

AMENDED IN SENATE APRIL 19, 2016
AMENDED IN SENATE MARCH 29, 2016

SENATE BILL

No. 1020

Introduced by Senator Wieckowski

February 11, 2016

An act to amend Section 65967 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

SB 1020, as amended, Wieckowski. Land use: mitigation lands.

The Planning and Zoning Law authorizes a state or local agency, where that agency requires a project proponent to transfer property to mitigate adverse project impacts upon natural resources, to in turn authorize a government entity, special district, or any of certain types of parties to hold title to, and manage, the transferred property. Existing law allows a state or local agency that has required such a transfer of property for mitigation purposes to identify the funding needs for the long-term stewardship of the property, and establishes various requirements with respect to the amount and management of any endowment conveyed or secured for purposes of funding the protection of the property.

Existing law authorizes a state or local agency that, in the development of its own project is required to protect property in order to mitigate an adverse impact upon natural resources, to take any action that the agency deems necessary to meet its mitigation obligations, including, but not limited to, transferring the interest to specified entities, providing funds to specified entities to acquire land or easements or to implement a restoration or enhancement project, or holding an endowment in an account administered by an elected official, as provided.

This bill would authorize a *regional park district, regional park and open-space district, and regional open-space district* that meets specified criteria to meet the mitigation obligation by possessing budget reserves in excess of funds required to, among other things, meet the mitigation obligation and retaining obligation and retain permanent stewardship and maintenance staff to manage the resource.

This bill would make legislative findings and declarations, including findings and declarations demonstrating the necessity of a special statute with respect to a particular district.

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. The Legislature finds and declares all of the
- 2 following:
- 3 (a) The Department of Fish and Wildlife construes Sections
- 4 65966 and 65967 of the Government Code to require all entities,
- 5 including public entities and private businesses and nonprofit
- 6 corporations, to set aside restricted endowments to guarantee the
- 7 stewardship of lands where conservation easements have been
- 8 required.
- 9 (b) In the case of the East Bay Regional Park District (EBRPD),
- 10 which is a nonenterprise, independent special district with its own
- 11 taxing authority and elected board of directors whose sole purpose
- 12 is to acquire and manage land for open space, public recreation,
- 13 and natural resource protection, endowment requirements need
- 14 additional consideration. For the reasons set forth below, a special
- 15 statute is necessary with respect to the EBRPD.
- 16 (c) Requiring entities established pursuant to Section 5500 of
- 17 the Public Resources Code, such as the EBRPD, which employs
- 18 permanent police, rangers, and stewardship staff, to fund
- 19 endowments effectively doubles the cost burden on local taxpayers
- 20 for managing specified habitat enhancements or conservation lands.
- 21 (d) Requiring this agency to mitigate for its own public projects
- 22 and permanently put local tax dollars in restricted endowment
- 23 accounts increases the costs and taxpayer obligations by millions
- 24 of dollars.

1 (e) The EBRPD is specifically required to manage public
2 parklands consistent with its master plan, as well as state and
3 federal regulatory requirements.

4 (f) Furthermore, the EBRPD’s ability to manage land for the
5 benefit of protected species and habitat has been recognized by
6 the Department of Fish and Wildlife, which has authorized the
7 EBRPD to hold and manage mitigation lands for third parties and
8 the state.

9 (g) Permanently obligating local taxpayer funding toward
10 endowment accounts will significantly reduce the funds available
11 to invest in stewardship staff and the appropriate management of
12 habitat sensitive public lands.

13 (h) Consistent with existing law, the Legislature affirms the
14 authority of the Department of Fish and Wildlife to require local
15 agencies to establish endowments for the ongoing care and
16 maintenance of lands and projects resulting from mitigation
17 practices.

18 (i) It is the intent of the Legislature that the Department of Fish
19 and Wildlife, as part of mitigation and resulting endowment
20 practices, administer Section 65967 of the Government Code so
21 as not to unnecessarily obligate public resources for activities
22 otherwise performed as part of an agency’s ongoing responsibilities
23 and operations.

