

AMENDED IN ASSEMBLY APRIL 24, 2014

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2490

Introduced by Assembly Member Eggman

February 21, 2014

An act to amend Sections 3954, 3960, 3965, 3965.1, ~~and 4051.2 of, and 4051.2, and 4057 of~~, to repeal Section 4053 of, *and to repeal and add Section 4051 of*, the Food and Agricultural Code, to amend Section 13332.09 of the Government Code, and to repeal ~~Section Sections~~ 10320 *and 10321* of the Public Contract Code, relating to district agricultural associations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2490, as amended, Eggman. District agricultural associations.

Existing

(1) Existing law divides the state into agricultural districts, and provides for the management of these districts by district agricultural associations. Existing law provides for a board of directors for each district agricultural association, and provides for the appointment of each director by the Governor. Existing law sets forth the duties and responsibilities of the board of directors and the district agricultural associations, including that a district agricultural association requires the approval of the Department of Food and Agriculture prior to entering into a settlement agreement for an amount greater than \$10,000. and requires a district agricultural association to take certain actions only with the approval of the Department of Food and Agriculture or the Department of General Services, or both.

This bill would authorize the Governor to remove any director of a district agricultural association for cause prior to the expiration of the director's term. The bill would revise the oversight responsibilities of the Department of Food and Agriculture and the Department of General Services ~~by allowing a district agricultural association to enter into settlement agreements for less than \$100,000 without the prior approval of the Department of Food and Agriculture and by deleting the requirements that a district agricultural association obtain approval of the Department of Food and Agriculture or the Department of General Services prior to exercising the power to sue, or contracting or exercising powers over its own real or personal property.~~ *in connection with district agricultural associations by deleting the requirement that a district agricultural association obtain approval of the Department of Food and Agriculture or the Department of General Services prior to exercising certain powers, including the power to sue, entering into a settlement agreement for less than \$100,000, or contracting or exercising certain powers over its own real or personal property. The bill would require a district agricultural association to comply with specified contracting procedures, including, among others, soliciting bids in writing if the cost of a project exceeds \$25,000. The bill would authorize the board of directors of a district agricultural association, with the approval of the Department of General Services, to purchase, acquire, hold, sell, exchange, or convey any interest in real property. The bill would require a district agricultural association to adopt a fiscal review policy that would provide for annual audits, as specified.*

Existing

(2) *Existing* law requires the Department of General Services to exercise oversight of the acquisition and replacement of motor vehicles and other mobile property by a state agency. Existing law defines "state agency" for purposes of those provisions.

This bill would exclude district agricultural associations from the definition of "state agency" for purposes of those provisions.

Existing

(3) *Existing* law requires the Department of General Services to annually prepare a delegation program for district agricultural associations, to be administered by the Department of Food and Agriculture and the Department of General Services. *Existing law also requires the Department of Food and Agriculture, for district agricultural associations and other fairs, to develop criteria to be*

applied for purchases made locally at a price equal to or lower than the price available through the state purchasing program.

This bill would repeal those provisions.

~~This~~

(4) ~~This~~ bill would make ~~other related changes~~ conforming and nonsubstantive changes.

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. Section 3954 of the Food and Agricultural Code
2 is amended to read:

3 3954. Each association by its name has perpetual succession.
4 It may have a seal. An association may sue and be sued, and may
5 do any and all things necessary to carry out the powers and the
6 objects and purposes for which the association is formed.

7 SEC. 2. Section 3960 of the Food and Agricultural Code is
8 amended to read:

9 3960. The term of office of each director, except that of a
10 member of the first board, is four years from the beginning of the
11 term for which he or she is appointed. Any vacancy shall be filled
12 for the unexpired term. However, any director may be removed
13 for cause by the Governor prior to the expiration of the director's
14 term.

15 SEC. 3. Section 3965 of the Food and Agricultural Code is
16 amended to read:

17 3965. The board may, with the approval of the department:

18 (a) Fix the term of office, the amount of bond, salary, and
19 prescribe the duties of the secretary and of the treasurer.

20 (b) Manage the affairs of the association.

21 (c) Make all necessary bylaws, rules, and regulations for the
22 government of the association.

