SOLANO COUNTY BOARD OF SUPERVISORS
Legislative Committee Meeting

Committee
Supervisor Linda J. Seifert (Chair)
Supervisor Michael J. Reagan

Staff
Michelle Heppner

June 11, 2012

1:30 P.M.

Solano County Administration Center
Sixth Floor Conference Center, Room 6003
675 Texas Street
Fairfield, CA 94533

AGENDA

I. Public Comment (Items not on the agenda)

II. Discussion of Federal Bills and consider making a recommendation (Waterman & Associates)

a. Fiscal Year 2013 Budget Update
b. Status of Farm Bill Reauthorization
c. State Criminal Alien Assistance Program (SCAAP) Reimbursement Criteria Change (Attachment A)
d. Update on Transportation Reauthorization Conference Committee
e. Status of National Flood Insurance Program Reauthorization

III. Report on State Budget and Legislation and consider making a recommendation for a position on legislation (Paul Yoder)

AB 2210 (Smyth) County assessors: notification.
Current Analysis: 05/24/2012 Assembly Appropriations (text 5/21/2012) html

SB 1094 (Kehoe) Land use: mitigation lands: nonprofit organizations.
Current Analysis: 05/30/2012 Senate Floor Analyses *(text 5/30/2012)* html

SB 1221 (Lieu) Mammals: use of dogs to pursue bears and bobcats.
Current Analysis: 05/09/2012 Senate Floor Analyses *(text 5/9/2012)* html

SB 1517 (Wolk) County medical service program: fees.
Current Analysis: 05/29/2012 Senate Floor Analyses *(text 5/29/2012)* html

AB 1831 (Dickinson) Local government: hiring practices.
Current Analysis: 05/18/2012 Assembly Floor Analysis *(text 5/17/2012)* html

AB 1692 (Wieckowski) Bankruptcy.
Current Analysis: 05/16/2012 Assembly Floor Analysis *(text 5/2/2012)* html

IV. Extension of Design-Build Authority (AB 1901)

V. Adjourn

Attachment A

Solicitation Year: 2010

State	APPLICANT NAME	ACTUAL AWARD AMOUNT	Theoretical Awards with only "knowns"	Increase or (decrease)
CA	Alameda County	$ 950,068	$ 481,904	($468,164)
CA	COUNTY OF MONO	$ 51,042	$ 18,042	($33,000)
CA	COUNTY OF STANISLAUS	$ 196,458	$ 227,045	$30,587
CA	COUNTY OF VENTURA	$ 905,814	$ 1,076,504	$170,690
CA	COUNTY OF YUBA	$ 105,150	$ 93,766	($11,384)
CA	City and County of San Francisco	$ 754,853	$ 1,123,530	$368,677
CA	City of Anaheim	$ 10,219	$ 15,515	$5,296
CA	Colusa County	$ 31,506	$ 9,081	($22,425)
CA	Contra Costa County	$ 597,828	$ 272,262	($325,566)
CA	County of Amador	$ 4,580	$ 292	($4,288)
CA	County of Butte	$ 69,321	$ 15,763	($53,558)
CA	County of Calaveras	$ 14,646	$ 2,405	($12,241)
CA	County of Fresno	$ 816,128	$ 284,205	($531,923)
CA	County of Humboldt	$ 52,812	$ 81,052	$28,240
CA	County of Kern	$ 751,400	$ 491,753	($259,647)
CA	County of Lake	$ 21,609	$ 12,802	($8,807)
CA	County of Madera	$ 89,921	$ 73,448	($16,473)
CA	County of Mariposa	$ 203	$ 323	$120
CA	County of Mendocino	$ 117,927	$ 36,517	($81,410)
CA	County of Merced	$ 174,115	$ 44,061	($130,054)
CA	County of Monterey	$ 776,681	$ 265,501	($511,180)
CA	County of Nevada	$ 64,330	$ 35,063	($29,267)
CA	County of Orange	$ 5,287,229	$ 2,143,538	($3,143,691)
CA	County of Placer	$ 112,378	$ 102,740	($9,638)
CA	County of Plumas	$ 7,849	$ 1,384	($6,465)
CA	County of Riverside	$ 806,265	$ 229,512	($576,753)
CA	County of Sacramento	$ 1,723,019	$ 625,215	($1,097,804)
CA	County of San Bernardino	$ 1,577,422	$ 629,259	($948,163)
CA	County of San Diego	$ 2,218,643	$ 735,320	($1,483,323)
CA	County of San Luis Obispo	$ 175,031	$ 104,518	($70,513)
CA	County of San Mateo	$ 1,413,857	$ 1,402,332	($11,525)
CA	County of Santa Clara	$ 1,591,662	$ 906,074	($685,588)
CA	County of Shasta	$ 53,523	$ 18,307	($35,216)
CA	County of Solano	$ 340,700	$ 116,151	($224,549)
CA	County of Sonoma	$ 865,420	$ 924,720	$59,300
CA	County of Sutter	$ 32,984	$ 25,532	($7,452)
CA	County of Tehama	$ 55,701	$ 13,825	($41,876)
CA	County of Tulare	$ 1,300,509	$ 187,454	($1,113,055)
CA	County of Tuolumne	$ 15,585	$ 6,647	($8,938)
CA	County of Yolo	$ 150,210	$ 41,425	($108,785)
CA	El Dorado County	$ 76,388	$ 45,813	($30,575)
CA	GLENN COUNTY	$ 26,769	$ 16,046	($10,723)
CA	Imperial County	$ 65,467	$ 28,420	($37,047)
CA	Inyo County	$ 9,098	$ 3,814	($5,284)
CA	Kings County	$ 74,126	$ 25,277	($48,849)

Solicitation Year: 2010

State	APPLICANT NAME	ACTUAL AWARD AMOUNT	Theoretical Awards with only "knowns"	Increase or (decrease)
CA	Los Angeles County Sheriff's Department	$ 14,292,913	$ 7,104,868	($7,188,045)
CA	Marin County	$ 339,746	$ 440,336	$100,590
CA	Napa County	$ 309,951	$ 134,436	($175,515)
CA	SANTA CRUZ COUNTY	$ 273,529	$ 159,189	($114,340)
CA	San Benito County	$ 85,445	$ 63,555	($21,890)
CA	San Joaquin County	$ 386,499	$ 296,265	($90,234)
CA	Santa Barbara County	$ 576,500	$ 768,108	$191,608
CA	Siskiyou County	$ 4,825	$ 3,111	($1,714)
CA	State of California	$ 88,106,548	$ 116,837,447	$28,730,899
	Total	$ 128,912,402	$ 138,801,472	$ 9,889,070
	ALL CA Counties (w/out State)	$ 40,805,854	$ 21,964,025	$18,841,829

AMENDED IN ASSEMBLY MAY 21, 2012

AMENDED IN ASSEMBLY APRIL 30, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 2210

Introduced by Assembly Member Smyth

February 23, 2012

An act to amend Section 27421 of the Government Code, relating to local government finance.

LEGISLATIVE COUNSEL'S DIGEST

AB 2210, as amended, Smyth. County assessors: notification.

Existing law requires a county assessor, upon the request of the governing body of the jurisdiction where the assessor performs the duty of assessing taxes, to furnish an estimate of the assessed valuation of property within the jurisdiction for the succeeding fiscal year.

This bill would require the assessor, ~~in cooperation with the tax collector,~~ *upon a request by the board of supervisors to furnish an estimate of the assessed valuation of property within the county for the succeeding fiscal year,* to estimate whether property valuations have decreased by 3% or more and, if so, require the assessor to issue a written report to the ~~governing body~~ *board of supervisors* within 30 days. This bill would require the assessor to*, within 15 days of notifying the board of supervisors, also* notify ~~entities affected by the decrease in property valuation~~ *the Department of Finance and all cities and affected school districts within the county*. ~~By increasing the duties of local officials, this bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

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

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

SECTION 1. The Legislature finds and declares the following:

(a) County governments are primarily responsible for local property tax assessments, but the state retains a vested interest in promoting equitable property tax assessments due to the public policy and financial implications inherent with the assessment process.

(b) It is incumbent upon the state to ensure that public policy supports a transparent and impartial assessment process to minimize impacts on taxpayers.

(c) Fluctuations in property tax revenue have direct financial consequences for the state's General Fund due to the state's obligation to guarantee minimum funding for schools, *for* which the state must make up the difference when revenues fall short.

(d) Unanticipated and significant drops in projected property tax revenue not only impact the state and counties, but local municipalities within each county.

(e) It is imperative for all levels of government to have appropriate information about unanticipated declines in revenue in a timely manner that allows for appropriate responses.

SEC. 2. Section 27421 of the Government Code is amended to read:

27421. (a) The county assessor in each county who is designated to perform the duty of assessing property for a local taxing jurisdiction shall, upon request of the governing body of such jurisdiction, excluding a school district, furnish not later than May ~~15th~~ *15* of each year an estimate of the assessed valuation of property within the jurisdiction for the succeeding fiscal year. The request shall be made on or before February ~~20th~~ *20* of each year.

The estimate required herein shall contain estimates of the total of each of the items contained on the assessment roll as well as the estimated total valuation.

(b) Within 30 days of receiving ~~the~~ *a* request by the ~~governing body of the jurisdiction~~ *board of supervisors of the county*, the assessor~~, in cooperation with the tax collector,~~ shall estimate whether property valuations have decreased by 3 percent or more. If property valuations have decreased by 3 percent or more the assessor shall ~~issue a written report notifying~~ *notify* the ~~governing body~~ *board of supervisors* before the end of the 30 days.

(c) Within 15 days of notifying the ~~governing body~~ *board of supervisors*, the assessor shall notify the Department of Finance, ~~the board of supervisors of the county, the governing board of cities, affected school districts, and any other entity affected by the decrease in property valuation~~ *and all cities and affected school districts within the county*.

~~SEC. 3. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.~~

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Date of Hearing: May 25, 2012

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Felipe Fuentes, Chair

AB 2210 (Smyth) – As Amended: May 21, 2012

Policy Committee: Local Government Vote: 8-0

Urgency: No State Mandated Local Program: No Reimbursable:

SUMMARY

This bill requires a county assessor, when requested by the board of supervisors, to estimate whether annual property valuations for the county have decreased by 3% or more, and if so, to notify the county and the Department of Finance of the decrease. Specifically, this bill:

1) Requires the assessor, within 30 days of receiving the request by the governing body of the jurisdiction and in cooperation with the tax collector, to estimate whether property valuations have decreased by 3% or more.

2) Requires the assessor, if property valuations have decreased by an estimated 3% or more, to notify the requesting body before the end of the 30-day period.

FISCAL EFFECT

Negligible state fiscal impact.

COMMENTS

1) Purpose. The author contends scandals in the Cities of Bell and Vernon demonstrate the need for more transparency in local government. The author further notes the brewing scandal in the Los Angeles County Assessor's Office proves that further transparency is needed to ensure that governing bodies have the appropriate information to make informed decisions when budgeting for their jurisdiction.

2) Background. The Los Angeles County Assessor alerted the Board of Supervisors in April 2012 that the county's property valuations and resulting tax base would be dramatically lower than what the assessor had forecast in December 2011. The Assessor originally told the board in December 2011 that the estimated decrease in the property tax base would be roughly $2.6 billion, but his April 2012 communication to the board revised the estimated decrease to $13.5 billion. This led the Board of Supervisors to call for a complete audit of the office. In addition, there is an ongoing criminal investigation of the Los Angeles County Assessor for allegedly soliciting campaign contributions in exchange for lowered property valuations.

   Under existing law, the governing body of a local taxing jurisdiction may ask (by February 20) the assessor's office to provide by May 15 an estimate of the assessed valuation of the property within the jurisdiction. The purpose is to give the governing body information

about the expected revenues from property taxes, which then helps guide that body's budget-making process. Counties, cities and special districts are all allowed to make this request under current law.

3) Opposition. This bill is opposed by the Santa Clara County Assessor who contends assessors should not be in the estimation business at all: "By necessity, training and law, assessors must look backward on transactions that have actually occurred in the real estate marketplace. Assessors do not possess the skill set or information required to accurately project future property tax revenue. Forecasting is the proper role of economists and budget analysts. As assessor, I regularly decline requests by cities and school districts to provide projections, and would be unable to comply, with any degree of accuracy or reliability, the estimates demanded in AB 2210…"

Analysis Prepared by: Roger Dunstan / APPR. / (916) 319-2081

AMENDED IN SENATE MAY 29, 2012

AMENDED IN SENATE MAY 15, 2012

AMENDED IN SENATE APRIL 19, 2012

AMENDED IN SENATE APRIL 16, 2012

AMENDED IN SENATE APRIL 9, 2012

SENATE BILL No. 1094

Introduced by Senator Kehoe

February 16, 2012

An act to amend Sections 65965, 65966, 65967, and 65968 of the Government Code, relating to land use, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1094, as amended, Kehoe. Land use: mitigation lands: nonprofit organizations.

(1) The Planning and Zoning Law provides that if a state or local agency requires a person to transfer to that agency an interest in real property to mitigate the environmental impact of a project or facility, that agency may authorize specified entities to hold title to, and manage that interest in, real property, as well as any accompanying funds, provided those entities meet specified requirements. Existing law requires that if accompanying funds, as defined, are conveyed at the time the property is protected, then the holder of those accompanying funds must meet specified requirements. Existing law requires a state or local agency to exercise due diligence in reviewing the qualifications of a special district or nonprofit organization to effectively manage and

steward land, water, or natural resources, as well as the accompanying funds.

This bill would use the term "endowment" instead of "accompanying funds." This bill would authorize an agency, in connection with the provisions described above, to also permit a governmental entity, as defined, to hold title to, and manage that interest in, real property, as well as any endowment. This bill would remove the requirement that a state or local agency exercise due diligence in reviewing the qualifications of a special district or nonprofit organization to effectively manage the endowment. This bill would also modify the requirements that the holder of an endowment must meet, and would provide that those requirements also apply to endowments that are secured at the time the property is protected.

(2) Existing law authorizes a state or local agency, if that agency authorizes specified entities to hold property pursuant to these provisions, to require an administrative endowment from the project proponent to cover reasonable costs to the agency.

This bill would revise that provision to authorize a state ~~or local~~ agency to *require the project proponent to* pay a one-time fee that does not exceed the reasonable costs of the agency in reviewing qualifications of potential holders of the property, approving those holders, and any regular oversight over those holders to ensure that the holders are complying with all applicable laws. *The bill would also authorize a local agency to require a project proponent to pay a one-time fee that does not exceed the reasonable costs of the agency in reviewing qualifications of the parties to the mitigation agreement, approving those holders, and any regular oversight over those holders to ensure that the holders are complying with all applicable laws.*

(3) Existing law provides that if a state or local agency, in the development of its own project, is required to mitigate an adverse impact upon natural resources, that agency may take any action it deems necessary to meet its mitigation obligations, including, among others, transferring an interest in the property to specified entities.

