

AMENDED IN SENATE MAY 3, 2011
AMENDED IN SENATE APRIL 25, 2011

SENATE BILL

No. 618

Introduced by Senator Wolk

February 18, 2011

An act to add ~~Section 51255.1~~ *Sections 51255.1 and 65924* 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: solar-use easement.

Existing

(1) *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. 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 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 require a county or city to include certain restrictions, conditions, or covenants in the deed or instrument granting a solar-use easement.* 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 require that if the landowner terminates the solar-use easement, the landowner shall restore the property to the conditions that existed before the easement by the time the easement terminates.* 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~~

(2) *Under the Permit Streamlining Act, a state or local agency and a public agency that is the lead agency for a development project are required to act upon an application for a development project within specified time periods prescribed by the act and may not include a waiver of these time periods, as specified, as a condition of accepting or processing the application for a development project.*

~~This bill would require the Department of Fish and Game or any other lead agency~~ *every lead agency and responsible 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 marginally productive or physically impaired, or disturbed land, as defined.*

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. 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

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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:

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

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

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

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

19 (B) Land previously designated by the Farmland Mapping and
20 Monitoring Program as Prime Farmland, Farmland of Statewide
21 Importance, or Unique Farmland where the water rights have been
22 voluntarily transferred or retired, unless the transfer or retirement
23 of the water rights was due to significant chemical or physical soil
24 limitations on the parcel or parcels that severely limit agricultural
25 productivity.

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

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

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

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

6 (e) “Solar-use easement” means any right or interest in
7 perpetuity or for a term of years in marginally productive or
8 physically impaired lands acquired by a county, or city pursuant
9 to this chapter where the deed or other instrument granting the
10 right or interest imposes restrictions that, through limitation of
11 future use, will effectively restrict the use of the land to
12 photovoltaic solar facilities. A solar-use easement shall contain a
13 covenant with the county, or city running with the land, either in
14 perpetuity or for a term of years, that the landowner shall not
15 construct or permit the construction of improvements except those
16 for which the right is expressly reserved in the instrument provided
17 that those reservation would not be inconsistent with the purposes
18 of this chapter and which would not be incompatible with the sole
19 use of the property for solar photovoltaic facilities.

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21

Article 2. General Provisions

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23 51191. Any county or city may enter into an agreement with
24 a landowner pursuant to Section 51255.1 to hold marginally
25 productive or physically impaired land in a solar-use easement in
26 the manner provided in this chapter.

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

39 51191.2. (a) A county or city may require a deed or other
40 instrument described in subdivision (e) of Section 51190 to contain

1 any restrictions, conditions, or covenants as are necessary or
2 desirable to restrict the use of the land to photovoltaic solar
3 facilities.

4 *(b) The restrictions, conditions, or covenants may include, but
5 are not limited to, the following:*

6 *(1) Mitigation measures on the land that is subject to the
7 solar-use easement.*

8 *(2) Mitigation measures beyond the land that is subject to the
9 solar-use easement.*

10 *(3) Performance bonds or other securities to fund, upon the
11 cessation of the solar voltaic use, the restoration of the land that
12 is subject to the easement to the conditions that existed before the
13 approval or acceptance of that easement by the time that the
14 easement terminates.*

15 *(c) In the case of a solar-use easement that is terminated
16 because of a notice of nonrenewal by the landowner, the
17 restrictions, conditions, or covenants shall include a requirement
18 for the landowner to post a performance bond or other securities
19 to fund the restoration of the land that is subject to the easement
20 to the conditions that existed before the approval or acceptance
21 of the easement by the time the easement terminates.*

22 51191.3. No deed or other instrument described in subdivision
23 (e) of Section 51190 shall be effective until it has been accepted
24 or approved by resolution of the governing body of the county or
25 city and its acceptance endorsed thereon.

26 51191.4. (a) From and after the time when a solar-use easement
27 has been accepted or approved by the county or city and its
28 acceptance or approval endorsed on the easement, no building
29 permit may be issued for any structure that would violate the
30 easement and the county or city shall seek, by appropriate
31 proceedings, an injunction against any threatened construction or
32 other development or activity on the land that would violate the
33 easement and shall seek a mandatory injunction requiring the
34 removal of any structure erected in violation of the easement.

