

AMENDED IN ASSEMBLY SEPTEMBER 2, 2011

AMENDED IN ASSEMBLY AUGUST 26, 2011

AMENDED IN ASSEMBLY JULY 13, 2011

AMENDED IN ASSEMBLY JUNE 22, 2011

AMENDED IN SENATE MAY 31, 2011

AMENDED IN SENATE MAY 2, 2011

AMENDED IN SENATE MARCH 24, 2011

**SENATE BILL**

**No. 436**

---

---

**Introduced by Senator Kehoe**

(Principal coauthor: Assembly Member Alejo)

*(Coauthor: Senator Evans)*

(Coauthor: Assembly Member Chesbro)

February 16, 2011

---

---

An act to amend Section 65965 of, to add Sections 65966 and 65967 to, and to add and repeal ~~Sections 65968 and 65968.01~~ *Section 65968* of, the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

SB 436, as amended, Kehoe. Land use: mitigation lands: nonprofit organizations.

The Planning and Zoning Law authorizes a state or local public agency, if the agency requires a property owner to transfer to the agency an interest in real property to mitigate an adverse impact upon natural resources caused by permitting the development of a project or facility, to authorize a nonprofit organization to hold title to and manage that

interest in real property, provided that the nonprofit organization meets specified requirements.

This bill would revise these provisions and would *additionally* authorize a state or local public agency to ~~provide~~ *authorize a nonprofit organization, a special district, a for-profit entity, a person, or another entity to hold title to and manage an interest in property held for mitigation purposes, subject to certain requirements. This bill would also provide that if a state or local agency, in the development of its own project, is required to protect property to mitigate an adverse impact upon natural resources, the agency is authorized to take any action that it deems necessary to meet its mitigation obligations, including, but not limited to, providing funds to a nonprofit organization to acquire land or easements that satisfy the agency's mitigation obligations, including funds that have been set aside for the long-term management of any lands or easements conveyed to a nonprofit organization, as specified. This bill would, until January 1, 2022, require a nonprofit organization that holds funds on behalf of the Department of Fish and Game, or a special district or nonprofit organization that holds funds on behalf of a state or local agency, for the long-term management of land, to comply with certain requirements, including certification by the department, and oversight by the Controller under specified circumstances.* The bill would also state the findings and declarations of the Legislature with respect to the preservation of natural resources through mitigation, and would state that it is in the best interest of the public to allow state and local public agencies and nonprofit organizations to utilize the tools and strategies they need for improving the effectiveness, cost efficiency, and durability of mitigation for California's natural resources.

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. The Legislature finds and declares all of the
- 2 following:
- 3 (a) State and local laws protect a variety of natural resources,
- 4 and also require permits to be issued for the development of certain
- 5 projects or facilities.
- 6 (b) In furtherance of these laws, state or local public agencies
- 7 may require a project proponent to transfer an interest in real

1 property to mitigate any adverse impact upon natural resources  
2 caused by permitting the development of a project or facility.

3 (c) It is a widespread practice that funds are set aside for the  
4 long-term stewardship of the property protected for mitigation  
5 purposes by the project proponent at the time the property is  
6 protected.

7 (d) Lands and real property interests that are protected to achieve  
8 the mitigation may be held by public agencies, special districts,  
9 nonprofit organizations, or other entities, including for-profit  
10 entities.

11 (e) Many state and local agencies work with special districts,  
12 nonprofit organizations, and property owners in valuable and  
13 cost-effective public-private partnerships to identify properties  
14 that meet the mitigation requirements and to hold and provide  
15 long-term stewardship of the real property interests.

16 (f) There are tools and strategies available for improving the  
17 effectiveness, cost efficiency, and durability of mitigation for  
18 California's natural resources.