This bill would additionally authorize a state or local agency to hold an endowment in an account administered by an elected official.

(4) Existing law generally requires that the accompanying funds described above be held by the agency that requires the mitigation or by the special district or nonprofit organization that holds the property. Existing law excepts certain situations from this requirement, including, among others, if the accompanying funds are held by another entity

pursuant to a natural community conservation plan or a safe harbor agreement that is executed on or before January 1, 2012.

This bill would require that, in order to qualify for that exception, the implementation agreement would be required to meet certain requirements. This bill also would modify the exceptions to that requirement by adding some and removing others, including, among other changes, adding exceptions that would authorize a community foundation, as defined, or a congressionally chartered foundation to hold an endowment if specified conditions are met.

This bill would authorize a state or local agency to allow the endowments to be temporarily held in an escrow account until a specified date, after which time the bill would require the state or local agency to transfer the endowments to the entity that will permanently hold them.

This bill would also make technical, nonsubstantive changes to those provisions.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ⅔. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

SECTION 1. It is the intent of the Legislature, and in the best interest of the public, that there is available a diversified pool of eligible entities that are qualified to do business in California, based in California, and that meet the requirements of this chapter to hold, manage, invest, and disburse endowment funds in furtherance of the long-term stewardship of the property set aside for mitigation purposes.

SEC. 2. Section 65965 of the Government Code is amended to read:

65965. For the purposes of this chapter, the following definitions apply:

(a) “Endowment” means the funds that are conveyed solely for the long-term stewardship of a mitigation property. Endowment funds are held as charitable assets that are permanently restricted to paying the costs of long-term management and stewardship of the mitigation property for which the funds were set aside. Endowments shall be governed by the underlying laws and

regulations pursuant to which the endowments were exacted, and otherwise held consistent with subdivision (b) of Section 65966 and with the Uniform Prudent Management of Institutional Funds Act (Part 7 (commencing with Section 18501) of Division 9 of the Probate Code). Endowments do not include funds conveyed for meeting short-term performance objectives of a project.

(b) "Community foundation" means any community foundation that meets all of the following requirements:

(1) Meets the requirements of a community trust under Section 1.170A-9(f)(10)-(11) of Title 26 of the Code of Federal Regulations.

(2) Is exempt from taxation as an organization described in Section 501(c)(3) of the Internal Revenue Code.

(3) Is qualified to do business in this state.

(4) Is a "qualified organization" as defined in Section 170(h)(3) of the Internal Revenue Code.

(5) Has complied with National Standards for U.S. Community Foundations as determined by the Community Foundations National Standards Board, a supporting organization of the Council on Foundations.

(6) Is registered with the Registry of Charitable Trusts maintained by the Attorney General pursuant to Section 12584.

(c) "Conservation easement" means a conservation easement created pursuant to Chapter 4 (commencing with Section 815) of Title 2 of Part 2 of Division 2 of the Civil Code.

(d) "Direct protection" means the permanent protection, conservation, and preservation of lands, waters, or natural resources, including, but not limited to, agricultural lands, wildlife habitat, wetlands, endangered species habitat, open-space areas, or outdoor recreational areas.

(e) "Governmental entity" means any state agency, office, officer, department, division, bureau, board, commission, city, county, or city and county, or a joint powers authority formed pursuant to the Joint Exercise of Powers Act (Chapter 5 (commencing with Section 6500) of Division 7 of the Government Code) that was created for the principal purpose and activity of the direct protection or stewardship of land, water, or natural resources, including, but not limited to, agricultural lands, wildlife habitat, wetlands, endangered species habitat, open-space areas, and outdoor recreational areas.

(f) "Mitigation agreement" means a written agreement between a state or local agency, the project proponent, and the governmental entity, special district, nonprofit organization, for-profit entity, or other entity that holds the property. A mitigation agreement governs the long-term stewardship of the mitigation property and an endowment.

(g) "Congressionally chartered foundation" means a nonprofit organization that meets all of the following requirements:

(1) Is chartered by the United States Congress.

(2) Is exempt from taxation as an organization described in Section 501(c)(3) of the Internal Revenue Code.

(3) Is qualified to do business in this state.

(4) Is registered with the Registry of Charitable Trusts maintained by the Attorney General pursuant to Section 12584.

(5) Has as a purpose the conservation and management of fish, wildlife, plants, and other natural resources, which includes, but is not limited to, the direct protection or stewardship of land, water, or natural wildlife habitat, wetlands, endangered species habitat, open-space areas, and outdoor recreational areas.

(h) "Nonprofit organization" means any nonprofit organization that meets all of the following requirements:

(1) Is exempt from taxation as an organization described in Section 501(c)(3) of the Internal Revenue Code.

(2) Is qualified to do business in this state.

(3) Is a "qualified organization" as defined in Section 170(h)(3) of the Internal Revenue Code.

(4) Is registered with the Registry of Charitable Trusts maintained by the Attorney General pursuant to Section 12584.

(5) Has as its principal purpose and activity the direct protection or stewardship of land, water, or natural resources, including, but not limited to, agricultural lands, wildlife habitat, wetlands, endangered species habitat, open-space areas, and outdoor recreational areas.

(i) "Project proponent" means an individual, business entity, agency, or other entity that is developing a project or facility and is required to mitigate any adverse impact upon natural resources.

(j) "Property" means fee title land or any partial interest in real property, including a conservation easement, that may be conveyed pursuant to a mitigation requirement by a state or local agency.

(k) "Special district" means any of the following special districts:

(1) A special district formed pursuant to Article 3 (commencing with Section 5500) of Chapter 3 of Division 5 or Division 26 (commencing with Section 35100) of the Public Resources Code.

(2) A resource conservation district organized pursuant to Division 9 (commencing with Section 9001) of the Public Resources Code.

(3) A district organized or formed pursuant to the Metropolitan Water District Act (Chapter 209 of the Statutes of 1969).

(4) A county water district organized under Division 12 (commencing with Section 30000) of the Water Code, that has more than 5,000 acres of mitigation lands.

(5) A special district formed pursuant to Chapter 2 (commencing with Section 11561) of Division 6 of the Public Utilities Code that provides water and wastewater treatment services.

(6) A district organized or formed pursuant to the County Water Authority Act (Chapter 545 of the Statutes of 1943).

(*l*) "Stewardship" encompasses the range of activities involved in controlling, monitoring, and managing for conservation purposes a property, or a conservation or open-space easement, as defined by the terms of the easement, and its attendant resources.

SEC. 3. Section 65966 of the Government Code is amended to read:

65966. (a) Any conservation easement created as a component of satisfying a local or state mitigation requirement shall be perpetual in duration, whether created pursuant to Chapter 6.6 (commencing with Section 51070) of Part 1 of Division 1 of Title 5 of this code or Chapter 4 (commencing with Section 815) of Title 2 of Part 2 of the Civil Code.

(b) Any local or state agency that requires property to be protected pursuant to subdivision (a) or (b) of Section 65967 may identify how the funding needs of the long-term stewardship of the property will be met. If an endowment is conveyed or secured at the time the property is protected, all of the following shall apply:

(1) The endowment shall be held, managed, invested, and disbursed solely for, and permanently restricted to, the long-term stewardship of the specific property for which the funds were set aside.

(2) The endowment shall be calculated to include a principal amount that, when managed and invested, is reasonably anticipated to cover the annual stewardship costs of the property in perpetuity.

(3) The endowment shall be held, managed, invested, disbursed, and governed as described in subdivision (a) of Section 65965 consistent with the Uniform Prudent Management of Institutional Funds Act (Part 7 (commencing with Section 18501) of Division 9 of the Probate Code).

(c) If a nonprofit corporation holds the endowment, the nonprofit shall utilize generally accepted accounting practices that are promulgated by the Financial Accounting Standards Board or any successor entity.

(d) If a local agency holds the endowment, the local agency shall do all of the following:

(1) Hold, manage, and invest the endowment consistent with subdivision (b) to the extent allowed by law.

(2) Disburse funds on a timely basis to meet the stewardship expenses of the entity holding the property.

(3) Utilize accounting standards consistent with standards promulgated by the Governmental Accounting Standards Board or any successor entity.

(e) (1) Unless the mitigation agreement provides otherwise, a governmental entity, community foundation, special district, a congressionally chartered foundation, or a nonprofit organization that holds funds pursuant to this chapter, including an endowment or moneys for initial stewardship costs, shall provide the local or state agency that required the endowment with an annual fiscal report that contains at least the following elements with respect to each individual endowment dedicated on a property-by-property basis and held by that entity:

(A) The balance of each individual endowment at the beginning of the reporting period.

(B) The amount of any contribution to the endowment during the reporting period including, but not limited to, gifts, grants, and contributions received.

(C) The net amounts of investment earnings, gains, and losses during the reporting period, including both realized and unrealized amounts.

(D) The amounts distributed during the reporting period ~~for facilities and programs~~ that accomplish the purpose for which the endowment was established.

(E) The administrative expenses charged to the endowment from internal or third-party sources during the reporting period.

(F) The balance of the endowment or other fund at the end of the reporting period.

(G) The specific asset allocation percentages including, but not limited to, cash, fixed income, equities, and alternative investments.

(H) The most recent financial statements for the organization audited by an independent auditor who is, at a minimum, a certified public accountant.

(2) If an entity is required to submit an identical annual fiscal report pursuant to paragraph (1) to the Department of Fish and Game and any other state or local agency, then that report shall be provided only to the Department of Fish and Game. In that instance, the Department of Fish and Game shall provide a copy of that annual fiscal report on its Internet Web site for a minimum of five years.

(f) If a state ~~or local~~ agency authorizes a governmental entity, special district, or nonprofit organization to hold property pursuant to subdivision (a) or (b) of Section 65967 in connection with a development project, the agency may require the project proponent to pay a one-time fee that does not exceed the reasonable costs of the agency in reviewing qualifications of potential holders of the property, approving those holders, and any regular oversight over those holders to ensure that the holders are complying with all applicable laws. *This one-time fee shall be collected only if the agency can demonstrate its actual review of qualifications, approval of holders, or regular oversight of compliance and performance.*

(g) If a local agency authorizes a governmental entity, special district, or nonprofit organization to hold property or an endowment pursuant to this chapter, the agency may require the project proponent to pay a one-time fee that does not exceed the reasonable costs of the agency in reviewing qualifications of the parties identified in the mitigation agreement, approving those parties, and any regular oversight over those parties to ensure that the parties are complying with all applicable laws. This one-time fee shall be collected only if the agency can demonstrate

its actual review of qualifications, approval of parties, or regular oversight of compliance and performance.

~~(g)~~

(h) A local agency may require a project proponent to provide a one-time payment that will provide for the initial stewardship costs for up to three years while the endowment begins to accumulate investment earnings. The funds for the initial stewardship costs are distinct from the funds that may be conveyed for long-term stewardship, construction, or other costs. If there are funds remaining at the completion of the initial stewardship period, the funds shall be conveyed to the project proponent.

~~(h)~~

(i) The local agency may contract with or designate a qualified third party to do any of the following:

(1) Review the qualifications of a governmental entity, special district, or nonprofit organization to effectively manage and steward natural land or resources pursuant to subdivision (c) of Section 65967.

(2) Review the qualifications of a governmental entity, community foundation, or nonprofit organization to hold and manage the endowment that is set aside for long-term stewardship of the property.

(3) Review reports or other performance indicators to evaluate the stewardship of lands, natural resources, or funds, and compliance with the mitigation agreement.

~~(i)~~

(j) If a property conserved pursuant to subdivision (a) or (b) of Section 65967 is condemned, the net proceeds from the condemnation of the real property interest set aside for mitigation purposes shall be used for the purchase of property that replaces the natural resource characteristics the original mitigation was intended to protect, or as near as reasonably feasible. Any endowment held for the condemned property shall be held for the long-term stewardship of the replacement property.

~~(j)~~

(k) Unless prohibited by law, no provision in this chapter is intended to prohibit for-profit entities from holding, acquiring, or providing property for mitigation purposes.

~~(k)~~

(l) Nothing in this section shall prohibit a state agency from exercising any powers described in subdivision (d), (g), or (h).

~~(l)~~

(m) A governmental entity, special district, ~~congressionally chartered foundation,~~ or nonprofit organization may contract with a community foundation *or congressionally chartered foundation* at any time to hold, manage, and invest the endowment for a mitigation property and disburse payments from the endowment to the holder of the mitigation property consistent with the fund agreement.

~~(m)~~

(n) The mitigation agreement shall not include any provision to waive or exempt the parties from any requirement, in whole or part, of this chapter.

SEC. 4. Section 65967 of the Government Code is amended to read:

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

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

(1) Transfer the interest to a governmental entity, special district, or nonprofit organization that meets the requirements set forth in subdivision (c).

(2) Provide funds to a governmental entity, nonprofit organization, a special district, a for-profit entity, a person, or other entity to acquire land or easements that satisfy the agency's mitigation obligations.

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

(c) A state or local agency shall exercise due diligence in reviewing the qualifications of a governmental entity, special district, or nonprofit organization to effectively manage and

steward land, water, or natural resources. The local agency may adopt guidelines to assist it in that review process, which may include, but are not limited to, the use of or reliance upon guidelines, standards, or accreditation established by a qualified entity that are in widespread state or national use.

(d) The state or local agency may require the governmental entity, special district, or nonprofit organization to submit a report not more than once every 12 months and for the number of years specified in the mitigation agreement that details the stewardship and condition of the property and any other requirements pursuant to the mitigation agreement for the property.

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

SEC. 5. Section 65968 of the Government Code is amended to read:

65968. (a) Notwithstanding Section 13014 of the Fish and Game Code, if an endowment is conveyed pursuant to Section 65966 for property conveyed pursuant to Section 65967, the endowment may be held by the same governmental entity, special district, or nonprofit organization that holds the property pursuant to this section.

(b) (1) Except as permitted pursuant to paragraph (2), the endowment shall be held by ~~the agency or agencies that require~~ one of the following:

(A) The *agency or agencies that required the* mitigation.

(B) The governmental entity, special district, or nonprofit organization that either holds the property, or holds an interest in the property, for conservation purposes.

(C) The governmental entity or special district that retains the property after conveying an interest in the property for conservation purposes if that governmental entity or special district is protecting, restoring, or enhancing the property that was retained.

(2) Notwithstanding paragraph (1), an endowment may also be held by the following:

(A) An endowment that is held by an entity other than the state or holder of the mitigation property as of January 1, 2012.

