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SB-103 Transportation. (2017-2018)

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Senate Bill No. 103

CHAPTER 95

An act to amend Section 1861 of the Fish and Game Code, to add Sections 14105.6, 14110.1, 14110.2, 14110.3, and 14110.4 to the Government Code, to amend Section 3073.5 of the Labor Code, to amend Section 10140 of the Public Contract Code, and to amend Sections 800, 2038, 2192, and 2192.2 of, and to add Sections 800.5, 800.6, 800.7, 800.8, and 800.9 to, the Streets and Highways Code, relating to transportation, and making an appropriation therefor, to take effect immediately, bill related to the budget.

[Approved by Governor July 21, 2017. Filed with Secretary of State July 21, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

SB 103, Committee on Budget and Fiscal Review. Transportation.

(1) Existing law creates the Department of Transportation within the Transportation Agency. The Road Repair and Accountability Act of 2017 creates the Independent Office of Audits and Investigations within the department, with specified powers and duties, and provides that the director of the office, known as the inspector general, is appointed by the Governor. The act requires the department to develop a plan by January 1, 2020, to increase by up to 100% the dollar value of contracts awarded to small businesses, disadvantaged business enterprises, and disabled veteran business enterprises.

Existing federal law implements the Disadvantaged Business Enterprise Program to foster equal opportunity for firms owned by disadvantaged individuals on United States Department of Transportation assisted contracts.

This bill would require the department to develop and submit to the Legislature and specified legislative caucuses, by January 1, 2019, a detailed outreach plan intended to increase procurement opportunities for new and limited contracting small business enterprises, as defined, including, but not limited to, those owned by women, minority, disabled veterans, LGBT, and other disadvantaged groups, in all the department's transportation programs, to undertake specified outreach activities required to be included in the plan, and to update that plan and submit it to specified entities. The bill would require the inspector general to review, audit, and report on the department's outreach efforts, and to audit contract-seeking businesses as appropriate to ensure that they do not subvert the purposes of these provisions.

This bill would require the department to achieve, at a minimum, 25% certified small business participation in state-funded contracts and procurements. The bill would require the department, beginning with the 2018–19 fiscal year, to take all lawful and reasonable steps to raise the disparity indices for contracts awarded under the federal Disadvantaged Business Enterprise Program to 100 for contracts and procurements subject to federal participation requirements, with particular emphasis on those minorities that exhibit substantial disparities with the indices, and to implement the recommendations from every disparity study undertaken by the department as part of that federal program, consistent with federal laws and regulations and a specified provision of the California Constitution. The bill would require the department to prepare a detailed plan that includes steps the department will take to ensure that it is in conformance with its policies to prevent discrimination or preferences in its employing

practices or its practices in bidding and awarding public contracts to provide equal access to opportunities for all qualified applicants, and would require the department to report the plan to the Legislature and to report updates to the plan, as necessary. The bill would require the department to collect voluntarily reported data on groups of interest awarded public contracts by the department, including, but not limited to, women, minority, LGBT, and disabled veteran business enterprises, and to annually report that information and the percentages of entities receiving public contracts from the department, disaggregated by classifications, including, but not limited to, new and limited contracting small business enterprises, and women, minority, disabled veteran, and LGBT business enterprises, to the Legislature.

(2) Existing law requires the Chief of the Division of Apprenticeship Standards and the California Apprenticeship Council to report annually through the Director of Industrial Relations on the activities of the division and the council, and further requires that the report include specified information with respect to apprenticeship programs in this state.

This bill would require the report to include annual demographic data detailing the racial, ethnic, and gender makeup of participants in construction trade apprenticeship programs.

(3) Existing law requires the Department of Transportation to give public notice of a project by publication, as specified, but allows the department to comply with this requirement by publishing the notice on its Internet Web site.

This bill would require the department, if the department publishes the notice on its Internet Web site, to also publish information regarding notices listed on the department's Internet Web site in trade papers, newspapers, or magazines, as appropriate, including those whose primary audience consists of underrepresented groups, including, but not limited to, women, minorities, LGBT, and disabled veterans, as specified.

(4) The Road Repair and Accountability Act of 2017 requires \$5,000,000 of the funds made available by the act that are not restricted by Article XIX of the California Constitution to be appropriated each fiscal year to the California Workforce Development Board to assist local agencies to implement policies to promote preapprenticeship training programs to carry out specified projects funded by the Road Maintenance and Rehabilitation Account. The act requires the board to also establish a preapprenticeship development and training grant program, beginning January 1, 2019, and requires a grant recipient to, among other things, include plans relating to specified outreach activities.

This bill, as a condition of receiving a grant, would require grantees to collect demographic data from participants and to report this data to the board. The bill would require the board to provide technical assistance to grantees on the manner in which to collect this data, and to annually report demographic data to the Legislature, detailing the racial, ethnic, and gender makeup of participants in the grant programs and including demographic data on participation, completion, and placement.

