

AMENDED IN SENATE FEBRUARY 15, 2012

AMENDED IN ASSEMBLY MAY 27, 2011

AMENDED IN ASSEMBLY MARCH 29, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 484

Introduced by Assembly Member Alejo

February 15, 2011

An act to amend Section ~~65965~~ of the Government Code, relating to ~~land use~~; 7074.2 of the Government Code, relating to enterprise zones.

LEGISLATIVE COUNSEL'S DIGEST

AB 484, as amended, Alejo. ~~Land use: natural resources: transfer of long-term management funds.~~ *Enterprise zones: expiration of designation.*

The Enterprise Zone Act requires the Department of Housing and Community Development to administer the act and to designate no more than 42 enterprise zones at any one time that may be proposed by a city, county, or city and county from applications selected on the basis of the most effective, innovative, and comprehensive regulatory, tax program, and other incentives in attracting private sector investment in the zone proposed. The act specifies that any enterprise zone designated by the department on or after January 1, 1997, may not exceed a designation period of 15 years. Existing law also authorizes an expiring enterprise zone that applies for a new enterprise zone designation and receives a conditional designation letter from the department, to offer, and a taxpayer doing business within the geographic boundaries of the new zone referenced in the conditional designation letter is eligible to receive, all enterprise zone benefits until

the department makes a final designation or declines to redesignate the zone, as specified.

This bill would authorize the jurisdiction of an expiring enterprise zone to send a letter to the department expressing the intent of the jurisdiction to reapply for a new enterprise zone designation prior to the expiration of the designation of the enterprise zone. The bill would provide that if that letter is sent and, if prior to the expiration of the designation of the enterprise zone, the department has not issued a request for proposal and has not conditionally designated the maximum number of enterprise zones within the state, then businesses within the geographic boundaries of the existing enterprise zone may continue to be eligible to receive all enterprise zone benefits until the department completes any regulatory or administrative review, issues a request for proposal, and issues conditional designation letters to the maximum number of enterprise zones within the state.

~~The Planning and Zoning Law authorizes a state or local public agency to authorize a nonprofit organization to hold title to, and manage an interest in, real property that the state or local public agency requires a property owner to transfer to the agency to mitigate any adverse impact upon natural resources caused by permitting the development of a project or facility, provided the nonprofit organization meets specified conditions. That law also authorizes an agency that, in the development of its own project, is required to transfer an interest in real property to mitigate an adverse impact upon natural resources, to transfer the interest to a nonprofit organization that meets the specified conditions.~~

~~This bill would authorize funds set aside for the long-term management of any lands or easements conveyed to a nonprofit organization pursuant to the above provisions to also be conveyed to the nonprofit organization as specified. The bill would also require the nonprofit organization to hold, manage, invest, and disburse the funds in furtherance of managing and stewarding the land or easement for which the funds were set aside.~~

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. Section 7074.2 of the Government Code is
2 amended to read:

1 7074.2. (a) Notwithstanding any other ~~provision of law~~, a city,
2 county, or a city and county may designate a joint powers authority
3 to administer an enterprise zone.

4 (b) No more than 42 enterprise zones may be designated at any
5 one time pursuant to this chapter, including those deemed
6 designated pursuant to subdivision (e) of Section 7073. Upon the
7 expiration or termination of a designation, the department may
8 designate another enterprise zone to maintain a total of 42
9 enterprise zones.

10 (c) Notwithstanding any other ~~provision of law~~, an expiring
11 enterprise zone that applies for a new enterprise zone designation
12 pursuant to Section 7073 or 7073.1, and receives a conditional
13 designation letter from the department, may offer, and a taxpayer
14 doing business within the geographic boundaries of the new zone
15 referenced in the conditional designation letter shall be eligible to
16 receive, all enterprise zone benefits until the department makes a
17 final designation or declines to redesignate the zone. The
18 department shall make the effective date of the new zone the date
19 of expiration of the previous designation and the term of the new
20 zone shall begin on that date.