23 (d) Delegate, as it may deem advisable, to its officers or
24 employees any of the powers that are vested in the board under
25 subdivision (b). Any delegation of power may be revoked at any
26 time.

27 SEC. 4. Section 3965.1 of the Food and Agricultural Code is
28 amended to read:

1 3965.1. Notwithstanding Section 3965 or 4051, the board,
 2 without prior approval from the department, may arrange for and
 3 conduct, or cause to be conducted, or by contract permit to be
 4 conducted, any activity by any individual, institution, corporation,
 5 or association upon its property at a time as it may be deemed
 6 advisable, except for the following:

7 (a) Revenue generating contracts involving hazardous activities,
 8 as determined by the department, unless adequate insurance
 9 coverage is provided, as determined by the department in
 10 consultation with the Department of General Services.

11 (b) The activities specified in Sections 4051.1 and 4051.2.

12 *SEC. 5. Section 4051 of the Food and Agricultural Code is*
 13 *repealed.*

14 ~~4051. An association, with the approval of both the Department~~
 15 ~~of Food and Agriculture and the Department of General Services,~~
 16 ~~may do any of the following:~~

17 ~~(a) Contract.~~

18 ~~(b) Purchase, acquire, hold, sell, exchange, or convey any~~
 19 ~~interest in real or personal property and beautify or improve that~~
 20 ~~property. Any acquisition of land or other real property shall be~~
 21 ~~subject to the Property Acquisition Law (Part 11 (commencing~~
 22 ~~with Section 15850) of Division 3 of Title 2 of the Government~~
 23 ~~Code).~~

24 ~~(c) Lease, let, or grant licenses for the use of its real estate or~~
 25 ~~personal property, or any portion of that property, to any person~~
 26 ~~or public body for whatever purpose may be approved by the board.~~

27 ~~(d) Use or manage its real estate or personal property, or any~~
 28 ~~portion of that property, for any or all of the purposes of this section~~
 29 ~~jointly with any lessee, sublessee, or licensee, or otherwise use or~~
 30 ~~manage the property in connection with the lease, sublease, or~~
 31 ~~license which is made or granted.~~

32 ~~(e) Lease or let its real property for public park, recreational,~~
 33 ~~or playground purposes.~~

34 ~~(f) Rent or permit the use of its premises for any purpose which~~
 35 ~~is beneficial to the agricultural industry, including, but not limited~~
 36 ~~to, the holding of sales or auctions of cattle or other livestock.~~

37 ~~(g) Contract with any county or county fair association for~~
 38 ~~holding a fair jointly with the county or county fair association.~~
 39 ~~The joint fair is a district fair of the association.~~

1 ~~(h) Make permanent improvements upon publicly owned real~~
2 ~~property adjacent to real property of the district when the~~
3 ~~improvements materially benefit the property of the district.~~

4 ~~(i) Pledge any and all revenues, moneys, accounts, accounts~~
5 ~~receivable, contract rights, and other rights to payment of whatever~~
6 ~~kind, pursuant to such terms and conditions as are approved by~~
7 ~~the board. The revenues, moneys, accounts, accounts receivable,~~
8 ~~contract rights, and other rights to payment of whatever kind~~
9 ~~pledged by the association or its assignees constitute a lien and~~
10 ~~security interest which immediately attaches to the property so~~
11 ~~pledged and is effective, binding, and enforceable against the~~
12 ~~association, its successors, purchasers of the property so pledged,~~
13 ~~creditors, and all others asserting rights therein, to the extent set~~
14 ~~forth, and in accordance with, the terms and conditions of the~~
15 ~~pledge, irrespective of whether those persons have notice of the~~
16 ~~pledge and without the need for any physical delivery, recordation,~~
17 ~~filing, or further act.~~

18 *SEC. 6. Section 4051 is added to the Food and Agricultural*
19 *Code, to read:*

20 *4051. (a) An association may do any of the following:*

21 *(1) Contract, in accordance with all of the following:*

22 *(A) The written policies and procedures for contracting that*
23 *are developed and maintained by the board of directors of the*
24 *association in accordance with this section.*