(5) Existing law creates the Advance Mitigation Program to enhance communications between the Department of Transportation and stakeholders to, among other things, protect natural resources and accelerate project delivery. Existing law requires the department to set aside not less than \$30,000,000 annually for 4 years for the program from capital outlay revenues for purposes of the program.

This bill would create the Advance Mitigation Account in the State Transportation Fund as a revolving fund. The bill would require expenditures from the account to later be reimbursed from project funding available at the time a planned transportation project is constructed. The bill would continuously appropriate the moneys in the fund for the purposes of the Advance Mitigation Program and state that the Advance Mitigation Program is intended to become self-sustaining.

The bill would authorize the department to engage in various activities to implement the Advance Mitigation Program, including, among other things, purchasing, or funding the purchase of, credits from mitigation banks, conservation banks, or in-lieu fee programs approved by one or more regulatory agencies. The bill would also authorize the department to establish, or fund the establishment of, those types of activities if the department determines that those activities would provide appropriate mitigation of the anticipated potential impacts of planned transportation improvements, as defined. The bill would authorize the department to pay or fund the payment of mitigation fees for the department's or transportation agency's covered activities under natural community conservation plans approved by the Department of Fish and Wildlife under the Natural Community Conservation Planning Act.

The bill would authorize the department to use, or allow other transportation agencies to use, mitigation credits or values generated or obtained under the program to fulfill the mitigation requirements of planned transportation improvements if the applicable transportation agency reimburses the program for all costs of purchasing or creating the mitigation credits or values, as determined by the department. The bill would exclude high-speed rail projects or projects associated with or interacting with the high-speed rail program from the definition of "planned transportation improvement," thereby excluding those projects from participating in the Advance Mitigation Program. The bill would require the department to track all implemented advance mitigation projects to use as credits for environmental mitigation, and would require the department, and the Department of Fish and Wildlife to report to the Legislature on the Advance Mitigation Program.

(6) Existing law authorizes the Department of Fish and Wildlife to approve a regional conservation investment strategy, as defined, upon request of one or more state agencies, under specified circumstances. Existing law provides that the department shall not approve more than 8 regional conservation investment strategies under these provisions before January 1, 2020, and prohibits the department from approving a regional conservation investment strategy, or from entering into a mitigation credit agreement under these provisions, after that date.

This bill would repeal these restrictions on approving regional conservation investment strategies other than restricting the number of strategies approved to a maximum of 8.

(7) Existing law continues in existence the Trade Corridors Improvement Fund to fund trade corridor improvements consistent with various requirements. Existing law also creates the Trade Corridor Enhancement Account to receive funding from the Road Repair and Accountability Act of 2017 for corridor-based freight projects nominated by local agencies and the state.

This bill would delete these references to the Trade Corridors Improvement Fund, and instead revise and recast the requirements currently applicable to that fund and make them applicable to the Trade Corridor Enhancement Account. The bill would provide that certain federal funds apportioned to the state shall be expended consistent with these revised requirements. The bill would require the California Transportation Commission to allocate 60% of available funds to projects nominated by regional transportation agencies and other local agencies, with the remaining 40% of available funds to be allocated to projects nominated by the Department of Transportation. The bill would prohibit funding of projects that include the purchase of fully automated cargo handling equipment, as specified. The bill would require the California Transportation Commission to adopt guidelines for the purpose of administering these funds.

(8) This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

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

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

SECTION 1. (a) The Legislature, in regard to Sections 3 to 9, inclusive, and Section 16 of this act, finds and declares all of the following:

(1) The maintenance and expansion of the transportation infrastructure of the state will benefit from developing and employing capable contractors who will be available in the coming years and decades to ensure the safety of California's infrastructure.

(2) The contracting laws and practices of the state, while intended to be easily satisfied by those with the skills to perform contract requirements, can discourage would-be contractors due to complexity and unfamiliarity, particularly diverse business enterprises.

(3) State agencies should increase outreach to, and technical assistance for, capable persons and businesses who may be interested in contracting opportunities related to California infrastructure, in order to include diverse business enterprises.

(4) Some of the barriers expressed by some contractors to accessing state contract bidding systems, including finding out which projects are available for bid and understanding the process for preparing a qualifying bid, discourage new contractors from entering into state contracts.

(5) In particular, the Legislature is concerned that these barriers may result in less than desirable levels of participation of women and minorities in the labor force in California.

(6) The difficulties presented by these initial barriers to new contractors could create a contractor base that does not represent the diversity of the state at large, does not include as many qualified contractors as would be optimal to reduce state costs and improve the quality of our roads, bridges, and other transportation infrastructure, and therefore could cost the state money, safety, and employment equity.

(b) It is therefore the intent of the Legislature, in regards to Sections 3 to 9, inclusive, and Section 16 of this act, to emphasize all of the following objectives:

(1) That women- and minority-owned businesses continue to have an equal opportunity to participate in contracts awarded by transportation agencies.