21 *(d) Notwithstanding any other law, if the jurisdiction of an*
22 *expiring enterprise zone has sent a letter to the department*
23 *expressing the intent of the jurisdiction to reapply for a new*
24 *enterprise zone designation prior to the expiration of the*
25 *designation of the enterprise zone, and if prior to the expiration*
26 *of the designation of the enterprise zone the department has not*
27 *issued a request for proposal and has not conditionally designated*
28 *the maximum number of enterprise zones within the state, the*
29 *businesses within the geographic boundaries of the existing*
30 *enterprise zone shall continue to be eligible to receive all enterprise*
31 *zone benefits until the department completes any regulatory or*
32 *administrative review, issues a request for proposal, and issues*
33 *conditional designation letters to the maximum number of*
34 *enterprise zones within the state.*

35 ~~SECTION 1. Section 65965 of the Government Code is~~
36 ~~amended to read:~~

37 ~~65965. (a) For the purposes of this section, the following~~
38 ~~definitions apply:~~

39 ~~(1) "Direct protection" means the protection and preservation~~
40 ~~of natural lands or resources, including, but not limited to,~~

1 agricultural lands, wildlife habitat, wetlands, endangered species
2 habitat, open-space areas, or outdoor recreational areas.

3 (2) “Stewardship” encompasses the range of activities involved
4 in controlling, monitoring, and managing for conservation purposes
5 a property, or a conservation or open-space easement, as defined
6 by the terms of the easement, and its attendant resources.

7 (b) Notwithstanding any other provision of law to the contrary,
8 if a state or local public agency requires a property owner to
9 transfer to the agency an interest in real property to mitigate any
10 adverse impact upon natural resources caused by permitting the
11 development of a project or facility, the state or local public agency
12 may authorize a nonprofit organization to hold title to and manage
13 that interest in real property, provided that the nonprofit
14 organization is all of the following:

15 (1) Exempt from taxation as an organization described in Section
16 501(e)(3) of the Internal Revenue Code, and qualified to do
17 business in the state.

18 (2) A “qualified organization” as defined in Section 170(h)(3)
19 of the Internal Revenue Code.

20 (3) An organization that has as its principal purpose and activity
21 the direct protection or stewardship of natural land or resources,
22 or cultural or historic resources, including, but not limited to,
23 agricultural lands, wildlife habitat, wetlands, endangered species
24 habitat, open-space areas, and outdoor recreational areas.

25 (e) If a state or local public agency, in the development of its
26 own project, is required to transfer an interest in real property to
27 mitigate an adverse impact upon natural resources, the agency may
28 transfer the interest to a nonprofit organization that meets the
29 requirements set forth in paragraphs (1) to (3), inclusive, of
30 subdivision (b).

31 (d) (1) Funds set aside for the long-term management of any
32 lands or easements conveyed to a nonprofit organization pursuant
33 to subdivisions (b) and (e) may also be conveyed to the nonprofit
34 organization. The nonprofit organization shall hold, manage, invest,
35 and disburse the funds in furtherance of managing and stewarding
36 the land or easement for which the funds were set aside.

37 (2) The state or local agency may require the nonprofit
38 organization to submit a report, not more than once every 12
39 months, that details the management and condition of the property
40 or easement and the accompanying funds. The mitigation or

1 funding agreement shall specify the reporting due dates and
2 elements of the report.

3 (3) If, after the state or local agency receives the report described
4 in paragraph (2), the state or local agency determines that there is
5 cause to consider whether the terms of the mitigation or funding
6 agreement have been violated, the agency may review the
7 accounting documents involving the funds or require an
8 independent audit of the funds to be performed and the audit report
9 submitted to the agency.

10 (e) The recorded instrument that places title with a nonprofit
11 organization pursuant to subdivision (b) shall include, at a
12 minimum, a provision that if the state or local public agency that
13 authorized the nonprofit organization to hold the title, or its
14 successor agency, determines that the interest in real property that
15 is held by the nonprofit organization is not being held, monitored,
16 or managed for conservation purposes in the manner specified in
17 that instrument or in the mitigation agreement between the state
18 or local public agency and the nonprofit organization, the interest
19 in real property shall revert to the state or that local public agency,
20 or to another public agency or nonprofit organization qualified
21 pursuant to subdivision (b), approved by the state or local public
22 agency.

