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CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1251

Introduced by Assembly Member Gomez

(Principal coauthor: Senator Hertzberg)

(Coauthors: Assembly Members Brown, Cristina Garcia, and Gatto)

February 27, 2015

An act to add Chapter 4.5 (commencing with Section 816.50) to Title 2 of Part 2 of Division 2 of the Civil Code, to amend Section 65560 of the Government Code, and to amend Section 402.1 of the Revenue and Taxation Code, relating to open-space lands.

LEGISLATIVE COUNSEL'S DIGEST

AB 1251, as amended, Gomez. Greenway Development and Sustainment Act.

Existing law establishes various plans and programs intended to preserve, protect, and rehabilitate lands adjacent to rivers in the state. Existing law provides that a conservation easement, as defined, is an interest in real property voluntarily created and freely transferable for specified purposes and provides for the creation and transfer of conservation easements. Existing law authorizes certain tax exempt nonprofit organizations, state or local governmental entities, and California Native American tribes to acquire and hold conservation easements if those entities meet specified criteria.

This bill would enact the Greenway Development and Sustainment Act and would apply to greenway easements certain creation and transfer

provisions similar to those of conservation easements. The bill would define greenway as a pedestrian and bicycle, nonmotorized vehicle transportation, and recreational travel corridor that meets specified requirements. The bill would also include greenways in the definition of “open-space land” for local planning purposes.

The California Constitution provides that, unless otherwise provided in the Constitution or by federal law, all property in the state is taxable and is assessed at its fair market value. Existing law requires the county assessor to consider, when valuing real property for property taxation purposes, the effect of any enforceable restrictions, including recorded conservation easements, to which the use of the land may be subjected.

This bill would provide that a recorded greenway easement constitutes an enforceable restriction for purposes of these tax provisions. *By changing the manner in which county assessors assess property for property taxation purposes, this bill would impose a state-mandated local program.*

The bill would make findings with regard to the development of a greenway along the Los Angeles River and its ~~tributaries and would declare that, by developing a greenway, a city, county, or city and county, may apply for funds from various sources.~~ *tributaries.*

This bill would incorporate additional changes in Section 402.1 of the Revenue and Taxation Code, proposed by AB 668, to be operative only if AB 668 and this bill are both chaptered and become effective on or before January 1, 2016, and this bill is chaptered last.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

- 1 SECTION 1. The Legislature finds and declares the following
- 2 with regard to the development of a greenway along the Los
- 3 Angeles River and its tributaries:

1 (a) The area along the Los Angeles River and its tributaries is
2 particularly suited for the development of a greenway. ~~A~~

3 (b) A Los Angeles River greenway that focuses on public-private
4 partnerships aimed at establishing a continuous pedestrian bikeway
5 along the Los Angeles River and its tributaries would foster job
6 creation, economic development, and community revitalization.

7 ~~(b) By developing a greenway that promotes sustainability and
8 acts as a transportation corridor, a city, county, or city and county
9 may apply for alternative fuels funding, greenhouse gas reduction
10 funds, and other land use funds, as appropriate.~~

11 SEC. 2. This act shall be known, and may be cited, as the
12 Greenway Development and Sustainment Act.

13 SEC. 3. Chapter 4.5 (commencing with Section 816.50) is
14 added to Title 2 of Part 2 of Division 2 of the Civil Code, to read:

15
16 CHAPTER 4.5. GREENWAY EASEMENTS

17
18 816.50. The Legislature finds and declares the following with
19 regard to the development of greenways along urban waterways:

20 (a) The restoration and preservation of land in its natural, scenic,
21 forested, recreational, or open-space condition is among the most
22 important environmental assets in California.

23 (b) Greenways have the potential to improve the quality of life
24 in, and connectivity between, communities, and provide important
25 recreational, open-space, wildlife, flood management, greenhouse
26 gas reduction, and urban waterfront revitalization opportunities.

27 (c) It is the policy of the Legislature and in the best interest in
28 the state to encourage the voluntary conveyance of greenway
29 easements to qualified nonprofit organizations.