(B) An endowment that is held by another entity, which is qualified pursuant to this chapter, pursuant to the terms of a natural community conservation plan (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code) or a safe harbor agreement (Article 3.7 (commencing with Section 2089.2) of Chapter 1.5 of Division 3 of the Fish and Game Code). In order for this paragraph to apply, prior to setting aside any endowments, the implementation agreement that is a part of the recognized natural community conservation plan or safe harbor agreement shall specifically address the arrangements for the endowment including, but not limited to, qualifications of the endowment holder, capitalization rate, return objectives, and the spending rule and disbursement policies.

(C) If existing law prohibits the holder of the mitigation property to hold the endowment, including for-profit entities.

(D) If the project proponent and the holder of the mitigation property or conservation easement agree that a community foundation or a congressionally chartered foundation shall hold the endowment.

(E) If the mitigation property is held or managed by a federal agency.

(F) If any of ~~the~~ the same mitigation property is required to be conveyed pursuant to both a federal and state permit, and under the federal governmental approval the federal agency does not approve one of the entities described in paragraph (1) of subdivision (b) as chosen to hold the endowment by the agreement of the project proponent and the holder of the mitigation property or conservation easement.

(c) A community foundation or congressionally chartered foundation that holds an endowment pursuant to subparagraphs (A) to (F), inclusive, of paragraph (2) of subdivision (b), shall meet all the qualifications and requirements of this chapter for holding, managing, investing, and disbursing the endowment funds.

(d) Any entity that holds an endowment under this chapter shall hold, manage, invest, and disburse the funds in furtherance of the long-term stewardship of the property in accordance with subdivision (a) of Section 65965.

(e) The holder of an endowment shall certify to the project proponent or the holder of the mitigation property or a conservation easement and the local or state agency that required the endowment that it meets all of the following requirements:

(1) The holder has the capacity to effectively manage the mitigation funds.

(2) The holder has the capacity to achieve reasonable rates of return on the investment of those funds similar to those of other prudent investors for endowment funds and shall manage and invest the endowment in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances, consistent with the Uniform Prudent Management of Institutional Funds Act (Part 7 (commencing with Section 18501) of Division 9 of the Probate Code).

(3) The holder utilizes generally accepted accounting practices as promulgated by either of the following:

(A) The Financial Accounting Standards Board or any successor entity for nonprofit organizations.

(B) The Governmental Accounting Standards Board or any successor entity for public agencies, to the extent those practices do not conflict with any requirement for special districts in Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code.

(4) The holder will be able to ensure that funds are accounted for, and tied to, a specific property.

(5) If the holder is a nonprofit organization, a community foundation, or a congressionally chartered foundation, it has an investment policy that is consistent with the Uniform Prudent Management of Institutional Funds Act (Part 7 (commencing with Section 18501) of Division 9 of the Probate Code).

(f) If a governmental entity, community foundation, special district, nonprofit organization, or a congressionally chartered foundation meets the requirements of this chapter, it is qualified to be a holder of the endowment for the purpose of obtaining any permit, clearance, agreement, or mitigation approval from a state or local agency.

(g) Except for a mitigation agreement prepared by a state agency, the mitigation agreement that authorizes the funds to be conveyed to a governmental entity, community foundation, special district, a congressionally chartered foundation, or nonprofit organization pursuant to subdivision (a) shall include a provision that requires the endowment be held by a governmental entity, special district, or a nonprofit organization to revert to the local agency, or to a successor organization identified by the agency and subject to subdivision (e), if any of the following occurs:

(1) The governmental entity, community foundation, special district, a congressionally chartered foundation, or nonprofit organization ceases to exist.

(2) The governmental entity, community foundation, special district, a congressionally chartered foundation, or nonprofit organization is dissolved.

(3) The governmental entity, community foundation, special district, a congressionally chartered foundation, or nonprofit organization becomes bankrupt or insolvent.

(4) The local agency reasonably determines that the endowment held by the governmental entity, community foundation, special district, or nonprofit organization, or its successor entity, is not being held, managed, invested, or disbursed for conservation purposes and consistent with the mitigation agreement and legal requirements. Any reverted funds shall continue to be held, managed, and disbursed only for long-term stewardship and benefit of the specific property for which they were set aside. If the funds revert from the governmental entity, community foundation, special district, or nonprofit organization, the special district or nonprofit organization may choose to relinquish the property. If the property is relinquished, the local agency shall accept title to the property or identify an approved governmental entity, community foundation, special district, or nonprofit organization to accept title to the property.

(h) Nothing in this section shall prohibit a state or local agency from determining that a governmental entity, community foundation, special district, a congressionally chartered foundation, or nonprofit organization meets the requirements of this section and is qualified to hold the endowment, or including a provision in the mitigation agreement as described in subdivision (g).

(i) A state or local agency may allow the endowment to be held temporarily in an escrow account until December 31, 2012, after which time the funds shall be transferred to the entity that will permanently hold the endowment.

(j) Subject to subdivision (g), any endowment that is conveyed to and held by a governmental entity, special district, or nonprofit organization pursuant to this section shall continue to be held by the entity if this section is repealed.

(k) A state or local agency shall not require, as a condition of obtaining any permit, clearance, agreement, or mitigation approval from the state or local agency, that a preferred or exclusively named entity by the state or local agency be named as the entity to hold, manage, invest, and disburse the funds in furtherance of the long-term stewardship of the property for which the funds were set aside.

(*l*) This section shall remain in effect only until January 1, 2022, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2022, deletes or extends that date.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that mitigation projects are approved in a timely manner, particularly in relation to desert renewable energy projects, it is necessary that this act take effect immediately.

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SENATE RULES COMMITTEE SB 1094
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 651-1520 Fax: (916) 327-4478

THIRD READING

Bill No: SB 1094
Author: Kehoe (D)
Amended: 5/29/12
Vote: 27 - Urgency

SENATE NATURAL RESOURCES AND WATER COMM: 8-0, 4/10/12
AYES: Pavley, La Malfa, Cannella, Fuller, Kehoe, Padilla, Simitian, Wolk
NO VOTE RECORDED: Evans

SENATE GOVERNANCE & FINANCE COMMITTEE: 8-0, 4/25/12
AYES: Wolk, Dutton, DeSaulnier, Fuller, Hancock, Hernandez, Kehoe, La Malfa
NO VOTE RECORDED: Liu

SENATE APPROPRIATIONS COMMITTEE: 7-0, 5/24/12
AYES: Kehoe, Walters, Alquist, Dutton, Lieu, Price, Steinberg

SUBJECT: Land use: mitigation lands: nonprofit organizations

SOURCE: California Council of Land Trusts

DIGEST: This bill allows certain community foundations and congressionally chartered foundations to hold endowment accounts for mitigation lands. This bill also expands and modifies conditions which all endowment holders must abide.

ANALYSIS: Under existing law, when state or local agencies approve land use projects, they can require the project applicant to transfer interest in real property to the agency in order to mitigate the impact that the development will have on natural resources. Under Section 65965 of the

CONTINUED

Government Code, a state or local agency may authorize a nonprofit organization to hold title and to manage the mitigation lands.

The project applicant may also be required by the local and state agency to provide funds to finance the management of mitigation lands in perpetuity, also known as an endowment. Last year, the passage of SB 436 (Kehoe) Chapter 590, Statutes of 2011, gave explicit authority to state or local agencies to allow a nonprofit or special district, which is holding and managing the mitigation lands, to also hold the endowment account, subject to certain conditions. SB 436 allowed for limited exceptions where an endowment can be held by an entity other than the entity that is holding and managing the land. The state or local agency is required to exercise due diligence in reviewing the qualifications of the entity managing the land and the accompanying funds. The entity is required to meet certain standards, including accounting standards, and specified reporting requirements.

This bill expands the situations where an endowment can be held by an entity other than the one who is holding and managing the mitigation land. The most notable expansion is to allow certain community foundations and congressionally chartered foundations to hold endowments. This bill would also:

1. Allows a governmental entity to manage mitigation lands and the associated endowment.

2. Expands the definition of special district.

3. Requires any entity holding endowment accounts to provide an annual fiscal report to the local or state agency that required the endowment that contains specified information.

4. Deletes the requirement that local and state agencies must exercise due diligence in reviewing the qualifications of an entity holding an endowment account.

5. Defines endowments as charitable assets that are permanently restricted funds.

6. Expands local agency fee recovery.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

CONTINUED

Likely ongoing costs of $200,000 to $300,000 from the Fish and Game Preservation Fund (special fund) beginning in 2012-13 for the oversight and tracking of endowments.

SUPPORT: (Verified 5/30/12)

California Council of Land Trusts (source)
Big Sur Land Trust
California Community Foundation
Center for Natural Lands Management
Community Foundation for Monterey County
Community Foundation of Mendocino County
Community Foundation of San Joaquin
Community Foundation of Sonoma County
Community Foundation of the Verdugos
Community Foundation Santa Cruz County
Contra Costa Water District
East Bay Municipal Utility District
Fresno Regional Foundation
Kern Community Foundation
Land Trust of Santa Cruz County
League of California Community Foundations
Marin Community Foundation
Mendocino Land Trust
Metropolitan Water District
Napa Valley Community Foundation
Ojai Valley Land Conservancy
Orange County Community Foundation
Pasadena Community Foundation
Peninsula Open Space Trust
Redwood Coast Land Conservancy
Rocky Mountain Elk Foundation
Sacramento Region Community Foundation
San Diego County Water Authority
San Francisco Public Utilities Commission
San Luis Obispo County Community Foundation
Santa Barbara Foundation
Shasta Regional Community Foundation
Sierra Foothill Conservancy
Silicon Valley Community Foundation

CONTINUED

Solano Land Trust
Stanislaus Community Foundation
Tahoe Truckee Community Foundation
The Community Foundation
The San Diego Foundation
The San Francisco Foundation
Trust for Public Land
Ventura County Community Foundation
Wildlife Heritage Foundation

ARGUMENTS IN SUPPORT: According to the California Council of Land Trusts, "many diverse stakeholders worked for several years to establish strong laws and protections for holding, managing, investing and disbursing mitigation endowment funds. […] In 2011 and after years of work and education, SB 436 was chaptered and provided a very strong law for mitigation endowments." Further, California "has a vital and continuing interest in ensuring that the mitigation endowment funds being set aside pursuant to the issuance of state permits are well-managed by experienced and competent organizations, are permanently restricted and dedicated to the mitigation property they were created for, are not consolidated into a single vast holding that is inherently risky, and that the funds are transparent so that the public can track them."

CTW:nl 5/30/12 Senate Floor Analyses
SUPPORT/OPPOSITION: SEE ABOVE
****** END ******

AMENDED IN SENATE MARCH 26, 2012

SENATE BILL No. 1221

Introduced by Senator Lieu
(Coauthor: Senator Steinberg)

February 23, 2012

An act *to amend Section 3960 of, and to repeal Section 4756 of, the Fish and Game Code,* relating to ~~air quality~~ *mammals*.

LEGISLATIVE COUNSEL'S DIGEST

SB 1221, as amended, Lieu. ~~Air quality.~~ *Mammals: use of dogs to pursue bears and bobcats.*

Existing law prohibits a person from permitting a dog to pursue any big game mammal, as defined, during the closed season, or any fully protected, rare, or endangered mammal at any time. Employees of the Department of Fish and Game are authorized to capture any dog not under the reasonable control of its owner or handler, that is in violation of that provision, or that is inflicting, or immediately threatening to inflict, injury in violation of this provision. Under existing law, certain violations of the Fish and Game Code are misdemeanors. Existing law prohibits a person from using dogs to hunt, pursue, or molest bears, except under certain conditions.

This bill would prohibit a person from permitting a dog to pursue a bear or bobcat at any time. This bill would exempt from that prohibition the use of dogs by federal, state, or local law enforcement officers, or their agents or employees, when carrying out official duties as required by law.

By changing the definition of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Under existing law, the State Air Resources Board coordinates efforts to attain and maintain ambient air quality standards, and conducts research into the causes of and solution to air pollution.~~

~~This bill would state that it is the intent of the Legislature to enact legislation to ensure that adverse effects to public health from air pollution are minimized at regional sources, such as airports, ports, and highways.~~

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

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

SECTION 1. Section 3960 of the Fish and Game Code is amended to read:

3960. ~~It~~ *(a) (1) For the purpose of this section, "pursue" means pursue, run, or chase.*

(2) For the purpose of this section, "bear" means any black bear, brown bear, or any other subspecies of bear found in the wild in this state.

(b) It is unlawful to permit or allow any dog to pursue any big game mammal during the closed season on ~~such~~ *that* mammal, to pursue any fully protected, rare, or endangered mammal at any time, *to pursue any bear or bobcat at any time,* or to pursue any mammal in a game refuge or ecological reserve if hunting within ~~such~~ *that* refuge or ecological reserve is unlawful.

~~Employees of the department may capture~~

(c) (1) The department may take any of the following actions:

(A) Capture any dog not under the reasonable control of its owner or handler, when ~~such~~ *that* uncontrolled dog is pursuing, in violation of this section, any big game *mammal*, *any bear or bobcat, or any* fully protected, rare, or endangered mammal.

~~Employees of the department may capture~~

(B) Capture or dispatch any dog inflicting injury or immediately threatening to inflict injury to any big game mammal during the

closed season on ~~such~~ *that* mammal, and ~~they~~ *the department* may capture or dispatch any dog inflicting injury or immediately threatening to inflict injury on any *bear or bobcat at any time, or any* fully protected, rare, or endangered mammal at any time.

~~Employees of the department may capture~~

(C) Capture or dispatch any dog inflicting injury or immediately threatening to inflict injury to any mammal in a game refuge or ecological reserve if hunting within ~~such~~ *that* refuge or ecological reserve is unlawful.

~~No~~

(2) No criminal or civil liability shall accrue to any department employee as a result of enforcement of this section. ~~For the purpose of this section, "pursue" means pursue, run, or chase.~~

(3) This section does not apply to the use of dogs to pursue bears or bobcats by federal, state, or local law enforcement officers, or their agents or employees, when carrying out official duties as required by law.

~~Owners~~

(4) Owners of dogs with identification, that have been captured or dispatched, shall be notified within 72 hours after capture or dispatch.

SEC. 2. Section 4756 of the Fish and Game Code is repealed.

