AMENDED IN SENATE SEPTEMBER 1, 2009

AMENDED IN SENATE JULY 13, 2009

AMENDED IN ASSEMBLY APRIL 20, 2009

california legislature—2009–10 regular session

ASSEMBLY BILL No. 94

Introduced by Assembly Member Evans
(Coauthor: Assembly Member Monning)

January 6, 2009

An act to amend Section 7260 of the Government Code, to amend Sections 37002, 37022, 37034, and 37035 of the Public Resources Code, and to amend Sections 17053.30 and 23630 of the Revenue and Taxation Code, relating to conservation.

legislative counsel's digest

AB 94, as amended, Evans. Natural Heritage Preservation Tax Credit Act of 2000.

(1) Under the Natural Heritage Preservation Tax Credit Act of 2000, property may be contributed to departments, as defined, any local government, or any nonprofit organization designated by a local government or department, based on specified criteria, in order to provide for the protection of wildlife habitat, open space, and agricultural lands. The act defines "donee" as a department within the Natural Resources Agency to which a donor has applied to donate property, a local government requesting approval of a donation of property to it, or a designated nonprofit organization.

This bill would expand the definition of "donee" to include a local government that has submitted an application directly to the Wildlife Conservation Board. The bill would make related changes.

(2) The act limits the total amount of tax credits to $100,000,000 and prohibits tax credits from being awarded after the 2007–08 fiscal year without further statutory authorization.

This bill, instead, would prohibit tax credits from being awarded after the ~~2018–19~~ *2014–15* fiscal year without further statutory authorization, and would delete the monetary limit on the award of tax credits pursuant to the act.

(3) Existing law provides that, whenever a program or project to be undertaken by a public entity will result in the displacement of a person, the displaced person, as defined, is entitled to payment for actual moving and related expenses as the public entity determines to be reasonable and necessary.

This bill would exclude as a displaced person, for those purposes, a person displaced by willingly donating or selling his or her property for the purposes of protecting fish and wildlife habitat, providing recreation areas, or preserving cultural or agricultural resources and open space, or any person who occupies on a rental basis the property donated or sold. The bill would provide that this exclusion does not apply when a sale is in response to an eminent domain proceeding.

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

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

SECTION 1. Section 7260 of the Government Code is amended to read:

7260. As used in this chapter:

(a) “Public entity” includes the state, the Regents of the University of California, a county, city, city and county, district, public authority, public agency, and any other political subdivision or public corporation in the state or any entity acting on behalf of these agencies when acquiring real property, or any interest therein, in any city or county for public use, and any person who has the authority to acquire property by eminent domain under state law.

(b) “Person” means any individual, partnership, corporation, limited liability company, or association.

(c) (1) “Displaced person” means both of the following:

(A) Any person who moves from real property, or who moves his or her personal property from real property, either:

(i) As a direct result of a written notice of intent to acquire, or the acquisition of, the real property, in whole or in part, for a program or project undertaken by a public entity or by any person having an agreement with, or acting on behalf of, a public entity.

(ii) As a direct result of the rehabilitation, demolition, or other displacing activity, as the public entity may prescribe under a program or project undertaken by a public entity, of real property on which the person is a residential tenant or conducts a business or farm operation, if the public entity determines that the displacement is permanent. For purposes of this subparagraph, "residential tenant" includes any occupant of a residential hotel unit, as defined in subdivision (b) of Section 50669 of the Health and Safety Code, and any occupant of employee housing, as defined in Section 17008 of the Health and Safety Code, but does not include any person who has been determined to be in unlawful occupancy of the displacement dwelling.

(B) Solely for the purposes of Sections 7261 and 7262, any person who moves from real property, or moves his or her personal property from real property, either:

(i) As a direct result of a written notice of intent to acquire, or the acquisition of, other real property, in whole or in part, on which the person conducts a business or farm operation for a program or project undertaken by a public entity.

(ii) As a direct result of the rehabilitation, demolition, or other displacing activity as the public entity may prescribe under a program or project undertaken by a public entity, of other real property on which the person conducts a business or farm operation, in any case in which the public entity determines that the displacement is permanent.

(2) This subdivision shall be construed so that persons displaced as a result of public action receive relocation benefits in cases where they are displaced as a result of an owner participation agreement or an acquisition carried out by a private person for, or in connection with, a public use where the public entity is otherwise empowered to acquire the property to carry out the public use.

(3) Except for persons or families of low and moderate income, as defined in Section 50093 of the Health and Safety Code, who are occupants of housing that was made available to them on a permanent basis by a public agency and who are required to move

from the housing, a “displaced person” shall not include any of the following:

(A) Any person who has been determined to be in unlawful occupancy of the displacement dwellings.

