

AMENDED IN SENATE APRIL 25, 2011

SENATE BILL

No. 618

Introduced by Senator Wolk

February 18, 2011

~~An act to amend Section 51238 of the Government Code, relating to local government. An act to add Section 51255.1 to, and to add Chapter 6.9 (commencing with Section 51190) to Part 1 of Division 1 of Title 5 of, the Government Code, relating to local government.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 618, as amended, Wolk. ~~Local government: Williamson Act: compatible uses: government: solar-use easement.~~

Existing law, the Williamson Act, authorizes a city or county to enter into 10-year contracts with owners of land devoted to agricultural use, whereby the owners agree to continue using the property for that purpose, and the city or county agrees to value the land accordingly for purposes of property taxation. ~~Under the Williamson Act, the erection, construction, alteration, or maintenance of gas, electric, water, communication, or agricultural laborer housing facilities are considered compatible uses within any agricultural preserve. Existing law authorizes the parties to a Williamson Act contract to mutually agree to rescind a contract under the act in order to simultaneously enter into an open-space easement for a certain period of years.~~

~~This bill would additionally provide that the erection, construction, alteration, operation, or maintenance of renewable energy, and the operation of gas, electric, water, communication, or agricultural laborer housing are considered compatible uses within any agricultural preserve.~~

~~This bill would authorize the parties to a Williamson Act contract to mutually agree to rescind the contract in order to simultaneously enter~~

into a solar-use easement that would require that the land be used for solar photovoltaic facilities for a term no less than 10 years. This bill would provide that a solar-use easement would be automatically renewed annually, unless either party filed a notice of nonrenewal. This bill would provide that a solar-use easement may only be terminated by either party filing a notice of nonrenewal. This bill would provide that specified parties may bring an action to enforce the easement if it is violated. This bill would provide that construction of solar photovoltaic facilities on land subject to a solar-use easement that qualifies as a active solar energy system, as defined, would be excluded from classification as newly constructed. This bill would require the Department of Fish and Game or any other lead agency to expedite its review for issuing any necessary licenses or permits for solar photovoltaic facilities that are located on land subject to a solar-use easement.

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

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

1 SECTION 1. Chapter 6.9 (commencing with Section 51190)
 2 is added to Part 1 of Division 1 of Title 5 of the Government Code,
 3 to read:

4
 5 CHAPTER 6.9. SOLAR-USE EASEMENT

6
 7 Article 1. Definitions

8
 9 51190. As used in this chapter, the following terms have the
 10 following meanings:

11 (a) “Marginally productive or physically impaired” means one
 12 of the following:

13 (1) Parcels consisting predominately of soil with significantly
 14 reduced agricultural productivity due to chemical or physical
 15 limitations. A parcel of land may only be designated as marginally
 16 productive or physically impaired pursuant to this paragraph if
 17 the parcel was not used for agricultural purposes during the prior
 18 6 years, and is unusable for agricultural practices due to its
 19 topography, drainage, flooding, adverse soil conditions, or other
 20 physical reasons.

1 (2) Land that does not support livestock used for the production
2 of food and fiber with an annual carrying capacity equivalent to
3 at least one animal unit per acre as defined by the United States
4 Department of Agriculture.

5 (3) Notwithstanding paragraphs (1) or (2), a parcel or parcels
6 of land shall not qualify as marginally productive or physically
7 impaired if it is composed primarily of either of the following:

8 (A) Land that qualifies for rating as class I or class II in the
9 United States Department of Agriculture’s land capability
10 classification system.

11 (B) Land previously designated by the Farmland Mapping and
12 Monitoring Program as Prime Farmland, Farmland of Statewide
13 Importance, or Unique Farmland where the water rights have
14 been voluntarily transferred or retired, unless the transfer or
15 retirement of the water rights was due to significant chemical or
16 physical soil limitations on the parcel or parcels that severely limit
17 agricultural productivity.

18 (4) A parcel shall be designated as marginally productive or
19 physically impaired under this subdivision based on substantial
20 evidence in the public record, and this designation shall be
21 approved by the Secretary of Food and Agriculture.