19 ~~(g) Identifying mitigation needs on a regional basis may expedite  
20 the planning and mitigation processes, as well as ultimately  
21 resulting in consolidated mitigation areas that can be managed  
22 more cost-effectively.~~

23 ~~(h) It is in the best interest of the public, project proponents,  
24 and local communities to ensure that the public benefits of  
25 mitigation are achieved and enduring.~~

26 ~~(i)~~

27 (g) It is in the best interest of the public to allow public agencies,  
28 special districts, nonprofit organizations, and property owners to  
29 utilize the tools and strategies they need for improving the  
30 effectiveness, cost efficiency, and durability of mitigation for  
31 California's natural resources.

32 ~~(j)~~

33 (h) It is important that entities that are qualified as to experience,  
34 capacity, and knowledge hold and manage property for mitigation  
35 purposes and any accompanying funds.

36 ~~(k)~~

37 (i) There are numerous benefits, including decreased financial  
38 risk, creation of efficiencies, and maintaining partnerships, for the  
39 real property and ~~associated~~ *accompanying* long-term funding to  
40 be held and managed by the same entity.

1 ~~(t)~~

2 (j) The state recognizes that it is widespread practice for the  
3 holder of a mitigation property *or a conservation easement* to also  
4 hold and manage the long-term funding dedicated to the property.

5 ~~(m)~~

6 (k) The state seeks strategies that allow and provide for this  
7 practice to continue while providing appropriate standards and  
8 public oversight to ensure that the funds endure for the long-term  
9 stewardship of the protected property and its associated natural  
10 resources.

11 ~~(n) California has a number of strong protections in place to~~  
12 ~~ensure that nonprofit organizations properly manage their charitable~~  
13 ~~resources and assets held in trust. These protections include, but~~  
14 ~~are not limited to, the state's Nonprofit Corporation Law that~~  
15 ~~identifies the nonprofit governing body's obligations to protect~~  
16 ~~the assets and mission of the nonprofit, and the provision that the~~  
17 ~~governing body is jointly and severally liable for any failure to do~~  
18 ~~so. In addition, the Attorney General has enforcement rights and~~  
19 ~~obligations regarding noncompliance, mismanagement, or misuse~~  
20 ~~of endowment funds, including the recovery of any endowment~~  
21 ~~funds.~~

22 ~~(o) The management of endowment funds by California~~  
23 ~~nonprofit organizations is governed by the Uniform Prudent~~  
24 ~~Management of Institutional Funds Act (Part 7 (commencing with~~  
25 ~~Section 18501) of Division 9 of the Probate Code).~~

26 ~~(p) The Uniform Prudent Management of Institutional Funds~~  
27 ~~Act~~

28 (l) *California has numerous laws and regulations that provide*  
29 *strong protections for the funds that are held, managed, invested,*  
30 *and disbursed for the long-term stewardship of mitigation*  
31 *properties. There are also detailed national standards in generally*  
32 *accepted accounting practices for both nonprofit organizations*  
33 *and public agencies. These protections include, but are not limited*  
34 *to, at the state level the Supervision of Trustees and Fundraisers*  
35 *for Charitable Purposes Act (Article 7 (commencing with Section*  
36 *12580) of Chapter 6 of Part 2 of Division 3 of Title 2 of the*  
37 *Government Code), the Nonprofit Public Benefit Corporation Law*  
38 *(Part 2 (commencing with Section 5110) of Division 2 of Title 1*  
39 *of the Corporations Code), and the Uniform Prudent Management*  
40 *of Institutional Funds Act (Part 7 (commencing with Section 18501)*

1 of Division 9 of the Probate Code); and at the national level the  
2 accounting standards promulgated by the Financial Accounting  
3 Standards Board, the federal Bankruptcy Code (Title 11 of the  
4 United States Code), and provisions governing federal tax-exempt  
5 status.

