

AMENDED IN ASSEMBLY MAY 6, 2009

AMENDED IN ASSEMBLY APRIL 2, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1321

Introduced by Assembly Member Eng

February 27, 2009

An act to add Division 13.6 (commencing with Section 21200) to the Public Resources Code, relating to the environment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1321, as amended, Eng. Environment: The Advance Infrastructure Mitigation Program Act.

~~(1) The~~

The California Environmental Quality Act (CEQA) requires a lead agency to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project, as defined, that it proposes to carry out or approve that may have a significant effect on the environment, as defined, or to adopt a negative declaration if it finds that the project will not have that effect.

This bill would enact the Advance Infrastructure Mitigation Program Act, which would establish the Advance Infrastructure Mitigation Program, including defining terms for that purpose. The bill would authorize the Natural Resources Agency to administer and implement the program by taking ~~specified~~ *certain* actions. Those actions would include preparing, approving, and implementing regional advance mitigation plans, the contents of which the bill would specify, for planned infrastructure projects, as defined, identified by an infrastructure planning agency, as defined. The bill would specify that the purpose of

a regional advance mitigation plan is to provide effective mitigation and conservation of natural resources and natural processes on a landscape, regional, or statewide scale, to expedite the environmental review of planned infrastructure projects, and to facilitate the implementation of measures to mitigate the impacts of those projects by identifying and implementing mitigation measures in advance of project approval. The bill also would authorize the agency to acquire, restore, manage, monitor, and preserve lands, *waterways, aquatic resources, or fisheries*, or fund those actions, in accordance with an approved regional advance mitigation plan or as otherwise specified, and to establish or fund the establishment of mitigation banks and conservation banks and purchase credits at those types of banks ~~as specified~~. The bill would authorize the agency to take other ~~specified~~ actions with respect to mitigation credits or values created or acquired under the program.

The bill would authorize an infrastructure planning agency to identify planned infrastructure projects for the purposes of including the projects in a regional advance mitigation plan or for other advance mitigation under the program, and would authorize the agency to enter a memorandum of understanding or other agreement with an infrastructure planning agency for specified purposes of the program.

The bill would establish the Advance Infrastructure Mitigation Fund in the State Treasury. Upon appropriation by the Legislature, the bill would require moneys in the fund to be used by the agency to administer and implement the program.

The bill would specify that the program is intended to improve the efficiency and efficacy of mitigation only and is not intended to supplant the requirements of CEQA or any other environmental law.

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

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

- 1 SECTION 1. Division 13.6 (commencing with Section 21200)
- 2 is added to the Public Resources Code, to read:

DIVISION 13.6. ADVANCE INFRASTRUCTURE
MITIGATION PROGRAM ACT

CHAPTER 1. GENERAL

21200. This division shall be known, and may be cited, as the Advance Infrastructure Mitigation Program Act.

21201. (a) The purpose of this division is to improve the success and effectiveness of actions implemented to mitigate the natural resource impacts of future infrastructure projects by establishing the means to implement those actions well before the infrastructure projects are constructed. The advance identification and implementation of mitigation actions also will streamline the delivery of infrastructure projects by anticipating mitigation requirements for planned infrastructure projects and avoiding or reducing delays associated with environmental permitting. By identifying regional or statewide conservation priorities and by anticipating the impacts of planned infrastructure projects on a regional or statewide basis, mitigation actions can be designed to protect and restore California's most valuable natural resources and also facilitate environmental compliance for planned infrastructure projects on a regional scale.

(b) This division is not intended to create a new environmental permitting or regulatory program or to modify existing environmental laws or regulations, nor is it intended to address all mitigation that may be required for planned infrastructure projects. Instead, it is intended to provide a way in which to anticipate and fulfill the requirements of existing state and federal environmental laws that protect fish, wildlife, plant species, and other natural resources more efficiently and effectively.

21202. The Legislature finds and declares all of the following:

(a) The minimization and mitigation of environmental impacts is ordinarily handled on a project-by-project basis, usually at the end of a project's timeline and without guidance regarding regional or statewide conservation priorities.

(b) The cost of critical transportation, flood control, and other infrastructure projects often escalates because of permitting delays that occur when appropriate conservation and mitigation measures cannot easily be identified and because the cost of these measures

1 often increases between the time a project is planned and funded
2 and the time mitigation is implemented.

3 (c) Addressing biological conservation and mitigation needs
4 early in a project's timeline, during project design and
5 development, can reduce costs and allow natural resources
6 conservation to be integrated with project siting and design.

7 (d) When the Department of Transportation, the Department of
8 Water Resources, and other public agencies are able to anticipate
9 the mitigation needs for planned infrastructure projects, they can
10 meet those needs in a more timely and cost-effective way, by using
11 long-range regional advance mitigation planning.

