed that “the CDFA profiled certain individuals from a list of approximately 1,700 submissions, challenged their eligibility to vote and disqualified their ballots, while the ballots of identically qualified voters were accepted.”³ Many small-scale producers who oppose increased checkoff fees are rightfully concerned that they will be deemed ineligible to vote and yet still be required to pay.

And if the initial referendum proposed in AB 243 does not pass, the bill allows an additional referendum to be conducted at the Commission’s request as often as *every year* until a vote is successful.⁴ AB 243 also includes a provision allowing for an “assessment rate to defray operating costs of the commission” that California beef producers will have no choice but to pay.⁵

AB 243 does not supplement the existing state checkoff program, but *swallows* it and allows for control of both programs by the proposed new Commission.

AB 243 does not propose to amend existing law which governs the existing beef checkoff program. Instead, AB 243 creates entirely new sections of law which include authorizing a process by which the Commission could administer not just the newly created supplemental checkoff, but “any governmental program related to the California cattle, beef, and beef products industries.”⁶ This broad transfer of control, if executed, would give control over both the state’s checkoff programs to the new Commission.

AB 243 dangerously exempts all activity of the Commission from the state’s antitrust and unfair practices laws.

AB 243 poses a threat to marketplace and consumer safeguards by exempting *all* Commission activity from two of the state’s most important antitrust and unfair practices laws.⁷ There is no need for such wholesale exclusions from these laws designed to protect the public and the marketplace “by prohibiting unfair, dishonest, deceptive, destructive, fraudulent and discriminatory practices by which fair and honest competition is destroyed or prevented.” Cal. Bus. & Prof. Code § 17001. Removing such protections undermines California’s fundamental framework for ensuring against deceptive and anticompetitive practices.

This provision is an exponentially greater threat when considered with another remarkable provision of AB 243 which allows contributions from private entities. Section 65051 expressly allows the commission to accept “contributions” from private entities to further its activities. In combination with the immunity from the business laws noted above, this provision creates a limitless channel for special

³ Richard and Susie Snedden. AB 243 opposition letter. March 28, 2017.

⁴ AB 243, Sec. 65067.

⁵ AB 243, Sec. 65053.

⁶ AB 243, Sec. 65045.

⁷ AB 243, Sec. 65004.

interests to flood the checkoff program with private funds to carry out activities that they would otherwise be prohibited from engaging in themselves. It leaves the marketplace and consumers without the most basic protections from unscrupulous business activities.

AB 243 drastically weakens the Secretary’s control of the checkoff.

AB 243 contains several provisions that collectively operate to weaken the Secretary’s oversight authority, including a flat prohibition against blocking any Commission activity undertaken pursuant to its new grant of authority.⁸ And because the bill removes the public safeguards imposed by the state’s unfair practices law, the Secretary would be powerless to stop such activity. This flies in the face of the state’s fundamental interest in a fair and honest competitive marketplace.

AB 243 would make farmers personally liable for corporate debts.

AB 243 would subject business owners and operators to *personal liability* for assessment debts of the business.⁹ Such extraordinary terms would obliterate those corporate protections that are essential to entrepreneurship and a robust marketplace. Instead, a farmer’s personal and family belongings could be vulnerable, a threat that would be particularly hard-felt by small, family farming operations.

AB 243 would require small-scale California beef producers who strive to meet growing consumer demand for non-commodity beef to pay into a marketing program that does not serve their business interests, ethics, or values.

Smaller beef producers around the state take pride in their ability to provide a product that is an alternative to large-scale, industrialized beef. These producers engage in more humane animal husbandry, eschew unnecessary use of antibiotics and other drugs, and provide their cattle with more wholesome feeds than is often given to feedlot cattle.¹⁰ These specialty producers do not benefit from generic, commodity-focused advertising campaigns like those that would be funded through the new Commission promoting beef producers as if all beef products are the same. In fact, these smaller producers are disproportionately and adversely impacted by the increased checkoff tax than are large-scale operations. Their business model relies on consumers making informed choices when it comes to purchasing beef products; their efforts to distinguish their products are undermined by commodity marketing.

AB 243 creates the illusion of a voluntary checkoff program, but creates barriers that make avoiding participation difficult.

AB 243 states that producers may request a refund if they wish not to participate, but places barriers to accessing these refunds and provides no assurance as to how efficient, amenable, or fair the refund process would be.¹¹ The vague language of AB 243 (e.g., “necessary information as the department may

⁸ AB 243, Sec. 65058.