(2) That all persons, regardless of race, gender, or ethnicity, have an equal opportunity to learn of and participate in preapprenticeship programs leading to the skills necessary for work under contracts awarded by the department, and that preapprentices are encouraged to successfully complete those programs.

(3) That all persons, regardless of race, gender, or ethnicity, have an equal opportunity to learn of and participate in professional service contracts.

SEC. 2. Section 1861 of the Fish and Game Code is amended to read:

1861. The department shall approve no more than eight regional conservation investment strategies.

SEC. 3. Section 14105.6 is added to the Government Code, to read:

14105.6. (a) The department shall prepare a detailed plan that shall include steps the department will take to ensure that it is in conformance with its policies to prevent discrimination or preferences in its employing practices or its practices in bidding and awarding public contracts to provide equal access to opportunities for all qualified applicants, and shall report the plan to the Legislature and shall report updates to the plan, as necessary.

(b) All reports to the Legislature required by this section shall be submitted in conformance with Section 9795.

SEC. 4. Section 14110.1 is added to the Government Code, to read:

14110.1. (a) (1) The department shall develop and submit to the Legislature, by January 1, 2019, a detailed outreach plan intended to increase procurement opportunities for new and limited contracting small business enterprises, including, but not limited to, those owned by women, minority, disabled veterans, LGBT, and other disadvantaged groups, in all the department's transportation programs, including, but not limited to, state road repairs, bridge repair and maintenance, trade corridors, congestion commute corridors, and local partnerships.

(2) The department shall update the outreach plan based on the outcome of any disparity study undertaken every three years as part of the federal Disadvantaged Business Enterprise Program (Part 26 of Title 49 of the Code of Federal Regulations).

(b) The department shall undertake all of the following outreach activities, which shall be included in the plan:

(1) Sponsor, fund, or partner with apprenticeship programs, including those engaged in specific efforts to increase participation in the transportation construction industry of all groups, including, but not limited to, women, minorities, LGBT, disabled veterans, disadvantaged youth, and formerly incarcerated individuals.

(2) Host, fund, or partner with organizations that host workshops, training classes, and other activities around the state focused on opportunities to contract with the department. Contracting opportunities discussed may include, but shall not be limited to, construction, communication, and consulting services in the areas of engineering, environmental, and surveying services.

(3) Sponsor meetings to introduce prime contractors to new and limited contracting small business enterprises, including, but not limited to, those owned by women, minority, disabled veterans, LGBT, and other disadvantaged groups.

(4) Sponsor opportunities, including, but not limited to, prebid meetings and the department's Calmentor program, to increase contacts between prime contractors and new and limited contracting small business enterprises, including, but not limited to, those owned by women, minority, disabled veterans, LGBT, and other disadvantaged groups.

(5) Partner with organizations representing persons and business enterprises from underrepresented groups, including, but not limited to, women, minority, disabled veterans, LGBT, and other disadvantaged groups, in a manner that will inform members of these organizations on opportunities to participate in transportation contracts.

(c) By January 1, 2019, the department shall submit the outreach plan prepared pursuant to paragraph (1) of subdivision (a), and each update thereafter, to the California Legislative Black Caucus, California Latino Legislative Caucus, California Asian Pacific Islander Legislative Caucus, California Legislative Lesbian, Gay, Bisexual, and Transgender Caucus, and California Legislative Women's Caucus.

(d) The department shall annually report to the Legislature, pursuant to Section 14110.2, the percentages of entities receiving public contracts from the department, disaggregated by classifications, including, but not limited to, new and limited contracting enterprises, and women, minority, disabled veteran, and LGBT business enterprises, and further disaggregated within each of these classifications by contract size categories, as determined by the department.

(e) All reports to the Legislature required by this section shall be submitted in conformance with Section 9795.

(f) The Inspector General of the Independent Office of Audits and Investigations shall review, audit, and report on the department's outreach efforts required by this section. In addition, the Inspector General shall audit businesses as appropriate to ensure that persons associated with entities that do not meet the definition of a new or limited contracting small business enterprise do not create a new associated entity that would meet the definition of a new or limited contracting small business enterprise and thereby subvert the purposes of this section.

(g) For purposes of this section, the following terms have the following meanings:

(1) "Limited contracting small business enterprise" means a certified small business, as defined in Section 14837, that has received fewer than five public contracts from the department in the previous two years or has received public contracts from the department totaling less than two hundred fifty thousand dollars (\$250,000) in the previous two years.

(2) "New small business enterprise" means a certified small business, as defined in Section 14837, that has not received a public contract from the department in the previous two years.

SEC. 5. Section 14110.2 is added to the Government Code, to read:

14110.2. (a) The department shall collect voluntarily reported data on groups of interest awarded public contracts by the department, including, but not limited to, women, minority, LGBT, and disabled veteran business enterprises.

(b) The department shall report the information collected pursuant to subdivision (a) annually to the Legislature in conformance with Section 9795.