6 (m) The Attorney General is fully authorized to enforce the  
7 provisions of the Supervision of Trustees and Fundraisers for  
8 Charitable Purposes Act (Article 7 (commencing with Section  
9 12580) of Chapter 6 of Part 2 of Division 3 of Title 2 of the  
10 Government Code) and the Nonprofit Public Benefit Corporation  
11 Law (Part 2 (commencing with Section 5110) of Division 2 of Title  
12 1 of the Corporations Code) that identifies the nonprofit governing  
13 body's obligations to protect the assets and mission of the  
14 nonprofit, and the provision that the governing body can be jointly  
15 and severally liable for any failure to do so. In addition, the  
16 Attorney General has enforcement rights and obligations regarding  
17 noncompliance, mismanagement, or misuse of endowment funds,  
18 including the recovery of any endowment funds. The Attorney  
19 General is also a necessary party to proceedings affecting the  
20 disposition of assets of a charitable trust.

21 (n) The Uniform Prudent Management of Institutional Funds  
22 Act (Part 7 (commencing with Section 18501) of Division 9 of the  
23 Probate Code) provides strong direction and requirements for the  
24 holding, managing, investing, and disbursing of endowment funds  
25 held by nonprofits and public agencies, as defined. The act  
26 recognizes the distinction between permanently restricted funds  
27 and temporarily restricted funds and imposes requirements for  
28 each. Both types of funds are relevant to the management of funds  
29 for the long-term stewardship of land.

30 ~~(q)~~

31 (o) The goal of managing funds held for the long-term  
32 stewardship of land is to achieve intergenerational equity as  
33 embodied in the Uniform Prudent Management of Institutional  
34 Funds Act and extensively cited in the financial literature.  
35 Considerable guidance is provided in the act and in the  
36 implementing accounting standards about achieving this objective.

37 ~~(r) While nonprofit organizations must manage endowment~~  
38 ~~funds according to the Uniform Prudent Management of~~  
39 ~~Institutional Funds Act, to the extent feasible and permissible, the~~  
40 ~~same principles and guidelines, including the goal of managing~~

1 for intergenerational equity, should guide all holders of long-term  
2 endowment funds including public agencies and special districts.

3 (p) *The state acknowledges that existing laws, regulations, and*  
4 *accounting standards create a strong body of protections for the*  
5 *range of issues that may arise in the long-term management of*  
6 *endowments for protecting mitigation properties. These protections*  
7 *provide sufficient financial security for the funds upon which the*  
8 *state may rely.*

9 (q) *Due to the existing protections in law, regulation, and*  
10 *accounting standards, this chapter does not impose any liability*  
11 *or duty to perform upon a state or local agency with regard to*  
12 *reviewing or approving special districts or nonprofit organizations*  
13 *with regard to holding endowments.*

14 SEC. 2. Section 65965 of the Government Code is amended  
15 to read:

16 65965. For the purposes of this chapter, the following  
17 definitions apply:

18 (a) “Accompanying funds” means the funds that may be  
19 conveyed *solely* for the long-term stewardship of a property. *Also*  
20 *known as “endowments,” these funds are held and managed*  
21 *consistent with subdivision (b) of Section 65966 and with the*  
22 *Uniform Prudent Management of Institutional Funds Act (Part 7*  
23 *commencing with Section 18501) of Division 9 of the Probate*  
24 *Code). Accompanying funds do not include funds conveyed for*  
25 *meeting short-term performance objectives of a project.*

26 (b) “Conservation easement” means a conservation easement  
27 created pursuant to Chapter 4 (commencing with Section 815) of  
28 Title 2 of Part 2 of Division 2 of the Civil Code.

29 (c) “Department” means the Department of Fish and Game.

30 (d) “Direct protection” means the permanent protection,  
31 conservation, and preservation of lands, waters, or natural  
32 resources, including, but not limited to, agricultural lands, wildlife  
33 habitat, wetlands, endangered species habitat, open-space areas,  
34 or outdoor recreational areas.

