

AMENDED IN ASSEMBLY APRIL 8, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2655

Introduced by Assembly Member Eng

February 19, 2010

An act to add Division 13.6 (commencing with Section 21200) to the Public Resources Code, relating to natural resources.

LEGISLATIVE COUNSEL'S DIGEST

AB 2655, as amended, Eng. Natural resources: ~~mitigation~~. *Advance Infrastructure Mitigation Program Act.*

The California Environmental Quality Act (CEQA) requires a lead agency to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project, as defined, that it proposes to carry out or approve that may have a significant effect on the environment, as defined, or to adopt a negative declaration if it finds that the project will not have that effect.

This bill would enact the Advance Infrastructure Mitigation Program Act, which would establish the Advance Infrastructure Mitigation Program, including defining terms for that purpose. The bill would authorize the Natural Resources Agency to administer and implement the program by taking certain actions. Those actions would include preparing, approving, and implementing regional advance mitigation plans, the contents of which the bill would specify, for planned infrastructure projects, as defined, identified by an infrastructure planning agency, as defined. The bill would specify that the purpose of a regional advance mitigation plan is to provide effective mitigation and conservation of natural resources and natural processes on a landscape, regional, or statewide scale, to expedite the environmental

review of planned infrastructure projects, and to facilitate the implementation of measures to mitigate the impacts of those projects by identifying and implementing mitigation measures in advance of project approval. The bill also would authorize the agency to acquire, restore, manage, monitor, and preserve lands, waterways, aquatic resources, or fisheries, or fund those actions, in accordance with an approved regional advance mitigation plan or as otherwise specified, and to establish or fund the establishment of mitigation banks and conservation banks and purchase credits at those types of banks. The bill would authorize the agency to take other actions with respect to mitigation credits or values created or acquired under the program.

The bill would authorize an infrastructure planning agency to identify planned infrastructure projects for the purpose of including the projects in a regional advance mitigation plan or for other advance mitigation under the program, and would authorize the agency to enter a memorandum of understanding or other agreement with an infrastructure planning agency for specified purposes of the program.

The bill would establish the Advance Infrastructure Mitigation Fund in the State Treasury. Upon appropriation by the Legislature, the bill would require moneys in the fund to be used by the agency to administer and implement the program.

The bill would specify that the program is intended to improve the efficiency and efficacy of mitigation only and is not intended to supplant the requirements of CEQA or any other environmental law.

~~Existing law declares that resource conservation is of fundamental importance to the prosperity and welfare of the people of the state. Existing law states that it is the policy of the state to adopt conservation practices to save the basic resources of soil, water, and air from unreasonable and economically preventable waste and destruction.~~

~~This bill would state the intent of the Legislature to enact legislation that would improve the delivery of natural resource mitigation by identifying regional or statewide conservation priorities and by anticipating the impact of planned infrastructure projects, in order to protect and restore California's most valuable natural resources.~~

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

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

1 SECTION 1. Division 13.6 (commencing with Section 21200)
2 is added to the Public Resources Code, to read:

3
4 DIVISION 13.6. ADVANCE INFRASTRUCTURE MITIGATION
5 PROGRAM ACT

6
7 CHAPTER 1. GENERAL
8

9 21200. This division shall be known, and may be cited, as the
10 Advance Infrastructure Mitigation Program Act.

11 21201. (a) The purpose of this division is to improve the
12 success and effectiveness of actions implemented to mitigate the
13 natural resource impacts of future infrastructure projects by
14 establishing the means to implement those actions well before the
15 infrastructure projects are constructed. The advance identification
16 and implementation of mitigation actions also will streamline the
17 delivery of infrastructure projects by anticipating mitigation
18 requirements for planned infrastructure projects and avoiding or
19 reducing delays associated with environmental permitting. By
20 identifying regional or statewide conservation priorities and by
21 anticipating the impacts of planned infrastructure projects on a
22 regional or statewide basis, mitigation actions can be designed to
23 protect and restore California's most valuable natural resources
24 and also facilitate environmental compliance for planned
25 infrastructure projects on a regional scale.

26 (b) This division is not intended to create a new environmental
27 permitting or regulatory program or to modify existing
28 environmental laws or regulations, nor is it intended to address
29 all mitigation that may be required for planned infrastructure
30 projects. Instead, it is intended to provide a way in which to
31 anticipate and fulfill the requirements of existing state and federal
32 environmental laws that protect fish, wildlife, plant species, and
33 other natural resources more efficiently and effectively.