30 816.52. For purposes of this chapter, the following definitions
31 apply:

32 (a) (1) “Adjacent” means within 400 yards from the property
33 boundary of an existing urban waterway.

34 (2) This subdivision does not create a new authority to place or
35 extend an easement on private property that is not part of a
36 voluntary agreement.

37 (b) “Greenway” means a pedestrian and bicycle, nonmotorized
38 vehicle transportation, and recreational travel corridor that meets
39 the following requirements:

1 (1) Includes landscaping that improves rivers and streams,
 2 provides flood protection benefits, and incorporates the significance
 3 and value of natural, historical, and cultural resources, as
 4 documented in the local agency’s applicable planning document,
 5 including, but not limited to, a master plan, a general plan, or a
 6 specific plan.

7 (2) Is separated and protected from shared roadways, is adjacent
 8 to an urban waterway, and incorporates both ease of access to
 9 nearby communities and an array of amenities and services for the
 10 users of the corridor and nearby communities.

11 (3) Is located on public lands or private lands, or a combination
 12 of public and private lands, where public access to those lands for
 13 greenway purposes has been legally authorized by, or legally
 14 obtained from, the fee owner of the land and, if applicable, the
 15 operator of any facility or improvement located on the land,
 16 through leases, easements, or other agreements entered into by the
 17 fee owner and the operator of any affected facility or improvement
 18 on the land.

19 (4) Reflects design standards regarding appropriate widths,
 20 clearances, setbacks from obstructions, and centerlines protecting
 21 directional travel, and other considerations, as appropriate, that
 22 are applicable for each affected local agency, as documented in
 23 the local agency’s applicable planning document, including, but
 24 not limited to, a master plan, general plan, or specific plan.

25 (5) May incorporate appropriate lighting, public amenities, art,
 26 and other features that are consistent with a local agency’s planning
 27 document, including, but not limited to, a general plan, master
 28 plan, or specific plan.

29 (c) “Greenway easement” means any limitation in a deed, will,
 30 or other instrument in the form of an easement, restriction,
 31 covenant, or condition that is or has been executed by or on behalf
 32 of the owner of the land subject to the easement and is binding
 33 upon successive owners of that land, for the purpose of developing
 34 greenways adjacent to urban waterways.

35 (d) “Local agency” means a city, county, or city and county.

36 (e) “Urban waterway” means a creek, stream, or river that
 37 crosses (1) developed residential, commercial, or industrial
 38 property or (2) open space where the land use is designated as
 39 residential, commercial, or industrial, as referenced in a local

1 agency's planning document, including, but not limited to, a
2 general plan, master plan, or specific general plan.

3 816.54. (a) A greenway easement is an interest in real property
4 voluntarily created and freely transferable in whole or in part for
5 the purposes stated in subdivision (c) of Section 816.52 by any
6 lawful method for the transfer of interests in real property in this
7 state.

8 (b) A greenway easement shall be perpetual in duration.

9 (c) Notwithstanding the fact that it may be negative in character,
10 a greenway easement is not personal in nature and shall constitute
11 an interest in real property.

12 (d) The particular characteristics of a greenway easement shall
13 be those granted or specified in the instrument creating or
14 transferring the easement.

15 816.56. Only the following entities or organizations may
16 acquire and hold a greenway easement:

17 (a) A tax-exempt nonprofit organization qualified under Section
18 501(c)(3) of the Internal Revenue Code and qualified to do business
19 in this state that has as its primary purpose the preservation,
20 protection, or enhancement of land in its natural, scenic, historical,
21 agricultural, forested, or open-space condition or use, or the
22 preservation or development of a greenway.

23 (b) The state or any city, county, city and county, district, or
24 other state or local governmental entity, if otherwise authorized
25 to acquire and hold title to real property and if the greenway
26 easement is voluntarily conveyed. A local governmental entity
27 shall not condition the issuance of an entitlement for use on the
28 applicant's granting of a greenway easement pursuant to this
29 chapter.

30 (c) A federally recognized California Native American tribe or
31 a nonfederally recognized California Native American tribe that
32 is on the contact list maintained by the Native American Heritage
33 Commission to protect a California Native American prehistoric,
34 archaeological, cultural, spiritual, or ceremonial place, if the
35 greenway easement is voluntarily conveyed.