SEC. 6. Section 14110.3 is added to the Government Code, to read:

14110.3. The department shall achieve, at a minimum, an overall rate of 25 percent certified small business participation in state-funded contracts and procurements. For purposes of this section, "small business" has the same meaning as set forth in Section 14837.

SEC. 7. Section 14110.4 is added to the Government Code, to read:

14110.4. (a) Beginning with the 2018–19 fiscal year, the department shall take all lawful and reasonable steps to raise the disparity indices for contracts awarded under the federal Disadvantaged Business Enterprise Program (Part 26 of Title 49 of the Code of Federal Regulations) to 100 for contracts and procurements subject to federal participation requirements, with particular emphasis on those minorities that exhibit substantial disparities with the indices, consistent with federal laws and regulations and subdivision (e) of Section 31 of Article I of the California Constitution.

(b) The department shall implement the recommendations from every disparity study undertaken as part of the federal Disadvantaged Business Enterprise Program (Part 26 of Title 49 of the Code of Federal Regulations), consistent with federal laws and regulations and subdivision (e) of Section 31 of Article I of the California Constitution.

SEC. 8. Section 3073.5 of the Labor Code is amended to read:

3073.5. The Chief of the Division of Apprenticeship Standards and the California Apprenticeship Council shall annually report through the Director of Industrial Relations to the Legislature and the public on the activities of the division and the council. The report shall contain information including, but not limited to, analyses of the following:

(a) (1) The number of individuals, including numbers of women and minorities, registered in apprenticeship programs in this state for the current year and in each of the previous five years.

(2) For construction trade apprenticeship programs, the report shall include demographic data detailing the racial, ethnic, and gender makeup of those participants for the annual reporting period.

(b) The number and percentage of apprentices, including numbers and percentages of minorities and women, registered in each apprenticeship program having five or more apprentices, and the percentage of those apprentices who have completed their programs successfully in the current year and in each of the previous five years.

(c) Remedial actions taken by the division to assist those apprenticeship programs having difficulty in achieving affirmative action goals or having very low completion rates.

(d) The number of disputed issues with respect to individual apprenticeship agreements submitted to the Administrator of Apprenticeship for determination and the number of those issues resolved by the council on appeal.

(e) The number of apprenticeship program applications received by the division, the number approved, the number denied and the reason for those denials, the number being reviewed, and deficiencies, if any, with respect to those program applications being reviewed.

(f) The number of apprenticeship programs, approved by the Division of Apprenticeship Standards, that are disapproved by the California Apprenticeship Council, and the reasons for those disapprovals.

SEC. 9. Section 10140 of the Public Contract Code is amended to read:

10140. (a) Public notice of a project shall be given by publication once a week for at least two consecutive weeks or once a week for more than two consecutive weeks if the longer period of advertising is deemed necessary by the department, as follows:

(1) In a newspaper of general circulation published in the county in which the project is located, or if located in more than one county, in such a newspaper in a county in which a major portion of the work is to be done.

(2) In a trade paper of general circulation published in San Francisco for projects located in County Group No. 1, as defined in Section 187 of the Streets and Highways Code, or in Los Angeles for projects located in County Group No. 2, as defined in Section 187 of the Streets and Highways Code, devoted primarily to the dissemination of contract and building news among contracting and building materials supply firms.

(b) The department may publish the notice to bidders for a project in additional trade papers or newspapers of general circulation that it deems advisable.

(c) (1) In the case of the Department of Transportation, instead of the public notice described in subdivision (a), the public notice requirement of this section may instead be met by publishing the public notice electronically on that department's Internet Web site.

(2) If the department exercises its authority under paragraph (1), the department shall also publish information regarding notices listed on the department's Internet Web site in trade papers, newspapers, or magazines, as appropriate in order to ensure all communities have access to the public notice, including those publications whose primary audience consists of underrepresented groups, including, but not limited to, women, minorities, LGBT, and disabled veterans, pursuant to the frequency requirements specified in subdivision (a).

SEC. 10. Section 800 of the Streets and Highways Code is amended to read:

800. (a) The Advance Mitigation Program is hereby created in the department to enhance communications between the department and stakeholders to protect natural resources through project mitigation, to meet or exceed applicable environmental requirements, to accelerate project delivery, and to mitigate, to the maximum extent required by law, environmental impacts from transportation infrastructure projects. The department shall consult on all activities pursuant to this article with the Department of Fish and Wildlife, including activities pursuant to Chapter 9 (commencing with Section 1850) of Division 2 of the Fish and Game Code.

(b) Commencing with the 2017–18 fiscal year, and for a period of four years, the department shall set aside no less than thirty million dollars (\$30,000,000) annually for the Advance Mitigation Program from the annual appropriations for the State Highway Operation and Protection Program and the State Transportation Improvement Program for the planning and implementation of projects in the Advance Mitigation Program. Mitigation credits or values generated or obtained with these funds may be used only for transportation improvements in the State Transportation Improvement Program or the State Highway Operation and Protection Program, and may be transferred to another agency, but only upon full reimbursement of the department pursuant to subdivision (b) of Section 800.6.