~~4756. Except as provided in this section it is unlawful to use dogs to hunt, pursue, or molest bears.~~

~~The use of one dog per hunter is permitted for the hunting of bears during the time that the season is open for the taking of deer in the area of the state affected.~~

~~The use of more than one dog per hunter is permitted in the hunting of bears during the open season on bears in the area of the state affected except during the period when archery deer seasons or regular deer seasons are open.~~

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

~~SECTION 1. It is the intent of the Legislature to enact legislation to ensure that adverse effects to public health from air pollution are minimized at regional sources, such as airports, ports, and highways.~~

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SENATE RULES COMMITTEE SB 1221
Office of Senate Floor Analyses
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THIRD READING

Bill No: SB 1221
Author: Lieu (D), et al.
Amended: 3/26/12
Vote: 21

SENATE NATURAL RESOURCES & WATER COMM.: 5-3, 4/24/12
AYES: Pavley, Kehoe, Padilla, Simitian, Wolk
NOES: La Malfa, Cannella, Fuller
NO VOTE RECORDED: Evans

SENATE APPROPRIATIONS COMMITTEE: 5-2, 5/7/12
AYES: Kehoe, Alquist, Lieu, Price, Steinberg
NOES: Walters, Dutton

SUBJECT: Mammals: use of dogs to pursue bears and bobcats

SOURCE: The Humane Society of the United States

DIGEST: This bill prohibits the use of dogs for bear and bobcat hunting.

ANALYSIS: Existing law prohibits a person from permitting a dog to pursue any big game mammal, as defined, during the closed season, or any fully protected, rare, or endangered mammal at any time. Employees of the Department of Fish and Game (DFG) are authorized to capture any dog not under the reasonable control of its owner or handler, that is in violation of that provision, or that is inflicting, or immediately threatening to inflict, injury in violation of this provision. Under existing law, certain violations of the Fish and Game Code (FGC) are misdemeanors. Existing law prohibits a person from using dogs to hunt, pursue, or molest bears, except under certain conditions.

CONTINUED

This bill prohibits the use of dogs to pursue any bear or bobcat at any time. Use of dogs to pursue bears or bobcats by federal, state, or local law enforcement officers, or their agents, while carrying out official duties would be exempted from the prohibition.

Background

Big game mammals are defined in FGC Section 3953 as antelope, elk, deer, wild pig, bear and sheep. Bobcats are considered "nongame" animals although there is a hunting season and those with a license and a bobcat tag may hunt bobcat. A five-bobcat limit exists in regulations of the Fish and Game Commission.

FGC Section 3960 establishes the criteria for when dogs may be used to pursue big game mammals. Generally, dogs may not be used during the closed season on such species, to pursue any fully protected, rare, or endangered mammal at any time, or to pursue any mammal in a game refuge or ecological reserve where hunting is prohibited.

DFG employees are authorized to capture or kill any dog inflicting injury to any big game mammal during the closed season that violates the above provision.

DFG employees are immune from civil or criminal liability as a result of enforcement actions pursuant to this section.

FGC Section 4756 allows hunters to use one dog for hunting bear during deer season. It allows the use of an unlimited number of dogs during bear season except when the archery season for deer or regular deer season is open.

FGC Section 3008 requires dogs to be under the physical control of its owner or as authorized by regulations of the Fish and Game Commission. Those regulations allow hunters to use radio telemetry devices, but not GPS devices, on the dogs that are used to chase bears.

Penal Code Section 597b makes it a misdemeanor to cause any animal to fight with any other type of animal for the person's amusement or gain. There is no hunting exemption in Section 597b, but there is little legal authority that connects this prohibition with the state's hunting laws.

CONTINUED

DFG reports that approximately 1,500 bears were killed in 2010 by hunters in California. That number was 20% less than 2009. Hunters are required to send an upper tooth to DFG for DNA analysis. The total population of bears in California was estimated by DFG to be nearly 40,000, although the margin of error is nearly 8,000 bears. A revised statistical estimate reduced the population to 30,000, although the margin of error remains high. The take of bears has been declining, causing some to worry that the population is not robust.

The bobcat population is estimated to be 70,000.

Forty-five percent of the bears were killed with the use of dogs. About 11% of the bobcats killed in California in 2011 were killed with the use of dogs. These figures do not include illegal take by poachers.

The counties with the largest bear harvest are Siskiyou, Shasta, Trinity, Tulare, Tuolumne, Humboldt, and Mendocino.

There are about 25,000 bear hunters in California. There were 4,500 bobcat tags sold in 2011 with a maximum number of tags/hunter of five.

Eighteen states allow bears to be hunted with the use of dogs. Fourteen states, including states with similar hunting traditions to California, have bear hunting without dogs. These include Oregon, Washington, and Montana.

California has considered and rejected similar legislation in 1993 and 2003.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

- One-time costs of $18,000 from the Fish and Game Preservation Fund (special fund) beginning in 2013 for changes to Fish and Game regulations.

- Uncertain revenues losses, from negligible to a $265,000 annually but likely approximately $130,000, starting in 2013 from Fish and Game Preservation Fund (special fund), mostly to the Big Game Account, from reduced bear and bobcat tag sales.

CONTINUED

SUPPORT: (Verified 5/8/12)

The Humane Society of the United States (source)
American Society for the Prevention of Cruelty to Animals
Animal Legal Defense Fund
Animal Rescue Team
BEAR League
Best Friends Animal Society
Big Wildlife
Born Free USA
Environmental Protection Information Center
Haven Humane Society
Humane Society Veterinary Medical Association
In Defense of Animals
Injured & Orphaned Wildlife
Klamath Forest Alliance
Lake Tahoe Humane Society
Lake Tahoe Wildlife Care
Last Chance for Animals
Last Chance for Animals
Lions Tigers & Bears Big Cat Sanctuary and Rescue
Los Padres ForestWatch
Mountain Lion Foundation
Ohlone Humane Society
Ojai Wildlife League
Paw Pac
PEACE
Project Coyote
Public Interest Coalition
Sacramento SPCA
San Diego Animal Advocates
San Francisco SPCA
Santa Clara County Activists for Animals
Santa Clara County Activists for Animals
Santa Cruz SPCA
Sierra Club – Kern-Kaweah Chapter
Sierra Club California
Sierra Wildlife Coalition
Society for the Prevention of Cruelty to Animals Los Angeles
State Humane Association of California
The Fund for Animals Wildlife Center

CONTINUED

The League of Humane Voters, California Chapter
The Marin Humane Society
The Paw Project
WildCare
Wildlife Rehabilitation and Release

OPPOSITION: (Verified 5/8/12)

Barnum Timber Company
California Cattlemen's Association
California Houndsmen for Conservation
California Outdoor Heritage Alliance
California Rifle and Pistol Association
California Sportsman's Lobby
California Waterfowl Association
Central California Sporting Dog Association
Modesto Houndsmen Association
National Shooting Sports Foundation
Outdoor Sportsmen's Coalition of California
Safari Club International
Shasta County Cattlemen's Association
Siskiyou County Board of Supervisors
U.S. Sportsmen's Alliance

ARGUMENTS IN SUPPORT: The lead supporting organization is the Humane Society of the United States which is heading a large coalition of animal welfare organizations. The main arguments of the author and other supporters are as follows:

1. According to the author, hunting bears with dogs is cruel and unsporting. He objects to the practice of releasing dogs equipped with radio devices to chase bears or bobcats across great distances, often across private property or public property where no hunting is allowed.

2. As described by the author, at the end of the chase, the bear or bobcat climbs a tree or fights with the dogs, at which point the hunter can arrive and shoot the bear or bobcat.

3. One supporter from Shasta County wrote that wayward hounds have attacked her cats, her poultry, her livestock and killed 14 deer near her

CONTINUED

home. There are other reports of dogs being lost during hunts or injured or killed by their prey.

4. The author and sponsors also have obtained numerous reports that the dogs are often treated improperly, especially those dogs which are rented from kennels that raise dogs for the purpose of bear hounding.

5. The sponsors and other supporters are concerned that historically bear hunting has been closely associated with poaching or other enforcement problems for DFG. Some supporters argue that a ban on hounding will reduce poaching.

ARGUMENTS IN OPPOSITION: It seems that every hunting and sportsmen's organization is united against this bill with the addition of a ranching organization, one timber company, and the Siskiyou County Board of Supervisors. The main arguments of the opposition are as follows:

1. Bear hunting is necessary to minimize human-bear interactions.

2. Hunting with dogs is humane in the sense that the bear or bobcat can be killed quickly.

3. The bill is simply an emotional attack on one type of hunting.

4. Hounding is necessary to meet DFG's management objectives for native bears and that even with telemetry devices on dogs, the bear population has increased over the last 40 years.

5. Hounders do not take the state's full quota of bears or bobcats.

6. The use of dogs is part of a proud tradition of hunting and is a very challenging and physically grueling endeavor. Dogs are not mistreated.

CTW:mw 5/8/12 Senate Floor Analyses
SUPPORT/OPPOSITION: SEE ABOVE
****** END ******

AMENDED IN SENATE MAY 29, 2012

AMENDED IN SENATE APRIL 9, 2012

SENATE BILL No. 1517

Introduced by Senator Wolk

February 24, 2012

An act to amend ~~Sections 15911, 16809, and~~ *Section* 16809.3 of the Welfare and Institutions Code, relating to county health services.

LEGISLATIVE COUNSEL'S DIGEST

SB 1517, as amended, Wolk. County medical service program: fees.

Existing law authorizes counties meeting certain criteria to elect to participate in the County Medical Services Program (CMSP), for the purpose of providing specified health services to eligible county residents. Counties that elect to participate in the program may establish a CMSP Governing Board, responsible for the oversight of the participating counties. Existing law requires fees to be paid each fiscal year, as a condition of participating in the program, to the governing board in 12 equal monthly payments or as otherwise specified by the governing board.

This bill would instead require the payments to the CMSP ~~governing board~~ *Governing Board* be made in 10 equal payments during the fiscal year or as otherwise specified by the governing board.

~~Existing law establishes the County Medical Services Program Account in the County Health Services Fund. Existing law requires the moneys in the program account be used by the CMSP governing board to pay for health care services of eligible county residents and to pay the CMSP governing board expenses and program administrative costs. Existing law permits the Department of Finance to authorize a loan of up to $30,000,000 for deposit into the program account to ensure there~~

~~are sufficient funds available to reimburse providers and counties pursuant to the CMSP. Existing law authorizes the CMSP governing board to establish and maintain pilot projects for providing benefits under the CMSP and to develop and implement alternative products outside of the CMSP. Existing law permits a CMSP to apply to operate a local Low Income Health Program for the purpose of providing health care services, as specified.~~

~~This bill would authorize the loan to be used for CMSP governing board expenses that are associated with the governing board's Low Income Health Program.~~

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

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

~~SECTION 1. Section 15911 of the Welfare and Institutions Code is amended to read:~~

~~15911. (a) Funding for each LIHP shall be based on all of the following:~~

~~(1) The amount of funding that the participating entity voluntarily provides for the nonfederal share of LIHP expenditures.~~

~~(2) For a LIHP that had in operation a Health Care Coverage Initiative program under Part 3.5 (commencing with Section 15900) as of November 1, 2010, and elects to continue funding the program, the amount of funds requested to ensure that eligible enrollees continue to receive health care services for persons enrolled in the Health Care Coverage Initiative program as of November 1, 2010.~~

~~(3) Any limitations imposed by the Special Terms and Conditions of the demonstration project.~~

~~(4) The total allocations requested by participating entities for Health Care Coverage Initiative eligible individuals.~~

~~(5) Whether funding under this part would result in the reduction of other payments under the demonstration project.~~

~~(b) Nothing in this part shall be construed to require a political subdivision of the state to participate in a LIHP as set forth in this part, and those local funds expended or transferred for the nonfederal share of LIHP expenditures under this part shall be considered voluntary contributions for purposes of the federal Patient Protection and Affordable Care Act (Public Law 111-148),~~

~~as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), and the federal American Recovery and Reinvestment Act of 2009 (Public Law 111-5), as amended by the federal Patient Protection and Affordable Care Act.~~

~~(c) Except as provided for in subdivision (n) of Section 16809, state General Fund moneys shall not be used to fund LIHP services, nor to fund any related administrative costs incurred by counties or any other political subdivision of the state.~~

~~(d) Subject to the Special Terms and Conditions of the demonstration project, if a participating entity elects to fund the nonfederal share of a LIHP, the nonfederal funding and payments to the LIHP shall be provided through one of the following mechanisms, at the options of the participating entity:~~

~~(1) On a quarterly basis, the participating entity shall transfer to the department for deposit in the LIHP Fund established for the participating counties and pursuant to subparagraph (A), the amount necessary to meet the nonfederal share of estimated payments to the LIHP for the next quarter under subdivision (g) Section 15910.3.~~

~~(A) The LIHP Fund is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, all moneys in the fund shall be continuously appropriated to the department for the purposes specified in this part. The fund shall contain all moneys deposited into the fund in accordance with this paragraph.~~

~~(B) The department shall obtain the related federal financial participation and pay the rates established under Section 15910.3, provided that the intergovernmental transfer is transferred in accordance with the deadlines imposed under the Medi-Cal Checkwrite Schedule, no later than the next available warrant release date. This payment shall be a nondiscretionary obligation of the department, enforceable under a writ of mandate pursuant to Section 1085 of the Code of Civil Procedure. Participating entities may request expedited processing within seven business days of the transfer as made available by the State Controllers office, provided that the participating entity prepay the department for the additional administrative costs associated with the expedited processing.~~

~~(C) Total quarterly payment amounts shall be determined in accordance with estimates of the number of enrollees in each rate category, subject to annual reconciliation to final enrollment data.~~

~~(2) If a participating entity operates its LIHP through a contract with another entity, the participating entity may pay the operating entity based on the per enrollee rates established under Section 15910.3 on a quarterly basis in accordance with estimates of the number of enrollees in each rate category, subject to annual reconciliation to final enrollment data.~~

~~(A) (i) On a quarterly basis, the participating entity shall certify the expenditures made under this paragraph and submit the report of certified public expenditures to the department.~~

~~(ii) The department shall report the certified public expenditures of a participating entity under this paragraph on the next available quarterly report as necessary to obtain federal financial participation for the expenditures. The total amount of federal financial participation associated with the participating entity's expenditures under this paragraph shall be reimbursed to the participating entity.~~

~~(B) At the option of the participating entity, the LIHP may be reimbursed on a cost basis in accordance with the methodology applied to Health Care Coverage Initiative programs established under Part 3.5 (commencing with Section 15900) including interim quarterly payments.~~

~~(e) Notwithstanding Section 15910.3 and subdivision (d) of this section, if the participating entity cannot reach an agreement with the department as to the appropriate rate to be paid under Section 15910.3, at the option of the participating entity, the LIHP shall be reimbursed on a cost basis in accordance with the methodology applied to Health Care Coverage Initiative programs established under Part 3.5 (commencing with Section 15900), including interim quarterly payments. If the participating entity and the department reach an agreement as to the appropriate rate, the rate shall be applied no earlier than the first day of the LIHP year in which the parties agree to the rate.~~