(B) Any person whose right of possession at the time of moving arose after the date of the public entity’s acquisition of the real property.

(C) Any person who has occupied the real property for the purpose of obtaining assistance under this chapter.

(D) In any case in which the public entity acquires property for a program or project (other than a person who was an occupant of the property at the time it was acquired), any person who occupies the property for a period subject to termination when the property is needed for the program or project.

(E) Any person who donates or willingly sells his or her property for the purposes of protecting fish and wildlife habitat, providing recreational areas, or preserving cultural or agricultural resources and open space, or any person who occupies that property on a rental basis. This subparagraph does not apply when a sale is in response to an eminent domain proceeding.

(d) “Business” means any lawful activity, except a farm operation, conducted for any of the following:

(1) Primarily for the purchase, sale, lease, or rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property.

(2) Primarily for the sale of services to the public.

(3) Primarily by a nonprofit organization.

(4) Solely for the purpose of Section 7262 for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display, whether or not the display is located on the premises on which any of the above activities are conducted.

(e) “Farm operation” means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing these products or commodities in sufficient quantity to be capable of contributing materially to the operator’s support.

(f) “Affected property” means any real property that actually declines in fair market value because of acquisition by a public entity for public use of other real property and a change in the use of the real property acquired by the public entity.

(g) “Public use” means a use for which real property may be acquired by eminent domain.

(h) “Mortgage” means classes of liens that are commonly given to secure advances on, or the unpaid purchase price of, real property, together with the credit instruments, if any, secured thereby.

(i) “Comparable replacement dwelling” means any dwelling that is all of the following:

(1) Decent, safe, and sanitary.

(2) Adequate in size to accommodate the occupants.

(3) In the case of a displaced person who is a renter, within the financial means of the displaced person. A comparable replacement dwelling is within the financial means of a displaced person if the monthly rental cost of the dwelling, including estimated average monthly utility costs, minus any replacement housing payment available to the person, does not exceed 30 percent of the person’s average monthly income, unless the displaced person meets one or more of the following conditions, in which case the payment of the monthly rental cost of the comparable replacement dwelling, including estimated average monthly utility costs, minus any replacement housing payment available to the person, shall not exceed 25 percent of the person’s average monthly income:

(A) Prior to January 1, 1998, the displaced person received a notice to vacate from a public entity, or from a person having an agreement with a public entity.

(B) The displaced person resides on property that was acquired by a public entity, or by a person having an agreement with a public entity, prior to January 1, 1998.

(C) Prior to January 1, 1998, a public entity, or a person having an agreement with a public entity, initiated negotiations to acquire the property on which the displaced person resides.

(D) Prior to January 1, 1998, a public entity, or a person having an agreement with a public entity, entered into an agreement to acquire the property on which the displaced person resides.

(E) Prior to January 1, 1998, a public entity, or a person having an agreement with a public entity, gave written notice of intent to acquire the property on which the displaced person resides.

(F) The displaced person is covered by, or resides in an area or project covered by, a final relocation plan that was adopted by the legislative body prior to January 1, 1998, pursuant to this chapter and the regulations adopted pursuant to this chapter.

(G) The displaced person is covered by, or resides in an area or project covered by, a proposed relocation plan that was required to have been submitted prior to January 1, 1998, to the Department of Housing and Community Development or to a local relocation committee, or for which notice was required to have been provided to occupants of the property prior to January 1, 1998, pursuant to this chapter and the regulations adopted pursuant to this chapter.

(H) The displaced person is covered by, or resides in an area or project covered by, a proposed relocation plan that was submitted prior to January 1, 1998, to the Department of Housing and Community Development or to a local relocation committee, or for which notice was provided to the public or to occupants of the property prior to January 1, 1998, pursuant to this chapter and the regulations adopted pursuant to this chapter, and the person is eventually displaced by the project covered in the proposed relocation plan.

(I) The displaced person resides on property for which a contract for acquisition, rehabilitation, demolition, construction, or other displacing activity was entered into by a public entity, or by a person having an agreement with a public entity, prior to January 1, 1998.

(J) The displaced person resides on property where an owner participation agreement, or other agreement between a public entity and a private party that will result in the acquisition, rehabilitation, demolition, or development of the property or other displacement, was entered into prior to January 1, 1998, and the displaced person resides in the property at the time of the agreement, provides information to the public entity, or person having an agreement with the public entity, showing that he or she did reside in the property at the time of the agreement and is eventually displaced by the project covered in the agreement.

