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AB-1131 District agricultural associations: joint powers agreements: audits. (2017-2018)

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Assembly Bill No. 1131

CHAPTER 556

An act to amend Section 4051 of the Food and Agricultural Code, relating to district agricultural associations.

[Approved by Governor October 07, 2017. Filed with Secretary of State October 07, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1131, Lackey. District agricultural associations: joint powers agreements: audits.

Existing law divides the state into agricultural districts and provides for the management of these agricultural districts by district agricultural associations. Existing law requires a district agricultural association with an annual budget of less than \$5,000,000 to have its books and accounts examined and reviewed annually and audited every 3 years.

This bill would require, solely for the 50th District Agricultural Association, which has entered into a joint powers agreement to manage the responsibilities of the association, that the joint powers agency is the entity responsible for ensuring that the annual examinations and reviews and the audits are conducted, as specified.

This bill would incorporate additional changes to Section 4051 of the Food and Agricultural Code proposed by AB 1351 to be operative only if this bill and AB 1351 are enacted and this bill is enacted last.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

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

SECTION 1. Section 4051 of the Food and Agricultural Code is amended to read:

4051. (a) An association may do any of the following:

(1) Contract, in accordance with all of the following:

(A) The written policies and procedures for contracting that are developed and maintained by the board of directors of the association in accordance with this section.

(B) All applicable state laws governing contracts, except as follows:

(i) Any grant or contract entered into by an association for goods is not subject to Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

(ii) Any grant or contract entered into by an association is not subject to Chapter 3 (commencing with Section 12100) of Part 2 of Division 2 of the Public Contract Code.

(C) If the estimated total cost of any construction project or similar work carried out under this section exceeds twenty-five thousand dollars (\$25,000), the association shall solicit bids in writing and shall award the work to the lowest responsible bidder or reject all bids. The association is subject to all applicable provisions of the Public Contract Code.

(D) An association may elect to become subject to the provisions of the Uniform Public Construction Cost Accounting Act (Chapter 2 (commencing with Section 22000) of Part 3 of Division 2 of the Public Contract Code) and the Small Business Procurement and Contract Act (Chapter 6.5 (commencing with Section 14835) of Part 5.5 of Division 3 of Title 2 of the Government Code), but exempt from the reporting requirements noted in subdivision (f) of Section 14838.1 of the Government Code.

(2) Accept funds or gifts of value from the United States or any person to aid in carrying out the purposes of this part.

(3) Conduct or contract for programs, and contract for the purchase or lease of goods that are necessary to effectuate the purposes of this chapter, either independently or in cooperation with any individual, public or private organization, or federal, state, or local governmental agency.

(4) Establish and maintain a bank checking account or other financial institution account, approved by the Director of Finance in accordance with Sections 16506 and 16605 of the Government Code, for depositing funds received by the association. All funds maintained in an account authorized by this paragraph shall be used in accordance with Section 4001.

(5) Approve the annual budget of the association and establish a program for paying vendors who contract with the association.

(6) Contract with any county or county fair association for holding a fair jointly with the county or county fair association. The joint fair is a district fair of the association.

(7) Make or adopt all necessary orders, rules, or regulations for governing the activities of the association. Notwithstanding paragraph (14), any orders, rules, or regulations adopted by the board are exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For informational purposes only, however, any order, rule, or regulation adopted by the board may be transmitted to the Office of Administrative Law for filing with the Secretary of State pursuant to Section 11343 of the Government Code.

(8) Operate a payroll system for paying employees, and a system for accounting for vacation and sick leave credits of employees.

(9) Delegate to the officers and employees of the association the exercise of powers vested in the board, as the board may deem desirable, for the orderly management and operation of the association.

(10) With the approval of the Department of General Services, purchase, acquire, hold, sell, or exchange, or convey any interest in real property. Any acquisition of land or other real property shall be subject to the Property Acquisition Law (Part 11 (commencing with Section 15850) of Division 3 of Title 2 of the Government Code).