35 (e) “Mitigation agreement” means a written agreement between  
36 a public agency, the project proponent, and the special district,  
37 nonprofit organization, for-profit entity, or other entity that holds  
38 the property. A mitigation agreement governs the long-term  
39 stewardship of a property and accompanying funds, and shall

1 specify any reporting requirements or elements, including due  
2 dates of reports.

3 (f) “Project proponent” means an individual, business entity,  
4 agency, or other entity that is developing a project or facility and  
5 is required to mitigate any adverse impact upon natural resources.

6 (g) “Property” means fee title land or any partial interest in real  
7 property, including a conservation easement, *that may be conveyed*  
8 *pursuant to a mitigation requirement by a state or local agency.*

9 (h) “Special district” means any special district formed pursuant  
10 to Article 3 (commencing with Section 5500) of Chapter 3 of  
11 Division 5 or Division 26 (commencing with Section 35100) of  
12 the Public Resources Code, or any resource conservation district  
13 organized pursuant to Division 9 (commencing with Section 9001)  
14 of the Public Resources Code.

15 (i) “Stewardship” encompasses the range of activities involved  
16 in controlling, monitoring, and managing for conservation purposes  
17 a property, or a conservation or open-space easement, as defined  
18 by the terms of the easement, and its attendant resources.

19 SEC. 3. Section 65966 is added to the Government Code, to  
20 read:

21 65966. (a) Any conservation easement created as a component  
22 of satisfying a local or state mitigation requirement shall be  
23 perpetual in duration, whether created pursuant to Section 51075  
24 of this code or Section 815 of the Civil Code, ~~and shall be deemed~~  
25 ~~to be “voluntarily created” and “conveyed” as those terms are used~~  
26 ~~in Sections 815.2 and 815.3 of the Civil Code.~~

27 (b) Any local or state agency that requires property to be  
28 protected pursuant to subdivision (a) or (b) of Section 65967 ~~shall~~  
29 *may* identify how the funding needs of the long-term stewardship  
30 of the property will be met. ~~If funds are set aside~~ *accompanying*  
31 *funds are conveyed* at the time the property is protected, all of the  
32 following shall apply:

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

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

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

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

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

10 (c) If a ~~state or~~ local agency holds the accompanying funds, the  
11 ~~state or~~ local agency shall do all of the following:

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

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

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

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

25 (e) If a state or local agency authorizes a special district or  
26 nonprofit organization to hold property pursuant to subdivision  
27 (a) or (b) of Section 65967, the agency may require an  
28 administrative endowment from the project proponent, as a  
29 one-time payment for reasonable costs associated with reviewing  
30 qualifications, approving holders, and regular oversight of  
31 compliance and performance. The administrative endowment shall  
32 be held, managed, and invested to produce an annual revenue  
33 sufficient to cover the costs of reviewing qualifications, approving  
34 holders, and ongoing oversight.

35 (f) A ~~state or~~ local agency may require a project proponent to  
36 provide a one-time payment that will provide for the initial  
37 stewardship costs for up to three years while the endowment begins  
38 to accumulate investment earnings. The funds for the initial  
39 stewardship costs are distinct from the funds that may be conveyed  
40 for long-term stewardship, construction, or other costs. If there are

1 funds remaining at the completion of the initial stewardship period,  
2 the funds shall be conveyed to the project proponent.

3 (g) ~~The state or~~ local agency may contract with or designate a  
4 qualified third party to do any of the following:

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

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

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

14 (h) If a property conserved pursuant to subdivision (a) or (b) of  
15 Section 65967 is condemned, the net proceeds from the  
16 condemnation of the real property interest set aside for mitigation  
17 purposes shall be used for the purchase of property that replaces  
18 the natural resource characteristics the original mitigation was  
19 intended to protect, or as near as reasonably feasible. Any  
20 accompanying funds held for the condemned property shall be  
21 held for the long-term stewardship of the replacement property.

