

AMENDED IN ASSEMBLY APRIL 23, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 2921

Introduced by Assembly Member Laird

February 22, 2008

An act to amend Sections ~~51250 and 51256~~ 51250, 51256, and 51283 of the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 2921, as amended, Laird. Local government: agricultural land.

Existing

(1) *Existing* law, the Williamson Act, authorizes a city or county to contract with a landowner to limit the use of agricultural land located in an agricultural preserve designated by the city or county. Under this act, the Department of Conservation is required to notify the city or county if it discovers a possible material breach, as defined, of the contract, and the city or county is required to take certain actions against the landowner for the breach, with reimbursement, as specified, provided under the act for the costs incurred by the city or county in taking those actions. The Williamson Act also authorizes a landowner to rescind a contract made under its provisions in order to simultaneously place other land under an agricultural conservation easement, subject to specified conditions.

~~This bill would require reimbursement by an appropriation made by the Legislature in the Budget Act or other statute for the costs incurred by the Department of Conservation in discovering possible material breaches of Williamson Act contracts and otherwise administering and enforcing those provisions~~ *authorize a court, in a civil suit brought pursuant to these provisions, to award the Department of Conservation*

reasonable attorney’s fees and costs where the department is the prevailing party. The bill would also revise the conditions under which a landowner may cancel a Williamson Act contract to place other land under an agricultural conservation preserve.

(2) Existing law establishes the Soil Conservation Fund to support, among other things, the cost of the farmlands mapping and monitoring program of the Department of Conservation, and program support costs incurred by the Department of Conservation in administering the open-space subvention program.

This bill would also authorize the use of funds in the Soil Conservation Fund to cover the costs to the department in administering the provisions of the Williamson Act regarding discovering material breaches of a Williamson Act contract.

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

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

- 1 SECTION 1. Section 51250 of the Government Code is
- 2 amended to read:
- 3 51250. (a) The purpose of this section is to identify certain
- 4 structures that constitute material breaches of contract under this
- 5 chapter and to provide an alternate remedy to a contract
- 6 cancellation petition by the landowner. Accordingly, this remedy
- 7 is in addition to any other available remedies for breach of contract.
- 8 Except as expressly provided in this section, this section is not
- 9 intended to change the existing land use decisionmaking and
- 10 enforcement authority of cities and counties including the authority
- 11 conferred upon them by this chapter to administer agricultural
- 12 preserves and contracts.
- 13 (b) For purposes of this section, a breach is material if, on a
- 14 parcel under contract, both of the following conditions are met:
- 15 (1) A commercial, industrial, or residential building is
- 16 constructed that is not allowed by this chapter or the contract, local
- 17 uniform rules or ordinances consistent with the provisions of this
- 18 chapter, and that is not related to an agricultural use or compatible
- 19 use.
- 20 (2) The total area of all of the building or buildings likely
- 21 causing the breach exceeds 2,500 square feet for either of the
- 22 following:

1 (A) All property subject to any contract or all contiguous
2 property subject to a contract or contracts owned by the same
3 landowner or landowners on January 1, 2004.

4 (B) All property subject to a contract entered into after January
5 1, 2004, covering property not subject to a contract on January 1,
6 2004.

7 For purposes of this subdivision any additional parcels not
8 specified in the legal description that accompanied the contract,
9 as it existed prior to January 1, 2003, including any parcel created
10 or recognized within an existing contract by subdivision, deed,
11 partition, or, pursuant to Section 66499.35, by certificate of
12 compliance, shall not increase the limitation of this subdivision.

13 (c) The department shall notify the city or county if the
14 department discovers a possible breach.

15 (d) The city or county shall, upon notification by the department
16 or upon discovery by the city or county of a possible material
17 breach, determine if there is a valid contract and if it is likely that
18 the breach is material. In its investigation, the city or county shall
19 endeavor to contact the landowner or his or her representative to
20 learn the landowner's explanation of the facts and circumstances
21 related to the possible material breach.