(11) With the approval of the Department of General Services, make permanent improvements upon publicly owned real property adjacent to, or near the vicinity of, the real property of the association when the improvements materially benefit the property of the association pursuant to Section 11011 of the Government Code.

(12) With the approval of the Department of General Services, lease for the use of its real property, or any portion of that property, to any person or public body for whatever purpose as may be approved by the board.

(13) Use or manage any of its property jointly or in connection with any lessee or sublessee, for any purpose approved by the board.

(14) With the approval of the Department of General Services, pledge any revenues, moneys, accounts, accounts receivable, contract rights, and other rights to payment of whatever kind, pursuant to terms and conditions approved by the board. The revenues, moneys, accounts, accounts receivable, contract rights, and other rights to payment of whatever kind pledged by the association or its assignees constitute a lien or security interest that immediately attaches to the property pledged, and is effective, binding, and enforceable against the association, its successors, purchasers of the property pledged, creditors, and all others asserting rights therein, to the extent set forth, and in accordance with, the terms and conditions of the pledge, irrespective of whether those persons have notice of the pledge and without the need for physical delivery, recordation, filing, or further action.

(15) With the approval of the secretary, enter into a joint powers agreement pursuant to the Joint Exercise of Powers Act (Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code).

(b) In developing the written policies and procedures for contracting, the board shall incorporate the following to apply to contracts or procurement by the association:

(1) To ensure the fullest competition, the board shall adopt and publish competitive bidding procedures for the award of a procurement or contract involving an expenditure of more than one hundred thousand dollars (\$100,000). The competitive bidding procedures shall include, but not be limited to, requirements for submission of bids and accompanying documentation, guidelines for the use of requests for proposals, invitations to bid, or other methods of bidding, and a bid protest procedure. The general manager shall determine whether the goods or services subject to this paragraph are available through existing contracts or price schedules of the Department of General Services. The Legislature finds and declares that fairs are a valuable community resource and recognizes that local businesses and local communities make valuable contributions to fairs that include direct and indirect support of fair programs. The Legislature further finds and declares that local businesses often provide opportunity purchases to local fairs that, for similar things available through the state purchasing program, may be purchased locally at a price equivalent to or less than that available through the state purchasing program. As used in this subdivision, opportunity purchases means purchases made locally, either individually or cooperatively, at a price equal to or less than the price available through the state purchasing program on or off state contract.

(2) The contracting standards, procedures, and rules contained in this subdivision shall also apply with respect to any subcontract involving an expenditure of more than one hundred thousand dollars (\$100,000). The board shall establish, as part of the bidding procedures for general contracts, subcontracting guidelines that implement this requirement.

(3) With the approval of the Department of General Services, pledge any and all revenues, moneys, accounts, accounts receivable, contract rights, and other rights to payment of whatever kind, pursuant to terms and conditions approved by the board. Any issuance of bonds, contracts entered into, debts incurred, settlements, judgments, or liens under this section or pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, shall not directly, indirectly, or contingently obligate the state or any political subdivision of the state to levy or to pledge any form of taxation therefor or to make any appropriation for their payment. The bond shall contain on its face a statement to the following effect: "Neither the full faith and credit nor the taxing power of the State of California is pledged to the payment of the principal of, or interest on, this bond."

(4) This section shall not apply to Article 1 (commencing with Section 4101) of Chapter 6 of Part 3.

(c) Notwithstanding any other law, an association shall adopt a fiscal review policy as follows:

(1) An association with an annual budget exceeding five million dollars (\$5,000,000) shall conduct an annual audit by an independent certified public accountant or certified public accountancy firm selected by the board.

(2) (A) An association with an annual budget of less than five million dollars (\$5,000,000) shall have its books and accounts examined and reviewed annually and audited once every three years by an independent certified public accountant or certified public accountancy firm selected by the board.

(B) Solely for the 50th District Agricultural Association, which has entered into a joint powers agreement pursuant to the Joint Exercise of Powers Act (Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code), to manage the responsibilities of the association, the joint powers agency shall be the entity responsible for ensuring that the annual examinations and reviews and the audits required by this paragraph are conducted. If the joint powers agency performs separate audits of the association and the joint powers agency, the joint powers agency shall submit both audits to the department in the manner prescribed in this chapter.