34 21202. The Legislature finds and declares all of the following:

35 (a) The minimization and mitigation of environmental impacts
36 is ordinarily handled on a project-by-project basis, usually at the
37 end of a project's timeline and without guidance regarding
38 regional or statewide conservation priorities.

1 (b) The cost of critical transportation, flood control, renewable
2 energy, and other infrastructure projects often escalates because
3 of permitting delays that occur when appropriate conservation
4 and mitigation measures cannot easily be identified and because
5 the cost of these measures often increases between the time a
6 project is planned and funded and the time mitigation is
7 implemented.

8 (c) Addressing biological conservation and mitigation needs
9 early in a project's timeline, during project design and
10 development, can reduce costs and allow natural resources
11 conservation to be integrated with project siting and design.

12 (d) When the Department of Transportation, the Department of
13 Water Resources, the State Energy Resources Conservation and
14 Development Commission, the High-Speed Rail Authority,
15 metropolitan planning organizations, regional transportation
16 planning authorities, counties, and other public agencies are able
17 to anticipate the mitigation needs for planned infrastructure
18 projects, they can meet those needs in a more timely and
19 cost-effective way, by using long-range regional advance mitigation
20 planning.

21 (e) Working with state and federal resource protection agencies,
22 the Department of Transportation, the Department of Water
23 Resources, the State Energy Resources Conservation and
24 Development Commission, the High-Speed Rail Authority,
25 metropolitan planning organizations, regional transportation
26 planning authorities, counties, and other public agencies could
27 identify, conserve, and, where appropriate, restore lands for
28 mitigation of numerous projects early in the projects' timelines,
29 thereby allowing public funds to stretch further by acquiring
30 habitat at a lower cost and avoiding environmental permitting
31 delays.

32 (f) Regional advance mitigation planning can provide an
33 effective means of facilitating delivery of state and federal
34 economic stimulus funding to infrastructure projects while ensuring
35 more effective natural resource and wildlife conservation.

36 (g) Regional advance mitigation planning is needed to direct
37 mitigation funding for transportation, flood control, renewable
38 energy, and other infrastructure projects to agreed-upon
39 conservation priorities and to the creation of habitat reserves and
40 recreation areas that enhance the sustainability of human and

1 natural systems by protecting or restoring connectivity of natural
2 communities and the delivery of ecosystem services.

3 (h) Regional advance mitigation planning can facilitate the
4 implementation of climate change adaptation strategies both for
5 ecosystems and California's economy.

6 (i) Regional advance mitigation planning can enable the state
7 to protect, restore, and recover its natural capital as it strengthens
8 and improves its infrastructure.

9 21203. The Legislature intends to do all of the following by
10 enacting this division:

11 (a) Facilitate delivery of infrastructure projects while ensuring
12 more effective natural resource and wildlife conservation.

13 (b) Develop effective strategies to improve the state's ability to
14 meet mounting demands for transportation, flood control, and
15 energy services, and to maximize conservation and other public
16 benefits.

17 (c) Achieve conservation objectives of statewide and regional
18 importance by coordinating local, state, and federally funded
19 natural resource conservation efforts with mitigation actions
20 required for impacts from infrastructure projects.

21 (d) Create administrative, governance, and financial incentives
22 and mechanisms necessary to ensure that measures required to
23 minimize or mitigate impacts from infrastructure projects will
24 serve to achieve regional or statewide natural resource
25 conservation objectives.

26
27 *CHAPTER 2. DEFINITIONS*
28

29 21204. For purposes of this division, the following terms have
30 the following meanings:

31 (a) "Acquire" and "acquisition" mean, with respect to land or
32 a waterway, acquisition of fee title or purchase of a conservation
33 easement, that protects conservation and mitigation values on the
34 land or waterway in perpetuity.

35 (b) "Agency" means the Natural Resources Agency.

36 (c) "Infrastructure planning agency" means the Department of
37 Transportation, the Department of Water Resources, a
38 metropolitan planning organization, a regional transportation
39 planning agency, the State Energy Resources Conservation and

1 Development Commission, the High-Speed Rail Authority, a county,
2 or other public agency that implements infrastructure projects.

3 (d) “Infrastructure project” means the construction, repair, or
4 modification of a transportation, flood control, energy, or water
5 facility, or the construction of infrastructure that addresses
6 unavoidable impacts of climate change.