25 *(B) All applicable state laws governing contracts, except as*
26 *follows:*

27 *(i) Any grant or contract entered into by an association for*
28 *goods is not subject to Chapter 2 (commencing with Section 10290)*
29 *of Part 2 of Division 2 of the Public Contract Code.*

30 *(ii) Any grant or contract entered into by an association is not*
31 *subject to Chapter 3 (commencing with Section 12100) of Part 2*
32 *of Division 2 of the Public Contract Code.*

33 *(C) If the estimated total cost of any construction project or*
34 *similar work carried out under this section exceeds twenty-five*
35 *thousand dollars (\$25,000), the association shall solicit bids in*
36 *writing and shall award the work to the lowest responsible bidder*
37 *or reject all bids. The association is subject to all applicable*
38 *provisions of the Public Contract Code.*

39 *(D) An association may elect to become subject to the provisions*
40 *of the Uniform Public Construction Cost Accounting Act (Chapter*

1 2 (commencing with Section 22000) of Part 3 of Division 2 of the
 2 Public Contract Code) and the Small Business Procurement and
 3 Contract Act (Chapter 6.5 (commencing with Section 14835) of
 4 Part 5.5 of Division 3 of Title 2 of the Government Code), but
 5 exempt from the reporting requirements noted in subdivision (f)
 6 of Section 14838.1 of the Government Code.

7 (2) Accept funds or gifts of value from the United States or any
 8 person to aid in carrying out the purposes of this part.

9 (3) Conduct or contract for programs, and contract for the
 10 purchase or lease of goods that are necessary to effectuate the
 11 purposes of this chapter, either independently or in cooperation
 12 with any individual, public or private organization, or federal,
 13 state, or local governmental agency.

14 (4) Establish and maintain a bank checking account or other
 15 financial institution account, approved by the Director of Finance
 16 in accordance with Sections 16506 and 16605 of the Government
 17 Code, for depositing funds received by the district agricultural
 18 association. All funds maintained in an account authorized by this
 19 paragraph shall be used in accordance with Section 4001.

20 (5) Approve the annual budget of the association and establish
 21 a program for paying vendors who contract with the district
 22 agricultural association.

23 (6) Contract with any county or county fair association for
 24 holding a fair jointly with the county or county fair association.
 25 The joint fair is a district fair of the association.

26 (7) Make or adopt all necessary orders, rules, or regulations
 27 for governing the activities of the association. Notwithstanding
 28 Section 14, any orders, rules, or regulations adopted by the board
 29 are exempt from Chapter 3.5 (commencing with Section 11340)
 30 of Part 1 of Division 3 of Title 2 of the Government Code. For
 31 informational purposes only, however, any order, rule, or
 32 regulation adopted by the board may be transmitted to the Office
 33 of Administrative Law for filing with the Secretary of State pursuant
 34 to Section 11343 of the Government Code.

35 (8) Operate a payroll system for paying employees, and a system
 36 for accounting for vacation and sick leave credits of employees.

37 (9) Delegate to the officers and employees of the association
 38 the exercise of powers vested in the board, as the board may deem
 39 desirable, for the orderly management and operation of the
 40 association.

1 (10) With the approval of the Department of General Services,
2 purchase, acquire, hold, sell, or exchange, or convey any interest
3 in real property. Any acquisition of land or other real property
4 shall be subject to the Property Acquisition Law (Part 11
5 (commencing with Section 15850) of Division 3 of Title 2 of the
6 Government Code).

7 (11) With the approval of the Department of General Services,
8 make permanent improvements upon publicly owned real property
9 adjacent to, or near the vicinity of, the real property of the district
10 agricultural association when the improvements materially benefit
11 the property of the association pursuant to Section 11011 of the
12 Government Code.

13 (12) With the approval of the Department of General Services,
14 lease for the use of its real property, or any portion of that
15 property, to any person or public body for whatever purpose as
16 may be approved by the board.

17 (13) Use or manage any of its property jointly or in connection
18 with any lessee or sublessee, for any purpose approved by the
19 board.