22 (i) Unless prohibited by law, no provision in this chapter is  
23 intended to prohibit for-profit entities from holding ~~or acquiring,~~  
24 *acquiring, or providing* property for mitigation purposes.

25 (j) *Nothing in this section shall prohibit a state agency from*  
26 *exercising any powers described in subdivisions (c), (e), (f), or*  
27 *(g).*

28 SEC. 4. Section 65967 is added to the Government Code, to  
29 read:

30 65967. (a) If a state or local agency requires a project  
31 proponent to transfer property to mitigate any adverse impact upon  
32 natural resources caused by permitting the development of a project  
33 or facility, the agency may authorize a special district ~~or a nonprofit~~  
34 ~~organization,~~ *a nonprofit organization, a for-profit entity, a person,*  
35 *or another entity* to hold title to and manage that property.

36 (b) If a state or local agency, in the development of its own  
37 project, is required to protect property to mitigate an adverse impact  
38 upon natural resources, the agency may ~~do either of~~ *take any action*  
39 *that the agency deems necessary in order to meet its mitigation*  
40 *obligations, including, but not limited to,* the following:

1 (1) Transfer the interest to a special district or to a nonprofit  
2 organization that meets the requirements set forth in subdivision  
3 (c).

4 (2) Provide funds to a nonprofit organization ~~or special district,~~  
5 *a special district, a for-profit entity, a person, or other entity* to  
6 acquire land or easements that satisfy the agency's mitigation  
7 obligations.

8 (c) If a state or local agency authorizes a nonprofit organization  
9 to hold title to and manage the property, that nonprofit organization  
10 shall meet all of the following requirements:

11 (1) The nonprofit organization shall be exempt from taxation  
12 as an organization described in Section 501(c)(3) of the Internal  
13 Revenue Code.

14 (2) The nonprofit organization shall be qualified to do business  
15 in this state.

16 (3) The nonprofit organization shall be a "qualified organization"  
17 as defined in Section 170(h)(3) of the Internal Revenue Code.

18 (4) The nonprofit organization shall have as its principal purpose  
19 and activity the direct protection or stewardship of land, water, or  
20 natural resources, including, but not limited to, agricultural lands,  
21 wildlife habitat, wetlands, endangered species habitat, open-space  
22 areas, and outdoor recreational areas.

23 (d) A state or local agency shall exercise due diligence in  
24 reviewing the qualifications of a special district or nonprofit  
25 organization to effectively manage and steward land, water, or  
26 natural resources, as well as the accompanying funds. The local  
27 agency may adopt guidelines to assist it in that review process,  
28 which may include, but are not limited to, the use of or reliance  
29 upon guidelines, standards, or accreditation established by a  
30 qualified entity that are in widespread state or national use.

31 (e) The state or local agency may require the special district or  
32 nonprofit organization to submit a report not more than once every  
33 12 months and for the number of years specified in the mitigation  
34 agreement that details the stewardship and condition of the property  
35 and any other requirements pursuant to the mitigation agreement  
36 for the property.

37 (f) The recorded instrument that places the ~~title of the property~~  
38 *fee title or partial interest in real property* with a special district,  
39 nonprofit organization, or for-profit entity, pursuant to subdivision  
40 (a) or (b) shall include a provision that if the state or local agency

1 or its successor agency reasonably determines that the property  
 2 *conveyed to meet the mitigation requirement* is not being held,  
 3 monitored, or stewarded for conservation purposes in the manner  
 4 specified in that instrument or in the mitigation agreement, the  
 5 property shall revert to the state or local agency, or to another  
 6 public agency, special district, or nonprofit organization pursuant  
 7 to subdivisions (c) and (d) and subject to approval by the state or  
 8 local agency. If a state or local agency determines that a property  
 9 must revert, it shall work with the parties to the mitigation  
 10 agreement, or other affected entities, to ensure that any contracts,  
 11 permits, funding, or other obligations and responsibilities are met.