7 (e) “Planned infrastructure project” means a project that the
8 Department of Transportation, the Department of Water Resources,
9 or other public agency has concluded is reasonably likely to be
10 constructed within 20 years and that has been identified to the
11 agency for purposes of this division. A planned infrastructure
12 project may include, but is not limited to, projects that have been
13 proposed for approval or approved.

14 (f) “Program” means the Advance Infrastructure Mitigation
15 Program implemented pursuant to this division.

16 (g) “Regional advance mitigation plan” means a regional or
17 statewide plan developed in accordance with this division that
18 estimates the potential future compensatory mitigation
19 requirements for one or more planned infrastructure projects and
20 identifies mitigation projects, sites, or credits that would fulfill
21 some or all of those requirements.

22 (h) “Regulatory agency” means a state or federal natural
23 resource protection agency with regulatory authority over planned
24 infrastructure projects. A regulatory agency includes, but is not
25 limited to, the Department of Fish and Game, California regional
26 water quality control boards, the United States Fish and Wildlife
27 Service, the National Marine Fisheries Service, the United States
28 Environmental Protection Agency, and the United States Army
29 Corps of Engineers.

30
31 *CHAPTER 3. ADVANCE INFRASTRUCTURE MITIGATION PROGRAM*
32

33 21205. This division establishes the Advance Infrastructure
34 Mitigation Program to fulfill the purposes of this division. The
35 agency may do any of the following to administer and implement
36 the program:

37 (a) Prepare, approve, and implement regional advance
38 mitigation plans for one or more planned infrastructure projects
39 identified pursuant to Section 21207. The purpose of a regional
40 advance mitigation plan is to provide effective mitigation and

1 conservation of natural resources and natural processes on a
2 landscape, regional, or statewide scale, to expedite the
3 environmental review of planned infrastructure projects, and to
4 facilitate the implementation of measures to mitigate the impacts
5 of those projects by identifying and implementing mitigation
6 measures in advance of project approval.

7 (b) Acquire, restore, manage, monitor, and preserve lands,
8 waterways, aquatic resources, or fisheries, or fund the acquisition,
9 restoration, management, monitoring, and preservation of lands,
10 waterways, aquatic resources, or fisheries, in accordance with a
11 regional advance mitigation plan approved by the agency pursuant
12 to this division.

13 (c) Acquire, restore, manage, monitor, and preserve lands,
14 waterways, aquatic resources, or fisheries, or fund the acquisition,
15 restoration, management, monitoring, and preservation of lands,
16 waterways, aquatic resources, or fisheries, outside of an approved
17 regional advance mitigation plan if the agency determines that
18 those actions would conserve or create biological values that are
19 appropriate to mitigate the estimated impacts of one or more
20 planned infrastructure projects identified pursuant to Section
21 21207.

22 (d) Establish mitigation banks or conservation banks, or fund
23 the establishment of mitigation banks or conservation banks, in
24 accordance with applicable state and federal standards. The
25 agency also may purchase credits at mitigation banks and
26 conservation banks if the agency determines that the credits
27 provide biologically appropriate mitigation for one or more
28 planned infrastructure projects identified pursuant to Section
29 21207.

30 (e) Establish the type and quantity of mitigation credits or values
31 created under the program by obtaining the approval of those
32 credits or values from relevant regulatory agencies. This division
33 is not intended to supplant or abrogate the authority of a regulatory
34 agency to determine mitigation requirements under state or federal
35 environmental laws or to determine the type or quantity of
36 mitigation credits or values that may be used to fulfill those
37 requirements.

38 (f) Use, or allow infrastructure planning agencies to use,
39 mitigation credits or values created or acquired under the program
40 to fulfill the mitigation requirements of planned infrastructure

1 projects if the infrastructure planning agency reimburses the
2 program for all costs of creating the mitigation credits or values,
3 as determined by the agency.

4 (g) Assist regional and local agencies to develop regional
5 advance mitigation plans for one or more planned infrastructure
6 projects identified pursuant to Section 21207.

7 21206. A regional advance mitigation plan shall do all of the
8 following:

9 (a) Use geographic information system analysis, field surveys,
10 principles of conservation planning, and other appropriate
11 methodologies to estimate the nature and extent of mitigation
12 requirements of identified planned infrastructure projects on a
13 regional or statewide basis.

14 (b) Propose measures to avoid or minimize the adverse
15 environmental impacts of planned infrastructure projects,
16 including, where appropriate, the identification of project
17 alignments and design features that would avoid or minimize those
18 impacts.