(d) Notwithstanding subdivision (c), the department may require an audit to be conducted before the times specified in paragraphs (1) and (2) of subdivision (c) if the department or the state deems the audit is necessary.

SEC. 1.5. Section 4051 of the Food and Agricultural Code is amended to read:

4051. (a) An association may do any of the following:

(1) Contract, in accordance with all of the following:

(A) The written policies and procedures for contracting that are developed and maintained by the board of directors of the association in accordance with this section.

(B) All applicable state laws governing contracts, except as follows:

(i) Any grant or contract entered into by an association for goods is not subject to Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

(ii) Any grant or contract entered into by an association is not subject to Chapter 3 (commencing with Section 12100) of Part 2 of Division 2 of the Public Contract Code.

(C) If the estimated total cost of any construction project or similar work carried out under this section exceeds twenty-five thousand dollars (\$25,000), the association shall solicit bids in writing and shall award the work to the lowest responsible bidder or reject all bids. The association is subject to all applicable provisions of the Public Contract Code.

(D) An association may elect to become subject to the provisions of the Uniform Public Construction Cost Accounting Act (Chapter 2 (commencing with Section 22000) of Part 3 of Division 2 of the Public Contract Code) and the Small Business Procurement and Contract Act (Chapter 6.5 (commencing with Section 14835) of Part 5.5 of Division 3 of Title 2 of the Government Code), but exempt from the reporting requirements noted in subdivision (f) of Section 14838.1 of the Government Code.

(2) Accept funds or gifts of value from the United States or any person to aid in carrying out the purposes of this part.

(3) Conduct or contract for programs, and contract for the purchase or lease of goods that are necessary to effectuate the purposes of this chapter, either independently or in cooperation with any individual, public or private organization, or federal, state, or local governmental agency.

(4) Establish and maintain a bank checking account or other financial institution account, approved by the Director of Finance in accordance with Sections 16506 and 16605 of the Government Code, for depositing funds received by the association. All funds maintained in an account authorized by this paragraph shall be used in accordance with Section 4001.

(5) Approve the annual budget of the association and establish a program for paying vendors who contract with the association.

(6) Contract with any county or county fair association for holding a fair jointly with the county or county fair association. The joint fair is a district fair of the association.

(7) Make or adopt all necessary orders, rules, or regulations for governing the activities of the association. Notwithstanding paragraph (14), any orders, rules, or regulations adopted by the board are exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For informational purposes only, however, any order, rule, or regulation adopted by the board may be transmitted to the Office of Administrative Law for filing with the Secretary of State pursuant to Section 11343 of the Government Code.

(8) Operate a payroll system for paying employees, and a system for accounting for vacation and sick leave credits of employees.

(9) Delegate to the officers and employees of the association the exercise of powers vested in the board, as the board may deem desirable, for the orderly management and operation of the association.

(10) With the approval of the Department of General Services, purchase, acquire, hold, sell, or exchange, or convey any interest in real property. Any acquisition of land or other real property shall be subject to the Property Acquisition Law (Part 11 (commencing with Section 15850) of Division 3 of Title 2 of the Government Code).

(11) With the approval of the Department of General Services, make permanent improvements upon publicly owned real property adjacent to, or near the vicinity of, the real property of the association when the improvements materially benefit the property of the association pursuant to Section 11011 of the Government Code.

(12) With the approval of the Department of General Services, lease for the use of its real property, or any portion of that property, to any person or public body for whatever purpose as may be approved by the board. This purpose may include, but not be limited to, the construction and maintenance of housing affordable to persons and families of low or moderate income, as defined by Section 50093 of the Health and Safety Code, pursuant to a lease of not more than 55 years.

(13) Use, manage, or operate any of its property jointly or in connection with any lessee or sublessee, for any purpose approved by the board.