(4) Comparable with respect to the number of rooms, habitable space, and type and quality of construction. Comparability under

this paragraph shall not require strict adherence to a detailed, feature-by-feature comparison. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal features shall be present.

(5) In an area not subject to unreasonable adverse environmental conditions.

(6) In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities, facilities, services, and the displaced person's place of employment.

(j) "Displacing agency" means any public entity or person carrying out a program or project which causes a person to be a displaced person for a public project.

(k) "Appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

(*l*) "Small business" means a business as defined in Part 24 of Title 49 of the Code of Federal Regulations.

(m) "Lead agency" means the Department of Housing and Community Development.

SEC. 2. Section 37002 of the Public Resources Code is amended to read:

37002. As used in this division, the following terms have the following meanings:

(a) "Approval" or "approval for acceptance" means the board's approval of the granting of a tax credit for a donation of property pursuant to the program.

(b) "Board" means the Wildlife Conservation Board created pursuant to Article 2 (commencing with Section 1320) of Chapter 4 of Division 2 of the Fish and Game Code.

(c) "Conservation easement" means a conservation easement, as defined by Section 815.1 of the Civil Code, that is contributed in perpetuity.

(d) "Department" means any entity created by statute within the Natural Resources Agency and authorized to hold title to land, or the Natural Resources Agency.

(e) (1) "Designated nonprofit organization" means a nonprofit organization qualified under Section 501(c)(3) of Title 26 of the United States Code that has as a principal purpose the conservation of land and water resources and that is designated by a local government or a department to accept property pursuant to this division in lieu of the local government or a department. In order to be eligible to receive a donation of property pursuant to this division, a nonprofit organization shall have experience in land conservation.

(2) If bond funds are used pursuant to Chapter 7 (commencing with Section 37030), the designated nonprofit organization shall also meet the eligibility requirements specified in the relevant provision of the applicable bond act, for a nonprofit organization.

(f) “Donee” means any of the following:

(1) A department to which a donor has applied to donate property.

(2) A local government that has submitted a joint application with a department requesting approval of a donation of property to that local government.

(3) A local government that has submitted an application directly to the board.

(4) A designated nonprofit organization.

(g) “Donor” means a property owner that donates, or submits an application to donate, property pursuant to the program.

(h) (1) “Local government” means any city, county, city and county, or any district, as defined in Section 5902 or in Division 26 (commencing with Section 35100), or any joint powers authority made up of one or more of those entities or those entities and departments.

(2) If bond funds are used pursuant to Chapter 7 (commencing with Section 37030), “local government” also includes any other local governmental entity eligible to receive bond funds pursuant to the relevant provision of the applicable bond act.

(i) “Program” means the Natural Heritage Preservation Tax Credit Program authorized by this division.

(j) “Property” means any real property, and any perpetual interest therein, including land, conservation easements, and land containing water rights, as well as water rights.

(k) “Secretary” means the Secretary of the Natural Resources Agency.

SEC. 3. Section 37022 of the Public Resources Code is amended to read:

37022. (a) Tax credits may be awarded pursuant to this division only if the amount of all lost revenue resulting from the award of tax credits is reimbursed by transfer to the General Fund of moneys that are not from the General Fund. Tax Credits shall not be awarded subsequent to the ~~2018–19~~ *2014–15* fiscal year without further statutory authorization.

(b) For purposes of this section, "moneys that are not from the General Fund" means any of the following:

(1) State bond funds as described in Section 37032.

(2) State funds available for the purposes of this division, other than funds specified in Section 37014.

(3) Court settlements.

(4) Private or public donations.

(5) Local government funds of any type.

(6) Federal funds available for the purposes of this division.

SEC. 4. Section 37034 of the Public Resources Code is amended to read:

37034. (a) (1) If a department determines that property is available for acquisition by donation, and that the acquisition of the property would comply with the requirements of an applicable bond provision specified in subdivision (c) of Section 37032 and any applicable guidelines developed for that bond provision by the administering agency, and the department believes the acquisition of the property would comply with the requirements of this division, the department may request the prospective donor of the property to submit an application pursuant to Section 37010. If the prospective donor agrees to submit that application, the department may apply for approval of the donation pursuant to the requirements of this division.

(2) If a local government determines that property is available for acquisition by donation, and that the acquisition of the property would comply with the requirements of an applicable bond provision specified in subdivision (c) of Section 37032 and any applicable guidelines developed for that bond provision by the administering agency, and the local government believes that the acquisition of the property would comply with the requirements of this division, the local government may request the department that allocated to it the relevant bond funds to determine whether it agrees with the local government's determinations and beliefs made pursuant to this paragraph. If the department agrees with the

local government and gives its approval for the acquisition with bond funds that it has allocated to the local government, the local government may request the prospective donor of the property to submit an application pursuant to Section 37010. If the prospective donor agrees to submit the application, the local government may apply for approval of the donation pursuant to the requirements of this division.