~~(f) If authorized under the Special Terms and Conditions of the demonstration project, pending the department's development of rates in accordance with Section 15910.3, the department shall make interim quarterly payments to approved LIHPs for expenditures based on estimated costs submitted for rate setting.~~

~~(g) Participating entities that operate a LIHP directly or through contract with another entity shall be entitled to any federal financial participation available for administrative expenditures incurred in the operation of the Medi-Cal program or the demonstration project, including, but not limited to, outreach, screening and enrollment, program development, data collection, reporting and quality monitoring, and contract administration, but only to the extent that the expenditures are allowable under federal law and only to the extent the expenditures are not taken into account in the determination of the per enrollee rates under Section 15910.3.~~

~~(h) On and after January 1, 2014, the state shall implement comprehensive health care reform for the populations targeted by the LIHP in compliance with federal health care reform law, regulation, and policy, including the federal Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), and subsequent amendments.~~

~~(i) Subject to the Special Terms and Conditions of the demonstration project, a participating entity may elect to include, in collaboration with the department, as the nonfederal share of LIHP expenditures, voluntary intergovernmental transfers or certified public expenditures of another governmental entity, as long as the intergovernmental transfer or certified public expenditure is consistent with federal law.~~

~~(j) Participation in the LIHP under this part is voluntary on the part of the eligible entity for purposes of all applicable federal laws. As part of its voluntary participation under this article, the participating entity shall agree to reimburse the state for the nonfederal share of state staffing and administrative costs directly attributable to the cost of administering that LIHP, including, but not limited to, the state administrative costs related to certified public expenditures and intergovernmental transfers. This section shall be implemented only to the extent federal financial participation is not jeopardized.~~

~~SEC. 2. Section 16809 of the Welfare and Institutions Code is amended to read:~~

~~16809. (a) (1) The board of supervisors of a county that contracted with the department pursuant to former Section 16709 during the 1990–91 fiscal year and any county with a population under 300,000, as determined in accordance with the 1990~~

~~decennial census, by adopting a resolution to that effect, may elect to participate in the County Medical Services Program. The governing board shall have responsibilities for specified health services to county residents certified eligible for those services by the county.~~

~~(2) The board of supervisors of a county that has contracted with the governing board pursuant to paragraph (1) may also contract with the governing board for the delivery of health care and health-related services to county residents other than under the County Medical Services Program by adopting a resolution to that effect. The governing board shall have responsibilities for the delivery of specified health services to county residents as agreed upon by the governing board and the county. Participation by a county pursuant to this paragraph shall be voluntary, and funds shall be provided solely by the county.~~

~~(b) The governing board may contract with the department or any other person or entity to administer the County Medical Services Program.~~

~~(1) If the governing board contracts with the department to administer the County Medical Services Program, that contract shall include, but need not be limited to, all of the following:~~

~~(A) Provisions for the payment to participating counties for making eligibility determinations as determined by the governing board.~~

~~(B) Provisions for payment of expenses of the governing board.~~

~~(C) Provisions relating to the flow of funds from counties' vehicle license fees, sales taxes, and participation fees and the procedures to be followed if a county does not pay those funds to the program.~~

~~(D) Those provisions, as applicable, contained in the 1993–94 fiscal year contract with counties under the County Medical Services Program.~~

~~(E) Provisions for the department to administer the County Medical Services Program pursuant to regulations adopted by the governing board or as otherwise determined by the governing board.~~

~~(F) Provisions requiring that the governing board reimburse the state costs of providing administrative support to the County Medical Services Program in accordance with amounts determined between the governing board and the department.~~

~~(2) If the governing board does not contract with the department for administration of the County Medical Services Program, the governing board may contract with the department for specified services to assist in the administration of that program. Any contract with the department under this paragraph shall require that the governing board reimburse the state costs of providing administrative support.~~

~~(3) The department shall not be liable for any costs related to decisions of the governing board that are in excess of those set forth in the contract between the department and the governing board.~~

~~(c) Each county intending to participate in the County Medical Services Program pursuant to this section shall submit to the governing board a notice of intent to contract adopted by the board of supervisors no later than April 1 of the fiscal year preceding the fiscal year in which the county will participate in the County Medical Services Program.~~

~~(d) A county participating in the County Medical Services Program pursuant to this section, or a county contracting with the governing board pursuant to paragraph (2) or (3) of subdivision (a), or participating in a pilot project or contracting with the governing board for an alternative product pursuant to Section 16809.4, shall not be relieved of its indigent health care obligation under Section 17000.~~

~~(e) (1) The County Medical Services Program Account is established in the County Health Services Fund. The County Medical Services Program Account is continuously appropriated, notwithstanding Section 13340 of the Government Code, without regard to fiscal years. The following amounts may be deposited in the account:~~

~~(A) Any interest earned upon moneys deposited in the account.~~

~~(B) Moneys provided by participating counties or appropriated by the Legislature to the account.~~

~~(C) Moneys loaned pursuant to subdivision (n).~~

~~(2) The methods and procedures used to deposit funds into the account shall be consistent with the methods used by the program during the 1993–94 fiscal year, unless otherwise determined by the governing board.~~

~~(f) Moneys in the program account shall be used by the governing board, or by the department if the department contracts~~

~~with the governing board for this purpose, to pay for health care services provided to the persons meeting the eligibility criteria established pursuant to subdivision (j) and to pay the governing board expenses and program administrative costs. In addition, moneys in this account may be used to reimburse the department for state costs pursuant to subparagraph (F) of paragraph (1) of subdivision (b).~~

~~(g) (1) Moneys in this account shall be administered on an accrual basis and notwithstanding any other law, except as provided in this section and Section 17605.051, shall not be transferred to any other fund or account in the State Treasury except for purposes of investment as provided in Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code.~~

~~(2) (A) All interest or other increment resulting from the investment shall be deposited in the program account, notwithstanding Section 16305.7 of the Government Code.~~

~~(B) All interest deposited pursuant to subparagraph (A) shall be available to reimburse program-covered services, governing board expenses, and program administrative costs.~~

~~(h) The governing board shall establish a reserve account for the purpose of depositing funds for the payment of claims and unexpected contingencies. Funds in the reserve account in excess of the amounts the governing board determines necessary for these purposes shall be available for expenditures in years when program expenditures exceed program funds, and to augment the rates, benefits, or eligibility criteria under the program.~~

~~(i) (1) Counties shall pay participation fees as established by the governing board and their jurisdictional risk amount in a method that is consistent with that established in the 1993–94 fiscal year.~~

~~(2) A county may request, due to financial hardship, the payments under paragraph (1) be delayed. The request shall be subject to approval by the governing board.~~

~~(3) Payments made pursuant to this subdivision shall be deposited in the program account, unless otherwise directed by the governing board.~~

~~(4) Payments may be made as part of the deposits authorized by the county pursuant to Sections 17603.05 and 17604.05.~~

~~(j) (1) (A) Beginning in the 1992–93 fiscal year and for each fiscal year thereafter, counties and the state shall share the risk for cost increases of the County Medical Services Program not funded through other sources. The state shall be at risk for any cost that exceeds the cumulative annual growth in dedicated sales tax and vehicle license fee revenue, up to the amount of twenty million two hundred thirty-seven thousand four hundred sixty dollars ($20,237,460) per fiscal year, except for the 1999–2000, 2000–01, 2001–02, 2002–03, 2003–04, 2004–05, 2005–06, 2006–07, and 2007–08 fiscal years, and all fiscal years thereafter. Counties shall be at risk up to the cumulative annual growth in the Local Revenue Fund created by Section 17600, according to the table specified in paragraph (2), to the County Medical Services Program, plus the additional cost increases in excess of twenty million two hundred thirty-seven thousand four hundred sixty dollars ($20,237,460) per fiscal year, except for the 1999–2000, 2000–01, 2001–02, 2002–03, 2003–04, 2004–05, 2005–06, 2006–07, and 2007–08 fiscal years, and all fiscal years thereafter.~~

~~(B) For the 1999–2000, 2000–01, 2001–02, 2002–03, 2003–04, 2004–05, 2005–06, 2006–07, and 2007–08 fiscal years, and all fiscal years thereafter, the state shall not be at risk for any cost that exceeds the cumulative annual growth in dedicated sales tax and vehicle license fee revenue. Counties shall be at risk up to the cumulative annual growth in the Local Revenue Fund created by Section 17600, according to the table specified in paragraph (2), to the County Medical Services Program, plus any additional cost increases for the 1999–2000, 2000–01, 2001–02, 2002–03, 2003–04, 2004–05, 2005–06, 2006–07, and 2007–08 fiscal years, and all fiscal years thereafter.~~

~~(C) (i) The governing board shall establish uniform eligibility criteria and benefits among all counties participating in the County Medical Services Program listed in paragraph (2). For counties that are not listed in paragraph (2) and that elect to participate pursuant to paragraph (1) of subdivision (a), the eligibility criteria and benefit structure may vary from those of counties participating pursuant to paragraph (2) of subdivision (a).~~

~~(ii) Notwithstanding clause (i), the governing board may establish and maintain pilot projects to identify or test alternative approaches for determining eligibility or for providing or paying for benefits under the County Medical Services Program, and may~~

~~develop and implement alternative products with varying levels of eligibility criteria and benefits outside of the County Medical Services Program.~~

~~(2) For the 1991–92 fiscal year, and each fiscal year thereafter, jurisdictional risk limitations shall be as follows:~~

~~Jurisdiction~~	~~Amount~~
~~Alpine~~	~~$ 13,150~~
~~Amador~~	~~620,264~~
~~Butte~~	~~5,950,593~~
~~Calaveras~~	~~913,959~~
~~Colusa~~	~~799,988~~
~~Del Norte~~	~~781,358~~
~~El Dorado~~	~~3,535,288~~
~~Glenn~~	~~787,933~~
~~Humboldt~~	~~6,883,182~~
~~Imperial~~	~~6,394,422~~
~~Inyo~~	~~1,100,257~~
~~Kings~~	~~2,832,833~~
~~Lake~~	~~1,022,963~~
~~Lassen~~	~~687,113~~
~~Madera~~	~~2,882,147~~
~~Marin~~	~~7,725,909~~
~~Mariposa~~	~~435,062~~
~~Mendocino~~	~~1,654,999~~
~~Modoc~~	~~469,034~~
~~Mono~~	~~369,309~~
~~Napa~~	~~3,062,967~~
~~Nevada~~	~~1,860,793~~
~~Plumas~~	~~905,192~~
~~San Benito~~	~~1,086,011~~
~~Shasta~~	~~5,361,013~~
~~Sierra~~	~~135,888~~
~~Siskiyou~~	~~1,372,034~~
~~Solano~~	~~6,871,127~~
~~Sonoma~~	~~13,183,359~~
~~Sutter~~	~~2,996,118~~
~~Tehama~~	~~1,912,299~~
~~Trinity~~	~~611,497~~
~~Tuolumne~~	~~1,455,320~~

Yuba	2,395,580

(3) Beginning in the 1991–92 fiscal year and in subsequent fiscal years, the jurisdictional risk limitation for the counties that did not contract with the department pursuant to former Section 16709 during the 1990–91 fiscal year shall be the amount specified in subparagraph (A) plus the amount determined pursuant to subparagraph (B), minus the amount specified by the governing board as participation fees.

(A)

Jurisdiction	Amount
Merced	2,033,729
Placer	1,338,330
San Luis Obispo	2,000,491
Santa Cruz	3,037,783
Yolo	1,475,620

(B) The amount of funds necessary to fully fund the anticipated costs for the county shall be determined by the governing board before a county is permitted to participate in the County Medical Services Program.

(4) The specific amounts and method of apportioning risk to each participating county may be adjusted by the governing board.

(k) The Legislature hereby determines that an expedited contract process for contracts under this section is necessary. Contracts under this section shall be exempt from Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code. Contracts of the department pursuant to this section shall have no force or effect unless they are approved by the Department of Finance.

(*l*) The state shall not incur any liability except as specified in this section.

(m) Third-party recoveries for services provided under this section may be pursued.

(n) The Department of Finance may authorize a loan of up to thirty million dollars ($30,000,000) for deposit into the program account to ensure that there are sufficient funds available to reimburse providers and counties pursuant to this section and for

~~governing board expenses described in subdivision (f) that are associated with a Low Income Health Program, operated by the governing board pursuant to Part 3.6 (commencing with Section 15909).~~

~~(o) Moneys appropriated from the General Fund to meet the state risk, as set forth in subparagraph (A) of paragraph (1) of subdivision (j), shall not be available for those counties electing to disenroll from the County Medical Services Program.~~

~~(p) Notwithstanding any other law, the Controller may use the moneys in the County Medical Services Program Account for loans to the General Fund as provided in Sections 16310 and 16381 of the Government Code. However, interest shall be paid on all moneys loaned to the General Fund from the County Medical Services Program Account. Interest payable shall be computed at a rate determined by the Pooled Money Investment Board to be the current earning rate of the fund from which loaned. This subdivision does not authorize any transfer that will interfere with the carrying out of the object for which the County Medical Services Program Account was created.~~

~~SEC. 3.~~

SECTION 1. Section 16809.3 of the Welfare and Institutions Code is amended to read:

16809.3. (a) Beginning in the 1991–92 fiscal year, and in subsequent fiscal years, a county shall pay the amount listed below or as established by the governing board pursuant to subparagraph (B) of paragraph (1) of subdivision (e) of Section 16809.4, to the governing board as a condition of participation in the County Medical Services Program administered pursuant to Section 16809:

Jurisdiction	Amount
Alpine	$ 661
Amador	17,107
Butte	459,610
Calaveras	30,401
Colusa	28,997
Del Norte	39,424
El Dorado	233,492
Glenn	33,989
Humboldt	430,851
Imperial	249,786

Inyo	18,950
Kings	195,053
Lake	150,278
Lassen	17,206
Madera	151,434
Marin	576,233
Mariposa	5,649
Mendocino	247,578
Modoc	9,688
Mono	25,469
Napa	142,767
Nevada	42,051
Plumas	23,796
San Benito	37,018
Shasta	294,369
Sierra	6,183
Siskiyou	48,956
Solano	809,548
Sonoma	718,947
Sutter	188,781
Tehama	79,950
Trinity	8,319
Tuolumne	34,947
Yuba	101,907

(b) Beginning in the 1991–92 fiscal year and in subsequent fiscal years, counties that did not contract with the department pursuant to Section 16709 during the 1990–91 fiscal year shall pay the following amount listed below or as established by the governing board pursuant to subparagraph (B) of paragraph (1) of subdivision (e) of Section 16809.4, to the governing board as a condition of participation in the County Medical Services Program, administered pursuant to Section 16809:

Jurisdiction	Amount
Merced	$488,954
Placer	247,193
San Luis Obispo	358,571
Santa Cruz	678,868
Yolo	532,510

(c) (1) County amounts specified in subdivisions (a) and (b) shall be paid to the governing board in 10 equal payments during the fiscal year or as otherwise specified by the governing board. Subject to paragraphs (2) and (3), a county that does not pay the amounts specified in subdivision (a) or (b) may be terminated from participation in the program.

