

AMENDED IN ASSEMBLY MARCH 11, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 823

Introduced by Assembly Member Eggman

February 21, 2013

An act to add ~~Section 21095.5~~ *Sections 21095.5, 21095.6, and 21095.7* to the Public Resources Code, relating to the environment.

LEGISLATIVE COUNSEL'S DIGEST

AB 823, as amended, Eggman. Environment: ~~agricultural land: mitigation.~~ *California Farmland Protection Act.*

(1) The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.

This bill would ~~require a lead agency, for a project that converts agricultural lands for nonagricultural uses, to require mitigation measures consisting, at a minimum, of providing replacement acreage through specified mechanisms to ensure the availability of agricultural production capacity. Because a lead agency would be required to provide a higher level of service by requiring the specified mitigation measure, the bill would impose a state-mandated local program~~ *enact the*

California Farmland Protection Act, which would require that an applicant for a project, as defined, that involves the conversion of agricultural land to a permanent or long-term nonagricultural use, including a residential, commercial, civic, industrial, infrastructure, or other similar use, at a minimum, mitigate the identified environmental impacts associated with the conversion of those lands through the permanent protection and conservation of land suitable for agricultural uses, and would require that an adopted mitigation measure providing for the protection of agricultural land meet specified requirements. The act would require that any lands identified and proposed for conservation and protection meet specified criteria. The act would provide that a project is deemed to have fully mitigated all identified significant project-level and cumulative impacts on agricultural resources and no further mitigation is required if specified conditions are met. The act would require the Office of Planning and Research, no later than December 31, 2014, to promulgate regulations covering projects subject to the act. By imposing new duties on a lead agency with regard to the review and approval of the mitigation measures required by the act, the bill would impose a state-mandated local program.

(2) 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.

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

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

- 1 ~~SECTION 1.—(a) The Legislature finds and declares that~~
- 2 ~~California agriculture is a \$43,000,000,000 per year industry, one~~
- 3 ~~of the state’s largest and most significant industries. California~~
- 4 ~~agriculture supplies 90 percent of the nation’s nuts and wine grapes,~~
- 5 ~~more than one-half of the country’s fruits and vegetables and is~~
- 6 ~~the leading producer of dairy products.~~
- 7 ~~(b) It is the intent of the Legislature to enhance the long-term~~
- 8 ~~viability of California agriculture by clarifying farmland mitigation~~
- 9 ~~requirements under the California Environmental Quality Act~~

1 ~~(Division 13 (commencing with Section 21000) of the Public~~
2 ~~Resources Code:~~

3 ~~SEC. 2. Section 21095.5 is added to the Public Resources Code,~~
4 ~~to read:~~

5 ~~21095.5. For a project that converts agricultural lands for~~
6 ~~nonagricultural uses, the lead agency shall require mitigation~~
7 ~~measures consisting, at a minimum, of providing replacement~~
8 ~~acreage through a grant, in perpetuity, of an agricultural or~~
9 ~~farmland conservation easement, a deed restriction, or other~~
10 ~~conservation mechanism on the replacement acreage to ensure the~~
11 ~~availability of agricultural production capacity by limiting~~
12 ~~nonagricultural development that is inconsistent with agricultural~~
13 ~~uses and related activities for the benefit of a qualified entity.~~

14 ~~SECTION 1. This act shall be known, and may be cited, as the~~
15 ~~California Farmland Protection Act.~~

16 ~~SEC. 2. Section 21095.5 is added to the Public Resources Code,~~
17 ~~to read:~~

18 ~~21095.5. (a) The Legislature finds and declares all of the~~
19 ~~following:~~

20 ~~(1) California is the nation's leader in food production and~~
21 ~~contributes significantly to both national and global food security.~~

22 ~~(2) California agricultural production depends on soil, water,~~
23 ~~and climate conditions found in one of only five Mediterranean~~
24 ~~growing regions on Earth.~~

25 ~~(3) Dependent on land and natural resources, California~~
26 ~~agriculture is uniquely vulnerable to global warming. Global~~
27 ~~warming poses a serious threat to California agriculture with~~
28 ~~rising temperatures, constrained water resources, increases in~~
29 ~~extreme weather events, reduced winter chilling hours, and rising~~
30 ~~sea levels.~~

31 ~~(4) California agriculture is also uniquely positioned to provide~~
32 ~~climate benefits by reducing greenhouse gas emissions. Research~~
33 ~~funded by the State Energy Resources Conservation and~~
34 ~~Development Commission's Public Interest Energy Research~~
35 ~~program found that an acre of irrigated cropland emits 70 times~~
36 ~~fewer greenhouse gas emissions than an acre of urban land.~~

37 ~~(5) California's growing population places additional demands~~
38 ~~on both our food supply and on the development of agricultural~~
39 ~~land for nonagricultural purposes. An average of approximately~~

1 30,000 acres of California agricultural land is permanently
2 converted to nonagricultural uses every year.

3 (6) The preservation of a maximum amount of the limited supply
4 of agricultural land is necessary for conservation of the state's
5 natural resources, the maintenance of the agricultural economy
6 of the state, and the assurance of an adequate, healthy, and
7 nutritious food supply for the residents of this state and nation.