12 (e) Working with state and federal resource protection agencies,
13 the Department of Transportation, the Department of Water
14 Resources, and other public agencies could identify, conserve,
15 and, where appropriate, restore lands for mitigation of numerous
16 projects early in the projects' timelines, thereby allowing public
17 funds to stretch further by acquiring habitat at a lower cost and
18 avoiding environmental permitting delays.

19 (f) Regional advance mitigation planning can provide an
20 effective means of facilitating delivery of state and federal
21 economic stimulus funding to infrastructure projects while ensuring
22 more effective natural resource and wildlife conservation.

23 (g) Regional advance mitigation planning is needed to direct
24 mitigation funding for transportation, flood control, and energy
25 projects to ~~agreed-upon~~ *agreed-upon* conservation priorities and
26 to the creation of habitat reserves and recreation areas that enhance
27 the sustainability of human and natural systems by protecting or
28 restoring connectivity of natural communities and the delivery of
29 ecosystem services.

30 (h) Regional advance mitigation planning can facilitate the
31 implementation of climate change adaptation strategies both for
32 ecosystems and California's economy.

33 (i) Regional advance mitigation planning can enable the state
34 to protect, restore, and recover its natural capital as it strengthens
35 and improves its infrastructure.

36 21203. The Legislature intends to do all of the following by
37 enacting this division:

38 (a) Facilitate delivery of infrastructure projects while ensuring
39 more effective natural resource and wildlife conservation.

(b) Develop effective strategies to improve the state’s ability to meet mounting demands for transportation, flood control, and energy services, and to maximize conservation and other public benefits.

(c) Achieve conservation objectives of statewide and regional importance by coordinating local, state, and ~~federal~~ *federally* funded natural resource conservation efforts with mitigation actions required for impacts from public infrastructure projects.

(d) Create administrative, governance, and financial incentives and mechanisms necessary to ensure that measures required to minimize or mitigate impacts from infrastructure projects will serve to achieve regional or statewide natural resource conservation objectives.

CHAPTER 2. DEFINITIONS

21204. For the purposes of this division, the following terms have the following meanings:

(a) “Acquire” and “acquisition” mean, with respect to land *or a waterway*, acquisition of fee title or purchase of a conservation easement, that protects conservation and mitigation values on the land *or waterway* in perpetuity.

(b) “Agency” means the Natural Resources Agency.

(c) “Infrastructure planning agency” means the Department of Transportation, the Department of Water Resources, a metropolitan planning organization, a regional transportation planning agency, or other public agency that implements infrastructure projects.

(d) “Infrastructure project” means the construction, repair, or modification of a transportation, flood control, energy, or water facility.

(e) “Planned infrastructure project” means a project that the Department of Transportation, the Department of Water Resources, or other public agency has concluded is reasonably likely to be constructed within 20 years and that has been identified to the agency for purposes of this division. A planned infrastructure project may include, but is not limited to, projects that have been proposed for approval or approved.

(f) “Program” means the Advance Infrastructure Mitigation Program implemented pursuant to this division.

(g) “Regional advance mitigation plan” means a regional or statewide plan developed in accordance with this division that estimates the potential future compensatory mitigation requirements for one or more planned infrastructure projects and identifies mitigation projects, sites, or credits that would fulfill some or all of those requirements.

(h) “Regulatory agency” means a state ~~and~~ or federal natural resource protection agency with regulatory authority over planned infrastructure projects. A regulatory agency includes, but is not limited to, the Department of Fish and Game, California regional water quality control boards, the United States Fish and Wildlife Service, the National Marine Fisheries Service, the United States Environmental Protection Agency, and the United States Army Corps of Engineers.

CHAPTER 3. ADVANCE INFRASTRUCTURE MITIGATION PROGRAM

21205. This division establishes the Advance Infrastructure Mitigation Program to fulfill the purposes of this division. The agency may do any of the following to administer and implement the program:

(a) Prepare, approve, and implement regional advance mitigation plans for one or more planned infrastructure projects identified pursuant to Section 21207. The purpose of a regional advance mitigation plan is to provide effective mitigation and conservation of natural resources and natural processes on a landscape, regional, or statewide scale, to expedite the environmental review of planned infrastructure projects, and to facilitate the implementation of measures to mitigate the impacts of those projects by identifying and implementing mitigation measures in advance of project approval.

(b) Acquire, restore, manage, monitor, and preserve lands, *waterways, aquatic resources, or fisheries*, or fund the acquisition, restoration, management, monitoring, and preservation of lands, *waterways, aquatic resources, or fisheries*, in accordance with a regional advance mitigation plan approved by the agency pursuant to this division.

(c) Acquire, restore, manage, monitor, and preserve lands, *waterways, aquatic resources, or fisheries*, or fund the acquisition, restoration, management, monitoring, and preservation of lands,

1 *waterways, aquatic resources, or fisheries*, outside of an approved
2 regional advance mitigation plan if the agency determines that
3 those actions would conserve or create biological values that are
4 appropriate to mitigate the estimated impacts of one or more
5 planned infrastructure projects identified pursuant to Section 21207.