35 If the county or city fails to seek an injunction against any
36 threatened construction or other development or activity on the
37 land that would violate the easement or to seek a mandatory
38 injunction requiring the removal of any structure erected in
39 violation of the easement, or if the county or city should construct
40 any structure or development or conduct or permit any activity in

1 violation of the easement, the owner of any property within the
 2 county or city, or any resident of the city or county, may, by
 3 appropriate proceedings, seek an injunction.

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

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

11 51191.5. Upon the acceptance or approval of any instrument
 12 creating a solar-use easement the clerk of the governing body shall
 13 record the instrument in the office of the county recorder and file
 14 a copy with the county assessor. After the easement is recorded,
 15 it shall impart notice to all persons under the recording laws of
 16 this state.

17 51191.6. The construction of solar photovoltaic facilities on
 18 land subject to a solar-use easement that qualifies as an active solar
 19 energy system pursuant to Section 73 of the Revenue and Taxation
 20 Code ~~would~~ shall be excluded from classification as newly
 21 constructed under Section 2 of Article XIII A of the California
 22 Constitution.

23 ~~51191.7. The Department of Fish and Game or any other lead~~
 24 ~~agency shall expedite its review for issuing any necessary permits~~
 25 ~~for solar photovoltaic facilities that are located on solar-use~~
 26 ~~easements pursuant to this chapter.~~

27 *51191.7. The Department of Conservation may adopt*
 28 *regulations pursuant to the Administrative Procedures Act*
 29 *(Chapter 3.5 (commencing with Section 11340) of Division 3 of*
 30 *Title 2) for the implementation of this chapter.*

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32 Article 3. Termination of a Solar-Use Easement

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34 51192. (a) A solar-use easement may be terminated only by
 35 nonrenewal.

36 (b) (1) If either the landowner or the county or city desires in
 37 any year not to renew the solar-use easement, that party shall serve
 38 written notice of nonrenewal of the easement upon the other party
 39 at least 90 days in advance of the annual renewal date of the
 40 solar-use easement. Unless written notice is served at least 90 days

1 in advance of the renewal date, the a solar-use easement shall be
2 considered renewed as provided in Section 51191.1.

3 (2) Upon receipt by the owner of a notice from the county or
4 city of nonrenewal, the owner may make a written protest of the
5 notice of nonrenewal. The county or city may, at any time prior
6 to the renewal date, withdraw the notice of nonrenewal.

7 (c) If the county, city, or the landowner serves notice of intent
8 in any year not to renew the solar-use easement, the existing
9 solar-use easement shall remain in effect for the balance of the
10 period remaining since the original execution or the last renewal
11 of the solar-use easement, as the case may be.

12 *51192.1. In the case of a solar-use easement that is terminated*
13 *because of a notice of nonrenewal by the landowner, the landowner*
14 *shall restore the land that is subject to the easement to the*
15 *conditions that existed before the approval of the easement by the*
16 *time the easement terminates.*

17 SEC. 2. Section 51255.1 is added to the Government Code, to
18 read:

19 51255.1. Notwithstanding any other provision of this chapter,
20 the parties may upon their mutual agreement rescind a contract
21 for a parcel or parcels of marginally productive or physically
22 impaired lands, as defined in Section 51190, in order to
23 simultaneously enter into a solar-use easement pursuant to Chapter
24 6.9 (commencing with Section 51190). This action may be taken
25 notwithstanding the prior serving of a notice of nonrenewal.

26 SEC. 3. Section 65924 is added to the Government Code, to
27 read:

28 65924. Every lead agency and responsible agency shall
29 expedite its review for issuing any necessary permits for solar
30 photovoltaic facilities that are located on marginally productive
31 or physically impaired, or disturbed land, as those terms are
32 defined in Chapter 6.9 (commencing with Section 51190) of Part
33 1 of Division 1 of Title 5.