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AB-2964 Agricultural land conservation: California Farmland Conservancy Program Act. (2021-2022)

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Assembly Bill No. 2964

CHAPTER 502

An act to amend Sections 10211, 10212, 10213, 10221, 10223, 10224, 10230, 10231, 10235, 10236, 10237, 10238, 10242, 10246, 10250, 10251, 10252, 10262, 10263, and 10264 of, to amend the headings of Chapter 2 (commencing with Section 10230) and Chapter 4 (commencing with Section 10260) of Division 10.2 of, to amend the heading of Division 10.2 (commencing with Section 10200) of, to add Sections 10224.5 and 10230.2 to, to repeal Sections 10230.5, 10234, 10244, 10252.5, 10255, 10262.1, and 10262.2 of, to repeal Chapter 5 (commencing with Section 10270) of Division 10.2 of, and to repeal and add Sections 10243, 10254, and 10260.5 of, the Public Resources Code, relating to agricultural land, and making an appropriation therefor.

[Approved by Governor September 23, 2022. Filed with Secretary of State September 23, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2964, Committee on Agriculture. Agricultural land conservation: California Farmland Conservancy Program Act.

Existing law establishes the California Farmland Conservancy Program Act, to be administered generally by the Department of Conservation, and provides that it is the intent of the act to, among other things, encourage voluntary, long-term private stewardship of agricultural lands by offering landowners financial incentives, encourage local land use planning for orderly and efficient urban growth and conservation of agricultural land, and encourage improvements to enhance long-term sustainable agricultural uses. The act creates the California Farmland Conservancy Program Fund and requires moneys in the fund from gifts, donations, and federal grants, which are continuously appropriated to the department, and other moneys in the fund, upon appropriation, to be used for the purposes of the California Farmland Conservancy Program, which include, among other things, the purchase of agricultural conservation easements, fee title acquisition grants, and land improvement and planning grants. The act requires an agricultural conservation easement to be granted to any organization or entity authorized to acquire and hold conservation easements, as specified.

This bill would revise and recast provisions of the California Farmland Conservancy Program Act to, among other things, expressly authorize the interest earned on those continuously appropriated moneys to be deposited into the fund, authorize the California Farmland Conservancy Program to offer financial assistance, including grants or contracts, for projects and activities on agricultural lands that support agricultural conservation and sustainable land management, expand the authorization of the department to pay direct costs associated with the acquisition of an easement or fee title, and revise requirements on the department to be fulfilled before disbursing funding under the program, as specified. To the extent the bill would continuously appropriate additional moneys or expand the purposes for which those continuously appropriated moneys may be used, the bill would make an appropriation.

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

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

SECTION 1. The heading of Division 10.2 (commencing with Section 10200) of the Public Resources Code is amended to read:

DIVISION 10.2. CALIFORNIA FARMLAND CONSERVANCY PROGRAM ACT

SEC. 2. Section 10211 of the Public Resources Code is amended to read:

10211. "Agricultural conservation easement," "conservation easement," or "easement" means an interest in land, less than fee simple, that represents the right to prevent the development or improvement of the land, as specified in Section 815.1 of the Civil Code, for any primary purpose other than agricultural production. The easement shall be granted for the California Farmland Conservancy Program by the owner of a fee simple interest in land to any of the organizations or entities specified in Section 815.3 of the Civil Code. It shall be granted in perpetuity as the equivalent of covenants running with the land.

SEC. 3. Section 10212 of the Public Resources Code is amended to read:

10212. "Applicant" means an entity listed in Section 815.3 of the Civil Code that applies for a grant authorized pursuant to this division.

SEC. 4. Section 10213 of the Public Resources Code is amended to read:

10213. (a) "Agricultural land" means prime farmland, farmland of statewide importance, unique farmland, farmland of local importance, and grazing land as defined in the Guidelines for the Farmland Mapping and Monitoring Program, pursuant to Section 65570 of the Government Code.

(b) In those areas of the state where lands have not been surveyed for classification pursuant to subdivision (a), land shall meet the requirements of "prime agricultural land" as set forth in subdivision (c) of Section 51201 of the Government Code.

SEC. 5. Section 10221 of the Public Resources Code is amended to read:

10221. "Nonprofit organization" means an organization described in subdivision (a) of Section 815.3 of the Civil Code.

SEC. 6. Section 10223 of the Public Resources Code is amended to read:

10223. "Secretary" means the Secretary of the Natural Resources Agency.

SEC. 7. Section 10224 of the Public Resources Code is amended to read:

10224. "Resource conservation district" means a resource conservation district established pursuant to Division 9 (commencing with Section 9001).

SEC. 8. Section 10224.5 is added to the Public Resources Code, to read:

10224.5. "Restriction" has the same meaning as that term is defined in Section 784 of the Civil Code.