(2) A county may request, due to financial hardship, that payments specified under subdivisions (a) and (b) be delayed. The request shall be subject to the approval of the governing board.

(3) For the 1991–92 fiscal year and subsequent fiscal years, counties that enter the County Medical Services Program shall pay the amount specified in subdivision (a) or (b), as applicable, on a prorated basis, for the number of contracted months of participation in the County Medical Services Program.

(d) The payments required by subdivision (c) shall not be paid for with funds from the health account of the local health and welfare trust fund established pursuant to Section 17600.10.

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SENATE RULES COMMITTEE SB 1517
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 651-1520 Fax: (916) 327-4478

THIRD READING

Bill No: SB 1517
Author: Wolk (D)
Amended: 5/29/12
Vote: 21

SENATE HEALTH COMMITTEE: 9-0, 4/18/12
AYES: Hernandez, Harman, Alquist, Anderson, Blakeslee, De León, DeSaulnier, Rubio, Wolk

SENATE APPROPRIATIONS COMMITTEE: 7-0, 5/24/12
AYES: Kehoe, Walters, Alquist, Dutton, Lieu, Price, Steinberg

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SUBJECT: County medical service program: fees

SOURCE: County Medical Services Program Governing Board

DIGEST: This bill requires County Medical Services Program (CMSP) participation fees paid by counties to be paid each fiscal year to the CMSP Governing Board to be made in 10 equal payments (instead of 12 equal payments) during the fiscal year, or as otherwise specified by the CMSP Governing Board.

ANALYSIS:

Existing law:

1. Authorizes counties with a population of less than 300,000 in the 1990 census or that contracted with the Department of Health Services (now the Department of Health Care Services (DHCS)) during the 1990-91 fiscal year under a specified provision of law to elect to participate in the CMSP, for the purpose of providing health services to eligible county

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residents. Counties that elect to participate in the program may establish a CMSP Governing Board, and the Governing Board is required to administer the CMSP.

2. Allows the Department of Finance (DOF) to authorize a loan of up to $30 million for deposit into the CMSP account to ensure that there are sufficient funds available to reimburse providers and counties under CMSP.

3. Requires CMSP participation fees paid by counties to be paid each fiscal year, as a condition of participating in CMSP to the CMSP Governing Board in 12 equal monthly payments, or as otherwise specified by the CMSP Governing Board.

4. Requires DHCS, pursuant to federal approval of a demonstration project, to authorize local Low Income Health Programs (LIHPs) to provide health care services to eligible low-income individuals under certain circumstances. LIHPs are established at local option, and are authorized to cover individuals up to 200% of the federal poverty level (FPL) (200% of the FPL is at or below $22,340 for an individual in 2012). LIHPs are in effect until December 31, 2013, and no state General Fund moneys can be used to fund LIHP services or any related local administrative costs.

This bill requires CMSP participation fees paid by counties to be paid each fiscal year to the CMSP Governing Board to be made in 10 equal payments (instead of 12 equal payments) during the fiscal year, or as otherwise specified by the CMSP Governing Board.

Background

CMSP was established in 1983, after the Legislature transferred responsibility for providing health services to low-income adults, referred to as medically indigent adults (MIAs) from the state Medi-Cal program to the counties. There are currently 34 primarily rural counties electing to provide for care of the MIAs through CMSP that are principally located in the northern and eastern portions of California. CMSP provides medical care services to indigent adults ages 18 to 64, with incomes at or below 200 percent of the FPL (at or below $22,340 for an individual in 2012) who are not eligible for Medi-Cal and who are county residents. Individuals with incomes above 67% of the FPL up to 200% of the FPL (between $7,484 and

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$22,340 for an individual in 2012) have a share of cost before CMSP coverage begins. Individuals with incomes below 67% of the FPL do not have a share of cost. Emergency services are provided when the person's immigration status is not known. The average monthly enrollment in CMSP at the end of 2011 was approximately 62,000 individuals. The CMSP Governing Board, established through existing law, has responsibility for setting program eligibility standards, defining the scope of covered health care benefits, and determining payment rates for health care providers delivering emergency and non-emergency services to CMSP members. For 2011-12, CMSP assumed expenditures of $363 million, revenues of $247 million and a beginning year fund balance of $138 million.

In January 2012, the Governing Board established "Path2Health," an LIHP for the 34 counties in CMSP. On July 1, 2012, Yolo County will join CMSP and participate in both CMSP and Path2Health. As an LIHP, Path2Health provides broader coverage than the prior CMSP benefit package and eliminates CMSP eligibility restrictions, specifically, the asset test and the share-of-cost requirement for individuals with incomes between 67 and 100% of the FPL. Path2Health also provides expanded mental health and substance abuse counseling benefits that were not previously covered by CMSP. Projected enrollment in Path2Health and CMSP as a result of the eligibility changes and enhanced awareness and outreach is projected to increase by 28,000, for total combined enrollment of approximately 89,000 by the end of 2013.

LIHPs are established at county option, and services provided through LIHPs are not an entitlement. LIHPs are authorized to cover low-income individuals 19 to 64 years of age, who are not pregnant, with family incomes at or below 200% of the FPL (at or below $22,340 for an individual in 2012), who are not eligible for the Medicare Program, the Medi-Cal program, the Healthy Families Program, or other third-party coverage, have satisfactory immigration status, and meet county of residence requirements. Each LIHP can establish an upper income limit for eligible individuals, and can limit enrollment, subject to specified conditions, including state approval. The state match used to draw down federal Medicaid funds for LIHPs comes from local funds. Existing law prohibits state General Fund moneys from being used to fund LIHP services or any related administrative costs incurred by counties. As of January 2012, total statewide LIHP enrollment was 321,825 individuals.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

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According to the Senate Appropriations Committee, minor costs to program participants (Local Fund).

SUPPORT: (Verified 5/29/12)

County Medical Services Program Governing Board (source)

ARGUMENTS IN SUPPORT: This bill is sponsored by the CMSP Governing Board to make two changes. First, this bill codifies the current Governing Board practice of requiring fees to the CMSP Governing Board to be made in 10 equal payments. Second, this bill helps the CMSP Governing Board address cash flow needs associated with Path2Health and CMSP so that timely payments can be made to health care providers for services provided to indigent adults under those two programs. The sponsor states federal Medicaid matching funds for the LIHP and the cycle of payments under realignment provide revenues to CMSP five to eight months after expenditures are made. In the absence of this loan authority, the sponsor states the Governing Board will be required to seek loan financing solely through the commercial financial markets, which will be time consuming and potentially quite costly, depending on the financial instruments that are utilized.

CTW:mw 5/29/12 Senate Floor Analyses
SUPPORT/OPPOSITION: SEE ABOVE
****** END ******

AMENDED IN ASSEMBLY MAY 17, 2012

AMENDED IN ASSEMBLY APRIL 26, 2012

AMENDED IN ASSEMBLY APRIL 23, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 1831

Introduced by Assembly Member Dickinson
(~~Coauthor:~~ *Coauthors:* Assembly ~~Member~~ *Members Ammiano and* Swanson)

February 22, 2012

An act to add Section 50085.3 to the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 1831, as amended, Dickinson. Local government: hiring practices.

Existing law requires the hiring practices and promotional practices of a local agency, as defined, to conform to the federal Civil Rights Act of 1964 and prohibits any local agency from, as a part of its hiring practices or promotional practices, employing any educational prerequisites or testing or evaluation methods ~~which~~ *that* are not job-related, unless there is no adverse effect.

This bill would prohibit a local agency from inquiring into or considering the criminal history of an applicant or including any inquiry about criminal history on any initial employment application. The bill would authorize a local agency to inquire into or consider an applicant's criminal history after the applicant's qualifications have been screened and the agency has determined the applicant meets the minimum employment requirements, as stated in any notice issued for the position. The bill would not apply to a position ~~for which~~ *that* a local agency is

otherwise required by law to conduct a criminal history background check or to any position within a criminal justice agency, as defined.

The bill would also express a legislative finding and declaration that reducing barriers to employment for people who have previously offended, and decreasing unemployment in communities with concentrated numbers of people who have previously offended, is a matter of statewide concern, and that ~~therefore,~~ all cities and counties, including charter cities and counties, would be subject to the provisions of the bill.

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

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

SECTION 1. The Legislature finds and declares that reducing barriers to employment for people who have previously offended, and decreasing unemployment in communities with concentrated numbers of people who have previously offended, is a matter of statewide concern. Therefore, this act shall apply to all cities and counties, including charter cities and charter counties. The Legislature further finds and declares that, consistent with the Criminal Justice Realignment Act of 2011 (Chapter 39 of the Statutes of 2011), increasing employment opportunities for people who have previously offended will reduce recidivism and improve economic stability in our communities.

SEC. 2. Section 50085.3 is added to the Government Code, to read:

50085.3. (a) A local agency shall not inquire into or consider the criminal history of an applicant or include any inquiry about criminal history on any initial employment application. A local agency may inquire into or consider an applicant's criminal history after the applicant's qualifications have been screened and the agency has determined the applicant meets the minimum employment requirements, as stated in any notice issued for the position.

(b) This section shall not apply to a position ~~for which~~ *that* a local agency is otherwise required by law to conduct a criminal history background check or to any position within a criminal justice agency, as that term is defined in Section 13101 of the Penal Code.

(c) Nothing in this section shall be construed as ~~requiring that~~ *preventing* a local agency ~~conduct~~ *from conducting* a criminal history background check *after compliance with all of the provisions of subdivision (a).*

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ASSEMBLY THIRD READING
AB 1831 (Dickinson)
As Amended May 17, 2012
Majority vote

LOCAL GOVERNMENT 6-2

Ayes: Alejo, Bradford, Campos, Davis, Gordon, Hueso

Nays: Smyth, Knight

SUMMARY: Prohibits a city or county from inquiring into or considering criminal history when screening an applicant for employment, or including any inquiry about criminal history on any initial employment application. Specifically, this bill:

1) Prohibits a city or county from inquiring into or considering the criminal history of an applicant or including any inquiry about criminal history on any initial employment application.

2) Authorizes a city or county to inquire into or consider an applicant's criminal history after the applicant's qualifications have been screened and the city or county has determined that the applicant meets the minimum employment requirements.

3) Excludes from the provisions of this bill any position: a) for which a city or county is otherwise required by law to conduct a criminal history background check; or, b) within a criminal justice agency, as that term is defined in Penal Code Section 13101.

4) Provides that nothing in this measure shall be construed as preventing a local agency from conducting a criminal history background check after complying with the provisions of 1) and 2) above.

5) Makes legislative findings and declarations related to the importance of reducing employment discrimination, and further declares the matter to be of statewide concern, such that all cities and counties, including charter cities and counties, would be subject to the provisions of the bill.

EXISTING LAW:

1) Requires the hiring practices and promotional practices of a city or county, as defined, to conform to the Federal Civil Rights Act of 1964 and prohibits any city or county from, as a part of its hiring practices or promotional practices, employing any educational prerequisites or testing or evaluation methods which are not job-related unless there is no adverse effect.

2) Defines "criminal justice agencies" as those agencies at all levels of government which perform as their principal functions, activities which either: a) relate to the apprehension, prosecution, adjudication, incarceration, or correction of criminal offenders; or, b) relate to the collection, storage, dissemination or usage of criminal offender record information.

FISCAL EFFECT: None

COMMENTS: This bill is intended to reduce employment discrimination against individuals with past criminal records by prohibiting cities and counties from inquiring into or considering the criminal history of an applicant before determining whether or not the applicant has met the stated initial employment requirements. In doing so, this bill aims to increase employment and reduce criminal recidivism, particularly in areas with disproportionately high numbers of individuals with criminal records. This bill is sponsored by the American Civil Liberties Union of California (ACLU) and the National Employment Law Project (NELP).

This bill would prohibit all cities and counties – including charter cities and counties, but not special districts or other forms of local public agencies – from inquiring into or considering the criminal history of an applicant for employment, or including any inquiry about criminal history on any initial employment application. A local agency would be permitted to inquire into and consider criminal history only after determining that the applicant otherwise meets the stated minimum employment requirements.

The bill exempts from its own provisions any position that is otherwise required by law to conduct a criminal history background check (such as law enforcement and those working with children, the elderly and the disabled), and more broadly, any position within a criminal justice agency (i.e., police and sheriffs' departments, criminal courts and crime labs). The bill also makes clear that it does not prevent a local agency from conducting a criminal history background check as long as that local agency is otherwise in compliance with this measure.

This bill is part of a larger nationwide effort to "ban the box" – namely, to prohibit public employers from including in initial employment applications a 'check box' or other inquiry requiring an applicant to disclose any prior criminal history. According to the author, the states of Connecticut, Hawaii, Massachusetts, Minnesota, New Mexico and over 30 U.S. cities and counties have removed the conviction history inquiry from initial job applications in public employment, including Alameda and Santa Clara Counties and the cities of San Francisco, Berkeley, East Palo Alto, Compton, Oakland, Richmond, and San Diego.

The author notes that "[b]ecause criminal background checks have a disparate impact on people of color, Title VII of the Civil Rights Act of 1964 prohibits no-hire policies against people with criminal records. An employer's consideration of a conviction history may pass muster under Title VII if an individualized assessment is made taking into account whether the conviction is job-related and the time passed since the conviction. Removing the inquiry about conviction history from the initial job application promotes a case-by-case assessment of the applicant, which is more consistent with Title VII."

The Drug Policy Alliance contends that employment discrimination based on prior criminal history is rampant, especially in minority communities: "[a] wide body of research has demonstrated that the consequences of a criminal conviction on opportunities for employment are particularly severe. A major study of actual hiring practices, for example, shows that in nearly 50% of cases, employers were unwilling to consider equally qualified applicants on the basis of their criminal record. Additionally, people of color with criminal convictions face additional discrimination and are even less likely to be considered for employment than white applicants with criminal convictions. Another survey of employer attitudes reflected that 40% of employers will not even consider a job applicant for employment once they are aware that the

individual has a criminal record." [Emphasis removed]

According to the author, NELP "estimates that there are almost 7 million adults in California with criminal records on file with the state. One prominent researcher has found that a criminal record reduces the likelihood of a job callback or offer by nearly 50 percent, an effect even more pronounced for African American men than for white men. The stigma of a past criminal record also discourages otherwise qualified individuals from applying for work because of a conviction history inquiry on the job application."