12 SEC. 5. Section 65968 is added to the Government Code, to  
 13 read:

14 ~~65968. (a) If a local agency authorizes a special district or~~  
 15 ~~nonprofit organization to hold the property pursuant to subdivision~~  
 16 ~~(a) or (b) of Section 65967, the agency may allow the~~  
 17 ~~*Notwithstanding Section 13014 of the Fish and Game Code, if*~~  
 18 ~~*accompanying funds are conveyed pursuant to Section 65966 for*~~  
 19 ~~*property conveyed pursuant to Section 65967, the accompanying*~~  
 20 ~~funds to~~ may be held by the same special district or nonprofit  
 21 organization that holds the property pursuant to this section. Except  
 22 for the local agency or as prohibited by law, no other special  
 23 district, nonprofit organization, or entity may hold the  
 24 accompanying funds if the property is held by a special district or  
 25 nonprofit organization. section.

26 (b) *Except as permitted below, the accompanying funds shall*  
 27 *be held by the agency that requires the mitigation or by the special*  
 28 *district or nonprofit organization that holds the property. The*  
 29 *exceptions to this requirement are the following:*

30 (1) *Accompanying funds that are held by an entity other than*  
 31 *the state or holder of the mitigation property as of January 1, 2012.*

32 (2) *Accompanying funds that are held by another entity pursuant*  
 33 *to the terms of a natural Community conservation plan (Chapter*  
 34 *10 (commencing with Section 2800) of Division 3 of the Fish and*  
 35 *Game Code) or a safe harbor agreement (Article 3.7 (commencing*  
 36 *with Section 2089.2) of Chapter 1.5 of Division 3 of the Fish and*  
 37 *Game Code) that is executed on or before January 1, 2012.*

38 (3) *Where existing law prohibits the holder of the mitigation*  
 39 *property to hold the endowment, including for-profit entities.*

40 (b)

1 (c) The special district or nonprofit organization shall hold,  
2 manage, invest, and disburse the funds in furtherance of the  
3 long-term stewardship of the property for which the funds were  
4 set aside.

5 ~~(e)~~

6 ~~(d) The local agency shall determine that the holder of~~  
7 ~~accompanying funds meets shall meet~~ all of the following  
8 requirements:

9 (1) The holder has the capacity to effectively manage the  
10 mitigation funds.

11 (2) The holder has the capacity to achieve reasonable rates of  
12 return on the investment of those funds similar to those of other  
13 prudent investors.

14 (3) The holder utilizes generally accepted accounting practices  
15 as promulgated by either of the following:

16 (A) The Financial Accounting Standards Board for nonprofit  
17 organizations.

18 (B) The Governmental Accounting Standards Board for public  
19 agencies, to the extent those practices do not conflict with any  
20 requirement for special districts in Article 2 (commencing with  
21 Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5 of  
22 the Government Code.

23 (4) The holder will be able to ensure that funds are accounted  
24 for, and tied to, a specific property.

25 (5) If the holder is a nonprofit organization, it has an investment  
26 policy that is consistent with the Uniform Prudent Management  
27 of Institutional Funds Act (Part 7 (commencing with Section  
28 18501) of Division 9 of the Probate Code).

29 ~~(d) The~~

30 *(e) Except for a mitigation agreement prepared by a state*  
31 *agency, the mitigation agreement that authorizes the funds to be*  
32 *conveyed to a special district or nonprofit organization pursuant*  
33 *to subdivision (a) shall include a provision that requires the*  
34 *accompanying funds held by a special district or a nonprofit*  
35 *organization to revert to the local agency, or to a successor*  
36 *organization identified by the agency and subject to subdivision*  
37 ~~(e)~~ *(d), if any of the following occurs:*

38 (1) The special district or nonprofit organization ceases to exist.

39 (2) The special district or nonprofit organization is dissolved.

1 (3) The special district or nonprofit organization becomes  
2 bankrupt or insolvent.

