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SB-50 Federal public lands: conveyances. (2017-2018)

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Senate Bill No. 50

CHAPTER 535

An act to add Section 27338 to, to add Chapter 3.4 (commencing with Section 6223) to Division 7 of Title 1 of, and to repeal the heading of Chapter 3.4 (commencing with Section 6223) of Division 7 of Title 1 of, the Government Code, and to add Chapter 5 (commencing with Section 8560) to Part 4 of Division 6 of the Public Resources Code, relating to public lands.

[Approved by Governor October 06, 2017. Filed with Secretary of State October 06, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

SB 50, Allen. Federal public lands: conveyances.

Existing law vests the authority over public lands owned by the state with the State Lands Commission. Existing federal law authorizes federal agencies to convey federal public lands under certain circumstances.

This bill would establish, except as provided, a policy of the state to discourage conveyances of federal public lands in California from the federal government. The bill would, except as provided, specify that these conveyances are void ab initio unless the commission was provided with the right of first refusal or the right to arrange for the transfer of the federal public land to another entity. The bill would require the commission to issue a certificate of compliance if the commission was provided with the right of first refusal or the right to arrange for the transfer of the federal public land to another entity. The bill would require the commission to waive the right of first refusal or the right to arrange for the transfer of the federal public land to another entity for conveyances the commission deems to be routine, as specified. The bill would require the commission, the Wildlife Conservation Board, and the Department of Fish and Wildlife to enter into a memorandum of understanding establishing a state policy that they will undertake all feasible efforts to protect against future unauthorized conveyances of federal public lands or any change in federal public land designation. The bill would authorize the commission to seek declaratory and injunctive relief in a court of competent jurisdiction to contest these conveyances. The bill would, except as provided, prohibit a person from knowingly presenting for recording or filing with the county recorder a deed, instrument, or other document related to the conveyance of federal public lands unless it is accompanied by a certificate of compliance and would subject a person who violates this prohibition to a civil penalty not to exceed \$5,000. By increasing the duties of the county recorder's office, this bill would impose a state-mandated local program. The bill would provide that the state shall not be responsible for any costs associated with conveyed federal public land that the commission did not accept, purchase, or arrange for the transfer of, as provided. The bill would require the commission to ensure, for any conveyed federal public land the commission accepts, purchases, or arranges for the transfer of, that future management of the conveyed federal public land is determined in a public process that gives consideration of past recognized and legal uses of those lands.

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 Local Program: yes

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

SECTION 1. The heading of Chapter 3.4 (commencing with Section 6223) of Division 7 of Title 1 of the Government Code is repealed.

SEC. 2. Chapter 3.4 (commencing with Section 6223) is added to Division 7 of Title 1 of the Government Code, to read:

CHAPTER 3.4. Recording of Documents

6223. (a) A person shall not knowingly present for recording or filing with a county recorder a deed, instrument, or other document related to a conveyance subject to Section 8560 of the Public Resources Code unless it is accompanied by a certificate of compliance from the State Lands Commission. A person who presents for recording or filing with a county recorder a deed, instrument, or other document in violation of this section is liable for a civil penalty not to exceed five thousand dollars (\$5,000).

(b) Civil penalties collected pursuant to this section shall be deposited into the state General Fund.

SEC. 3. Section 27338 is added to the Government Code, to read:

27338. A deed, instrument, or other document related to a conveyance that is subject to Section 8560 of the Public Resources Code shall be titled "Federal Public Land Deed of Conveyance" and shall not be recorded without a certificate from the State Lands Commission. The federal agency wishing to convey federal public lands shall ensure that the deed, instrument, or other conveyance document is titled in the manner required by this section.

SEC. 4. Chapter 5 (commencing with Section 8560) is added to Part 4 of Division 6 of the Public Resources Code, to read:

CHAPTER 5. Conveyance of Federal Lands

8560. (a) For purposes of this chapter, the following terms apply:

(1) "Conservation plan" means a habitat conservation plan developed pursuant to Section 10 of the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1539) and its implementing regulations, as the federal act and regulations exist as of January 1, 2016, and an approved natural communities conservation plan developed pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code).

(2) "Conveyance" includes any method, including sale, donation, or exchange, by which all or a portion of the right, title, and interest of the United States in and to federal lands located in California is transferred to another entity.

(3) "Federal public land" means any land owned by the United States, including the surface estate, the subsurface estate, or any improvements on those estates.

(4) "Infrastructure" means any development or construction that is not on or appurtenant to the federal public land at the time of transfer.

(b) (1) Except as provided in Chapter 6 (commencing with Section 6441) of Part 1, it is the policy of the State of California to discourage conveyances that transfer ownership of federal public lands in California from the federal government.

(2) (A) Except as provided in this chapter, conveyances of federal public lands in California are void ab initio unless the commission was provided with the right of first refusal to the conveyance or the right to arrange for the transfer of the federal public land to another entity.

(B) The commission may seek declaratory and injunctive relief from a court of competent jurisdiction to contest conveyances made to any entity unless the requirements of this paragraph are met.

(C) The commission shall formally consider its right of first refusal or arrange for the transfer of federal public lands to a third party at a public hearing.

(D) (i) Prior to the conveyance of federal public lands in California, if the commission was provided with the right of first refusal or the right to arrange for the transfer of the federal public lands to another entity, the commission shall issue a certificate affirming compliance with this section.

(ii) The commission shall waive its right of first refusal or the right to arrange for the transfer of the federal public lands to another entity, and issue a certification of compliance affirming compliance with this section for a conveyance that is deemed by the commission to be routine. A conveyance deemed by the commission to be routine includes, but is not limited to, the exchange of lands of equal value between the federal government and a private entity. The commission may adopt regulations to establish a process and criteria for determining the types of conveyances it considers to be routine.

(E) The commission, the Wildlife Conservation Board, and the Department of Fish and Wildlife shall enter into a memorandum of understanding that establishes a state policy that all three agencies shall undertake all feasible efforts to protect against any future unauthorized conveyance or any change in federal public land designation, including, but not limited to, any change in use, classification, or legal status of any lands designated as federal monuments pursuant to the federal Antiquities Act of 1906 (Public Law 59-209).

(c) The state shall not be responsible for any costs associated with conveyed federal public land that the commission did not accept, purchase, or arrange for the transfer of, pursuant to this section. Costs include, but are not limited to, management costs and infrastructure development costs.

(d) The commission may establish, through regulations or another appropriate method, a process for engaging with federal land managers and potential purchasers of federal public lands early in the conveyance process.

(e) The commission shall ensure, for any conveyed federal public land the commission accepts, purchases, or arranges for the transfer of, that future management of the conveyed federal public land is determined in a public process that gives consideration of past recognized and legal uses of those lands. At a minimum, the public process required by this subdivision shall include a noticed and open meeting as required by the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Division 3 of Title 2 of the Government Code).

(f) The commission shall waive its right of first refusal or the right to arrange for the transfer of the federal public lands to another entity, and issue a certification of compliance affirming compliance with this section for any of the following:

(1) The conveyance of federal public lands pursuant to a conservation plan.

(2) The renewal of a lease in existence as of January 1, 2017.

(3) The conveyance of federal public lands to a federally recognized Native American tribe or lands taken into or out of trust for a Native American tribe or individual Native American.

(g) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

8561. This chapter does not apply to the sale of real property acquired by a federal agency through a foreclosure proceeding.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.