

AMENDED IN SENATE APRIL 11, 2012

AMENDED IN SENATE MARCH 26, 2012

**SENATE BILL**

**No. 1501**

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**Introduced by Senator Kehoe**

February 24, 2012

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An act to amend ~~Section 51087~~ of Sections 51051, 51053, 51054, 51055, 51059, 51084, and 51087 of, and to repeal Section 51052 of, the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

SB 1501, as amended, Kehoe. Open-space easements.

*(1) Existing law regulates the execution and acceptance of a grant of an open-space easement, as defined. The execution and acceptance of a grant of an open-space easement constitutes a dedication to the public of the open-space character of the lands for the term specified. Existing law provides that the easement and covenant run for a term of not less than 20 years. Existing law authorizes an open-space easement to contain a covenant against the extraction of natural resources or other activities that may destroy the unique physical and scenic characteristics of the land, as specified.*

*This bill would make technical, nonsubstantive changes to these provisions.*

*(2) The Open-Space Easement Act of 1974 authorizes any county or city that has an adopted open-space plan to accept or approve a grant of an open-space easement, as defined, on privately owned lands lying within the county or city in a specified manner for a term not less than 10 years. Existing law authorizes a grant of an open-space easement to be accepted only if the governing body, by resolution, makes specified findings, including a finding that the preservation of the land as open*

*space is consistent with the general plan of the county or city and that it is important to the public for a specified purpose.*

*This bill would expand the purposes for which a governing body may approve a grant of an open-space easement, as specified.*

~~The Open-Space Easement Act of 1974~~

*(3) Existing law requires the clerk of the governing board of a city or county, upon acceptance or approval of a grant of an open-space easement on privately owned lands within a city or county, as defined, to record the easement in the office of the county recorder and file a copy of the easement with the county assessor, as specified.*

Existing law requires the county recorder in each county to develop and maintain, within the existing indexing system, a comprehensive index of conservation easements and notice of conservation easement on lands within that county.

This bill would require an easement accepted or approved pursuant to ~~the Open-Space Easement Act of 1974~~ existing law to be recorded consistent with the existing indexing system maintained by ~~the~~ a county recorder.

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 51051 of the Government Code is  
2 amended to read:

3 51051. As used in this chapter, the following terms have the  
4 following meanings:

5 “Grant

6 (a) “Grant of an open-space easement” means a grant by an  
7 instrument whereby the owner relinquishes to the public, either in  
8 perpetuity or for a term of years, the right to construct  
9 improvements upon the land except as may be expressly reserved  
10 in the instrument and which contains a covenant with the city or  
11 county, running with the land, either in perpetuity or for a term of  
12 years, not to construct or permit the construction of any  
13 improvements, except as ~~such~~ that right is expressly reserved in  
14 the instrument and except for public service facilities installed for  
15 the benefit of the land subject to ~~such~~ any covenant or public  
16 service facilities installed pursuant to an authorization by the

1 governing body of the city or county or the Public Utilities  
2 Commission.

3 Any such reservation shall be consistent with the purposes of  
4 this chapter or with the findings of the county or city pursuant to  
5 Section 51056 and shall not permit any action ~~which~~ *that* will  
6 materially impair the open-space character of the land.

7 (b) “Owner” means any lessee or trustee, if the expiration of  
8 the lease or trust occurs at a time later than the expiration of the  
9 easement or any extension thereof.

10 SEC. 2. Section 51052 of the Government Code is repealed.

11 ~~51052. For the purposes of this chapter, “owner” includes a~~  
12 ~~lessee or trustee, if the expiration of the lease or trust occurs at a~~  
13 ~~time later than the expiration of the easement or any extension~~  
14 ~~thereof.~~

15 SEC. 3. Section 51053 of the Government Code is amended to  
16 read:

17 51053. The execution and acceptance of an instrument  
18 described in *subdivision (a)* of Section 51051 shall constitute a  
19 dedication to the public of the open-space character of the lands  
20 for the term specified. Any such easement and covenant shall run  
21 for a term of not less than 20 years.

22 SEC. 4. Section 51054 of the Government Code is amended to  
23 read:

24 51054. An instrument described in *subdivision (a)* of Section  
25 51051 may contain, and the city or county in appropriate cases  
26 may require that it contain, a covenant against the extraction of  
27 natural resources or other activities which may destroy the unique  
28 physical and scenic characteristics of the land or a covenant against  
29 the cutting of timber, trees and other natural growth, except as may  
30 be required for fire prevention, thinning, elimination of diseased  
31 growth and similar protective measures, or for the harvest of trees  
32 in a manner compatible with scenic purposes.

33 SEC. 5. Section 51055 of the Government Code is amended to  
34 read:

35 51055. ~~No~~ An instrument described in *subdivision (a)* of Section  
36 51051 shall *not* be effective until it has been accepted by resolution  
37 of the governing body of the city or county and its acceptance  
38 endorsed thereon.

39 SEC. 6. Section 51059 of the Government Code is amended to  
40 read:

1 51059. Upon the acceptance of any instrument creating an  
 2 open-space easement the clerk of the governing body shall record  
 3 the same in the office of the county recorder and file a copy thereof  
 4 with the county assessor. *The recording shall be consistent with*  
 5 *Section 27255.* From and after the time of ~~such~~ the recordation  
 6 ~~such~~, the contract shall impart ~~such~~ the notice thereof to all persons  
 7 as is afforded by the recording laws of this state.

8 *SEC. 7. Section 51084 of the Government Code is amended to*  
 9 *read:*

10 51084. ~~No~~A grant of an open-space easement shall *not* be  
 11 accepted or approved by a county or city, unless the governing  
 12 body, by resolution, finds:

13 (a) That the preservation of the land as open space is consistent  
 14 with the general plan of the county or city; and

15 (b) That the preservation of the land as open space is in the best  
 16 interest of the *state*, county ~~or~~, city ~~and~~, *or city and county and is*  
 17 *important to the public for the enjoyment of scenic beauty, for the*  
 18 *use of natural resources, for recreation, or for the production of*  
 19 *food or fiber* specifically because one or more of the following  
 20 reasons exists:

21 (1) That the land is essentially unimproved and if retained in  
 22 its natural state has either scenic value to the public, or is valuable  
 23 as a watershed or as a wildlife preserve, and the instrument contains  
 24 appropriate covenants to that end.

25 (2) It is in the public interest that the land be retained as open  
 26 space because such land either will add to the amenities of living  
 27 in neighboring urbanized areas or will help preserve the rural  
 28 character of the area in which the land is located.

29 (3) *The land lies in an area that in the public interest should*  
 30 *remain rural in character and the retention of the land as open*  
 31 *space will preserve the rural character of the area.*

32 (4) *It is in the public interest that the land remain in its natural*  
 33 *state, including the trees and other natural growth, as a means of*  
 34 *preventing floods or because of its value as watershed.*

35 (5) *The land lies within an established scenic highway corridor.*

36 (6) *The land is valuable to the public as a wildlife preserve or*  
 37 *sanctuary and the instrument contains appropriate covenants to*  
 38 *that end.*

39 ~~(3)~~

1 (7) The public interest will otherwise be served in a manner  
2 recited in the resolution and consistent with the purposes of this  
3 subdivision and Section 8 of Article XIII of the Constitution of  
4 the State of California.

5 The resolution of the governing body shall establish a conclusive  
6 presumption that the conditions set forth in subdivisions (a) and  
7 (b) have been satisfied.

8 ~~SECTION 1.~~

9 *SEC. 8.* Section 51087 of the Government Code is amended  
10 to read:

11 51087. Upon the acceptance or approval of any instrument  
12 creating an open-space easement the clerk of the governing body  
13 shall record the same in the office of the county recorder and file  
14 a copy thereof with the county assessor. The recording shall be  
15 consistent with Section 27255. From and after the time of the  
16 recordation, the easement shall impart notice thereof to all persons  
17 as is afforded by the recording laws of this state.

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