(c) Upon the order of the Director of Finance, the Controller shall transfer the amount identified for the Advance Mitigation Program in subdivision (b), as determined by the department and the Department of Finance, to the Advance Mitigation Account in the State Transportation Fund.

(d) The annual Budget Act and subsequent legislation may establish additional provisions and requirements for the program.

SEC. 11. Section 800.5 is added to the Streets and Highways Code, to read:

800.5. For purposes of this article, the following terms have the following meanings:

(a) "Acquire" and "acquisition" mean, with respect to land or a waterway, acquisition of fee title or purchase of a conservation easement that protects conservation and mitigation values on the land or waterway in perpetuity.

(b) "Administrative draft natural community conservation plan" means a substantially complete draft of a natural community conservation plan that is released after January 1, 2016, to the general public, plan participants, and the department.

(c) "Advance mitigation" means mitigation implemented before, and in anticipation of, environmental effects of planned transportation improvements.

(d) "Commission" means the California Transportation Commission.

(e) "Conservation easement" means a perpetual conservation easement that complies with Chapter 4 (commencing with Section 815) of Title 2 of Part 2 of Division 2 of the Civil Code.

(f) "Department" means the Department of Transportation.

(g) "Mitigation credit agreement" means a mitigation credit agreement pursuant to Chapter 9 (commencing with Section 1850) of Division 2 of the Fish and Game Code.

(h) "Natural Communities Conservation Plan" means a plan developed pursuant to Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code.

(i) "Planned transportation improvement" means a transportation project that a transportation agency has identified in a regional transportation plan, an interregional transportation plan, a capital improvement program, or other approved transportation planning document, excluding any project that is associated with or interacting with the high-speed rail program. A planned transportation improvement may include, but is not limited to, a transportation project that has been planned, programmed, proposed for approval, or that has been approved.

(j) "Program" means the Advance Mitigation Program implemented pursuant to this article.

(k) "Regional conservation investment strategy" means a regional conservation investment strategy approved by the Department of Fish and Wildlife pursuant to Chapter 9 (commencing with Section 1850) of Division 2 of the Fish and Game Code.

(l) "Regulatory agency" means a state or federal natural resource protection agency with regulatory authority over planned transportation improvements. A regulatory agency includes, but is not limited to, the Natural Resources Agency, the Department of Fish and Wildlife, California regional water quality control boards, the United States Fish and Wildlife Service, the National Marine Fisheries Service, the United States Environmental Protection Agency, and the United States Army Corps of Engineers.

(m) "Transportation agency" means the department, a metropolitan planning organization, a regional transportation planning agency, or another public agency that implements transportation improvements.

(n) "Transportation improvement" means a transportation capital improvement project.

SEC. 12. Section 800.6 is added to the Streets and Highways Code, to read:

800.6. (a) The funds in the Advance Mitigation Account created in Section 800.7 shall be used only to do the following:

(1) Purchase, or fund the purchase of, credits from mitigation banks, conservation banks, or in-lieu fee programs approved by one or more regulatory agencies. The department may also establish mitigation banks, conservation banks, or in-lieu fee programs, or fund the establishment of mitigation banks, conservation banks, or in-lieu fee programs, in accordance with applicable state and federal standards, if the department determines that those banks or in-lieu fee programs would provide appropriate mitigation of the anticipated potential impacts of planned transportation improvements identified pursuant to Section 800.8.

(2) Pay, or fund the payment of, mitigation fees or other costs or payments associated with coverage for the department's or other transportation agency's projects under natural community conservation plans approved pursuant to Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code, or habitat conservation plans approved in accordance with the federal Endangered Species Act. The department shall, upon commencement of a regional conservation investment strategy pursuant to paragraph (3), provide written notification thereof to the executive administrative officer of any administrative draft natural community conservation plan, approved natural community conservation plan, or approved regional federal habitat conservation plan that overlaps the proposed area of the regional conservation investment strategy.

(3) Prepare, or fund the preparation of, regional conservation assessments and regional conservation investment strategies. Where a regional conservation investment strategy has been approved by the Department of Fish and Wildlife, the department may do either of the following:

(A) Enter into, or fund the preparation of, mitigation credit agreements with the Department of Fish and Wildlife; purchase credits from an established mitigation credit agreement; or implement, or fund the implementation of, conservation actions and habitat enhancement actions as needed to generate mitigation credits pursuant to those mitigation credit agreements.

(B) Acquire, restore, manage, monitor, enhance, and preserve lands, waterways, aquatic resources, or fisheries, or fund the acquisition, restoration, management, monitoring, enhancement, and preservation of lands, waterways, aquatic resources, or fisheries that would measurably advance a conservation objective in the regional conservation investment strategy if the department concludes that the action or actions could conserve or create environmental values that are appropriate to mitigate the anticipated potential impacts of planned transportation improvements.