20 (14) With the approval of the Department of General Services,
21 pledge any revenues, moneys, accounts, accounts receivable,
22 contract rights, and other rights to payment of whatever kind,
23 pursuant to terms and conditions approved by the board. The
24 revenues, moneys, accounts, accounts receivable, contract rights,
25 and other rights to payment of whatever kind pledged by the
26 association or its assignees constitute a lien or security interest
27 that immediately attaches to the property pledged, and is effective,
28 binding, and enforceable against the association, its successors,
29 purchasers of the property pledged, creditors, and all others
30 asserting rights therein, to the extent set forth, and in accordance
31 with, the terms and conditions of the pledge, irrespective of whether
32 those persons have notice of the pledge and without the need for
33 physical delivery, recordation, filing, or further action.

34 (15) With the approval of the Secretary of Food and Agriculture,
35 enter into a joint powers agreement pursuant to the Joint Exercise
36 of Powers Act (Chapter 5 (commencing with Section 6500) of
37 Division 7 of Title 1 of the Government Code).

38 (b) In developing the written policies and procedures for
39 contracting, the board shall incorporate the following to apply to
40 contracts or procurement by the association:

1 (1) *To ensure the fullest competition, the board shall adopt and*
2 *publish competitive bidding procedures for the award of a*
3 *procurement or contract involving an expenditure of more than*
4 *one hundred thousand dollars (\$100,000). The competitive bidding*
5 *procedures shall include, but not be limited to, requirements for*
6 *submission of bids and accompanying documentation, guidelines*
7 *for the use of requests for proposals, invitations to bid, or other*
8 *methods of bidding, and a bid protest procedure. The general*
9 *manager shall determine whether the goods or services subject to*
10 *this paragraph are available through existing contracts or price*
11 *schedules of the Department of General Services. The Legislature*
12 *finds and declares that fairs are a valuable community resource*
13 *and recognizes that local businesses and local communities make*
14 *valuable contributions to fairs that include direct and indirect*
15 *support of fair programs. The Legislature further finds and*
16 *declares that local businesses often provide opportunity purchases*
17 *to local fairs that, for similar things available through the state*
18 *purchasing program, may be purchased locally at a price*
19 *equivalent to or less than that available through the state*
20 *purchasing program. As used in this subdivision, opportunity*
21 *purchases means purchases made locally, either individually or*
22 *cooperatively, at a price equal to or less than the price available*
23 *through the state purchasing program on or off state contract.*

24 (2) *The contracting standards, procedures, and rules contained*
25 *in this subdivision shall also apply with respect to any subcontract*
26 *involving an expenditure of more than one hundred thousand*
27 *dollars (\$100,000). The board shall establish, as part of the bidding*
28 *procedures for general contracts, subcontracting guidelines that*
29 *implement this requirement.*

30 (3) *The board is subject to the Small Business Procurement and*
31 *Contract Act (Chapter 6.5 (commencing with Section 14835) of*
32 *Part 5.5 of Division 3 of Title 2 of the Government Code), but*
33 *exempt from the reporting requirements noted in subdivision (f)*
34 *of Section 14838.1 of the Government Code.*

35 (4) *In advertising or awarding any general contract for the*
36 *procurement of goods and services exceeding one hundred*
37 *thousand dollars (\$100,000), the board and the general manager*
38 *shall require all bidders or contractors to include specific plans*
39 *to utilize subcontracts with emerging small business entities. The*
40 *subcontracting plans shall delineate the nature and extent of the*

1 *services to be utilized, and the entity or individual identified for*
2 *subcontracting, if known.*

3 *(5) It is the intent of the Legislature in enacting this section to*
4 *establish as an objective of the utmost importance the advancement*
5 *of business opportunities for emerging small business entities in*
6 *the business activities created by the association. In that regard,*
7 *the board shall have an affirmative duty to achieve the most*
8 *feasible and practicable level of participation by emerging small*
9 *business entities.*

10 *(6) With the approval of the Department of General Services,*
11 *pledge any and all revenues, moneys, accounts, accounts*
12 *receivable, contract rights, and other rights to payment of whatever*
13 *kind, pursuant to terms and conditions approved by the board.*
14 *Any issuance of bonds, contracts entered into, debts incurred,*
15 *settlements, judgments, or liens under this section or pursuant to*
16 *Chapter 5 (commencing with Section 6500) of Division 7 of Title*
17 *1 of the Government Code, shall not directly, indirectly, or*
18 *contingently obligate the state or any political subdivision of the*
19 *state to levy or to pledge any form of taxation therefor or to make*
20 *any appropriation for their payment. The bond shall contain on*
21 *its face a statement to the following effect: "Neither the full faith*
22 *and credit nor the taxing power of the State of California is pledged*
23 *to the payment of the principal of, or interest on this bond."*