23 (f) The funds of a nonprofit organization holding funds for the
24 long-term management of property shall revert to the state or local
25 public agency or to another public agency or nonprofit organization
26 approved by the state or local agency and qualified under
27 subdivision (b), if any of the following conditions exist:

- 28 (1) The nonprofit organization ceases operations.
- 29 (2) The nonprofit organization is dissolved.
- 30 (3) The nonprofit organization becomes bankrupt or insolvent.
- 31 (4) The nonprofit organization fails to preform its duties
32 pursuant to this section for any reason.

33 (g) (1) A state or local public agency shall exercise due
34 diligence in reviewing the qualifications of a nonprofit organization
35 to effectively manage and steward natural land or resources, as
36 well as the accompanying funds. The state or local public agency
37 may adopt guidelines to assist the agency in that review process.

38 (2) The state or local agency shall determine that the holder of
39 accompanying funds meets all of the following requirements:

- 1 ~~(A) The holder has the capacity to effectively manage the~~
2 ~~mitigation funds.~~
- 3 ~~(B) The holder has the capacity to achieve reasonable rates of~~
4 ~~return on investment of those funds, similar to those of other~~
5 ~~prudent investors, over the life of the agreement.~~
- 6 ~~(C) The holder utilizes general accepted accounting practices,~~
7 ~~and will be able to ensure that funds are accounted for, and tied~~
8 ~~to, a specific property or project.~~
- 9 ~~(D) The holder has an adopted investment policy with regard~~
10 ~~to endowment funds that is consistent with the Uniform~~
11 ~~Management of Institutional Funds Act (Part 7 (commencing with~~
12 ~~Section 18501) of Division 9 of the Probate Code) and Sections~~
13 ~~18505 and 18506 of the Probate Code.~~
- 14 ~~(h) The state or local public agency may contract with or~~
15 ~~designate an independent third party to do any of the following:~~
- 16 ~~(1) Review the qualifications of a nonprofit organization to~~
17 ~~effectively manage and steward natural land or resources.~~
- 18 ~~(2) Review the qualifications of a nonprofit organization to hold~~
19 ~~and manage the funds set aside for long-term management~~
20 ~~associated with the property.~~
- 21 ~~(3) Determine whether the holder of the funds meets the~~
22 ~~requirements set forth in paragraph (2) of subdivision (f).~~
- 23 ~~(4) Review reports or other performance indicators to evaluate~~
24 ~~the management of lands, resources, or funds.~~
- 25 ~~(i) (1) If a state or local agency authorizes a nonprofit~~
26 ~~organization to hold land or natural resources created for mitigation~~
27 ~~purposes, the state or local agency may require an administrative~~
28 ~~endowment from the project proponent for costs associated with~~
29 ~~reviewing qualifications, approving holders, and regular oversight~~
30 ~~of compliance and performance.~~
- 31 ~~(2) The state or local public agency may also require project~~
32 ~~proponents to provide a separate account that will provide for~~
33 ~~initial management costs while the endowment matures.~~
- 34 ~~(j) This section shall not apply retroactively to endowment funds~~
35 ~~held by the state in the Pooled Money Investment Account as of~~
36 ~~January 1, 2012.~~
- 37 ~~(k) A property that has been previously protected for~~
38 ~~conservation purposes, including the placement of a conservation~~
39 ~~easement on the property, shall not be used for mitigation purposes.~~

1 ~~(f) This section is not intended to interfere with or prevent the~~
2 ~~existing authority of an agency or department to carry out its~~
3 ~~programs, projects, or responsibilities to identify, review, approve,~~
4 ~~deny, or implement any mitigation requirement, and nothing in~~
5 ~~this section shall be construed as a limitation on mitigation~~
6 ~~requirements for the project, or a limitation on compliance~~
7 ~~requirements under this division or any other provision of law.~~

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