(4) Where the advance mitigation mechanisms in paragraphs (1) to (3), inclusive, are not practicable, the department may implement advance mitigation, or fund the implementation of advance mitigation, in accordance with a programmatic mitigation plan pursuant to Section 800.9. No more than 25 percent of the funds in the Advance Mitigation Account may be allocated for this purpose over a four-year period.

(b) The department may use, or allow other transportation agencies to use, mitigation credits or values generated or obtained under the program to fulfill the mitigation requirements of planned transportation improvements if the applicable transportation agency reimburses the program for all costs of purchasing or creating the mitigation credits or values, as determined by the department. Those costs shall be calculated using total cost accounting and shall include, as applicable, land acquisition or conservation easement costs, monitoring and enforcement costs, restoration costs, transaction costs, administrative costs, contingency costs, and land management, monitoring, and protection costs.

(c) The department shall track all implemented advance mitigation projects to use as credits for environmental mitigation.

(d) Projects or plans prepared pursuant to this section that overlap with any approved natural community conservation plan or approved regional federal habitat conservation plan, shall be consistent with that plan and shall include an explanation of whether and to what extent they are consistent with any overlapping state or federal recovery plan, or other state-approved or federal-approved conservation strategy.

(e) Mitigation credits created pursuant to this section may be used for covered activities under an approved natural community conservation plan only in accordance with the requirements of the plan. Individuals and entities eligible for coverage as a participating special entity under an approved natural community conservation plan may use mitigation credits created pursuant to this section only if the plan's implementing entity declines to extend coverage to the covered activity proposed by the eligible individual or entity.

(f) By July 1, 2019, and biennially thereafter, the department, pursuant to Section 9795 of the Government Code, and notwithstanding Section 10231.5 of the Government Code, shall submit to the Legislature a report that describes to what extent the Advance Mitigation Program has accelerated the delivery of transportation projects. At a minimum, the report shall include the following:

(1) An accounting of the Advance Mitigation Account funds.

(2) Identification of expected state and federal resource and regulatory agency mitigation requirements for transportation projects utilizing the Advance Mitigation Program.

(3) A discussion of the extent to which those requirements are satisfied using advance mitigation credits.

(4) The use of funds to prepare, or to fund the preparation of, regional conservation assessments and regional conservation investment strategies.

(5) Recommendations for maximizing the ability of the Advance Mitigation Program to satisfy state and federal mitigation requirements.

(g) By July 1, 2018, or one year after the initial Advance Mitigation Program investments have begun, whichever is earlier, and biennially thereafter, the Department of Fish and Wildlife shall, pursuant to Section 9795 of the Government Code, and notwithstanding Section 10231.5 of the Government Code, submit a report to the Legislature that describes the extent to which the Advance Mitigation Program has improved the quality and effectiveness of habitat mitigation provided by the department for transportation projects and makes related recommendations on how to maximize these attributes. The report shall also include recommendations on how to maximize the quality and effectiveness of habitat mitigation developed pursuant to the Advance Mitigation Program.

(h) Nothing in this article shall be construed to impose any restrictions or requirements on the department for activities that do not involve the utilization of Advance Mitigation Account funds. Nothing in this article shall be construed to require the department to use the Advance Mitigation Program.

(i) Prior to making any expenditure from the Advance Mitigation Account, the Director of Transportation shall make a determination and justification that the proposed expenditure is likely to accelerate project delivery of specific projects.

(j) Any state water or transportation infrastructure agency that requests approval of a regional conservation investment strategy pursuant to subdivision (a) of Section 1852 of the Fish and Game Code that may be used to facilitate mitigation for an infrastructure project shall not be subject to the limitation on the number of regional conservation investment strategies set in Section 1861 of the Fish and Game Code.

SEC. 13. Section 800.7 is added to the Streets and Highways Code, to read:

800.7. The Advance Mitigation Account is hereby created in the State Transportation Fund as a revolving fund. Notwithstanding Section 13340 of the Government Code, the account shall be continuously appropriated without regard to fiscal years for purposes of the Advance Mitigation Program. The activity of the account shall be reported to the commission. The program is intended to become self-sustaining. Expenditures from the account shall later be reimbursed from project funding available at the time a planned transportation project is constructed.

SEC. 14. Section 800.8 is added to the Streets and Highways Code, to read:

800.8. The program is intended to improve the efficiency and efficacy of mitigation only and is not intended to supplant the requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resource Code) or any other environmental law. The identification of planned transportation projects and of mitigation projects or measures for planned transportation projects under this article does not imply or require approval of those projects for purposes of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resource Code) or any other environmental law.

SEC. 15. Section 800.9 is added to the Streets and Highways Code, to read:

800.9. The department, pursuant to this article and for the purpose of implementing the Advance Mitigation Program, may develop a programmatic mitigation plan pursuant to Section 169 of Title 23 of the United States Code to address the potential environmental impacts of future transportation projects for the purpose of required mitigation approved by federal, state, and local agencies. The programmatic mitigation plans shall include, to the maximum extent practicable, the information required for regional conservation investment strategies.