36 816.58. All interests not transferred and conveyed by the
37 instrument creating the greenway easement shall remain in the
38 grantor of the greenway easement, including the right to engage
39 in all uses of the land not affected by the greenway easement nor
40 prohibited by the greenway easement or by law.

1 816.60. Instruments creating, assigning, or otherwise
2 transferring greenway easements shall be recorded in the office of
3 the county recorder of the county where the land is situated, in
4 whole or in part, and those instruments shall be subject in all
5 respects to the recording laws.

6 816.62. (a) No greenway easement shall be unenforceable by
7 reason of lack of privity of contract or lack of benefit to particular
8 land or because not expressed in the instrument creating it as
9 running with the land.

10 (b) Actual or threatened injury to or impairment of a greenway
11 easement or actual or threatened violation of its terms may be
12 prohibited or restrained, or the interest intended for protection by
13 that easement may be enforced, by injunctive relief granted by any
14 court of competent jurisdiction in a proceeding initiated by the
15 grantor or by the owner of the greenway easement.

16 (c) In addition to the remedy of injunctive relief, the holder of
17 a greenway easement shall be entitled to recover money damages
18 for any injury to the greenway easement or to the interest being
19 protected thereby or for the violation of the terms of the greenway
20 easement. In assessing the damages, there may be taken into
21 account, in addition to the cost of restoration and other usual rules
22 of the law of damages, the loss of scenic, aesthetic, or
23 environmental value to the real property subject to the greenway
24 easement.

25 (d) The court may award to the prevailing party in any action
26 authorized by this section the costs of litigation, including
27 reasonable attorney's fees.

28 816.64. Nothing in this chapter shall be construed to impair or
29 conflict with the operation of any law or statute conferring upon
30 any political subdivision the right or power to hold interests in
31 land comparable to greenway easements, including, but not limited
32 to, Chapter 12 (commencing with Section 6950) of Division 7 of
33 Title 1 of, Chapter 6.5 (commencing with Section 51050), Chapter
34 6.6 (commencing with Section 51070) and Chapter 7 (commencing
35 with Section 51200) of Part 1 of Division 1 of Title 5 of, and
36 Article 10.5 (commencing with Section 65560) of Chapter 3 of
37 Title 7 of, the Government Code, and Article 1.5 (commencing
38 with Section 421) of Chapter 3 of Part 2 of Division 1 of the
39 Revenue and Taxation Code.

1 816.66. A greenway easement granted pursuant to this chapter
2 constitutes an enforceable restriction, for purposes of Section 402.1
3 of the Revenue and Taxation Code.

4 SEC. 4. Section 65560 of the Government Code is amended
5 to read:

6 65560. (a) “Local open-space plan” is the open-space element
7 of a county or city general plan adopted by the board or council,
8 either as the local open-space plan or as the interim local
9 open-space plan adopted pursuant to Section 65563.

10 (b) “Open-space land” is any parcel or area of land or water that
11 is essentially unimproved and devoted to an open-space use as
12 defined in this section, and that is designated on a local, regional,
13 or state open-space plan as any of the following:

14 (1) Open space for the preservation of natural resources
15 including, but not limited to, areas required for the preservation
16 of plant and animal life, including habitat for fish and wildlife
17 species; areas required for ecologic and other scientific study
18 purposes; rivers, streams, bays, and estuaries; and coastal beaches,
19 lakeshores, banks of rivers and streams, greenways, as defined in
20 Section 816.52 of the Civil Code, and watershed lands.

21 (2) Open space used for the managed production of resources,
22 including, but not limited to, forest lands, rangeland, agricultural
23 lands, and areas of economic importance for the production of
24 food or fiber; areas required for recharge of groundwater basins;
25 bays, estuaries, marshes, rivers, and streams that are important for
26 the management of commercial fisheries; and areas containing
27 major mineral deposits, including those in short supply.