22 (b) “Disturbed lands” means lands that have been mechanically
23 disturbed, including lands that have been converted from native
24 vegetation through plowing, bulldozing, or other mechanical means
25 in support of activities that change the land cover, including, but
26 not limited to, agriculture, mining, and clearance for development
27 purposes. These lands, based on appropriate biological surveys,
28 may also have diminished value as habitat for mitigation purposes
29 for endangered, threatened, candidate, and other sensitive species.
30 Agricultural land shall not qualify for disturbed lands unless it
31 also qualifies as marginally productive or physically impaired
32 pursuant to subdivision (a).

33 (c) “City” means any city or city and county.

34 (d) “Landowner” includes a lessee or trustee, if the expiration
35 of the lease or trust occurs at a time later than the expiration of
36 the restriction of the use of the land to photovoltaic solar facilities
37 or any extension of the restriction.

38 (e) “Solar-use easement” means any right or interest in
39 perpetuity or for a term of years in marginally productive or
40 physically impaired lands acquired by a county, or city pursuant

1 to this chapter where the deed or other instrument granting the
 2 right or interest imposes restrictions that, through limitation of
 3 future use, will effectively restrict the use of the land to photovoltaic
 4 solar facilities. A solar-use easement shall contain a covenant with
 5 the county, or city running with the land, either in perpetuity or
 6 for a term of years, that the landowner shall not construct or permit
 7 the construction of improvements except those for which the right
 8 is expressly reserved in the instrument provided that those
 9 reservation would not be inconsistent with the purposes of this
 10 chapter and which would not be incompatible with the sole use of
 11 the property for solar photovoltaic facilities.

12
 13 *Article 2. General Provisions*

14
 15 *51191. Any county or city may enter into an agreement with a*
 16 *landowner pursuant to Section 51255.1 to hold marginally*
 17 *productive or physically impaired land in a solar-use easement in*
 18 *the manner provided in this chapter.*

19 *51191.1. The execution and acceptance of a deed or other*
 20 *instrument described in subdivision (e) of Section 51190 shall*
 21 *constitute a dedication to the public of the use of the marginally*
 22 *productive or physically impaired lands for solar photovoltaic use*
 23 *for the term specified. Any such easement and covenant shall run*
 24 *for a term of not less than 10 years. A solar-use easement for a*
 25 *term of years shall provide that on the anniversary date of the*
 26 *acceptance of the solar-use easement, or on any other annual date*
 27 *as specified by the deed or other instrument described in*
 28 *subdivision (e) of Section 51190, a year shall be added*
 29 *automatically to the initial term unless a notice of nonrenewal is*
 30 *given as provided in Section 51192.*

31 *51191.2. A county or city may require a deed or other*
 32 *instrument described in subdivision (e) of Section 51190 to contain*
 33 *any restrictions, conditions, or covenants as are necessary or*
 34 *desirable to restrict the use of the land to photovoltaic solar*
 35 *facilities.*

36 *51191.3. No deed or other instrument described in subdivision*
 37 *(e) of Section 51190 shall be effective until it has been accepted*
 38 *or approved by resolution of the governing body of the county or*
 39 *city and its acceptance endorsed thereon.*

1 51191.4. (a) From and after the time when a solar-use
2 easement has been accepted or approved by the county or city and
3 its acceptance or approval endorsed on the easement, no building
4 permit may be issued for any structure that would violate the
5 easement and the county or city shall seek, by appropriate
6 proceedings, an injunction against any threatened construction
7 or other development or activity on the land that would violate the
8 easement and shall seek a mandatory injunction requiring the
9 removal of any structure erected in violation of the easement.

10 If the county or city fails to seek an injunction against any
11 threatened construction or other development or activity on the
12 land that would violate the easement or to seek a mandatory
13 injunction requiring the removal of any structure erected in
14 violation of the easement, or if the county or city should construct
15 any structure or development or conduct or permit any activity in
16 violation of the easement, the owner of any property within the
17 county or city, or any resident of the city or county, may, by
18 appropriate proceedings, seek an injunction.