22 (e) Within 10 days of determining that it is likely that a material
23 breach exists, the city or county shall notify the landowner and the
24 department by certified mail, return receipt requested. This notice
25 shall include the reasons for the determination and a copy of the
26 contract.

27 (f) Within 60 days of receiving the notice, the landowner or his
28 or her representative may notify the city or the county that the
29 landowner intends to eliminate the conditions that resulted in the
30 material breach within 60 days. If the landowner eliminates the
31 conditions that resulted in the material breach within 60 days, the
32 city or county shall take no further action under this section with
33 respect to the building at issue. If the landowner notifies the city
34 or county of the intention to eliminate the conditions but fails to
35 do so, the city or county shall proceed with the hearing required
36 in subdivision (g).

37 (g) The city or county shall schedule a hearing no more than
38 120 days after the notice is provided to the landowner as required
39 in subdivision (e). The city or county shall give notice of the public
40 hearing by certified mail, return receipt requested to the landowner

1 and the department at least 30 days prior to the hearing. The city
 2 or county shall give notice of the public hearing by first-class mail
 3 to every owner of land under contract, any portion of which is
 4 situated within one mile of the exterior boundary of the contracted
 5 parcel on which the likely material breach exists. The city or county
 6 shall also give published notice pursuant to Section 6061. The
 7 notice shall include the date, time, and place of the public hearing.
 8 Not less than five days before the hearing, the department may
 9 request that the city or county provide the department, at the
 10 department’s expense, a recorded transcript of the hearing not
 11 more than 30 days after the hearing.

12 (h) At the public hearing, the city or county shall consider any
 13 oral or written testimony and then determine if a material breach
 14 exists.

15 (i) If the city or county determines that a material breach exists,
 16 the city or county shall do one of the following:

17 (1) Order the landowner to eliminate the conditions that resulted
 18 in the material breach within 60 days.

19 (2) Assess the monetary penalty pursuant to subdivision (j) and
 20 terminate the contract on that portion of the contracted parcel that
 21 has been made incompatible by the material breach.

22 If the landowner disagrees with the determination, he or she may
 23 pursue any other legal remedy that is available.

24 (j) The monetary penalty shall be 25 percent of the unrestricted
 25 fair market value of the land rendered incompatible by the breach,
 26 plus 25 percent of the value of the incompatible building and any
 27 related improvements on the contracted land. The basis for the
 28 valuation of the penalty shall be an independent appraisal of the
 29 current unrestricted fair market value of the property that is subject
 30 to the contract and affected by the incompatible use or uses, and
 31 a valuation of any buildings and any related improvements within
 32 the area affected by the incompatible use or uses. If the city or
 33 county determines that equity would permit a lesser penalty, the
 34 city or county, the landowner, and the department may negotiate
 35 a reduction in the penalty based on the factors specified in
 36 subdivision (k), but a reduction in the penalty may not exceed
 37 one-half of the penalty. If negotiations are to be held, the city or
 38 county shall provide the department 15 days’ notice before the
 39 first negotiation. If the department chooses not to be a negotiator

1 or fails to send a negotiator, the city or county and the landowner
2 may negotiate the penalty.

3 (k) In determining the amount of a lesser penalty, the negotiators
4 shall consider:

5 (1) The nature, circumstances, extent, and gravity of the material
6 breach.

7 (2) Whether the landowner's actions were willful, knowing, or
8 negligent with respect to the material breach.

9 (3) The landowner's culpability in contributing to the material
10 breach and whether the actions of prior landowners subject to the
11 contract contributed to the material breach.

12 (4) Whether the actions of the city or county contributed to the
13 material breach.

14 (5) Whether the landowner notified the city or county that the
15 landowner would eliminate the conditions that resulted in the
16 material breach within 30 days, but failed to do so.

17 (6) The willingness of the landowner to rapidly resolve the issue
18 of the material breach.