28 (3) Open space for outdoor recreation, including, but not limited
29 to, areas of outstanding scenic, historic, and cultural value; areas
30 particularly suited for park and recreation purposes, including
31 access to lakeshores, beaches, and rivers and streams; and areas
32 that serve as links between major recreation and open-space
33 reservations, including utility easements, banks of rivers and
34 streams, trails, greenways, and scenic highway corridors.

35 (4) Open space for public health and safety, including, but not
36 limited to, areas that require special management or regulation
37 because of hazardous or special conditions such as earthquake
38 fault zones, unstable soil areas, flood plains, watersheds, areas
39 presenting high fire risks, areas required for the protection of water

1 quality and water reservoirs, and areas required for the protection
2 and enhancement of air quality.

3 (5) Open space in support of the mission of military installations
4 that comprises areas adjacent to military installations, military
5 training routes, and underlying restricted airspace that can provide
6 additional buffer zones to military activities and complement the
7 resource values of the military lands.

8 (6) Open space for the protection of places, features, and objects
9 described in Sections 5097.9 and 5097.993 of the Public Resources
10 Code.

11 SEC. 5. Section 402.1 of the Revenue and Taxation Code is
12 amended to read:

13 402.1. (a) In the assessment of land, the assessor shall consider
14 the effect upon value of any enforceable restrictions to which the
15 use of the land may be subjected. These restrictions shall include,
16 but are not limited to, all of the following:

17 (1) Zoning.

18 (2) Recorded contracts with governmental agencies other than
19 those provided in Sections 422, 422.5, and 422.7.

20 (3) Permit authority of, and permits issued by, governmental
21 agencies exercising land use powers concurrently with local
22 governments, including the California Coastal Commission and
23 regional coastal commissions, the San Francisco Bay Conservation
24 and Development Commission, and the Tahoe Regional Planning
25 Agency.

26 (4) Development controls of a local government in accordance
27 with any local coastal program certified pursuant to Division 20
28 (commencing with Section 30000) of the Public Resources Code.

29 (5) Development controls of a local government in accordance
30 with a local protection program, or any component thereof, certified
31 pursuant to Division 19 (commencing with Section 29000) of the
32 Public Resources Code.

33 (6) Environmental constraints applied to the use of land pursuant
34 to provisions of statutes.

35 (7) Hazardous waste land use restriction pursuant to Section
36 25226 of the Health and Safety Code.

37 (8) (A) A recorded conservation, trail, or scenic easement, as
38 described in Section 815.1 of the Civil Code, that is granted in
39 favor of a public agency, or in favor of a nonprofit corporation
40 organized pursuant to Section 501(c)(3) of the Internal Revenue

1 Code that has as its primary purpose the preservation, protection,
2 or enhancement of land in its natural, scenic, historical, agricultural,
3 forested, or open-space condition or use.

4 (B) A recorded greenway easement, as described in Section
5 816.52 of the Civil Code, that is granted in favor of a public
6 agency, or in favor of a nonprofit corporation organized pursuant
7 to Section 501(c)(3) of the Internal Revenue Code that has as its
8 primary purpose the developing and preserving of greenways.

9 (9) A solar-use easement pursuant to Chapter 6.9 (commencing
10 with Section 51190) of Part 1 of Division 1 of Title 5 of the
11 Government Code.

12 (b) There is a rebuttable presumption that restrictions will not
13 be removed or substantially modified in the predictable future and
14 that they will substantially equate the value of the land to the value
15 attributable to the legally permissible use or uses.

16 (c) Grounds for rebutting the presumption may include, but are
17 not necessarily limited to, the past history of like use restrictions
18 in the jurisdiction in question and the similarity of sales prices for
19 restricted and unrestricted land. The possible expiration of a
20 restriction at a time certain shall not be conclusive evidence of the
21 future removal or modification of the restriction unless there is no
22 opportunity or likelihood of the continuation or renewal of the
23 restriction, or unless a necessary party to the restriction has
24 indicated an intent to permit its expiration at that time.

25 (d) In assessing land with respect to which the presumption is
26 un rebutted, the assessor shall not consider sales of otherwise
27 comparable land not similarly restricted as to use as indicative of
28 value of land under restriction, unless the restrictions have a
29 demonstrably minimal effect upon value.