According to NELP, "[e]mployment of eligible people with a conviction history is key to the success of realignment at the local level, as studies have shown that stable employment significantly lowers recidivism and promotes public safety." Similarly, the author contends that "[r]esearch has shown that people who are employed after release from prison are less likely to return. One study found that only 8% of those who were employed for a year committed another crime compared to that state's 54% average recidivism rate. Increased employment and increased wages are also associated with lower crime rates."

Beginning in March 2007, the Alameda County Human Resource Service Department removed questions about conviction histories from the initial job application and delayed criminal background screening of applicants. According to the Interim Director, the Department "has not found that removing the question about conviction histories from the job application…is a waste of the County resources; in fact…this practice saves the County resources. The County's [modification of the initial application] was a simple process and was not resource-intensive…The County has not had any problems with this policy…In fact, the County has benefitted from hiring dedicated and hardworking County employees because of the policy change."

The City of Oakland also reports similar results with the same policy, stating "[t]he new processes have not required additional resources and have instead shifted the timing of when background checks are conducted. There are no new costs associated with the change in policy and we have not encountered new problems since changing our practices."

The California District Attorneys Association opposes the bill on the grounds that it would only extend the inevitable: "…all this bill will do is ensure that local agencies waste public time and resources screening initial applications for minimum eligibility that will almost certainly be rejected once an applicant's criminal history is made known. Certainly, there are positions in state and local government for which a criminal background check is not required but into which it is inappropriate to hire a person with specific criminal histories…The only sure outcome is unnecessary delay and increased costs in hiring procedures. At a time when local governments are just as, if not more than, cash-strapped as the state, it seems unwise to guarantee the pointless expenditure of public time and resources toward no discernible public benefit."

The California Police Chiefs Association opposes the bill on similar grounds: "AB 1831 would seriously add to the yoke of already fiscally overburdened agencies. Moreover, there are entire classes of employees whose criminal history could cause public harm: building inspectors, code enforcement officers, records clerks, public utility workers all occupy positions of public trust and the citizens of a jurisdiction are ill-served if the persons occupying those positions have the types of criminal records that could endanger the public."

It should be noted that the provisions of this bill do not apply to special districts (or other local agencies aside from cities and counties). In 2002, California counted more than 3,400 special districts which expend more than $26 billion per year - agencies that likely account for a substantial share of the public employees at the local level. The author's office has offered no rationale for the exclusion of special districts from the provisions of this bill.

The Legislature may wish to ask the author why the provisions of this bill should be applied to public employees of cities and counties – including charter cities and counties – but not to all local government agencies.

Analysis Prepared by: Hank Dempsey / L. GOV. / (916) 319-3958

FN: 0003655

AMENDED IN ASSEMBLY MAY 2, 2012

AMENDED IN ASSEMBLY APRIL 16, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 1692

Introduced by Assembly Member Wieckowski

February 15, 2012

An act to amend Sections 53760.1 and 53760.3 of the Government Code, relating to bankruptcy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1692, as amended, Wieckowski. Bankruptcy.

~~Existing law suspended various activities of redevelopment agencies and prohibited those agencies from incurring indebtedness for a specified period. Existing law dissolved redevelopment agencies on February 1, 2012, and provides for the designation of successor agencies, as defined. Existing law requires successor agencies to wind down the affairs of the dissolved redevelopment agencies and to, among other things, repay enforceable obligations, as defined, and to remit unencumbered balances of redevelopment agency funds, including housing funds, to the county auditor-controller for distribution to taxing entities.~~

Existing law authorizes a local public entity, as defined, to file a petition and exercise powers pursuant to applicable federal bankruptcy law, subject to specified procedures, including participation in a neutral evaluation process with interested parties, as defined, or upon a declaration of fiscal emergency, as specified. Existing law prohibits the neutral evaluation established by this process from ~~lasting~~ *exceeding* more than 60 days following the date the neutral evaluator is selected,

unless the local public entity or a majority of participating interested parties elect to extend the process for up to 30 additional days.

~~This bill would authorize a successor agency to file for bankruptcy under applicable federal bankruptcy law, subject to existing procedures.~~

This bill would revise and recast the bankruptcy procedures that apply to the neutral evaluation process. The bill would authorize the neutral evaluator to toll the limitation period for the neutral evaluation process based upon a finding that the local public entity or any interested parties' conduct in presenting information required under this process prevented the parties from effectively proceeding in the neutral evaluation process. The bill would authorize the neutral evaluator to request and control the process of an independent investigation, as specified. ~~The bill would further authorize the neutral evaluator to grant an extension of the process beyond 90 days if requested by the majority of the participating interested parties.~~ The bill would provide that the neutral evaluation process shall end upon a specified circumstance.

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

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

SECTION 1. Section 53760.1 of the Government Code is amended to read:

53760.1. As used in this article the following terms have the following meanings:

(a) "Chapter 9" means Chapter 9 (commencing with Section 901) of Title 11 of the United States Code.

(b) "Creditor" means either of the following:

(1) An entity that has a noncontingent claim against a municipality that arose at the time of or before the commencement of the neutral evaluation process and whose claim represents at least five million dollars ($5,000,000) or comprises more than 5 percent of the local public entity's debt or obligations, whichever is less.

(2) An entity that would have a noncontingent claim against the municipality upon the rejection of an executory contract or unexpired lease in a Chapter 9 case and whose claim would represent at least five million dollars ($5,000,000) or comprises more than 5 percent of the local public entity's debt or obligations, whichever is less.

(c) "Debtor" means a local public entity that may file for bankruptcy under Chapter 9.

(d) "Good faith" means participation by a party in the neutral evaluation process with the intent to negotiate toward a resolution of the issues that are the subject of the neutral evaluation process, including the timely provision of complete and accurate information to provide the relevant parties through the neutral evaluation process with sufficient information, in a confidential manner, to negotiate the readjustment of the municipality's debt.

(e) "Interested party" means a trustee, a committee of creditors, an affected creditor, an indenture trustee, a pension fund, a bondholder, a union that, under its collective bargaining agreements, has standing to initiate contract or debt restructuring negotiations with the municipality, or a representative selected by an association of retired employees of the public entity who receive income from the public entity convening the neutral evaluation. A local public entity may invite holders of contingent claims to participate as interested parties in the neutral evaluation if the local public entity determines that the contingency is likely to occur and the claim may represent five million dollars ($5,000,000) or comprise more than 5 percent of the local public entity's debt or obligations, whichever is less.

(f) "Local public entity" means any county, city, district, public authority, public agency, ~~a successor agency, as defined in Section 34171 of the Health and Safety Code,~~ or other entity, without limitation, that is a municipality as defined in Section 101(40) of Title 11 of the United States Code (bankruptcy), or that qualifies as a debtor under any other federal bankruptcy law applicable to local public entities. For purposes of this article, "local public entity" does not include a school district.

(g) "Local public entity representative" means the person or persons designated by the local public agency with authority to make recommendations and to attend the neutral evaluation on behalf of the governing body of the municipality.

(h) "Neutral evaluation" is a form of alternative dispute resolution that is imposed upon the parties and is a means whereby a neutral evaluator considers the arguments and information presented by the parties and offers a nonbinding opinion meant to assist in the resolution of the issue or issues in dispute.

SEC. 2. Section 53760.3 of the Government Code is amended to read:

53760.3. (a) A local public entity may initiate the neutral evaluation process if the local public entity is or likely will become unable to meet its financial obligations as and when those obligations are due or become due and owing. The local public entity shall initiate the neutral evaluation by providing notice by certified mail of a request for neutral evaluation to all interested parties as defined in Section 53760.1.

(b) Interested parties shall respond within 10 business days of receipt of notice of the local public entity's request for neutral evaluation indicating their agreement to participate in the neutral evaluation process.

(c) (1) The local public entity and the interested parties agreeing to participate in the neutral evaluation shall, through a mutually agreed upon process, select the neutral evaluator to oversee the neutral evaluation process and facilitate all discussions in an effort to resolve their disputes. The process shall include, but not be limited to, an opportunity for any interested party to submit neutral evaluators for consideration by the interested parties.

(2) If the local public entity and interested parties fail to agree on a neutral evaluator selection process pursuant to paragraph (1) within seven days after the interested parties have responded to the notification sent by the public entity, the public entity shall select five qualified neutral evaluators and provide their names, references, and backgrounds to the participating interested parties. Within three business days, a majority of participating interested parties may strike up to four names from the list. If a majority of participating interested parties strikes four names, the remaining candidate shall be the neutral evaluator. If the majority of participating parties strikes fewer than four names, the local public entity may choose which of the remaining candidates shall be the neutral evaluator.

(d) A neutral evaluator shall have experience and training in conflict resolution and alternative dispute resolution and shall meet at least one of the following qualifications:

(1) At least 10 years of high-level business or legal practice involving bankruptcy or service as a United States Bankruptcy Judge.

(2) Professional experience or training in municipal finance and one or more of the following issue areas:

(A) Municipal organization.

(B) Municipal debt restructuring.

(C) Municipal finance dispute resolution.

(D) Chapter 9 bankruptcy.

(E) Public finance.

(F) Taxation.

(G) California constitutional law.

(H) California labor law.

(I) Federal labor law.

(e) The neutral evaluator shall be impartial, objective, independent, and free from prejudice. The neutral evaluator shall not act with partiality or prejudice based on any participant's personal characteristics, background, values or beliefs, or performance during the neutral evaluation process.

(f) The neutral evaluator shall avoid a conflict of interest or the appearance of a conflict of interest during the neutral evaluation process. The neutral evaluator shall make a reasonable inquiry to determine whether there are any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest. Notwithstanding subdivision (o), if the neutral evaluator is informed of the existence of any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest, the neutral evaluator shall disclose these facts in writing to the local public entity and all interested parties involved in the neutral evaluation. If any party to the neutral evaluation objects to the neutral evaluator, that party shall notify all other parties to the neutral evaluation, including the neutral evaluator, within 15 days of receipt of the notice from the neutral evaluator, the neutral evaluator shall withdraw and a new neutral evaluator shall be selected pursuant to subdivision (c) of Section 53761.3.

(g) Prior to the neutral evaluation process, the neutral evaluator shall not establish another relationship with any of the parties in a manner that would raise questions about the integrity of the neutral evaluation, except that the neutral evaluator may conduct further neutral evaluations regarding other potential local public entities that may involve some of the same or similar constituents to a prior mediation.

(h) The neutral evaluator shall conduct the neutral evaluation process in a manner that promotes voluntary, uncoerced decisionmaking in which each party makes free and informed choices regarding the process and outcome.

(i) The neutral evaluator shall not impose a settlement on the parties. The neutral evaluator shall use his or her best efforts to assist the parties to reach a satisfactory resolution of their disputes. Subject to the discretion of the neutral evaluator, the neutral evaluator may make oral or written recommendations for settlement or plan of readjustment to a party privately or to all parties jointly.

(j) The neutral evaluator shall inform the local public entity and all parties of the provisions of Chapter 9 relative to other chapters of the bankruptcy codes. This instruction shall highlight the limited authority of United States bankruptcy judges in Chapter 9 such as the lack of flexibility available to judges to reduce or cram down debt repayments and similar efforts not available to reorganize the operations of the city that may be available to a corporate entity.

(k) The neutral evaluator may request from the parties documentation and other information that the neutral evaluator believes may be helpful in assisting the parties to address the obligations between them. This documentation may include the status of funds of the local public entity that clearly distinguishes between general funds and special funds, and the proposed plan of readjustment prepared by the local public entity. The neutral evaluator may toll the limitation period for the neutral evaluation process based upon a finding that the local public entity or any interested parties' conduct in presenting information required pursuant to this subdivision prevented the parties from effectively proceeding in the neutral evaluation process.

(*l*) The neutral evaluator may request and control the process of an independent investigation in an effort to obtain meaningful financial information and explore other areas of recovery.

(m) The neutral evaluator shall provide counsel and guidance to all parties, shall not be a legal representative of any party, and shall not have a fiduciary duty to any party.

(n) In the event of a settlement with all interested parties, the neutral evaluator may assist the parties in negotiating a prepetitioned, preagreed plan of readjustment in connection with a potential Chapter 9 filing.

(o) If at any time during the neutral evaluation process the local public entity and a majority of the representatives of the interested parties participating in the neutral evaluation wish to remove the neutral evaluator, the local public entity or any interested party may make a request to the other interested parties to remove the neutral evaluator. If the local public entity and the majority of the interested parties agree that the neutral evaluator should be removed, the parties shall select a new neutral evaluator.

(p) The local public entity and all interested parties participating in the neutral evaluation process shall negotiate in good faith.

(q) The local public entity and interested parties shall provide a representative of each party to attend all neutral evaluation sessions. Each representative shall have the authority to settle and resolve disputes or shall be in a position to present any proposed settlement or plan of readjustment to the parties participating in the neutral evaluation.

(r) The parties shall maintain the confidentiality of the neutral evaluation process and shall not disclose statements made, information disclosed, or documents prepared or produced, during the neutral evaluation process, at the conclusion of the neutral evaluation process or during any bankruptcy proceeding unless either of the following occur:

(1) All persons that conduct or otherwise participate in the neutral evaluation expressly agree in writing, or orally in accordance with Section 1118 of the Evidence Code, to disclosure of the communication, document, or writing.

(2) The information is deemed necessary by a judge presiding over a bankruptcy proceeding pursuant to Chapter 9 of Title 11 of the United States Code to determine eligibility of a municipality to proceed with a bankruptcy proceeding pursuant to Section 109(c) of Title 11 of the United States Code.

(s) ~~(1)~~ The neutral evaluation established by this process shall not last for more than 60 days following the date the evaluator is selected, unless the local public entity or a majority of participating interested parties elect to extend the process for up to 30 additional days. The neutral evaluation process shall not last for more than 90 days following the date the evaluator is selected unless the local public entity and a majority of the interested parties agree to an extension.

~~(2) Notwithstanding paragraph (1), the neutral evaluator may grant an extension beyond 90 days if requested by the majority of the participating interested parties.~~

(t) The local public entity shall pay 50 percent of the costs of neutral evaluation, including but not limited to the fees of the evaluator, and the creditors shall pay the balance, unless otherwise agreed to by the parties.

(u) The neutral evaluation process shall end if any of the following occur:

(1) The parties execute a settlement agreement.

