

ASSEMBLY BILL

No. 2629

Introduced by Assembly Member Morrell

February 24, 2012

An act to amend Section 65966 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 2629, as introduced, Morrell. Land use: mitigation lands.

The Planning and Zoning Law provides that if a state or local agency requires a person to transfer to that agency an interest in real property to mitigate the environmental impact of a project or facility, that agency may authorize specified entities to hold title to and manage that interest in real property, as well as any accompanying funds, provided those entities meet specified requirements. Existing law requires any conservation easement created as a component of satisfying a local or state mitigation requirement to be perpetual in duration, as specified.

This bill would make a technical, nonsubstantive change to this requirement.

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

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

- 1 SECTION 1. Section 65966 of the Government Code is
- 2 amended to read:
- 3 65966. (a) Any conservation easement created as a component
- 4 of satisfying a local or state mitigation requirement shall be

1 perpetual in duration, whether created pursuant to Section 51075
2 ~~of this code~~ or pursuant to Section 815 of the Civil Code.

3 (b) Any local or state agency that requires property to be
4 protected pursuant to subdivision (a) or (b) of Section 65967 may
5 identify how the funding needs of the long-term stewardship of
6 the property will be met. If accompanying funds are conveyed at
7 the time the property is protected, all of the following shall apply:

8 (1) The accompanying funds shall be held, managed, invested,
9 and disbursed solely for the long-term stewardship of the specific
10 property for which the funds were set aside.

11 (2) The accompanying funds shall be calculated to include a
12 principal amount that, when managed and invested, will produce
13 revenues that are reasonably sufficient to cover the annual
14 stewardship costs of the property in perpetuity.

15 (3) The principal amount shall be defined and managed as
16 permanently restricted funds.

17 (4) Any one-time payment, as defined by subdivision (f), and
18 earnings from the principal shall be managed as temporarily
19 restricted funds.

20 (5) The accompanying funds shall be held, managed, invested,
21 and disbursed consistent with the Uniform Prudent Management
22 of Institutional Funds Act (Part 7 (commencing with Section
23 18501) of Division 9 of the Probate Code).

24 (c) If a local agency holds the accompanying funds, the local
25 agency shall do all of the following:

26 (1) Hold, manage, and invest the accompanying funds consistent
27 with subdivision (b) to the extent allowed by law.

28 (2) Disburse funds on a timely basis to meet the stewardship
29 expenses of the entity holding the property.

30 (3) Utilize accounting standards consistent with standards
31 promulgated by the Governmental Accounting Standards Board.

32 (d) A special district or a nonprofit organization that holds funds
33 pursuant to this chapter, including, but not limited to,
34 accompanying funds, moneys to acquire land or easements, or
35 moneys for initial stewardship costs, shall provide the local or state
36 agency with an annual fiscal report that contains at least the same
37 information as required by Internal Revenue Service Form 990
38 regarding the funds.

39 (e) If a state or local agency authorizes a special district or
40 nonprofit organization to hold property pursuant to subdivision

1 (a) or (b) of Section 65967, the agency may require an
2 administrative endowment from the project proponent, as a
3 one-time payment for reasonable costs associated with reviewing
4 qualifications, approving holders, and regular oversight of
5 compliance and performance. The administrative endowment shall
6 be held, managed, and invested to produce an annual revenue
7 sufficient to cover the costs of reviewing qualifications, approving
8 holders, and ongoing oversight.

9 (f) A local agency may require a project proponent to provide
10 a one-time payment that will provide for the initial stewardship
11 costs for up to three years while the endowment begins to
12 accumulate investment earnings. The funds for the initial
13 stewardship costs are distinct from the funds that may be conveyed
14 for long-term stewardship, construction, or other costs. If there are
15 funds remaining at the completion of the initial stewardship period,
16 the funds shall be conveyed to the project proponent.

17 (g) The local agency may contract with or designate a qualified
18 third party to do any of the following:

19 (1) Review the qualifications of a special district or nonprofit
20 organization to effectively manage and steward natural land or
21 resources pursuant to subdivisions (c) and (d) of Section 65967.

22 (2) Review the qualifications of a nonprofit to hold and manage
23 the accompanying funds that are set aside for long-term
24 stewardship of the property.

25 (3) Review reports or other performance indicators to evaluate
26 the stewardship of lands, natural resources, or funds, and
27 compliance with the mitigation agreement.

28 (h) If a property conserved pursuant to subdivision (a) or (b) of
29 Section 65967 is condemned, the net proceeds from the
30 condemnation of the real property interest set aside for mitigation
31 purposes shall be used for the purchase of property that replaces
32 the natural resource characteristics the original mitigation was
33 intended to protect, or as near as reasonably feasible. Any
34 accompanying funds held for the condemned property shall be
35 held for the long-term stewardship of the replacement property.

36 (i) Unless prohibited by law, no provision in this chapter is
37 intended to prohibit for-profit entities from holding, acquiring, or
38 providing property for mitigation purposes.

1 (j) Nothing in this section shall prohibit a state agency from
2 exercising any powers described in subdivisions (c), (e), (f), or
3 (g).

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