

AMENDED IN SENATE JUNE 11, 2014

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, 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 *and add* Section 13332.09 of the Government Code, ~~and~~ to repeal Sections 10320 and 10321 of the Public Contract Code, *and to amend Section 42926 of the Public Resources Code*, relating to district agricultural associations.

LEGISLATIVE COUNSEL'S DIGEST

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

(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, 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 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.

(2) Existing law requires the Department of General Services to exercise oversight of the acquisition and replacement of motor vehicles and other mobile ~~property~~ *equipment* by a state agency. Existing law defines “state agency” for purposes of those provisions. *Existing law requires the Trustees of the California State University to purchase vehicles using statewide commodity contracts, to the greatest extent feasible, and to make an interim report to the Governor and the Legislature on January 1, 2014, and a final report on January 1, 2015, containing certain information relative to motor vehicle procurement by the California State University. Existing law repeals these provisions as of July 1, 2015.*

This bill would exclude district agricultural associations from the definition of “state agency” for purposes of those provisions *and would continue the operation of these provisions beyond July 1, 2015, except for the requirement on the Trustees of the California State University.*

(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.

(4) Existing law requires each state agency to submit an annual report to the Department of Resources Recycling and Recovery summarizing its progress in reducing solid waste that is due on or before May 1 each year.

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

(4)

(5) This bill would make 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~~, *bond and* salary,
- 19 and 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.

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

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

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

14 (b)
15 (2) The activities specified in ~~Sections 4051.1 and 4051.2~~
16 *Section 4051.2 and Section 19130 of the Government Code.*

17 (b) *This section shall not be construed and is not intended to*
18 *extend or limit the authority specified in Section 19130 of the*
19 *Government Code.*

20 SEC. 5. Section 4051 of the Food and Agricultural Code is
21 repealed.

22 SEC. 6. Section 4051 is added to the Food and Agricultural
23 Code, to read:

24 4051. (a) An association may do any of the following:

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

26 (A) The written policies and procedures for contracting that are
27 developed and maintained by the board of directors of the
28 association in accordance with this section.

29 (B) All applicable state laws governing contracts, except as
30 follows:

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

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

37 (C) If the estimated total cost of any construction project or
38 similar work carried out under this section exceeds twenty-five
39 thousand dollars (\$25,000), the association shall solicit bids in
40 writing and shall award the work to the lowest responsible bidder

1 or reject all bids. The association is subject to all applicable
2 provisions of the Public Contract Code.

3 (D) An association may elect to become subject to the provisions
4 of the Uniform Public Construction Cost Accounting Act (Chapter
5 2 (commencing with Section 22000) of Part 3 of Division 2 of the
6 Public Contract Code) and the Small Business Procurement and
7 Contract Act (Chapter 6.5 (commencing with Section 14835) of
8 Part 5.5 of Division 3 of Title 2 of the Government Code), but
9 exempt from the reporting requirements noted in subdivision (f)
10 of Section 14838.1 of the Government Code.

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

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

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

24 (5) Approve the annual budget of the association and establish
25 a program for paying vendors who contract with the district
26 agricultural association.

27 (6) Contract with any county or county fair association for
28 holding a fair jointly with the county or county fair association.
29 The joint fair is a district fair of the association.

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

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

1 (9) Delegate to the officers and employees of the association
2 the exercise of powers vested in the board, as the board may deem
3 desirable, for the orderly management and operation of the
4 association.

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

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

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

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

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

38 (15) With the approval of the Secretary of Food and Agriculture,
39 enter into a joint powers agreement pursuant to the Joint Exercise

1 of Powers Act (Chapter 5 (commencing with Section 6500) of
2 Division 7 of Title 1 of the Government Code).

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

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

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

35 ~~(3) The board is subject to the Small Business Procurement and~~
36 ~~Contract Act (Chapter 6.5 (commencing with Section 14835) of~~
37 ~~Part 5.5 of Division 3 of Title 2 of the Government Code), but~~
38 ~~exempt from the reporting requirements noted in subdivision (f)~~
39 ~~of Section 14838.1 of the Government Code.~~

1 ~~(4) In advertising or awarding any general contract for the~~
 2 ~~procurement of goods and services exceeding one hundred~~
 3 ~~thousand dollars (\$100,000), the board and the general manager~~
 4 ~~shall require all bidders or contractors to include specific plans to~~
 5 ~~utilize subcontracts with emerging small business entities. The~~
 6 ~~subcontracting plans shall delineate the nature and extent of the~~
 7 ~~services to be utilized, and the entity or individual identified for~~
 8 ~~subcontracting, if known.~~

9 ~~(5) It is the intent of the Legislature in enacting this section to~~
 10 ~~establish as an objective of the utmost importance the advancement~~
 11 ~~of business opportunities for emerging small business entities in~~
 12 ~~the business activities created by the association. In that regard,~~
 13 ~~the board shall have an affirmative duty to achieve the most~~
 14 ~~feasible and practicable level of participation by emerging small~~
 15 ~~business entities.~~

16 ~~(6)~~

17 (3) With the approval of the Department of General Services,
 18 pledge any and all revenues, moneys, accounts, accounts
 19 receivable, contract rights, and other rights to payment of whatever
 20 kind, pursuant to terms and conditions approved by the board. Any
 21 issuance of bonds, contracts entered into, debts incurred,
 22 settlements, judgments, or liens under this section or pursuant to
 23 Chapter 5 (commencing with Section 6500) of Division 7 of Title
 24 1 of the Government Code, shall not directly, indirectly, or
 25 contingently obligate the state or any political subdivision of the
 26 state to levy or to pledge any form of taxation therefor or to make
 27 any appropriation for their payment. The bond shall contain on its
 28 face a statement to the following effect: “Neither the full faith and
 29 credit nor the taxing power of the State of California is pledged to
 30 the payment of the principal of, or interest on, this bond.”