(3) In addition to the requirements of Section 37011, the application shall include, and shall not be accepted if it does not include, a signed authorization by the donor, in a form and manner mutually agreeable to the board and the Franchise Tax Board, for the disclosure of the information necessary to make the payment as required by subdivision (b). For purposes of subdivision (b) of Section 1798.24 of the Civil Code, the signed authorization shall be the donor's voluntary consent to the disclosure of the information.

(b) (1) If the board gives approval, the department or local government may acquire the property pursuant to this division. Through the process outlined in this section, the department shall reimburse the General Fund for the tax credit claimed pursuant to this chapter under Section 17053.30 or 23630 of the Revenue and Taxation Code by transferring bond funds identified under subdivision (c) of Section 37032 to the Natural Heritage Preservation Tax Credit Reimbursement Account, on the basis of information provided to the department under Section 37040 regarding credit claimed for a qualified contribution under Section 17053.30 or 23630 of the Revenue and Taxation Code in that tax year.

(2) If a local government applies directly to the board for acceptance of a qualified donation, the board may provide conditional approval for the local government to acquire the property pursuant to this division. Through the process outlined in this section, the local government shall reimburse the General Fund for the tax credit claimed pursuant to this chapter under Section 17053.30 or 23630 of the Revenue and Taxation Code by transferring funds in the full amount of the approved tax credit to the board for deposit into the Natural Heritage Preservation Tax Credit Reimbursement Account.

(3) (A) Upon approval by the board, and prior to the time the department, local government, or designated nonprofit organization

receives the property, the department shall encumber bond funds identified under subdivision (c) of Section 37032 in an amount necessary to pay for the tax credit as provided in Section 17053.30 or 23630, as applicable, of the Revenue and Taxation Code.

(B) If a local government applies directly to the board for acceptance of a qualified donation, and the board provides conditional approval of the qualified donation, the local government shall have 60 days to transfer to the board the full amount of funds necessary to reimburse the General Fund. Upon receipt of the funds necessary to reimburse the General Fund, the board shall provide the donor and the local government with a notice of final approval of the tax credit. A tax credit is not approved until such time as the donor and local government receive a final notification from the board that sufficient funds have been received to reimburse the General Fund for the loss of revenue associated with the tax credit.

(C) The acquisition agreement or any other document that clearly delineates the commitment pursuant to this division shall be the only documentation required for the department to encumber the bond funds as required by this paragraph.

(D) Except as prohibited by the relevant bond act, notwithstanding Section 13340 of the Government Code or any other provision of law, the encumbrance shall be available without regard to fiscal years to allow payments to the Natural Heritage Preservation Tax Credit Reimbursement Account for the tax credit due the donor of the property under Section 17053.30 or 23630, as applicable, of the Revenue and Taxation Code.

(4) The Franchise Tax Board shall provide the board information pursuant to subdivision (a) of Section 19560 of the Revenue and Taxation Code on tax credits claimed. The information shall include the tax year for which the credit was claimed. The board shall provide the information required by Section 37040 to the relevant department. Upon notification that a qualified tax credit has been claimed, the department, pursuant to paragraph (1), shall transfer bond funds in the amount of the tax credit for that tax year to the Natural Heritage Preservation Tax Credit Reimbursement Account within 60 days of receipt of the notification. The department shall notify the board of this transfer.

(5) The board shall forward the information it receives pursuant to paragraph (4) to the Controller and the Department of Finance,

which shall use the information for the purpose of attributing the budgetary impact of the credit and bond fund transfer to the appropriate tax and fiscal year.

SEC. 5. Section 37035 of the Public Resources Code is amended to read:

37035. (a) (1) If a department determines that a designated nonprofit organization, in lieu of the department, should accept property that the department applies to acquire pursuant to paragraph (1) of subdivision (a) of Section 37034, and determines that the acceptance by the designated nonprofit organization would comply with the purpose of the applicable bond provision specified in subdivision (c) of Section 37032, the department may, upon that determination and upon making the determinations and having the belief required by paragraph (1) of subdivision (a) of Section 37034, apply to acquire the property for that designated nonprofit organization pursuant to this division. The department shall not make that application until the prospective donor agrees to submit an application pursuant to Section 37010 and paragraph (3) of subdivision (a) of Section 37034 and the designated nonprofit organization agrees to accept the property if it is acquired pursuant to this division.