19 (7) Any other mitigating or aggravating factors that justice may
20 require.

21 (l) If the landowner is ordered to eliminate the conditions that
22 resulted in the material breach pursuant to paragraph (1) of
23 subdivision (i) but the landowner fails to do so within the time
24 specified by the city or county, the city or county may abate the
25 material breach as a public nuisance pursuant to any applicable
26 provisions of law.

27 (m) If the city or county terminates the contract pursuant to
28 paragraph (2) of subdivision (i), the city or county shall record a
29 notice of termination following the procedures of Section 51283.4.

30 (n) The assessment of a monetary penalty pursuant to
31 subdivision (i) shall be secured by a lien payable to the county
32 treasurer of the county within which the property is located, in the
33 amount assessed pursuant to subdivision (j) or (k). Once properly
34 recorded and indexed, the lien shall have the force, effect, and
35 priority of a judgment lien. The lien document shall provide both
36 of the following:

37 (1) The name of the real property owner of record and shall
38 contain either the legal description or the assessor's parcel number
39 of the real property to which the lien attaches.

1 (2) A direct telephone number and address that interested parties
2 may contact to determine the final amount of any applicable
3 assessments and penalties owing on the lien pursuant to this
4 section.

5 (o) If the lien is not paid within 60 days of recording, simple
6 interest shall accrue on the unpaid penalty at the rate of 10 percent
7 per year, and shall continue to accrue until the penalty is paid,
8 prior to all other claims except those with superior status under
9 federal or state law.

10 (p) Upon payment of the lien, the city or county shall record a
11 release of lien and a certificate of contract termination by breach
12 with the county recorder for the land rendered incompatible by the
13 breach.

14 (q) ~~(4)~~—The city or county may deduct from any funds received
15 pursuant to this chapter the amount of the actual costs of
16 administering this section and shall transmit the balance of the
17 funds by the county treasurer to the Controller for deposit in the
18 Soil Conservation Fund. *In a civil action brought pursuant to this*
19 *section, where the department is the prevailing party, a court may*
20 *award the department reasonable attorney's fees and costs.*

21 ~~(2) The department shall be reimbursed for the costs it incurs~~
22 ~~in enforcing and administering this section through an appropriation~~
23 ~~made by the Legislature in the annual Budget Act or other statute.~~

24 (r) (1) The department may carry out the responsibilities of a
25 city or county under this section if either of the following occurs:

26 (A) The city or county fails to determine whether there is a
27 material breach within 210 days of the discovery of the breach.

28 (B) The city or county fails to complete the requirements of this
29 section within 180 days of the determination that a material breach
30 exists.

31 (2) The city or county may request in writing to the department,
32 the department's approval for an extension of time for the city or
33 county to act and the reasons for the extension. Approval may not
34 be unreasonably withheld by the department.

35 (3) The department shall notify the city or county 30 days prior
36 to its exercise of any responsibility under this subdivision.

37 (4) This section shall not be construed to limit the authority of
38 the Secretary of the Resources Agency under Section 16146 or
39 16147.

40 (s) (1) This section does not apply to any of the following:

1 (A) A building constructed prior to January 1, 2004, or a
2 building for which a permit was issued by a city or county prior
3 to January 1, 2004.

4 (B) A building that was not a material breach at the time of
5 construction but became a material breach because of a change in
6 law or ordinance.

7 (C) A building owned by the state.

8 (2) Subject to paragraphs (4) and (5), this section does not apply
9 when a board or council cancels a contract pursuant to Article 5
10 (commencing with Section 51280) or terminates a contract pursuant
11 to Section 51243.5 or when a public agency, as defined by
12 subdivision (a) of Section 51291, acquires land subject to contract
13 by, or in lieu of, eminent domain pursuant to Article 6
14 (commencing with Section 51290) unless either of the following
15 occurs:

16 (A) The action canceling or terminating the contract is rescinded.