24 *(7) This section shall not apply to Article 1 (commencing with*
25 *Section 4101) of Chapter 6 of Part 3.*

26 *(c) (1) Notwithstanding any other law, an association shall*
27 *adopt a fiscal review policy as follows:*

28 *(A) An association with an annual budget exceeding five million*
29 *dollars (\$5,000,000) shall conduct an annual audit by an*
30 *independent certified public accountant or certified public*
31 *accountancy firm selected by the board.*

32 *(B) An association with an annual budget of less than five*
33 *million dollars (\$5,000,000) shall have its books and accounts*
34 *examined and reviewed annually and audited once every three*
35 *years by an independent certified public accountant or certified*
36 *public accountancy firm selected by the board.*

37 *(2) Notwithstanding paragraph (1), the department may require*
38 *an audit to be conducted before the times specified in*
39 *subparagraphs (A) and (B) of paragraph (1) if the department or*
40 *the state deems the audit is necessary.*

1 ~~SEC. 5.~~

2 *SEC. 7.* Section 4051.2 of the Food and Agricultural Code is
3 amended to read:

4 4051.2. An association shall not enter into a settlement
5 agreement for an amount greater than one hundred thousand dollars
6 (\$100,000) without the prior approval of the department.

7 ~~SEC. 6.~~

8 *SEC. 8.* Section 4053 of the Food and Agricultural Code is
9 repealed.

10 *SEC. 9.* *Section 4057 of the Food and Agricultural Code is*
11 *amended to read:*

12 4057. The state is not liable for any *action, obligation,*
13 *commitment, contract, or premium*~~which that is offered~~ *offered,*
14 *or award that is made, or on account of any contract which is made,*
15 *by any association.*

16 ~~SEC. 7.~~

17 *SEC. 10.* Section 13332.09 of the Government Code is amended
18 to read:

19 13332.09. (a) A purchase order or other form of documentation
20 for acquisition or replacement of motor vehicles shall not be issued
21 against any appropriation until the Department of General Services
22 has investigated and established the necessity therefor.

23 (b) A state agency shall not acquire surplus mobile equipment
24 from any source for program support until the Department of
25 General Services has investigated and established the necessity
26 therefor.

27 (c) Notwithstanding any other law, any contract for the
28 acquisition of a motor vehicle or general use mobile equipment
29 for a state agency shall be made by or under the supervision of the
30 Department of General Services. Pursuant to Section 10298 of the
31 Public Contract Code, the Department of General Services may
32 collect a fee to offset the cost of the services provided.

33 (d) Any passenger-type motor vehicle purchased for a state
34 officer, except a constitutional officer, or a state employee shall
35 be an American-made vehicle of the light class, as defined by the
36 California Victim Compensation and Government Claims Board,
37 unless excepted by the Director of General Services on the basis
38 of unusual requirements, including, but not limited to, use by the
39 California Highway Patrol, that would justify the need for a motor
40 vehicle of a heavier class.

1 (e) General use mobile equipment having an original purchase
2 price of twenty-five thousand dollars (\$25,000) or more shall not
3 be rented or leased from a nonstate source and payment therefor
4 shall not be made from any appropriation for the use of the
5 Department of Transportation, without the prior approval of the
6 Department of General Services after a determination that
7 comparable state-owned equipment is not available, unless
8 obtaining approval would endanger life or property, in which case
9 the transaction and the justification for not having sought prior
10 approval shall be reported immediately thereafter to the Department
11 of General Services.

12 (f) (1) The Trustees of the California State University shall, to
13 the greatest extent feasible, purchase vehicles using statewide
14 commodity contracts.