(2) If a local government determines that a designated nonprofit organization, in lieu of the local government, should accept property that the local government applies to acquire pursuant to paragraph (2) of subdivision (a) of Section 37034, and determines that the acceptance by the designated nonprofit organization would comply with the purpose of the applicable bond provision specified in subdivision (c) of Section 37032, the local government may, upon that determination and making the determinations and having the belief required by paragraph (2) of subdivision (a) of Section 37034, request the department that allocated to it the relevant bond funds to determine whether it agrees with the local government's determinations made pursuant to this paragraph. If the department agrees with the local government, gives its approval for the designated nonprofit organization's acceptance of the property, and gives its approval pursuant to paragraph (2) of subdivision (a) of Section 37034, the local government may apply to acquire the property for that designated nonprofit organization pursuant to this division. The local government shall not make that application until the prospective donor agrees to submit an application pursuant

to Section 37010 and paragraph (3) of subdivision (a) of Section 37034 and the designated nonprofit organization agrees to accept the property if it is acquired pursuant to this division.

(b) If a department or local government applies for a designated nonprofit organization to acquire property, pursuant to subdivision (a), the department and donor, and the local government, if applicable, shall comply with all requirements of this division that apply to the department and donor, and to the local government, if applicable, when the department or local government otherwise applies to acquire property pursuant to this division.

(c) If a local government applies for a designated nonprofit organization to acquire and accept donated property, the local government shall comply with all requirements of this division that apply to the local government transferring funds to the board necessary to reimburse the General Fund.

SEC. 6. Section 17053.30 of the Revenue and Taxation Code is amended to read:

17053.30. (a) There shall be allowed as a credit against the "net tax," as defined in Section 17039, an amount equal to 55 percent of the fair market value of any qualified contribution made on or after January 1, 2000, and not later than June 30, 2008, and on or after January 1, 2010, and not later than June 30~~, 2019~~ *2015*, by the taxpayer during the taxable year to the state, any local government, or any designated nonprofit organization, pursuant to Division 28 (commencing with Section 37000) of the Public Resources Code.

(b) For purposes of this section, "qualified contribution" means a contribution of property, as defined in Section 37002 of the Public Resources Code, that has been approved for acceptance by the Wildlife Conservation Board pursuant to Division 28 (commencing with Section 37000) of the Public Resources Code.

(c) In the case of any passthrough entity, the fair market value of any qualified contribution approved for acceptance under Division 28 (commencing with Section 37000) of the Public Resources Code shall be passed through to the partners or shareholders of the passthrough entity in accordance with their interest in the passthrough entity as of the date of the qualified contribution. For purposes of this subdivision, the term "passthrough entity" means any partnership, "S" corporation, or limited liability company treated as a partnership.

(d) If the credit allowed by this section exceeds the "net tax," the excess may be carried over to reduce the "net tax" in the following year, and the succeeding seven years if necessary, until the credit is exhausted.

(e) This credit shall be in lieu of any other credit or deduction which the taxpayer may otherwise claim pursuant to this part with respect to the property or any interest therein that is contributed.

SEC. 7. Section 23630 of the Revenue and Taxation Code is amended to read:

23630. (a) There shall be allowed as a credit against the "tax," as defined in Section 23036, an amount equal to 55 percent of the fair market value of any qualified contribution made on or after January 1, 2000, and not later than June 30, 2008, and on or after January 1, 2010, and not later than June 30, ~~2019~~ *2015*, by the taxpayer during the taxable year to the state, any local government, or any designated nonprofit organization, pursuant to Division 28 (commencing with Section 37000) of the Public Resources Code.

(b) For purposes of this section, "qualified contribution" means a contribution of property, as defined in Section 37002 of the Public Resources Code, that has been approved for acceptance by the Wildlife Conservation Board pursuant to Division 28 (commencing with Section 37000) of the Public Resources Code.

(c) In the case of any passthrough entity, the fair market value of any qualified contribution approved for acceptance under Division 28 (commencing with Section 37000) of the Public Resources Code shall be passed through to the partners or shareholders of the passthrough entity in accordance with their interest in the passthrough entity as of the date of the qualified contribution. For purposes of this subdivision, the term "passthrough entity" means any partnership or "S" corporation.

(d) If the credit allowed by this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and the succeeding seven years if necessary, until the credit is exhausted.

(e) This credit shall be in lieu of any other credit or deduction that the taxpayer may otherwise claim pursuant to this part with respect to the property or any interest therein that is contributed.

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