3 (4) The local agency reasonably determines that the  
4 accompanying funds held by the special district or nonprofit  
5 organization, or its successor entity, are not being held, managed,  
6 invested, or disbursed for conservation purposes and consistent  
7 with the mitigation agreement and legal requirements. Any reverted  
8 funds shall continue to be held, managed, and disbursed only for  
9 long-term stewardship and benefit of the specific property for  
10 which they were set aside. If the funds revert from the special  
11 district or nonprofit organization, the special district or nonprofit  
12 organization may choose to relinquish the property. If the property  
13 is relinquished, the local agency shall accept title to the property  
14 or identify an approved special district or nonprofit organization  
15 to accept title to the property.

16 *(f) Nothing in this section shall prohibit a state or local agency*  
17 *from determining that a special district or nonprofit organization*  
18 *meets the requirements of this section and is qualified to hold the*  
19 *accompanying funds, or including a provision in the mitigation*  
20 *agreement as described in subdivision (e).*

21 (e)

22 (g) Subject to subdivision ~~(d)~~ (e), any accompanying funds that  
23 are conveyed to and held by a special district or nonprofit  
24 organization pursuant to this section shall continue to be held by  
25 the entity if this section is repealed and those funds are conveyed  
26 prior to the date this section is repealed.

27 (f)

28 (h) This section shall remain in effect only until January 1, 2022,  
29 and as of that date is repealed, unless a later enacted statute, that  
30 is enacted before January 1, 2022, deletes or extends that date.

31 ~~SEC. 6. Section 65968.01 is added to the Government Code,~~  
32 ~~to read:~~

33 ~~65968.01. (a) Notwithstanding Section 13014 of the Fish and~~  
34 ~~Game Code, if a state agency authorizes a special district or~~  
35 ~~nonprofit organization to hold the property pursuant to subdivision~~  
36 ~~(a) or (b) of Section 65967, the agency may allow the~~  
37 ~~accompanying funds to be held by the same special district or~~  
38 ~~nonprofit organization that holds the property pursuant to this~~  
39 ~~section. Except for the state agency or as prohibited by law, no~~  
40 ~~other special district, nonprofit organization, or entity may hold~~

1 the accompanying funds if the property is held by a special district  
2 or nonprofit organization.

3 ~~(b) The special district or nonprofit organization shall hold,  
4 manage, invest, and disburse the funds only in furtherance of the  
5 long-term stewardship of the property for which the funds were  
6 set aside.~~

7 ~~(e) The state agency shall determine that the holder of  
8 accompanying funds meets all of the following requirements:~~

9 ~~(1) The holder has the capacity to effectively manage the  
10 mitigation funds.~~

11 ~~(2) The holder has the capacity to achieve reasonable rates of  
12 return on the investment of those funds similar to those of other  
13 prudent investors.~~

14 ~~(3) The holder utilizes generally accepted accounting practices  
15 as promulgated by either of the following:~~

16 ~~(A) The Financial Accounting Standards Board for nonprofit  
17 organizations.~~

18 ~~(B) The Governmental Accounting Standards Board for public  
19 agencies, to the extent those practices do not conflict with any  
20 requirement for special districts in Article 2 (commencing with  
21 Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5 of  
22 the Government Code.~~

23 ~~(4) The holder will be able to ensure that funds are accounted  
24 for, and tied to, a specific property.~~

25 ~~(5) If the holder is a nonprofit organization, it has an investment  
26 policy that is consistent with the Uniform Prudent Management  
27 of Institutional Funds Act (Part 7 (commencing with Section  
28 18501) of Division 9 of the Probate Code).~~

29 ~~(d) The mitigation agreement that authorizes the funds to be  
30 conveyed to a special district or nonprofit organization pursuant  
31 to subdivision (a) shall include a provision that requires the  
32 accompanying funds held by a special district or a nonprofit  
33 organization to revert to the state agency, or to a successor  
34 organization identified by the agency and subject to subdivision  
35 (e), if any of the following occurs:~~

