

58177

05/12/17 02:35 PM
RN 17 14429 PAGE 1

An act to repeal Section 1861 of the Fish and Game Code, and to amend Section 800 of, and to add Sections 800.5, 800.6, 800.7, and 800.8 to, the Streets and Highways Code, relating to the enviroment, and making an appropriation therefor.



171442958177BILL

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1861 of the Fish and Game Code is repealed.

~~1861. The department shall approve no more than eight regional conservation investment strategies before January 1, 2020. The department shall not approve a regional conservation investment strategy or regional conservation assessment pursuant to this chapter on or after January 1, 2020, and shall not enter into a mitigation credit agreement pursuant to this chapter on or after January 1, 2020.~~

SEC. 2. Section 800 of the Streets and Highways Code is amended to read:

800. (a) The Advance Mitigation Program is hereby created in the department to enhance communications between the department and stakeholders to protect natural resources through project mitigation, to meet or exceed applicable environmental requirements, to accelerate project delivery, and to ~~fully mitigate~~ provide compensatory mitigation for environmental impacts from transportation infrastructure projects. The department shall consult on all activities pursuant to this article with the Department of Fish and Wildlife, including activities pursuant to Chapter 9 (commencing with Section 1850) of Division 2 of the Fish and Game Code.

(b) Commencing with the 2017–18 fiscal year, and for a period of four years, the department shall set aside no less than thirty million dollars (\$30,000,000) annually for the Advance Mitigation Program from the annual appropriations for the State Transportation Improvement Program and the State Highway Operation and Protection Program for the planning and implementation of projects in the Advanced Mitigation Program.



(c) The annual Budget Act and subsequent legislation may establish additional provisions and requirements for the program.

SEC. 3. Section 800.5 is added to the Streets and Highways Code, to read:

800.5. For purposes of this article, the following terms have the following meanings:

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

(b) “Administrative draft natural community conservation plan” means a substantially complete draft of a natural community conservation plan that is released after January 1, 2016, to the general public, plan participants, and the department.

(c) “Advance mitigation” means mitigation implemented before, and in anticipation of, environmental effects of planned transportation improvements.

(d) “Commission” means the California Transportation Commission.

(e) “Conservation easement” means a perpetual conservation easement that complies with Chapter 4 (commencing with Section 815) of Title 2 of Part 2 of Division 2 of the Civil Code.

(f) “Department” means the Department of Transportation.

(g) “Mitigation credit agreement” means a mitigation credit agreement pursuant to Chapter 9 (commencing with Section 1850) of Division 2 of the Fish and Game Code.



(h) "Natural Communities Conservation Plan means a plan developed pursuant to Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code.

(i) "Transportation agency" means the department, the High-Speed Rail Authority, a metropolitan planning organization, a regional transportation planning agency, or another public agency that implements transportation improvements.

(j) "Transportation improvement" means a transportation capital improvement project.

(k) "Planned transportation improvement" means a transportation project that a transportation agency has identified in a regional transportation plan, an interregional transportation plan, a capital improvement program, or other approved transportation planning document. A planned transportation improvement may include, but is not limited to, a transportation project that has been planned, programmed, proposed for approval, or that has been approved.

(l) "Program" means the Advance Mitigation Program implemented pursuant to this article.

(m) "Regional conservation investment strategy" means a regional conservation investment strategy approved by the Department of Fish and Wildlife pursuant to Chapter 9 (commencing with Section 1850) of Division 2 of the Fish and Game Code.

(n) "Regulatory agency" means a state or federal natural resource protection agency with regulatory authority over planned transportation improvements. A regulatory agency includes, but is not limited to, the Natural Resources Agency, the Department of Fish and Wildlife, California regional water quality control boards, the



United States Fish and Wildlife Service, the National Marine Fisheries Service, the United States Environmental Protection Agency, and the United States Army Corps of Engineers.

SEC. 4. Section 800.6 is added to the Streets and Highways Code, to read:

800.6. (a) The department may do any of the following to administer and implement the program:

(1) Purchase, or fund the purchase of, credits from mitigation banks, conservation banks, conservation easements, compensatory mitigation, or in lieu fee programs approved by one or more regulatory agencies. The department may also establish mitigation banks, conservation banks, conservation easements, compensatory mitigation, or in-lieu fee programs, or fund the establishment of mitigation banks, conservation banks, conservation easements, compensatory mitigation, or in-lieu fee programs, in accordance with applicable state and federal standards, if the department determines that those banks, easements, compensatory mitigation, or in-lieu fee programs would provide appropriate mitigation of the anticipated potential impacts of planned transportation improvements identified pursuant to Section 800.8.

(2) Pay, or fund the payment of, mitigation fees for the department's or agency's covered activities under natural community conservation plans approved pursuant to Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code, or habitat conservation plans approved in accordance with the federal Endangered Species Act. The department shall, upon commencement of a regional conservation investment strategy pursuant to paragraph (3), provide written notification thereof to the executive administrative officer of any administrative draft natural community



conservation plan, approved natural community conservation plan, or approved regional federal habitat conservation plan that overlaps the proposed area of the regional conservation investment strategy.

(3) Prepare, or fund the preparation of, regional conservation assessments and regional conservation investment strategies. Where a regional conservation investment strategy has been approved by the Department of Fish and Wildlife, the department may do either of the following:

(A) Enter into, or fund the preparation of, mitigation credit agreements with the Department of Fish and Wildlife; purchase credits from an established mitigation credit agreement; or implement, or fund the implementation of, conservation actions and habitat enhancement actions as needed to generate mitigation credits pursuant to those mitigation credit agreements.

(B) Acquire, restore, manage, monitor, enhance, and preserve lands, waterways, aquatic resources, or fisheries, or fund the acquisition, restoration, management, monitoring, enhancement, and preservation of lands, waterways, aquatic resources, or fisheries that would measurably advance a conservation objective in the regional conservation investment strategy if the department concludes that the action or actions could conserve or create environmental values that are appropriate to mitigate the anticipated potential impacts of planned transportation improvements.

(b) The department may use, or allow transportation agencies to use, mitigation credits or values generated or obtained under the program to fulfill the mitigation requirements of planned transportation improvements if the applicable transportation agency reimburses the program for all costs of purchasing or creating the mitigation



credits or values, as determined by the department. Those costs shall be calculated using total cost accounting and shall include, as applicable, land acquisition or conservation easement costs, monitoring and enforcement costs, restoration costs, transaction costs, administrative costs, contingency costs, and land management, monitoring, and protection costs.

(c) The department shall track all implemented advance mitigation projects to use as credits for environmental mitigation.

SEC. 5. Section 800.7 is added to the Streets and Highways Code, to read:

800.7. The Advance Mitigation Account is hereby created in the State Transportation Fund as a revolving fund. Notwithstanding Section 13340 of the Government Code, the fund shall be continuously appropriated without regard to fiscal years for purposes of the Advance Mitigation Program. The activity of the account shall be reported to the commission. The program is intended to become self-sustaining. Expenditures from the account shall later be reimbursed from project funding available at the time a planned transportation project is constructed.

SEC. 6. Section 800.8 is added to the Streets and Highways Code, to read:

800.8. The program is intended to improve the efficiency and efficacy of mitigation only and is not intended to supplant the requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resource Code) or any other environmental law. The identification of planned transportation projects and of mitigation projects or measures for planned transportation projects under this article does not imply or require approval of those projects for



58177

05/12/17 02:35 PM
RN 17 14429 PAGE 8

purposes of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resource Code) or any other environmental law.

- 0 -



17144295617BILL

LEGISLATIVE COUNSEL'S DIGEST

Bill No.

as introduced, _____.

General Subject: Advance Mitigation Program and regional conservation investment strategies.

(1) Existing law creates the Advance Mitigation Program to enhance communications between the Department of Transportation and stakeholders to, among other things, protect natural resources and accelerate project delivery. Existing law requires the department to set aside not less than \$30,000,000 annually for 4 years for the program from capital outlay revenues for purposes of the program.

This bill would create the Advance Mitigation Account in the State Transportation Fund as a revolving fund. The bill would require expenditures from the account to later be reimbursed from project funding available at the time a planned transportation project is constructed. The bill would continuously appropriate the moneys in the fund for the purposes of the Advance Mitigation Program and state that the Advanced Mitigation Program is intended to become self-sustaining.



The bill would authorize the department to engage in various activities to implement the Advance Mitigation Program, including, among other things, purchasing, or funding the purchase of, credits from mitigation banks, conservation banks, conservation easements, compensatory mitigation, or in-lieu fee programs approved by one or more regulatory agencies. The bill would also authorize the department to establish, or fund the establishment of, those types of activities if the department determines that those activities would provide appropriate mitigation of the anticipated potential impacts of planned transportation improvements, as defined. The bill would authorize the department to pay or fund the payment of mitigation fees for the department's or transportation agency's covered activities under natural community conservation plans approved by the Department of Fish and Wildlife under the Natural Community Conservation Planning Act.

The bill would authorize the department to use, or allow other transportation agencies to use, mitigation credits or values generated or obtained under the program to fulfill the mitigation requirements of planned transportation improvements if the applicable transportation agency reimburses the program for all costs of purchasing or creating the mitigation credits or values, as determined by the department. The bill would require the department to track all implemented advance mitigation projects to use as credits for environmental mitigation.

(2) Existing law authorizes the Department of Fish and Wildlife to approve a regional conservation investment strategy, as defined, upon request of one or more state agencies, under specified circumstances. Existing law provides that the department shall not approve more than 8 regional conservation investment strategies under these



58177

05/12/17 02:35 PM
RN 17 14429 PAGE 3

provisions before January 1, 2020, and prohibits the department from approving a regional conservation investment strategy, or from entering into a mitigation credit agreement under these provisions, after that date.

This bill would repeal these January 1, 2020, restrictions.

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



17144295617BILL