19 (b) The court may award to a plaintiff or defendant who prevails
20 in an action authorized by this section his or her cost of litigation,
21 including reasonable attorney's fees.

22 (c) Nothing in this chapter shall limit the power of the state or
23 any county, city, school district, or any other local public district,
24 agency or entity, or any other person authorized by law, to acquire
25 land subject to a solar-use easement by eminent domain.

26 51191.5. Upon the acceptance or approval of any instrument
27 creating a solar-use easement the clerk of the governing body shall
28 record the instrument in the office of the county recorder and file
29 a copy with the county assessor. After the easement is recorded,
30 it shall impart notice to all persons under the recording laws of
31 this state.

32 51191.6. The construction of solar photovoltaic facilities on
33 land subject to a solar-use easement that qualifies as an active
34 solar energy system pursuant to Section 73 of the Revenue and
35 Taxation Code would be excluded from classification as newly
36 constructed under Section 2 of Article XIII A of the California
37 Constitution.

38 51191.7. The Department of Fish and Game or any other lead
39 agency shall expedite its review for issuing any necessary permits

1 *for solar photovoltaic facilities that are located on solar-use*
 2 *easements pursuant to this chapter.*

3

4 *Article 3. Termination of a Solar-Use Easement*

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6 *51192. (a) A solar-use easement may be terminated only by*
 7 *nonrenewal.*

8 *(b) (1) If either the landowner or the county or city desires in*
 9 *any year not to renew the solar-use easement, that party shall*
 10 *serve written notice of nonrenewal of the easement upon the other*
 11 *party at least 90 days in advance of the annual renewal date of*
 12 *the solar-use easement. Unless written notice is served at least 90*
 13 *days in advance of the renewal date, the a solar-use easement*
 14 *shall be considered renewed as provided in Section 51191.1.*

15 *(2) Upon receipt by the owner of a notice from the county or*
 16 *city of nonrenewal, the owner may make a written protest of the*
 17 *notice of nonrenewal. The county or city may, at any time prior to*
 18 *the renewal date, withdraw the notice of nonrenewal.*

19 *(c) If the county, city, or the landowner serves notice of intent*
 20 *in any year not to renew the solar-use easement, the existing*
 21 *solar-use easement shall remain in effect for the balance of the*
 22 *period remaining since the original execution or the last renewal*
 23 *of the solar-use easement, as the case may be.*

24 *SEC. 2. Section 51255.1 is added to the Government Code, to*
 25 *read:*

26 *51255.1. Notwithstanding any other provision of this chapter,*
 27 *the parties may upon their mutual agreement rescind a contract*
 28 *for a parcel or parcels of marginally productive or physically*
 29 *impaired lands, as defined in Section 51190, in order to*
 30 *simultaneously enter into a solar-use easement pursuant to Chapter*
 31 *6.9 (commencing with Section 51190). This action may be taken*
 32 *notwithstanding the prior serving of a notice of nonrenewal.*

33 ~~*SECTION 1. Section 51238 of the Government Code is*~~
 34 ~~*amended to read:*~~

35 ~~*51238. (a) (1) Notwithstanding any determination of*~~
 36 ~~*compatible uses by the county or city pursuant to this article, unless*~~
 37 ~~*the board or council after notice and hearing makes a finding to*~~
 38 ~~*the contrary, the erection, construction, alteration, operation, or*~~
 39 ~~*maintenance of gas, electric, renewable energy, water,*~~

1 communication, or agricultural laborer housing facilities are hereby
2 determined to be compatible uses within any agricultural preserve.

3 ~~(2) No land occupied by gas, electric, renewable energy, water,
4 communication, or agricultural laborer housing facilities shall be
5 excluded from an agricultural preserve by reason of that use.~~

6 ~~(b) The board of supervisors may impose conditions on lands
7 or land uses to be placed within preserves to permit and encourage
8 compatible uses in conformity with Section 51238.1, particularly
9 public outdoor recreational uses.~~

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