6 (d) Establish mitigation banks or conservation banks, or fund
7 the establishment of mitigation banks or conservation banks, in
8 accordance with applicable state and federal standards. The agency
9 also may purchase credits at mitigation banks and conservation
10 banks if the agency determines that the credits provide biologically
11 appropriate mitigation for one or more planned infrastructure
12 projects identified pursuant to Section 21207.

13 (e) Establish the type and quantity of mitigation credits or values
14 created under the program by obtaining the approval of those
15 credits or values from relevant regulatory agencies. This division
16 is not intended to supplant or abrogate the authority of a regulatory
17 agency to determine mitigation requirements under state or federal
18 environmental laws or to determine the type or quantity of
19 mitigation credits or values that may be used to fulfill those
20 requirements.

21 (f) Use, or allow infrastructure planning agencies to use,
22 mitigation credits or values created or acquired under the program
23 to fulfill the mitigation requirements of planned infrastructure
24 projects if the infrastructure planning agency reimburses the
25 program for all costs of creating the mitigation credits or values,
26 as determined by the agency.

27 21206. A regional advance mitigation plan shall do all of the
28 following:

29 (a) Use geographic information system analysis, field surveys,
30 and principles of conservation planning to estimate the nature and
31 extent of mitigation requirements of identified planned
32 infrastructure projects on a regional or statewide basis.

33 (b) Propose measures to avoid or minimize the adverse
34 environmental impacts of planned infrastructure projects, including,
35 where appropriate, the identification of project alignments and
36 design features that would avoid or minimize those impacts.

37 (c) Anticipate and provide for compensatory mitigation for
38 planned infrastructure projects' impacts on natural resources and
39 natural processes by identifying needed mitigation and, to the

1 extent practicable, identifying suitable mitigation lands *or*
2 *waterways*.

3 (d) Identify and provide for the preservation of wildlife
4 movement corridors and habitat connectivity to avoid ecological
5 fragmentation and to enable ecosystem adaptation to climate
6 change.

7 (e) Consider impacts on water quality and riparian habitat, rare
8 plant species, sensitive species, *fisheries*, and declining natural
9 communities including oak woodlands, vernal pools, native
10 grasslands, and serpentine habitat.

11 (f) Identify the amount of greenhouse gas reductions estimated
12 to be achieved through the regional advance mitigation plan.

13 (g) Provide for endowments to manage and monitor acquired
14 or protected lands, *waterways*, *or fisheries*, as necessary.

15 (h) Where available and biologically appropriate, provide for
16 the purchase of mitigation credits at mitigation banks or
17 conservation banks or for the payment of mitigation fees within
18 established mitigation programs.

19 (i) Analyze the ~~cost-effectiveness~~ *cost-effectiveness* of available
20 mitigation alternatives both in terms of environmental benefits and
21 improved project delivery and certainty.

22 (j) Include measurable performance objectives and a monitoring
23 and evaluation program.

24 21207. (a) An infrastructure planning agency may identify
25 planned infrastructure projects for the purpose of including those
26 projects in a regional advance mitigation plan or for other advance
27 mitigation under the program. The infrastructure planning agency
28 shall provide an analysis and estimate of the projects' direct,
29 indirect, and cumulative impacts. The analysis and estimate shall
30 include all available relevant information regarding those impacts
31 and the analysis shall be at a level of detail commensurate with
32 the available relevant information. Detailed analysis shall not be
33 required where relevant detailed information about the projects'
34 impacts is not available.

35 (b) The agency may enter a memorandum of understanding or
36 other agreement with an infrastructure planning agency to do all
37 of the following:

38 (1) Specify terms consistent with this division under which the
39 program will provide advance mitigation for the identified planned
40 infrastructure projects.

1 (2) Establish guidelines for communication and sharing of
2 relevant information necessary to optimize coordination and
3 collaboration between the agency and the infrastructure planning
4 agency.

5 (3) Establish guidelines for strategically locating mitigation and
6 conservation sites to maximize the biological benefit and
7 conservation value to target species, habitats, and aquatic resources.

8 21208. The Advance Infrastructure Mitigation Fund is
9 established in the State Treasury. Upon appropriation by the
10 Legislature, all moneys in the fund shall be used by the agency to
11 administer and implement the program. All moneys provided by
12 infrastructure planning agencies to reimburse program expenditures
13 pursuant to subdivision (f) of Section 21205 shall be deposited in
14 the fund.

15 21209. The program is intended to improve the efficiency and
16 efficacy of mitigation only and is not intended to supplant the
17 requirements of the California Environmental Quality Act (Division
18 13 (commencing with Section 21000)) or any other environmental
19 law. The identification of planned infrastructure projects and the
20 identification of mitigation projects or measures for planned
21 infrastructure projects under this division does not imply or require
22 approval of those projects for purposes of the California
23 Environmental Quality Act (Division 13 (commencing with Section
24 21000)) *or any other environmental law*.