⁹ AB 243, Secs. 65078, 65088

¹⁰ It is not uncommon for feedlot cattle to be fed chicken manure and slaughterhouse byproducts. See, for example: <http://www.motherjones.com/food/2013/12/cow-feed-chicken-poop-candy-sawdust>

¹¹ “Any person who is subject to the fee that is required line 23 by Section 65071 may obtain a refund of the fee collected by submitting to the secretary commission a claim for a refund. The claim shall be submitted in writing within 90 days after the

require”) creates a huge loophole that could easily lead to a deliberately cumbersome and burdensome refund process or, more likely, forced participation. AB 243 is not a voluntary checkoff program by any meaningful interpretation.

Other checkoff programs with provisions similar to AB 243 within and beyond California have raised bona fide corruption concerns and are often fraught with a lack of transparency and accountability.

According to the AB 243 analysis by the Assembly Committee on Agriculture, California commissions focused on marketing and research have come under scrutiny in recent years.¹² The analysis states that one commission was recently terminated by its respective industry and another was found to have misused funds, as discovered by a state audit.

This is not just a California phenomenon. Beef checkoff programs and associated commissions in some of the most beef-centric states in the country have been found to be operating dubiously, and some even illegally. Just last month an Oklahoma Beef Council employee was found guilty of embezzling upwards of \$2.6 million from the very producers they are charged to help.¹³

Unfortunately, AB 243 does not include provisions that are conscious of these concerns. Rather, AB 243 explicitly exempts much of the information obtained by or for the Commission’s use from California’s public records act requirements and the bill does not prohibit checkoff funds from being used for lobbying activities. These troubling provisions alone would justify a “no” vote from anyone who believes in good government and government transparency.

The funds collected from California producers would not be required to be spent promoting California beef.

Although it purports to benefit California cattle producers, AB 243 does not limit promotional activities using fees the proposed Commission collects to those that would benefit California beef producers. As such, AB 243 could result in the promotion of and increased market share of beef products from cattle raised in foreign countries and imported by out-of-state corporate packers and producers.

The momentum is against checkoff programs like that proposed by AB 243.

In 2011, the Wyoming legislature overwhelmingly rejected a proposed \$1 tax to fund a new state beef commission very similar to the one AB 243 is proposing.¹⁴ Minnesota cattle producers voted down a proposed checkoff in 2014 and nearly 75 percent of Missouri cattle producers said “no” to a proposal to

date of the brand inspection or the date of payment of the fee to the secretary, whichever date is later. The claim for refund shall contain necessary information as the department may require. (AB 243, Sec. 65076.)

¹² See *supra*, note 1.

¹³ United States Department of Justice. Former Oklahoma Beef Council Employee Pleads Guilty to \$2.6 Million Embezzlement and Signing a False Tax Return. May 24, 2017. <https://www.justice.gov/usao-wdok/pr/former-oklahoma-beef-council-employee-pleads-guilty-26-million-embezzlement-and-signing>

¹⁴ Wyoming House Bill No. HB0016 Wyoming beef council-fee collections. <https://legisweb.state.wy.us/2011/Introduced/HB0016.pdf> Vote was Y:8, N: 49 <http://legisweb.state.wy.us/2011/SessionVotes/VoteDetail.aspx?ID=5088&Title=Wyoming+beef+council-fee+collections>

establish a new state beef checkoff in 2016.¹⁵ The dramatic number of Missouri operations that have gone out of business (40 percent), the drastic decline in beef consumption (32 percent), and the concern over checkoff dollars being used to promote foreign beef were just a few of the concerns driving this outcome.¹⁶

Given the lack of compelling support among California beef producers for an increased checkoff fee as recently as 2012, opposition to AB 243 from producer groups like the Kern County Cattlemen's Association and the California Dairy Campaign, the history of corruption and concern with checkoffs in other states, the explicit efforts to pierce the corporate veil, co-mingle government and business interests, allow for wanton collusion, retreat from significant consumer protections and avoid transparency, and the government overreach that comes along with mandating an inequitable tax to support expenditures on behalf of a private industry, we strongly urge a no vote on AB 243.

Sincerely,

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¹⁵ Beef Magazine. 4 States Look to Raise Checkoff. April 9, 2014. <http://www.beefmagazine.com/blog/4-states-look-raise-checkoff>

¹⁶ Missouri Rural Crisis Center. 2016. Press Release: Missouri's Cattle Producers Overwhelmingly Reject New Missouri Beef Checkoff. <https://morural.org/articles/missouricattlewin>

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Members of the Senate Judiciary Committee
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