8 (7) California's statewide land use planning priorities include
9 the goal of protecting, preserving, and enhancing the state's most
10 valuable natural resources, including working landscapes such
11 as farm, range, and forest lands as described in Section 65041.1
12 of the Government Code.

13 (8) Through the California Land Conservation Act of 1965
14 (Article 1 (commencing with Section 51200) of Chapter 7 of Part
15 1 of Division 1 of Title 5 of the Government Code), California has
16 provided legal and financial incentives for farmers and ranchers
17 to keep land in agricultural production, thereby discouraging the
18 premature and unnecessary conversion of agricultural land to
19 urban uses and discouraging discontinuous urban development
20 patterns that unnecessarily increase the costs of community
21 services.

22 (9) Since 1998, California has invested in the protection of
23 agricultural lands near urban areas through the California
24 Farmland Conservancy Program Act (Division 10.2 (commencing
25 with Section 10200)) recognizing that conservation of these lands
26 is necessary due to increasing development pressures and the
27 effects of urbanization on farmland close to cities.

28 (10) This division requires the analysis and adoption of feasible
29 mitigation for projects with significant effects on agricultural
30 resources.

31 (11) Local entities play a vital role in regulating the use of land
32 under their jurisdiction, including the conservation of agricultural
33 lands through appropriate zoning and planning activities, as well
34 as determinations of the potential environmental impacts of
35 proposed land use changes.

36 (12) Despite the analysis and mitigation requirements of this
37 division with respect to projects that result in agricultural land
38 conversion, lead agencies do not consistently require feasible
39 mitigation for agricultural land conversion impacts.

1 (13) *The conversion of agricultural land, as defined in Section*
2 *56016 of the Government Code, to nonagricultural uses without*
3 *appropriate mitigation negatively affects California’s economic*
4 *development, natural resources, social and economic equity, and*
5 *environmental quality.*

6 **(b)** *It is the intent of the Legislature to adopt minimum statewide*
7 *mitigation standards for projects that result in the conversion of*
8 *agricultural land to nonagricultural uses including residential,*
9 *commercial, civic, industrial, subdivision, infrastructure, or similar*
10 *land development projects. The conversion of agricultural land to*
11 *nonagricultural uses is an issue of statewide concern. It is therefore*
12 *the policy of the state that each lead agency comply with the*
13 *requirements of this section when approving projects that convert*
14 *agricultural lands to nonagricultural uses.*

15 **SEC. 3.** *Section 21095.6 is added to the Public Resources Code,*
16 *to read:*

17 21095.6. **(a)** *For purposes of this section, Sections 21095.6,*
18 *and Section 21095.7 a “qualified entity” means a land trust, city,*
19 *county, nonprofit organization, resource conservation district,*
20 *special district, or regional park or open-space district or regional*
21 *park or open-space authority that has the conservation of farmland*
22 *among its stated purposes.*

23 **(b)** *An applicant for a project, as defined in Section 21065, that*
24 *involves the conversion of agricultural land to a permanent or*
25 *long-term nonagricultural use, including residential, commercial,*
26 *civic, industrial, infrastructure, or other similar land development*
27 *projects shall, at a minimum, mitigate the identified environmental*
28 *impacts associated with the conversion of those lands through the*
29 *permanent protection and conservation of land suitable for*
30 *agricultural uses.*

31 **(c)** *An adopted mitigation measure that provides for the*
32 *protection of agricultural land shall require at least one of the*
33 *following:*

34 **(1)** *A grant in perpetuity to a qualified entity of an agricultural*
35 *conservation easement that limits development that is inconsistent*
36 *with agricultural uses and related activities to ensure the protection*
37 *and stewardship of the agricultural productive capacity of the*
38 *mitigation land.*

39 **(2)** *The project applicant to pay, or cause to be paid, a fee to*
40 *the lead agency sufficient to acquire a perpetual agricultural*

1 *conservation easement that meets all the requirements of this*
2 *section. The lead agency may secure an easement through a*
3 *payment to a qualified entity or to the Department of Conservation*
4 *for the California Farmland Conservancy Program through a*
5 *deposit to either the California Farmland Conservancy Program*
6 *Fund, created pursuant to Section 10230, or the Farm, Ranch,*
7 *and Watershed Account, created pursuant to paragraph (2) of*
8 *subdivision (c) of Section 10252.5, for the purposes of acquiring*
9 *a perpetual agricultural conservation easement that meets all the*
10 *requirements of this section.*

11 *(3) The project applicant to enter into a fee agreement with a*
12 *qualified entity to acquire an agricultural conservation easement*
13 *that meets all the requirements of this section.*

14 *(d) Any fees paid by a project applicant pursuant to paragraph*
15 *(2) or (3) of subdivision (c) to comply with this section shall include*
16 *the purchase price of an agricultural conservation easement, all*
17 *transaction costs, and funding for a reasonable endowment for*
18 *the purpose of monitoring, administering, legal defense, and all*
19 *other services provided by the qualified entity to acquire, manage,*
20 *and monitor the easement in perpetuity.*