31 ~~(7)~~

32 (4) This section shall not apply to Article 1 (commencing with
 33 Section 4101) of Chapter 6 of Part 3.

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

36 (A) An association with an annual budget exceeding five million
 37 dollars (\$5,000,000) shall conduct an annual audit by an
 38 independent certified public accountant or certified public
 39 accountancy firm selected by the board.

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

6 (2) Notwithstanding paragraph (1), the department may require
7 an audit to be conducted before the times specified in
8 subparagraphs (A) and (B) of paragraph (1) if the department or
9 the state deems the audit is necessary.

10 SEC. 7. Section 4051.2 of the Food and Agricultural Code is
11 amended to read:

12 4051.2. An association shall not enter into a settlement
13 agreement for an amount greater than one hundred thousand dollars
14 (\$100,000) without the prior approval of the department.

15 SEC. 8. Section 4053 of the Food and Agricultural Code is
16 repealed.

17 SEC. 9. Section 4057 of the Food and Agricultural Code is
18 amended to read:

19 4057. The state is not liable for any action, obligation,
20 commitment, contract, or premium that is offered, or award that
21 is made, by any association.

22 SEC. 10. Section 13332.09 of the Government Code is amended
23 to read:

24 13332.09. (a) A purchase order or other form of documentation
25 for acquisition or replacement of motor vehicles shall not be issued
26 against any appropriation until the Department of General Services
27 has investigated and established the necessity therefor.

28 (b) A state agency shall not acquire surplus mobile equipment
29 from any source for program support until the Department of
30 General Services has investigated and established the necessity
31 therefor.

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

38 (d) Any passenger-type motor vehicle purchased for a state
39 officer, except a constitutional officer, or a state employee shall
40 be an American-made vehicle of the light class, as defined by the

1 California Victim Compensation and Government Claims Board,
2 unless excepted by the Director of General Services on the basis
3 of unusual requirements, including, but not limited to, use by the
4 California Highway Patrol, that would justify the need for a motor
5 vehicle of a heavier class.

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

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

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

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

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

32 (C) Any change to a policy or procedure made during the prior
33 fiscal year related to motor vehicle procurement and contracts for
34 procurement and identifying any vehicle procured pursuant to the
35 new policy or procedure.

36 (D) The average time to complete procurements, average
37 administrative costs, reduced charges paid to the Department of
38 General Services, and competitive or reduced market prices
39 obtained for the vehicles.

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

3 (g) As used in this section:

4 (1) “General use mobile equipment” means equipment that is
5 listed in the Mobile Equipment Inventory of the State Equipment
6 Council and capable of being used by more than one state agency,
7 and shall not be deemed to refer to equipment having a practical
8 use limited only to the controlling state agency. Section 575 of the
9 Vehicle Code shall not have application to this section.

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

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

19 *SEC. 11. Section 13332.09 is added to the Government Code,*
20 *to read:*

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

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

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

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

1 California Highway Patrol, that would justify the need for a motor
2 vehicle of a heavier class.

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

14 (f) As used in this section:

15 (1) "General use mobile equipment" means equipment that is
16 listed in the Mobile Equipment Inventory of the State Equipment
17 Council and capable of being used by more than one state agency,
18 and shall not be deemed to refer to equipment having a practical
19 use limited to the controlling state agency only. Section 575 of the
20 Vehicle Code shall have no application to this section.

21 (2) "State agency" means a state agency, as defined pursuant
22 to Section 11000. The University of California is requested and
23 encouraged to have the Department of General Services perform
24 the tasks identified in this section with respect to the acquisition
25 or replacement of motor vehicles by the University of California.
26 "State agency" does not include a district agricultural association,
27 as defined in Section 3951 of the Food and Agricultural Code.

28 (g) This section shall become operative on July 1, 2015.

29 ~~SEC. 11.~~

30 SEC. 12. Section 10320 of the Public Contract Code is repealed.

31 ~~SEC. 12.~~

32 SEC. 13. Section 10321 of the Public Contract Code is repealed.

33 SEC. 14. Section 42926 of the Public Resources Code is
34 amended to read:

35 42926. (a) In addition to the information provided to the
36 department pursuant to Section 12167.1 of the Public Contract
37 Code, each state agency shall submit an annual report to the
38 department summarizing its progress in reducing solid waste as
39 required by Section 42921. The annual report shall be due on or
40 before May 1, 2012, and on or before May 1 in each subsequent

1 year. The information in this report shall encompass the previous
2 calendar year.

3 (b) Each state agency's annual report to the department shall,
4 at a minimum, include all of the following:

5 (1) Calculations of annual disposal reduction.

6 (2) Information on the changes in waste generated or disposed
7 of due to increases or decreases in employees, economics, or other
8 factors.

9 (3) A summary of progress made in implementing the integrated
10 waste management plan.

11 (4) The extent to which the state agency intends to utilize
12 programs or facilities established by the local agency for the
13 handling, diversion, and disposal of solid waste. If the state agency
14 does not intend to utilize those established programs or facilities,
15 the state agency shall identify sufficient disposal capacity for solid
16 waste that is not source reduced, recycled, or composted.

17 (5) Other information relevant to compliance with Section
18 42921.

19 (c) The department shall use, but is not limited to the use of,
20 the annual report in the determination of whether the agency's
21 integrated waste management plan needs to be revised.

22 (d) *For purposes of this section, the meaning of "state agency"*
23 *does not include a district agricultural association, as defined in*
24 *Section 3951 of the Food and Agricultural Code.*