19 (c) Anticipate and provide for compensatory mitigation for
20 planned infrastructure projects' impacts on natural resources and
21 natural processes by identifying needed mitigation and, to the
22 extent practicable, identifying suitable mitigation lands or
23 waterways.

24 (d) Identify and provide for the preservation of wildlife
25 movement corridors and habitat connectivity to avoid ecological
26 fragmentation and to enable ecosystem adaptation to climate
27 change.

28 (e) Consider the full range of impacts on natural resources,
29 including, but not limited to, impacts on water quality and riparian
30 habitat, rare plant species, sensitive species, fisheries, and
31 declining natural communities including oak woodlands, vernal
32 pools, native grasslands, and serpentine habitat.

33 (f) Take into consideration, where applicable, any local, state,
34 and regional conservation priorities as may be described in
35 existing conservation plans, including, but not limited to, the state
36 wildlife action plan, habitat conservation plans, natural community
37 conservation plans, climate change adaptation plans, and species
38 recovery plans.

1 (g) Identify and quantify the net reduction in greenhouse gas
2 emissions and changes to sequestration potential achieved through
3 implementation of the plan.

4 (h) Provide for endowments to manage and monitor acquired
5 or protected lands, waterways, or fisheries, as necessary.

6 (i) Where available and biologically appropriate, provide for
7 the purchase of mitigation credits at mitigation banks or
8 conservation banks or for the payment of mitigation fees within
9 established mitigation programs.

10 (j) Analyze the cost-effectiveness of available mitigation
11 alternatives both in terms of environmental benefits and improved
12 project delivery and certainty.

13 (k) Include measurable performance objectives and a monitoring
14 and evaluation program.

15 21207. (a) An infrastructure planning agency may identify
16 planned infrastructure projects for the purpose of including those
17 projects in a regional advance mitigation plan or for other advance
18 mitigation under the program. The infrastructure planning agency
19 shall provide an analysis and estimate of the projects' direct,
20 indirect, and cumulative impacts. The analysis and estimate shall
21 include all available relevant information regarding those impacts
22 and the analysis shall be at a level of detail commensurate with
23 the available relevant information. Detailed analysis shall not be
24 required where relevant detailed information about the projects'
25 impacts is not available.

26 (b) The agency may enter a memorandum of understanding or
27 other agreement with an infrastructure planning agency to do all
28 of the following:

29 (1) Specify terms consistent with this division under which the
30 program will provide advance mitigation for the identified planned
31 infrastructure projects.

32 (2) Establish guidelines for communication and sharing of
33 relevant information necessary to optimize coordination and
34 collaboration between the agency and the infrastructure planning
35 agency.

36 (3) Establish guidelines for strategically locating mitigation
37 and conservation sites to maximize the biological benefit and
38 conservation value to target species, habitats, and aquatic
39 resources.

1 21208. *The Advance Infrastructure Mitigation Fund is*
2 *established in the State Treasury. Notwithstanding any other law,*
3 *the moneys in the fund shall be available for appropriation by the*
4 *Legislature only to the agency for the administration and*
5 *implementation of the program, and shall not be subject to*
6 *appropriation, reversion, or transfer for any other purpose. All*
7 *moneys provided by infrastructure planning agencies to reimburse*
8 *program expenditures pursuant to subdivision (f) of Section 21205*
9 *or in advance of anticipated mitigation actions shall be deposited*
10 *in the fund.*

11 21209. *The program is intended to improve the efficiency and*
12 *efficacy of mitigation only and is not intended to supplant the*
13 *requirements of the California Environmental Quality Act (Division*
14 *13 (commencing with Section 21000)) or any other environmental*
15 *law. The identification of planned infrastructure projects and the*
16 *identification of mitigation projects or measures for planned*
17 *infrastructure projects under this division does not imply or require*
18 *approval of those projects for purposes of the California*
19 *Environmental Quality Act (Division 13 (commencing with Section*
20 *21000)) or any other environmental law.*

21 ~~SECTION 1. It is the intent of the Legislature to enact~~
22 ~~legislation that would improve the delivery of natural resource~~
23 ~~mitigation by identifying regional or statewide conservation~~
24 ~~priorities and by anticipating the impact of planned infrastructure~~
25 ~~projects, in order to protect and restore California's most valuable~~
26 ~~natural resources.~~