(2) The parties reach an agreement or proposed plan of readjustment that requires the approval of a bankruptcy judge.

(3) The neutral evaluation process has exceeded 60 days following the date the neutral evaluator was selected, the parties have not reached an agreement, and neither the local public entity or a majority of the interested parties elect to extend the neutral evaluation process past the initial 60-day time period.

(4) The local public entity initiated the neutral evaluation process pursuant to subdivision (a) and received no responses from interested parties within the time specified in subdivision (b).

(5) The fiscal condition of the local public entity deteriorates to the point that a fiscal emergency is declared pursuant to Section 53076.5 and necessitates the need to file a petition and exercise powers pursuant to applicable federal bankruptcy law.

(6) The neutral evaluation process has exceeded the agreed upon period pursuant to subdivision (s), the parties have not reached an agreement, and neither the local public entity or a majority of the interested parties elect to extend the neutral evaluation process past the agreed upon period.

(v) If the 60-day time period for neutral evaluation has expired, including any extension of the neutral evaluation past the initial 60-day time period pursuant to subdivision (s), and the neutral evaluation is complete with differences resolved, the neutral evaluation shall be concluded. If the neutral evaluation process does not resolve all pending disputes with creditors the local public entity may file a petition and exercise powers pursuant to applicable federal bankruptcy law if, in the opinion of the governing board of the local public entity, a bankruptcy filing is necessary.

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ASSEMBLY THIRD READING
AB 1692 (Wieckowski)
As Amended May 2, 2012
Majority vote

LOCAL GOVERNMENT 5-3

Ayes: Alejo, Bradford, Campos, Davis, Hueso

Nays: Smyth, Knight, Norby

SUMMARY: Revises recently enacted language relating to the neutral evaluation process for local public entities contained in AB 506 (Wieckowski), Chapter 675, Statutes of 2011. Specifically, this bill:

1) Revises the definition of "neutral evaluation" to mean a "form of alternative dispute resolution that is imposed upon the parties and is a means whereby a neutral evaluator considers the arguments and information presented by the parties and offers a nonbinding opinion meant to assist in the resolution of the issues in dispute."

2) Requires interested parties, as part of the neutral evaluation, to indicate their agreement to participate in the neutral evaluation process once they are in receipt of notice of the local public entity's request for neutral evaluation.

3) Requires, in the mutually agreed upon process used to select the neutral evaluator, to include, but not be limited to, an opportunity for any interested party to submit neutral evaluators for consideration by the interested parties.

4) Allows, as part of the neutral evaluator's request for documentation and other information from the parties, the neutral evaluator to toll the limitation period for the neutral evaluation process based upon a finding that the local public entity or any interested parties' conduct in presenting required information prevented the parties from effectively proceeding in the neutral evaluation process.

5) Allows the neutral evaluator to request and control the process of an independent investigation in an effort to obtain meaningful financial information and explore other areas of recovery.

6) Adds, to the list of reasons requiring the end of the neutral evaluation process, that the neutral evaluation process has exceeded the agreed upon period, the parties have not reached an agreement, and neither the local public entity or a majority of the interested parties elect to extend the neutral evaluation process past the agreed upon period.

EXISTING LAW:

1) Allows a local public entity to initiate a neutral evaluation process if the local public entity is or likely will become unable to meet its financial obligations as and when those obligations are due or become due and owing.

2) Allows a local public entity to file a petition and exercise powers pursuant to applicable federal bankruptcy law (Chapter 9) if the local public entity declares a fiscal emergency and adopts a resolution by a majority vote of the governing board at a noticed public hearing that includes findings that the financial state of the local public entity jeopardizes the health, safety, or well-being of the residents of the local public entity's jurisdiction or service area absent the protections of Chapter 9.

3) Requires the local public entity to initiate the neutral evaluation by providing notice by certified mail of a request for neutral evaluation to all interested parties, as defined.

4) Requires interested parties to respond within 10 business days of receipt of notice of the local public entity's request for neutral evaluation.

5) Requires the local public entity and interested parties to mutually agree upon a process and select the neutral evaluator to oversee the neutral evaluation process and facilitate all discussions in an effort to resolve their disputes.

6) Requires a neutral evaluator to have experience and training in conflict resolution and alternative dispute resolution and meet specified qualifications.

7) Requires the neutral evaluator to be impartial, objective, independent, and free from prejudice, and prohibits the neutral evaluator from imposing a settlement on the parties.

8) Requires the neutral evaluator to inform the local public entity and all parties of the provisions of Chapter 9 relative to other chapters of the federal bankruptcy codes.

9) Allows the neutral evaluator to assist the parties in negotiating a prepetitioned, preagreed plan of readjustment in connection with a Chapter 9 filing, in the event of a settlement with all interested parties.

10) Requires the local public entity and interested parties participating in the neutral evaluation process to negotiate in good faith.

11) Prohibits the neutral evaluation from lasting more than 60 days following the date the evaluator is selected, unless the local public entity or a majority of participating interested parties elect to extend the process for up to 30 additional days, and prohibits the neutral evaluation process from lasting more than 90 days unless parties agree to an extension.

12) Requires the local public entity to pay 50% of the costs of neutral evaluation, as specified.

13) Requires the neutral evaluation process to end if any of the following occur:

    a) The parties execute a settlement or agreement;

    b) The parties reach an agreement or proposed plan of readjustment that requires the approval of a bankruptcy judge;

c) The neutral evaluation process has exceeded 60 days and the parties have not reached an agreement, and no agreement is made to extend the process past the initial 60-day time period;

d) The local public entity initiated the neutral evaluation process but received no responses from interested parties during the specified time frame; or,

e) The fiscal condition of the local public entity deteriorates to the point that a fiscal emergency is declared and necessitates the need to file a petition for Chapter 9.

14) Defines a "local public entity" as a county, city, district, public authority, public agency, or other entity, without limitation, that is a municipality as defined in paragraph (40) of Section 101 of Title 11 of the United States Code (U.S.C.), or that qualifies as a debtor under any other federal bankruptcy law applicable to local public entities.

15) Defines the term “municipality” as a political subdivision or public agency or instrumentality of a state, pursuant to federal law (11 U.S.C. Section 101 (40)).

16) Allows the Superintendent of Public Instruction to assume control of a school district that becomes insolvent to ensure the district's return to fiscal solvency.

FISCAL EFFECT: None

COMMENTS:

Municipal Debtor: The list of eligibility requirements for a "municipal debtor" in federal law under Chapter 9 is contained in 11 U.S.C. Section 109(c) and specifies the following:

1) An entity may be a debtor under Chapter 9 only if such entity:

a) Is a municipality;

b) Is specifically authorized, in its capacity as a municipality or by name, to be a debtor under such chapter by state law, or by a governmental officer or organization empowered by state law to authorize such entity to be a debtor;

c) Is insolvent;

d) Desires to effect a plan to adjust such debts; and,

e) Has obtained the agreement of creditors holding at least a majority in amount of the claims of each class that such entity intends to impair under a plan in case under such chapter:

i) Has negotiated in good faith with creditors and it has obtained the agreement of creditors holding at least a majority in amount of the claims of each class that the municipality intends to impair under a plan of adjustment of claims;

ii) Is unable to negotiate with creditors because such negotiation is impracticable; or,

iii) Reasonably believes that a creditor may attempt to obtain a transfer that is avoidable under Section 547 of this title.

2) A municipality must meet all of these conditions for the bankruptcy petition to be accepted by the court.

Chapter 9: According to the U.S. Courts, "the purpose of Chapter 9 is to provide a financially-distressed municipality protection from its creditors while it develops and negotiates a plan for adjusting its debts. Reorganization of the debts of a municipality is typically accomplished either by extending debt maturities, reducing the amount of principal or interest, or refinancing the debt by obtaining a new loan."

Chapter 9 provides a municipal debtor with two primary benefits: a) a breathing spell with the automatic stay; and, b) the power to readjust debts through a bankruptcy plan process. The process enables municipalities to continue to provide essential public services while allowing them to adjust their debts.

Federal and State Bankruptcy Law: Federal law regarding municipal bankruptcy rose out of the financial crises of the 1930s. The provisions of Chapter 9 contained in federal law were created in 1934 and after several revisions, was made a permanent part of the Bankruptcy Act in 1946, and incorporated into the new Bankruptcy Code in 1978. In 1994, Congress amended the Bankruptcy Code to require that municipalities be "specifically authorized" under state law to file a petition under Chapter 9 – this was an express invitation to the states to revisit the types of local agencies that could seek federal relief. SB 1323 (Ackerman), Chapter 94, Statutes of 2002, sponsored by the California Law Revision Commission (CLRC), accomplished this by bringing state law in line with the "specific authorization" as required under federal law.

In response to the federal creation of Chapter 9, the California Legislature enacted bankruptcy authorization for municipalities in 1934. The general state statutes authorizing bankruptcy filings by local governments were codified in 1949 and those provisions were not amended until SB 1323 became law in 2002.

There were several attempts in the 1990s to harmonize California law with federal law requiring specific authorization:

1) SB 1274 (Killea), 1995-1996 and AB 2 X2 (Caldera), 1995-1996 would have granted the broadest authority permissible under federal law by adopting the federal definition of "municipality."

2) AB 29 X2 (Archie-Hudson), 1995-1996 would have provided authority for a municipality as defined by federal law to file "with specific statutory approval of the Legislature" and required the plan for adjustment of debts under Bankruptcy Code Section 941 to be "submitted to the appropriate policy committees of the Legislature prior to being submitted to the United States Bankruptcy Court."

3) SB 349 (Kopp), 1995-1996 would have modernized the obsolete references and adopted the "municipality" definition language in federal law. The bill would have established a Local Agency Bankruptcy Committee to determine whether to permit a municipality to file a

Chapter 9 petition, and the committee would have been comprised of the Treasurer, the Controller and the Director of Finance. The bill passed the Legislature, but was vetoed by Governor Wilson.

These bills were introduced mainly in response to the Orange County bankruptcy filing in 1994. According to a study done by the Public Policy Institute of California on the Orange County bankruptcy, "the financial difficulties leading to the bankruptcy were the direct result of an enormous gamble with public funds taken by a county treasurer who was seriously under-qualified to deal in the kinds of investments he chose." At that time, Orange County and its investment pool – which had suffered nearly $1.7 billion in investment losses – filed for bankruptcy protection on December 6 in two separate cases. The bankruptcy judge ruled that only the county, and not the investment pool, could file for bankruptcy, seeing that the investment pool did not meet the definition of a municipal debtor under federal bankruptcy law.

The California Law Revision Commission (CLRC) studied California's municipal bankruptcy statute and released their report in 2001. CLRC recommended that the Legislature revise the state law to conform to the federal provisions and what resulted was SB 1323 by Senator Ackerman.

Neutral Evaluation Process: Existing law prohibits a local public entity from filing under federal bankruptcy law unless the local public entity has participated in a neutral evaluation process with interested parties, or the local public entity has declared a fiscal emergency and has adopted a resolution by a majority vote of the governing board at a noticed public hearing. The requirements for a neutral evaluation process or fiscal emergency declaration were put into place by AB 506 (Wieckowski), Chapter 675, Statutes of 2011. The language in the final version of AB 506 was a compromise brokered between Senator Wolk as Chair of the Senate Governance and Finance Committee, and the Governor's Office, local government organizations, and the author's office. With the compromise language, local governments removed their opposition.

Prior to AB 506, local public entities in California had unfettered access to filing under Chapter 9 provisions of federal bankruptcy law, meaning that there was no state involvement or state-mandated requirements placed on the local entity in order to file for Chapter 9. The provisions of AB 506 took effect on January 1, 2012.

Two local governments, the City of Stockton and the Town of Mammoth Lakes, have recently entered into the newly-created neutral evaluation process enacted by AB 506. On February 29, 2012, the City of Stockton commenced the AB 506 process, with the 60-day mediation period starting on March 27th after Stockton and interested parties jointly selected a neutral evaluator.

The Legislature may wish to consider, in light of the fact that parties engaged in the AB 506 process are under confidentiality agreements, whether this bill is premature. If the goal of the bill is to clarify the process based on what is currently happening in Stockton, it may be best to wait until proceedings are finished in order to draw from that experience prior to making changes to the AB 506 process.

Purpose of the bill: This bill revises and recasts the bankruptcy procedures that apply to the neutral evaluation process. The bill authorizes the neutral evaluator to toll the limitation period for the neutral evaluation process based upon a finding that the local public entity or any interested parties' conduct in presenting information prevented the parties from effectively

proceeding in the neutral evaluation process. In essence, this means that the neutral evaluator would be given the authority to "stop the clock" during the 60-day window. This bill also authorizes the neutral evaluator to request and control the process of an independent investigation.

According to the author, this bill contains clarifying and supplemental language to be added to the neutral evaluation process. The author notes that there is uncertainty as to how the initial 60-day window is to be counted, and whether or not the neutral evaluator can require all parties to provide necessary access to information before the clock starts ticking. The bill is author-sponsored.

The California Professional Firefighters, in support, write that "as evidenced by the experience in the City of Stockton, there are key areas where a clarification under current law is needed. The amendments to AB 1692 seek to give the neutral evaluator the tools necessary to fulfill the obligations of their assignment by giving the neutral evaluator the authority to toll the limitation period for the mediation process if the local public entity or any interested party does not present the information required and thereby prevents the parties from effectively proceeding in the neutral evaluation process and permitting the neutral evaluator, when he or she believes it necessary, to request and oversee an independent investigation in an effort to obtain meaningful financial information and explore other areas of recovery."

The League of California Cities, in opposition, write that the "agreement on AB 506 was a notable compromise in the Legislature, because it had been preceded by three years of intense legislative battles. When [the League] agreed in good faith to the compromise…the expectation was that the matter has been resolved."

The League notes that the amendments adopted on April 16, 2012, "unravel key features of last year's agreement on AB 506….and revert to concepts that were advanced in earlier versions of AB 506 which local governments strongly opposed. Such changes include the removal of the reference to mandatory mediation and "mediator" as terms that describe the neutral party, the effort to empower the neutral evaluator with independent decision-making authority, and changing the circumstances in which the parties agreed to continue the mediation, by removing the required concurrence by the affected public entity."

Support arguments: Supporters argue for the need to make clarifying and conforming changes to the neutral evaluation process which, when practically applied, strengthen this confidential forum through which the neutral evaluator can provide assistance to help California's public agencies avert a destructive bankruptcy declaration.

Opposition arguments: According to the California State Association of Counties, Regional Council of Rural Counties, and Urban Counties Caucus, this bill would create more uncertainty in the neutral evaluation process and would make it impossible for a local agency choosing to use this process to know when the process would end.

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