SEC. 16. Section 2038 of the Streets and Highways Code is amended to read:

2038. (a) The California Workforce Development Board shall develop guidelines for public agencies receiving Road Maintenance and Rehabilitation Account funds to participate in, invest in, or partner with, new or existing preapprenticeship training programs established pursuant to subdivision (e) of Section 14230 of the Unemployment Insurance Code. The department and local agencies that receive Road Maintenance and Rehabilitation Account funds pursuant to this chapter shall, not later than July 1, 2023, follow the guidelines set forth by the board. The board shall also establish a preapprenticeship development and training grant program, beginning January 1, 2019, pursuant to subdivision (e) of Section 14230 of the Unemployment Insurance Code. Local public agencies that receive Road Maintenance and Rehabilitation Account funds pursuant to this chapter are eligible to compete for such grants and may apply in partnership with other agencies and entities, including those with existing preapprenticeship programs. Successful grant applicants shall, to the extent feasible:

- (1) Follow the multicraft core curriculum implemented by the State Department of Education for its pilot project with the California Partnership Academies and by the California Workforce Development Board and local boards.
- (2) Include a plan for outreach to and retention of women participants in the preapprenticeship program to help increase the representation of women in the building and construction trades.
- (3) Include a plan for outreach to and retention of minority participants and underrepresented subgroups in the preapprenticeship program to help increase their representation in the building and construction trades.
- (4) Include a plan for outreach to and retention of disadvantaged youth participants in the preapprenticeship program to help increase their employment opportunities in the building and construction trades.
- (5) Include a plan for outreach to individuals in the local labor market area and to formerly incarcerated individuals to provide pathways to employment and training.
- (6) Coordinate with local state-approved apprenticeship programs, local building trade councils, and to the extent possible the California Conservation Corps and certified community conservation corps, so individuals who have completed these programs have a pathway to continued employment.

(b) As a condition of receiving a grant, grantees shall collect demographic data from participants and shall report this data to the California Workforce Development Board. The California Workforce Development Board shall provide technical assistance to grantees on the manner in which to collect this data. The California Workforce Development Board shall annually report this demographic data to the Legislature, detailing the racial, ethnic, and gender makeup of participants in the grant programs. This report shall include demographic data on participation, completion, and placement.

SEC. 17. Section 2192 of the Streets and Highways Code is amended to read:

2192. (a) The following revenues shall be allocated for infrastructure projects pursuant to this section:

(1) The revenues deposited in the Trade Corridors Enhancement Account pursuant to Section 2192.4, except for those revenues in the account that were appropriated by Senate Bill 132 of the 2017–18 Regular Session (Chapter 7 of the Statutes of 2017).

(2) An amount of federal funds equal to the amount of revenue apportioned to the state under Section 167 of Title 23 of the United States Code from the national highway freight programs, pursuant to the federal Fixing America's Surface Transportation Act ("FAST Act," Public Law 114-94).

(b) The funding described in subdivision (a) shall be available upon appropriation for allocation by the California Transportation Commission for infrastructure improvements in this state on federally designated Trade Corridors of National and Regional Significance, on the Primary Freight Network, and along other corridors that have a high volume of freight movement, as determined by the commission and as identified in the state freight plan developed pursuant to Section 13978.8 of the Government Code. Projects eligible for funding shall be included in an adopted regional transportation plan. Projects within the boundaries of a metropolitan planning organization shall be included in an adopted regional transportation plan that includes a sustainable communities strategy determined by the State Air Resources Board to achieve the region's greenhouse gas emissions reduction targets. In developing guidelines for implementing this section, the commission shall (1) apply the guiding principles, to the maximum extent practicable, in the California Sustainable Freight Action Plan released in July 2016 pursuant to Executive Order B-32-15, and (2) consult the state freight plan and the applicable port master plan.

(c) Eligible projects for these funds include, but are not limited to, all of the following:

(1) Highway improvements to more efficiently accommodate the movement of freight, particularly for ingress and egress to and from the state's land ports of entry, rail terminals, and seaports, including navigable inland waterways used to transport freight between seaports, land ports of entry, and airports, and to relieve traffic congestion along major trade or goods movement corridors.

(2) Freight rail system improvements to enhance the ability to move goods from seaports, land ports of entry, and airports to warehousing and distribution centers throughout California, including projects that separate rail lines from highway or local road traffic, improve freight rail mobility, and other projects that improve the safety, efficiency, and capacity of the rail freight system.