15 (2) The trustees shall make an interim report to the Governor
16 and the Legislature on January 1, 2014, and a final report on
17 January 1, 2015, on their motor vehicle procurement, including
18 all of the following:

19 (A) An inventory, by campus, of motor vehicles that includes
20 the type of vehicle, vehicle usage and fuel data consistent with the
21 Department of General Services fleet asset management system
22 and reported to the Department of General Services.

23 (B) The number of motor vehicles purchased during the prior
24 fiscal year, disaggregated by campus and type of vehicle if the
25 passenger vehicle or truck was purchased through statewide
26 commodity contracts, and the purchase price.

27 (C) Any change to a policy or procedure made during the prior
28 fiscal year related to motor vehicle procurement and contracts for
29 procurement and identifying any vehicle procured pursuant to the
30 new policy or procedure.

31 (D) The average time to complete procurements, average
32 administrative costs, reduced charges paid to the Department of
33 General Services, and competitive or reduced market prices
34 obtained for the vehicles.

35 (3) A report submitted pursuant to this subdivision shall be
36 submitted in compliance with Section 9795.

37 (g) As used in this section:

38 (1) “General use mobile equipment” means equipment that is
39 listed in the Mobile Equipment Inventory of the State Equipment
40 Council and capable of being used by more than one state agency,

1 and shall not be deemed to refer to equipment having a practical
2 use limited only to the controlling state agency. Section 575 of the
3 Vehicle Code shall not have application to this section.

4 (2) “State agency” means a state agency, as defined pursuant
5 to Section 11000. The University of California is requested and
6 encouraged to have the Department of General Services perform
7 the tasks identified in this section with respect to the acquisition
8 or replacement of motor vehicles by the University of California.
9 “State agency” does not include a district agricultural association,
10 as defined in Section 3951 of the Food and Agricultural Code.

11 (h) This section shall remain in effect only until July 1, 2015,
12 and as of that date is repealed.

13 ~~SEC. 8.~~

14 ~~SEC. 11.~~ Section 10320 of the Public Contract Code is repealed.

15 ~~SEC. 12.~~ *Section 10321 of the Public Contract Code is*
16 *repealed.*

17 ~~10321.~~ (a) (1) ~~The Legislature finds and declares that fairs~~
18 ~~are a valuable community resource and recognizes that local~~
19 ~~businesses and local communities make valuable contributions to~~
20 ~~fairs that include direct and indirect support of fair programs. The~~
21 ~~Legislature further finds and declares that local businesses often~~
22 ~~provide opportunity purchases to local fairs that, for similar things~~
23 ~~available through the state purchasing program, may be purchased~~
24 ~~locally at a price equivalent to or less than that available through~~
25 ~~the state purchasing program.~~

26 (2) ~~Notwithstanding any other provision of law, the Department~~
27 ~~of Food and Agriculture shall develop criteria to be applied for~~
28 ~~opportunity purchases that are made by district agricultural~~
29 ~~associations, county and citrus fruit fairs, and the California~~
30 ~~Exposition and State Fair, individually or cooperatively.~~

31 (3) ~~As used in this subdivision, opportunity purchases means~~
32 ~~purchases made locally, either individually or cooperatively, at a~~
33 ~~price equal to or less than the price available through the state~~
34 ~~purchasing program on or off state contract.~~

35 (b) (1) ~~The Legislature finds and declares that district~~
36 ~~agricultural associations and county and citrus fruit fairs often do~~
37 ~~not have large, full-time staffs, and consequently the generally~~
38 ~~applicable expenditure reporting requirements contained in the~~
39 ~~State Administrative Manual (SAM) can represent an unreasonable~~
40 ~~paperwork burden upon those associations and fairs.~~

1 ~~(2) Notwithstanding any other provision of law, the Secretary~~
2 ~~of Food and Agriculture may develop, in consultation with the~~
3 ~~Department of General Services, an alternative expenditure~~
4 ~~reporting procedure from the State Administrative Manual~~
5 ~~applicable to district agricultural associations and county and citrus~~
6 ~~fruit fairs with annual reportable expenditures of not more than~~
7 ~~one million dollars (\$1,000,000). This procedure, at a minimum,~~
8 ~~shall maintain an audit trail and protect the ability of state auditors~~
9 ~~to confirm the proper use of state funds.~~

O