21 *(e) Any lands identified and proposed for conservation and*
22 *protection pursuant to subdivision (c) shall, at a minimum, meet*
23 *all of the following criteria:*

24 *(1) The mitigation acreage of conserved lands is at least equal*
25 *to the acreage of the agricultural land converted to nonagricultural*
26 *uses.*

27 *(2) The soil quality of the conserved agricultural land is*
28 *comparable to, or better than, the land that is converted to a*
29 *nonagricultural use.*

30 *(3) The conserved agricultural land has an adequate water*
31 *supply for the purposes of producing irrigated crops, watering of*
32 *livestock, or other agricultural purposes for which the conserved*
33 *agricultural land is suited.*

34 *(4) The conserved agricultural land is located as close to the*
35 *project site as the lead agency determines is feasible or is part of*
36 *an area designed as a priority agricultural mitigation or protection*
37 *area in an adopted general plan, regional advance mitigation*
38 *plan, greenprint, sustainable communities strategy prepared*
39 *pursuant to the Sustainable Communities and Climate Protection*

1 Act of 2008 (Chapter 728 of the Statutes of 2008), or other local
2 or statewide plan that promotes agricultural land protection.

3 (5) The conserved agricultural land has not been previously
4 encumbered by another conservation easement that restricts the
5 landowner's development rights.

6 (6) The environmental document and other relevant project
7 approval documents specify that the mitigation land shall be
8 protected through a legal agreement meeting the requirements of
9 paragraph (1) of subdivision (c) prior to commencement of any
10 construction activity. This requirement does not apply to mitigation
11 measures meeting the requirements of either paragraph (2) or (3)
12 of subdivision (c).

13 (f) The appropriate fee for purchase of suitable mitigation lands
14 under paragraph (2) or (3) of subdivision (c) shall be based on an
15 approved nexus study or an appraisal by an independent real estate
16 appraiser that indicates the fee value necessary to purchase
17 suitable mitigation lands meeting the standards of this subdivision.

18 (g) Compliance with an existing adopted mitigation ordinance
19 for the conversion of agricultural land that meets the minimum
20 standards in paragraphs (2), (3), (4), and (5) of subdivision (e)
21 shall be deemed to satisfy the requirements of this section. To the
22 extent that these locally adopted requirements exceed the minimum
23 standards set forth in this section, this subdivision does not
24 supersede those requirements.

25 (h) Compliance with the minimum mitigation standards set forth
26 in this section does not constitute compliance with the "full
27 mitigation" provisions set forth in paragraph (1) of subdivision
28 (a) of Section 21095.7.

29 SEC. 4. Section 21095.7 is added to the Public Resources Code,
30 to read:

31 21095.7. (a) (1) A project is deemed to have fully mitigated
32 all identified significant project-level and cumulative impacts on
33 agricultural resources and no further mitigation shall be required
34 for those impacts if one of the following conditions is met:

35 (A) The mitigation ratio of conserved land to converted land is
36 two acres for every one acre of converted land.

37 (B) For a project located within an existing city's jurisdictional
38 limits, the mitigation acreage of conserved lands is at least equal
39 to the acreage of the agricultural land converted to nonagricultural
40 uses, and meets at least one of the following criteria:

1 (i) *The project is a residential housing project that has a density*
 2 *of at least two times the statewide average of persons-per-acre*
 3 *(PPA) development ratios.*
 4 (ii) *The project is a commercial development with a minimum*
 5 *of at least two times the statewide floor-to-area ratio (FAR).*
 6 (iii) *The project is a mixed-use development that meets the PPA*
 7 *and FAR formulas in subparagraphs (A) and (B).*
 8 (2) *In order to rely on this section, the lead agency must make*
 9 *findings supported by substantial evidence in the record*
 10 *demonstrating that each applicable factor is satisfied.*
 11 (b) *The Office of Planning and Research shall promulgate*
 12 *regulations consistent with the findings and declarations set forth*
 13 *in Section 21095.5 and the requirements of this section with regard*
 14 *to the identification of additional categories of mitigation that fully*
 15 *mitigate project-level and cumulative impacts of projects that*
 16 *convert agricultural land. Those regulations shall be promulgated*
 17 *by December 31, 2014. The categories of mitigation described by*
 18 *the Office of Planning and Research in those regulations shall do*
 19 *all of the following:*
 20 (1) *Meet the minimum mitigation standards described in*
 21 *subdivision (c) of Section 21095.6.*
 22 (2) *Address one or more of the findings in Section 21095.5.*
 23 (3) *Reasonably mitigate both project-level and cumulative-level*
 24 *impacts associated with a project’s conversion of agricultural*
 25 *land. In this regard, the location and quality of agricultural land*
 26 *to be protected may be relevant.*
 27 ~~SEC. 3.~~
 28 SEC. 5. No reimbursement is required by this act pursuant to
 29 Section 6 of Article XIII B of the California Constitution because
 30 a local agency or school district has the authority to levy service
 31 charges, fees, or assessments sufficient to pay for the program or
 32 level of service mandated by this act, within the meaning of Section
 33 17556 of the Government Code.

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