17 (B) A court determines that the cancellation or termination was
18 not properly executed pursuant to this chapter, or that the land
19 continues to be subject to the contract.

20 (3) On the motion of any party with standing to bring an action
21 for breach, any court hearing an action challenging the termination
22 of a contract entered into under this chapter shall consolidate any
23 action for breach, including the remedies for material breach
24 available pursuant to this section.

25 (4) Paragraph (2) shall not be applicable for a cancellation or
26 termination occurring after January 1, 2004, unless the affected
27 landowner provides to the administering board or council and to
28 the department, within 30 days after the cancellation or termination,
29 a notarized statement, in a form acceptable to the department,
30 signed under penalty of perjury and filed with the county recorder,
31 acknowledging that the breach provisions of this section may apply
32 if any of the following conditions are met:

33 (A) The action by the local government is rescinded.

34 (B) A court permanently enjoins, voids, or rescinds the
35 cancellation or termination.

36 (C) For any other reason, the land continues to be subject to the
37 contract.

38 (5) Paragraph (2) does not apply for a cancellation or termination
39 occurring before January 1, 2004, unless the landowner provides
40 the statement required in paragraph (4) prior to the approval of a

1 building permit necessary for the construction of a commercial,
2 industrial, or residential building.

3 (t) It is the intent of the Legislature to encourage cities and
4 counties, in consultation with contracting landowners and the
5 department, to review existing Williamson Act enforcement
6 programs and consider any additions or improvements that would
7 make local enforcement more effective, equitable, or widely
8 acceptable to the affected landowners. Cities and counties are also
9 encouraged to include enforcement provisions within the terms of
10 the contracts, with the consent of contracting landowners.

11 SEC. 2. Section 51256 of the Government Code is amended
12 to read:

13 51256. Notwithstanding any other provision of this chapter, a
14 city or county, upon petition by a landowner, may enter into an
15 agreement with the landowner to rescind a contract in accordance
16 with the contract cancellation provisions of Section 51282 in order
17 to simultaneously place other land within that city, the county, or
18 the county where the contract is rescinded under an agricultural
19 conservation easement, consistent with the purposes and
20 requirements of the Agricultural Land Stewardship Program
21 pursuant to Division 10.2 (commencing with Section 10200) of
22 the Public Resources Code, other than Section 10238, if the board
23 or council makes all of the following findings:

24 (a) The proposed agricultural conservation easement is
25 consistent with the criteria set forth in Section 10251 of the Public
26 Resources Code.

27 (b) The proposed agricultural conservation easement is evaluated
28 pursuant to the selection criteria in Section 10252 of the Public
29 Resources Code, and particularly subdivisions (a), (c), (e), (f), and
30 (h), and the board or council makes a finding that the proposed
31 easement will make a beneficial contribution to the conservation
32 of agricultural land in its area.

33 (c) The land proposed to be placed under an agricultural
34 conservation easement is of equal size or larger than the land
35 subject to the contract to be rescinded, and is equally or more
36 suitable for agricultural use than the land subject to the contract
37 to be rescinded. In determining the suitability of the land for
38 agricultural use, the city or county shall consider the soil quality
39 and water availability of the land, adjacent land uses, and any
40 agricultural support infrastructure.

1 (d) The value of the proposed agricultural conservation
2 easement, as determined pursuant to Section 10260 of the Public
3 Resources Code, is equal to or greater than 12.5 percent of the
4 cancellation valuation of the land subject to the contract to be
5 rescinded, pursuant to subdivision (a) of Section 51283. The
6 easement value and the cancellation valuation shall be determined
7 within 30 days before the approval of the city or county of an
8 agreement pursuant to this section.