36 ~~(1) The special district or nonprofit organization ceases to exist.~~

37 ~~(2) The special district or nonprofit organization is dissolved.~~

38 ~~(3) The special district or nonprofit organization becomes  
39 bankrupt or insolvent.~~

1     ~~(4) The state agency reasonably determines that the~~  
2 ~~accompanying funds held by the special district or nonprofit~~  
3 ~~organization, or its successor entity, are not being held, managed,~~  
4 ~~invested, or disbursed for conservation purposes and consistent~~  
5 ~~with the mitigation agreement and legal requirements. Any reverted~~  
6 ~~funds shall continue to be held, managed, and disbursed only for~~  
7 ~~long-term stewardship and benefit of the specific property for~~  
8 ~~which they were set aside. If the funds revert from the special~~  
9 ~~district or nonprofit organization, the special district or nonprofit~~  
10 ~~organization may choose to relinquish the property. If the property~~  
11 ~~is relinquished, the state agency shall accept title to the property~~  
12 ~~or identify an approved special district or nonprofit organization~~  
13 ~~to accept title to the property.~~

14     ~~(e) Subject to subdivision (d), any accompanying funds that are~~  
15 ~~conveyed to and held by a special district or nonprofit organization~~  
16 ~~pursuant to this section shall continue to be held by the entity if~~  
17 ~~this section is repealed and if those funds are conveyed prior to~~  
18 ~~the date this section is repealed.~~

19     ~~(f) If the state agency is the department and it chooses to~~  
20 ~~authorize special districts or nonprofits to hold the accompanying~~  
21 ~~funds pursuant to subdivision (a), the following conditions~~  
22 ~~additionally apply:~~

23         ~~(1) A special district or nonprofit organization shall not hold~~  
24 ~~funds unless it is certified by the department. The department shall~~  
25 ~~adopt regulations for a process to certify special districts or~~  
26 ~~nonprofit organizations to hold accompanying funds. The~~  
27 ~~department shall not certify more than 10 special districts or~~  
28 ~~nonprofit organizations to hold accompanying funds under this~~  
29 ~~section.~~

30         ~~(2) The department shall contract with any of the following~~  
31 ~~entities to evaluate qualifications for holding accompanying funds~~  
32 ~~and to provide regular oversight of financial management of the~~  
33 ~~accompanying funds:~~

34             ~~(A) The Controller.~~

35             ~~(B) The Office of State Audits and Evaluations in the~~  
36 ~~Department of Finance.~~

37             ~~(C) An independent, qualified person or firm experienced with~~  
38 ~~financial evaluation and oversight.~~

39         ~~(3) A special district or nonprofit organization that holds~~  
40 ~~accompanying funds for the long-term stewardship of land may~~

1 ~~be subject to oversight by any of the entities in paragraph (2) of~~  
2 ~~subdivision (f). The entity may annually review independent audit~~  
3 ~~or financial statements, tax filings, or any other documents or~~  
4 ~~reports determined necessary to verify the sound financial~~  
5 ~~management of funds held by a special district or nonprofit~~  
6 ~~organization.~~

7 ~~(4) All reasonable costs incurred by the department or the entity~~  
8 ~~under this subdivision shall be paid by the administrative~~  
9 ~~endowment established pursuant to subdivision (c) of Section~~  
10 ~~65966.~~

11 ~~(g) This section shall not apply retroactively to endowment~~  
12 ~~funds held by the state in the Pooled Money Investment Account~~  
13 ~~as of January 1, 2012.~~

14 ~~(h) This section shall remain in effect only until January 1, 2022,~~  
15 ~~and as of that date is repealed, unless a later enacted statute, that~~  
16 ~~is enacted before January 1, 2022, deletes or extends that date.~~