30 (e) In assessing land under an enforceable use restriction wherein
31 the presumption of no predictable removal or substantial
32 modification of the restriction has been rebutted, but where the
33 restriction nevertheless retains some future life and has some effect
34 on present value, the assessor may consider, in addition to all other
35 legally permissible information, representative sales of comparable
36 lands that are not under restriction but upon which natural
37 limitations have substantially the same effect as restrictions.

38 (f) For the purposes of this section the following definitions
39 apply:

1 (1) “Comparable lands” are lands that are similar to the land
2 being valued in respect to legally permissible uses and physical
3 attributes.

4 (2) “Representative sales information” is information from sales
5 of a sufficient number of comparable lands to give an accurate
6 indication of the full cash value of the land being valued.

7 (g) It is hereby declared that the purpose and intent of the
8 Legislature in enacting this section is to provide for a method of
9 determining whether a sufficient amount of representative sales
10 information is available for land under use restriction to ensure
11 the accurate assessment of that land. It is also hereby declared that
12 the further purpose and intent of the Legislature in enacting this
13 section and Section 1630 is to avoid an assessment policy which,
14 in the absence of special circumstances, considers uses for land
15 that legally are not available to the owner and not contemplated
16 by government, and that these sections are necessary to implement
17 the public policy of encouraging and maintaining effective land
18 use planning. This statute shall not be construed as requiring the
19 assessment of any land at a value less than as required by Section
20 401 or as prohibiting the use of representative comparable sales
21 information on land under similar restrictions when this information
22 is available.

23 *SEC. 5.5. Section 402.1 of the Revenue and Taxation Code is*
24 *amended to read:*

25 402.1. (a) In the assessment of land, the assessor shall consider
26 the effect upon value of any enforceable restrictions to which the
27 use of the land may be subjected. These restrictions shall include,
28 but are not limited to, all of the following:

- 29 (1) Zoning.
- 30 (2) Recorded contracts with governmental agencies other than
31 those provided in Sections 422, 422.5, and 422.7.
- 32 (3) Permit authority of, and permits issued by, governmental
33 agencies exercising land use powers concurrently with local
34 governments, including the California Coastal Commission and
35 regional coastal commissions, the San Francisco Bay Conservation
36 and Development Commission, and the Tahoe Regional Planning
37 Agency.
- 38 (4) Development controls of a local government in accordance
39 with any local coastal program certified pursuant to Division 20
40 (commencing with Section 30000) of the Public Resources Code.

1 (5) Development controls of a local government in accordance
2 with a local protection program, or any component thereof, certified
3 pursuant to Division 19 (commencing with Section 29000) of the
4 Public Resources Code.

5 (6) Environmental constraints applied to the use of land pursuant
6 to provisions of statutes.

7 (7) Hazardous waste land use restriction pursuant to Section
8 ~~25240~~ 25226 of the Health and Safety Code.

9 (8) (A) A recorded conservation, trail, or scenic easement, as
10 described in Section 815.1 of the Civil Code, that is granted in
11 favor of a public agency, or in favor of a nonprofit corporation
12 organized pursuant to Section 501(c)(3) of the Internal Revenue
13 Code that has as its primary purpose the preservation, protection,
14 or enhancement of land in its natural, scenic, historical, agricultural,
15 forested, or open-space condition or use.

16 (B) *A recorded greenway easement, as described in Section*
17 *816.52 of the Civil Code, that is granted in favor of a public*
18 *agency, or in favor of a nonprofit corporation organized pursuant*
19 *to Section 501(c)(3) of the Internal Revenue Code that has as its*
20 *primary purpose the developing and preserving of greenways.*

21 (9) A solar-use easement pursuant to Chapter 6.9 (commencing
22 with Section 51190) of Part 1 of Division 1 of Title 5 of the
23 Government Code.

24 (10) *A contract where the following apply:*

25 (A) *The contract is with a nonprofit corporation organized*
26 *pursuant to Section 501(c)(3) of the Internal Revenue Code that*
27 *has received a welfare exemption under Section 214.15 for*
28 *properties intended to be sold to low-income families who*
29 *participate in a special no-interest loan program.*

30 (B) *The contract restricts the use of the land for at least 30 years*
31 *to owner-occupied housing available at affordable housing cost*
32 *in accordance with Section 50052.5 of the Health and Safety Code.*

33 (C) *The contract includes a deed of trust on the property in*
34 *favor of the nonprofit corporation to ensure compliance with the*
35 *terms of the program, which has no value unless the owner fails*
36 *to comply with the covenants and restrictions of the terms of the*
37 *home sale.*

38 (D) *The local housing authority or an equivalent agency, or, if*
39 *none exists, the city attorney or county counsel, has made a finding*

1 *that the long-term deed restrictions in the contract serve a public*
2 *purpose.*

3 *(E) The contract is recorded and provided to the assessor.*

4 (b) There is a rebuttable presumption that restrictions will not
5 be removed or substantially modified in the predictable future and
6 that they will substantially equate the value of the land to the value
7 attributable to the legally permissible use or uses.

8 (c) Grounds for rebutting the presumption may include, but are
9 not necessarily limited to, the past history of like use restrictions
10 in the jurisdiction in question and the similarity of sales prices for
11 restricted and unrestricted land. The possible expiration of a
12 restriction at a time certain shall not be conclusive evidence of the
13 future removal or modification of the restriction unless there is no
14 opportunity or likelihood of the continuation or renewal of the
15 restriction, or unless a necessary party to the restriction has
16 indicated an intent to permit its expiration at that time.

17 (d) In assessing land with respect to which the presumption is
18 un rebutted, the assessor shall not consider sales of otherwise
19 comparable land not similarly restricted as to use as indicative of
20 value of land under restriction, unless the restrictions have a
21 demonstrably minimal effect upon value.

22 (e) In assessing land under an enforceable use restriction wherein
23 the presumption of no predictable removal or substantial
24 modification of the restriction has been rebutted, but where the
25 restriction nevertheless retains some future life and has some effect
26 on present value, the assessor may consider, in addition to all other
27 legally permissible information, representative sales of comparable
28 lands that are not under restriction but upon which natural
29 limitations have substantially the same effect as restrictions.

30 (f) For the purposes of this section the following definitions
31 apply:

32 (1) “Comparable lands” are lands that are similar to the land
33 being valued in respect to legally permissible uses and physical
34 attributes.

35 (2) “Representative sales information” is information from sales
36 of a sufficient number of comparable lands to give an accurate
37 indication of the full cash value of the land being valued.

38 (g) It is hereby declared that the purpose and intent of the
39 Legislature in enacting this section is to provide for a method of
40 determining whether a sufficient amount of representative sales

1 information is available for land under use restriction ~~in order~~ to
2 ensure the accurate assessment of that land. It is also hereby
3 declared that the further purpose and intent of the Legislature in
4 enacting this section and Section 1630 is to avoid an assessment
5 policy which, in the absence of special circumstances, considers
6 uses for land that legally are not available to the owner and not
7 contemplated by government, and that these sections are necessary
8 to implement the public policy of encouraging and maintaining
9 effective land use planning. This statute shall not be construed as
10 requiring the assessment of any land at a value less than as required
11 by Section 401 or as prohibiting the use of representative
12 comparable sales information on land under similar restrictions
13 when this information is available.

14 *SEC. 6. Section 5.5 of this bill incorporates amendments to*
15 *Section 402.1 of the Revenue and Taxation Code proposed by both*
16 *this bill and Assembly Bill 668. It shall only become operative if*
17 *(1) both bills are enacted and become effective on or before*
18 *January 1, 2016, (2) each bill amends Section 402.1 of the Revenue*
19 *and Taxation Code, and (3) this bill is enacted after Assembly Bill*
20 *668, in which case Section 5 of this bill shall not become operative.*

21 *SEC. 7. If the Commission on State Mandates determines that*
22 *this act contains costs mandated by the state, reimbursement to*
23 *local agencies and school districts for those costs shall be made*
24 *pursuant to Part 7 (commencing with Section 17500) of Division*
25 *4 of Title 2 of the Government Code.*

O