24 SEC. 2. Section 65967 of the Government Code is amended
25 to read:

26 65967. (a) If a state or local agency requires a project
27 proponent to transfer property to mitigate any adverse impact upon
28 natural resources caused by permitting the development of a project
29 or facility, the agency may authorize a governmental entity, special
30 district, a nonprofit organization, a for-profit entity, a person, or
31 another entity to hold title to and manage that property.

32 (b) If a state or local agency, in the development of its own
33 project, is required to protect property to mitigate an adverse impact
34 upon natural resources, the agency may take any action that the
35 agency deems necessary in order to meet its mitigation obligations,
36 including, but not limited to, the following:

37 (1) Transfer the interest, or obligation to restore and enhance
38 property, to a governmental entity, special district, or nonprofit
39 organization that meets the requirements set forth in subdivision

40 (c).

1 (2) Provide funds to a governmental entity, nonprofit
2 organization, a special district, a for-profit entity, a person, or other
3 entity to acquire land or easements, or to implement a restoration
4 or enhancement project, that satisfies the agency's mitigation
5 obligations.

6 (3) Hold an endowment in an account administered by an elected
7 official provided that the state or local agency is protecting,
8 restoring, or enhancing its own property.

9 ~~(4) Possess budget reserves in excess of the funds required to~~
10 ~~meet the mitigation obligation and retain permanent stewardship~~
11 ~~and maintenance staff to manage the resource, provided that the~~
12 ~~agency does both of the following:~~

13 ~~(A) Acts as an agent for the state to acquire, plan, and develop~~
14 ~~units of the state park system pursuant to Section 5003.03 of the~~
15 ~~Public Resources Code.~~

16 ~~(B) Works in collaboration with the state and other local entities~~
17 ~~to implement a project pursuant to the Natural Community~~
18 ~~Conservation Planning Act (Chapter 10 (commencing with Section~~
19 ~~2800) of Division 3 of the Fish and Game Code).~~

20 *(4) If the local agency is a district formed pursuant to Article*
21 *3 (commencing with Section 5500) of Chapter 3 of Division 5 of*
22 *the Public Resources Code, possess budget reserves in excess of*
23 *the funds required to do all of the following:*

24 *(A) Meet mitigation obligations.*

25 *(B) Retain permanent stewardship and maintenance staff to*
26 *manage the resource.*

27 *(C) Maintain mitigation obligations consistent with permit*
28 *requirements.*

29 *(D) Ensure that if the mitigations are not maintained the state*
30 *will not incur any financial liabilities from the lack of mitigation.*

31 (c) A state or local agency shall exercise due diligence in
32 reviewing the qualifications of a governmental entity, special
33 district, or nonprofit organization to effectively manage and
34 steward land, water, or natural resources. The local agency may
35 adopt guidelines to assist it in that review process, which may
36 include, but are not limited to, the use of or reliance upon
37 guidelines, standards, or accreditation established by a qualified
38 entity that are in widespread state or national use.

39 (d) The state or local agency may require the governmental
40 entity, special district, or nonprofit organization to submit a report

1 not more than once every 12 months and for the number of years
2 specified in the mitigation agreement that details the stewardship
3 and condition of the property and any other requirements pursuant
4 to the mitigation agreement for the property.

5 (e) The recorded instrument that places the fee title or partial
6 interest in real property with a governmental entity, special district,
7 nonprofit organization, or for-profit entity, pursuant to subdivision
8 (a) or (b) shall include a provision that if the state or local agency
9 or its successor agency reasonably determines that the property
10 conveyed to meet the mitigation requirement is not being held,
11 monitored, or stewarded for conservation purposes in the manner
12 specified in that instrument or in the mitigation agreement, the
13 property shall revert to the state or local agency, or to another
14 public agency, governmental entity, special district, or nonprofit
15 organization pursuant to subdivision (c) and subject to approval
16 by the state or local agency. If a state or local agency determines
17 that a property must revert, it shall work with the parties to the
18 mitigation agreement, or other affected entities, to ensure that any
19 contracts, permits, funding, or other obligations and responsibilities
20 are met.