9 *SEC. 3. Section 51283 of the Government Code is amended to*
10 *read:*

11 51283. (a) Prior to any action by the board or council giving
12 tentative approval to the cancellation of any contract, the county
13 assessor of the county in which the land is located shall determine
14 the current fair market value of the land as though it were free of
15 the contractual restriction. The assessor shall certify to the board
16 or council the cancellation valuation of the land for the purpose
17 of determining the cancellation fee. At the same time, the assessor
18 shall send a notice to the landowner and the Department of
19 Conservation indicating the current fair market value of the land
20 as though it were free of the contractual restriction and advise the
21 parties, that upon their request, the assessor shall provide all
22 information relevant to the valuation, excluding third-party
23 information. If any information is confidential or otherwise
24 protected from release, the department and the landowner shall
25 hold it as confidential and return or destroy any protected
26 information upon termination of all actions relating to valuation
27 or cancellation of the contract on the property. The notice shall
28 also advise the landowner and the department of the opportunity
29 to request formal review from the assessor.

30 (b) Prior to giving tentative approval to the cancellation of any
31 contract, the board or council shall determine and certify to the
32 county auditor the amount of the cancellation fee that the
33 landowner shall pay the county treasurer upon cancellation. That
34 fee shall be an amount equal to 12½ percent of the cancellation
35 valuation of the property.

36 (c) If it finds that it is in the public interest to do so, the board
37 or council may waive any payment or any portion of a payment
38 by the landowner, or may extend the time for making the payment
39 or a portion of the payment contingent upon the future use made
40 of the land and its economic return to the landowner for a period

1 of time not to exceed the unexpired period of the contract, had it
2 not been canceled, if all of the following occur:

3 (1) The cancellation is caused by an involuntary transfer or
4 change in the use which may be made of the land and the land is
5 not immediately suitable, nor will be immediately used, for a
6 purpose which produces a greater economic return to the owner.

7 (2) The board or council has determined that it is in the best
8 interests of the program to conserve agricultural land use that the
9 payment be either deferred or is not required.

10 (3) The waiver or extension of time is approved by the Secretary
11 of the Resources Agency. The secretary shall approve a waiver or
12 extension of time if the secretary finds that the granting of the
13 waiver or extension of time by the board or council is consistent
14 with the policies of this chapter and that the board or council
15 complied with this article. In evaluating a request for a waiver or
16 extension of time, the secretary shall review the findings of the
17 board or council, the evidence in the record of the board or council,
18 and any other evidence the secretary may receive concerning the
19 cancellation, waiver, or extension of time.

20 (d) The first two million five hundred thirty-six thousand dollars
21 (\$2,536,000) of revenue paid to the Controller pursuant to
22 subdivision (e) in the 2004–05 fiscal year, and any other amount
23 as approved in the final Budget Act for each fiscal year thereafter,
24 shall be deposited in the Soil Conservation Fund, which is
25 continued in existence. The money in the fund is available, when
26 appropriated by the Legislature, for the support of all of the
27 following:

28 (1) The cost of the farmlands mapping and monitoring program
29 of the Department of Conservation pursuant to Section 65570.

30 (2) The soil conservation program identified in Section 614 of
31 the Public Resources Code.

32 (3) Program support costs of this chapter as administered by
33 the Department of Conservation.

34 (4) Program support costs incurred by the Department of
35 Conservation in administering the open-space subvention program
36 (Chapter 3 (commencing with Section 16140) of Part 1 of Division
37 4 of Title 2).

38 (5) *The costs to the Department of Conservation for*
39 *administering Section 51250.*

1 (e) When cancellation fees required by this section are collected,
2 they shall be transmitted by the county treasurer to the Controller
3 and deposited in the General Fund, except as provided in
4 subdivision (d) of this section and subdivision (b) of Section 51203.
5 The funds collected by the county treasurer with respect to each
6 cancellation of a contract shall be transmitted to the Controller
7 within 30 days of the execution of a certificate of cancellation of
8 contract by the board or council, as specified in subdivision (b) of
9 Section 51283.4.

10 (f) It is the intent of the Legislature that fees paid to cancel a
11 contract do not constitute taxes but are payments that, when made,
12 provide a private benefit that tends to increase the value of the
13 property.

O