(3) Projects to enhance the capacity and efficiency of ports, except that funds available under this section shall not be allocated to a project that includes the purchase of fully automated cargo handling equipment. For the purposes of this paragraph, "fully automated" means equipment that is remotely operated or remotely monitored, with or without the exercise of human intervention or control. Nothing in this paragraph shall prohibit the use of funds available pursuant to this section for a project that includes the purchase of human-operated zero-emission equipment, human-operated near-zero-emission equipment, and infrastructure supporting that human-operated equipment. Furthermore, nothing in this section shall prohibit the purchase of devices that support that human-operated equipment, including equipment to evaluate the utilization and environmental benefits of that human-operated equipment.

(4) Truck corridor improvements, including dedicated truck facilities or truck toll facilities, including the mitigation of the emissions from trucks or these facilities.

(5) Border access improvements that enhance goods movement between California and Mexico and that maximize the state's ability to access funds made available to the state by federal law.

(6) Surface transportation, local road, and connector road improvements to effectively facilitate the movement of goods, particularly for ingress and egress to and from the state's land ports of entry, airports, and seaports, to relieve traffic congestion along major trade or goods movement corridors.

(d) Projects funded with revenues identified in paragraph (1) of subdivision (a) shall be consistent with Article XIX of the California Constitution.

(e) (1) In adopting the program of projects to be funded with funds described in subdivision (a), the commission shall evaluate the total potential economic and noneconomic benefits of the program of projects to California's economy, environment, and public health. The evaluation shall specifically assess localized impacts in disadvantaged communities. The commission shall consult with the agencies identified in Executive Order B-32-15 and metropolitan planning organizations in order to utilize the appropriate models, techniques, and methods to develop the parameters for evaluating the program of projects. The commission shall allocate the funding from subdivision (a) for trade infrastructure improvements as follows:

(A) Sixty percent of the funds shall be available for projects nominated by regional transportation agencies and other public agencies, including counties, cities, and port authorities, in consultation with the department. The commission shall provide

reasonable geographic targets for funding allocations without constraining what an agency may propose or what the commission may approve.

(B) Forty percent of the funds shall be available for projects nominated by the department, in consultation with regional transportation agencies.

(2) In adopting a program of projects pursuant to paragraph (1), the commission shall prioritize projects jointly nominated and jointly funded by the state and local agencies. In considering geographic balance for the overall program, the commission may adjust the corridor-based targets in subparagraph (A) of paragraph (1) to account for projects programmed pursuant to subparagraph (B) of paragraph (1).

(f) The commission shall adopt guidelines, including a transparent process to evaluate projects and to allocate the funding described in subdivision (a) for trade infrastructure improvements in a manner that (1) addresses the state's most urgent needs, (2) balances the demands of various land ports of entry, seaports, and airports, (3) places emphasis on projects that improve trade corridor mobility and safety while reducing emissions of diesel particulates, greenhouse gases, and other pollutants and reducing other negative community impacts, especially in disadvantaged communities, (4) makes a significant contribution to the state's economy, (5) recognizes the key role of the state in project identification, (6) supports integrating statewide goods movement priorities in a corridor approach, and (7) includes disadvantaged communities measures, as established by the California Environmental Protection Agency pursuant to Section 39711 of the Health and Safety Code, and other tools the commission determines, for evaluating benefits or costs for disadvantaged communities and low-income communities. Project nominations shall include either a quantitative or qualitative assessment of the benefits the project is expected to achieve relative to the evaluation criteria.

(g) In addition, the commission shall also consider the following factors when allocating these funds:

(1) "Velocity," which means the speed by which large cargo would travel from the land port of entry or seaport through the distribution system.

(2) "Throughput," which means the volume of cargo that would move from the land port of entry or seaport through the distribution system.

(3) "Reliability," which means a reasonably consistent and predictable amount of time for cargo to travel from one point to another on any given day or at any given time in California.

(4) "Congestion reduction," which means the reduction in recurrent daily hours of delay to be achieved.

(h) For purposes of this section, the following terms have the following meanings:

(1) "Disadvantaged communities" are those communities identified by the California Environmental Protection Agency pursuant to Section 39711 of the Health and Safety Code.

(2) "Low-income communities" are census tracts with median household incomes at or below 80 percent of the statewide median income or with median household incomes at or below the threshold designated as low income by the Department of Housing and Community Development's list of state income limits adopted pursuant to Section 50093 of the Health and Safety Code.

(i) It is the intent of the Legislature for the commission to adopt an initial program of projects utilizing the state and federal funds described in subdivision (a) for eligible projects as soon as practicable and no later than May 17, 2018.

SEC. 18. Section 2192.2 of the Streets and Highways Code is amended to read:

2192.2. The commission shall allocate funds made available by this chapter to projects that have identified and committed supplemental funding from appropriate local, federal, or private sources. The commission shall determine the appropriate amount of supplemental funding each project should have to be eligible for moneys from the fund based on a project-by-project review and an assessment of the project's benefit to the state and the program. The commission may give priority for funding to projects with higher levels of committed supplemental funding.

SEC. 19. The provisions of this act are severable. If any provision of this act 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.

SEC. 20. This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately.