

AMENDED IN ASSEMBLY APRIL 26, 2010

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: 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 (*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 require the agency to publish a regional advance mitigation plan on its Internet Web site for*

public review and comment 45 days prior to adoption of the plan. 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.

Vote: majority. Appropriation: no. Fiscal committee: 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:

DIVISION 13.6. ADVANCE INFRASTRUCTURE
MITIGATION PROGRAM ACT

CHAPTER 1. GENERAL

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

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

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

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

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

(b) The cost of critical transportation, flood control, renewable energy, and other infrastructure projects often escalates because of permitting delays that occur when appropriate conservation and mitigation measures cannot easily be identified and because the

1 cost of these measures often increases between the time a project
2 is planned and funded and the time mitigation is implemented.

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

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

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

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

30 (g) Regional advance mitigation planning is needed to direct
31 mitigation funding for transportation, flood control, renewable
32 energy, and other infrastructure projects to agreed-upon
33 conservation priorities and to the creation of habitat reserves and
34 recreation areas that enhance the sustainability of human and
35 natural systems by protecting or restoring connectivity of natural
36 communities and the delivery of ecosystem services.

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

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

4 21203. The Legislature intends to do all of the following by
5 enacting this division:

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

8 (b) Develop effective strategies to improve the state's ability to
9 meet mounting demands for transportation, flood control, and
10 energy services, and to maximize conservation and other public
11 benefits.

12 (c) Achieve conservation objectives of statewide and regional
13 importance by coordinating local, state, and federally funded
14 natural resource conservation efforts with mitigation actions
15 required for impacts from infrastructure projects.

16 (d) Create administrative, governance, and financial incentives
17 and mechanisms necessary to ensure that measures required to
18 minimize or mitigate impacts from infrastructure projects will
19 serve to achieve regional or statewide natural resource conservation
20 objectives.

21
22 CHAPTER 2. DEFINITIONS
23

24 21204. For purposes of this division, the following terms have
25 the following meanings:

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

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

31 (c) "Infrastructure planning agency" means the Department of
32 Transportation, the Department of Water Resources, a metropolitan
33 planning organization, a regional transportation planning agency,
34 the State Energy Resources Conservation and Development
35 Commission, the High-Speed Rail Authority, a county, or other
36 public agency that implements infrastructure projects.

37 (d) "Infrastructure project" means the construction, repair, or
38 modification of a transportation, flood control, energy, or water
39 facility, or the construction of infrastructure that addresses
40 unavoidable impacts of climate change.

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

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

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

(h) “Regulatory agency” means a state or federal natural resource protection agency with regulatory authority over planned infrastructure projects. A regulatory agency includes, but is not limited to, the Department of Fish and Game, 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.

CHAPTER 3. ADVANCE INFRASTRUCTURE MITIGATION PROGRAM

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

(a) Prepare, approve, and implement regional advance mitigation plans for one or more planned infrastructure projects identified pursuant to Section 21207. 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.

1 (b) Acquire, restore, manage, monitor, and preserve lands,
2 waterways, aquatic resources, or fisheries, or fund the acquisition,
3 restoration, management, monitoring, and preservation of lands,
4 waterways, aquatic resources, or fisheries, in accordance with a
5 regional advance mitigation plan approved by the agency pursuant
6 to this division.

7 (c) 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, outside of an approved
11 regional advance mitigation plan if the agency determines that
12 those actions would conserve or create biological values that are
13 appropriate to mitigate the estimated impacts of one or more
14 planned infrastructure projects identified pursuant to Section 21207.

15 (d) Establish mitigation banks or conservation banks, or fund
16 the establishment of mitigation banks or conservation banks, in
17 accordance with applicable state and federal standards. The agency
18 also may purchase credits at mitigation banks and conservation
19 banks if the agency determines that the credits provide biologically
20 appropriate mitigation for one or more planned infrastructure
21 projects identified pursuant to Section 21207.

22 (e) Establish the type and quantity of mitigation credits or values
23 created under the program by obtaining the approval of those
24 credits or values from relevant regulatory agencies. This division
25 is not intended to supplant or abrogate the authority of a regulatory
26 agency to determine mitigation requirements under state or federal
27 environmental laws or to determine the type or quantity of
28 mitigation credits or values that may be used to fulfill those
29 requirements.

30 (f) Use, or allow infrastructure planning agencies to use,
31 mitigation credits or values created or acquired under the program
32 to fulfill the mitigation requirements of planned infrastructure
33 projects if the infrastructure planning agency reimburses the
34 program for all costs of creating the mitigation credits or values,
35 as determined by the agency. *Those costs shall be calculated using*
36 *total cost accounting and shall include, as applicable, land*
37 *acquisition or conservation easement costs, monitoring costs,*
38 *restoration costs, transaction costs, the amount of a nonwasting*
39 *endowment account for land management or easement stewardship*

1 costs by the management entity, administrative costs, and
2 contingency costs.

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

6 21205.5. *The agency shall publish a regional advance*
7 *mitigation plan on its Internet Web site for public review and*
8 *comment 45 days prior to adoption of the plan.*

9 21206. A regional advance mitigation plan shall do all of the
10 following:

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

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

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

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

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

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

1 (g) Identify and quantify the net ~~reduction~~ *change* in greenhouse
2 gas emissions and changes to sequestration potential achieved
3 through 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 and
37 conservation sites to maximize the biological benefit and
38 conservation value to target species, habitats, and aquatic resources.

39 21208. The Advance Infrastructure Mitigation Fund is
40 established in the State Treasury. Notwithstanding any other law,

1 the moneys in the fund shall be available for appropriation by the
2 Legislature only to the agency for the administration and
3 implementation of the program, and shall not be subject to
4 appropriation, reversion, or transfer for any other purpose. All
5 moneys provided by infrastructure planning agencies to reimburse
6 program expenditures pursuant to subdivision (f) of Section 21205
7 or in advance of anticipated mitigation actions shall be deposited
8 in the fund.

9 21209. The program is intended to improve the efficiency and
10 efficacy of mitigation only and is not intended to supplant the
11 requirements of the California Environmental Quality Act (Division
12 13 (commencing with Section 21000)) or any other environmental
13 law. The identification of planned infrastructure projects and the
14 identification of mitigation projects or measures for planned
15 infrastructure projects under this division does not imply or require
16 approval of those projects for purposes of the California
17 Environmental Quality Act (Division 13 (commencing with Section
18 21000)) or any other environmental law.