(14) With the approval of the Department of General Services, pledge any revenues, moneys, accounts, accounts receivable, contract rights, and other rights to payment of whatever kind, pursuant to terms and conditions approved by the board. The revenues, moneys, accounts, accounts receivable, contract rights, and other rights to payment of whatever kind pledged by the association or its assignees constitute a lien or security interest that immediately attaches to the property pledged, and is effective, binding, and enforceable against the association, its successors, purchasers of the property pledged, creditors, and all others asserting rights therein, to the extent set forth, and in accordance with, the terms and conditions of the pledge, irrespective of whether those persons have notice of the pledge and without the need for physical delivery, recordation, filing, or further action.

(15) With the approval of the secretary, enter into a joint powers agreement pursuant to the Joint Exercise of Powers Act (Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code).

(b) In developing the written policies and procedures for contracting, the board shall incorporate the following to apply to contracts or procurement by the association:

(1) To ensure the fullest competition, the board shall adopt and publish competitive bidding procedures for the award of a procurement or contract involving an expenditure of more than one hundred thousand dollars (\$100,000). The competitive bidding procedures shall include, but not be limited to, requirements for submission of bids and accompanying documentation, guidelines for the use of requests for proposals, invitations to bid, or other methods of bidding, and a bid protest procedure. The general manager shall determine whether the goods or services subject to this paragraph are available through existing contracts or price schedules of the Department of General Services. The Legislature finds and declares that fairs are a valuable community resource and recognizes that local businesses and local communities make valuable contributions to fairs that include direct and indirect support of fair programs. The Legislature further finds and declares that local businesses often provide opportunity purchases to local fairs that, for similar things available through the state purchasing program, may be purchased locally at a price equivalent to or less than that available through the state purchasing program. As used in this subdivision, opportunity purchases means purchases made locally, either individually or cooperatively, at a price equal to or less than the price available through the state purchasing program on or off state contract.

(2) The contracting standards, procedures, and rules contained in this subdivision shall also apply with respect to any subcontract involving an expenditure of more than one hundred thousand dollars (\$100,000). The board shall establish, as part of the bidding procedures for general contracts, subcontracting guidelines that implement this requirement.

(3) With the approval of the Department of General Services, pledge any and all revenues, moneys, accounts, accounts receivable, contract rights, and other rights to payment of whatever kind, pursuant to terms and conditions approved by the board. Any issuance of bonds, contracts entered into, debts incurred, settlements, judgments, or liens under this section or pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, shall not directly, indirectly, or contingently obligate the state or any political subdivision of the state to levy or to pledge any form of taxation therefor or to make any appropriation for their payment. The bond shall contain on its face a statement to the following effect: "Neither the full faith and credit nor the taxing power of the State of California is pledged to the payment of the principal of, or interest on, this bond."

(4) This section shall not apply to Article 1 (commencing with Section 4101) of Chapter 6 of Part 3.

(c) Notwithstanding any other law, an association shall adopt a fiscal review policy as follows:

(1) An association with an annual budget exceeding five million dollars (\$5,000,000) shall conduct an annual audit by an independent certified public accountant or certified public accountancy firm selected by the board.

(2) (A) An association with an annual budget of less than five million dollars (\$5,000,000) shall have its books and accounts examined and reviewed annually and audited once every three years by an independent certified public accountant or certified public accountancy firm selected by the board.

(B) Solely for the 50th District Agricultural Association, which has entered into a joint powers agreement pursuant to the Joint Exercise of Powers Act (Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code), to manage the responsibilities of the association, the joint powers agency shall be the entity responsible for ensuring that the annual examinations and reviews and the audits required by this paragraph are conducted. If the joint powers agency performs separate audits of the association and the joint powers agency, the joint powers agency shall submit both audits to the department in the manner prescribed in this chapter.

(d) Notwithstanding subdivision (c), the department may require an audit to be conducted before the times specified in paragraphs (1) and (2) of subdivision (c) if the department or the state deems the audit is necessary.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 4051 of the Food and Agricultural Code proposed by both this bill and Assembly Bill 1351. That section shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2018, (2) each bill amends Section 4051 of the Food and Agricultural Code, and (3) this bill is enacted after Assembly Bill 1351, in which case Section 1 of this bill shall not become operative.