SEC. 9. The heading of Chapter 2 (commencing with Section 10230) of Division 10.2 of the Public Resources Code is amended to read:

CHAPTER 2. California Farmland Conservancy Program

SEC. 10. Section 10230 of the Public Resources Code is amended to read:

10230. (a) The California Farmland Conservancy Program Fund is hereby created.

(b) (1) Except as provided in paragraph (2), the moneys in the fund shall, upon appropriation by the Legislature in the annual Budget Act, be used for the purposes of the program.

(2) Notwithstanding paragraph (1), moneys may be deposited into the fund from federal grants, and gifts and donations, including interest earned, that are designated and required by the donor to be used exclusively for the purposes of the program, and notwithstanding Section 13340 of the Government Code, those moneys are hereby continuously appropriated to the department for expenditure for the purposes of this program.

SEC. 11. Section 10230.2 is added to the Public Resources Code, to read:

10230.2. (a) The California Farmland Conservancy Program is hereby established in the department.

(b) The program may offer financial assistance, including grants or contracts, for projects and activities on agricultural lands that support agricultural conservation and sustainable land management, including, but not limited to, any of the following:

(1) Acquisition of agricultural conservation easements or fee title to protect the land's agricultural use or capacity that meets the following requirements:

(A) The primary purpose for which the easement or fee title is being sought is consistent with continuing agricultural use of the property.

(B) The easement or fee title does not, and will not, substantially prevent agricultural uses on the property.

(C) Any nonagricultural qualities that will be protected by the easement or fee title, if applicable, are inherent to the property.

(2) Improvements to land protected by a conservation easement, deed restriction, or similar long-term agreement as determined by the director.

(3) Plans to protect and conserve agricultural lands and plans to protect, conserve, restore, or enhance resources or values located on, or adjacent to, agricultural lands or that were historically present on agricultural lands. These may include, but are not limited to, either of the following:

(A) An agricultural land component or element of a general plan developed pursuant to Section 65565 of the Government Code.

(B) Land conservation strategies and plans to identify and develop potential projects.

(4) Technical assistance to develop projects, prepare applications, and implement projects.

(5) Administrative costs incurred by the department to administer the program.

(6) Any other purposes approved by the Legislature in a funding appropriation for the program.

SEC. 12. Section 10230.5 of the Public Resources Code is repealed.

SEC. 13. Section 10231 of the Public Resources Code is amended to read:

10231. (a) Funding shall be used in accordance with the expenditures and distribution authorized, required, or otherwise provided in the program for grants for the acquisition of agricultural conservation easements or fee title.

(b) The department may pay direct costs associated with the acquisition, as determined by the department, for costs incurred during the grant term.

SEC. 14. Section 10234 of the Public Resources Code is repealed.

SEC. 15. Section 10235 of the Public Resources Code is amended to read:

10235. (a) The director shall not disburse any grant funds unless the applicant agrees that the grant funds shall be used by the applicant only for the purpose for which the funds were requested and awarded. For a grant for an agricultural conservation easement, the director shall not disburse any grant funds unless the applicant agrees that no other use, sale, or other disposition of the easement shall be permitted unless approved by the director, or where the easement may be transferred to a public agency or nonprofit organization, for management purposes.

(b) If a local government or nonprofit organization holding the easement is dissolved, it shall be transferred to an appropriate public agency or nonprofit organization, as provided in this division.

(c) The easement, or any of its terms, may only be amended with the consent of all of the necessary parties to the easement, including the landowner, the easement holder, and the director. The director shall determine that the amendment is not inconsistent with this division before it may be amended.

SEC. 16. Section 10236 of the Public Resources Code is amended to read:

10236. If the funds are used for the acquisition of an agricultural conservation easement or fee title pursuant to a local transfer of development rights program, upon the sale of the easement or fee title and its attendant development rights, the entity that holds the easement shall reimburse the fund by an amount equal to the fair market value of the easement, as determined by an appraisal approved by the department.

SEC. 17. Section 10237 of the Public Resources Code is amended to read:

10237. The director shall not disburse any grant funds for easement or fee title acquisitions unless the applicant, and in the case of an easement acquisition grant, the seller, agrees to restrict the use of the land in perpetuity.

SEC. 18. Section 10238 of the Public Resources Code is amended to read:

10238. (a) The director shall not disburse any grant funds to acquire agricultural conservation easements that restrict husbandry practices.

(b) The following uses and activities shall be deemed consistent and compatible with any agricultural conservation easement funded under this division and shall not be considered to restrict husbandry practices:

(1) Those uses and activities specified in Sections 10246 and 10262.

(2) The production, processing, and marketing of agricultural crops, agricultural products, and livestock.

(3) The restoration, enhancement, maintenance, protection, and conservation of natural resources if those activities are carried out in accordance with generally accepted best management practices and that the long-term agricultural use of the conserved land is not thereby significantly impaired.

(4) Activities to reduce the agricultural operation's emissions of greenhouse gases, and to improve, promote, or enhance the land's adaptation and resilience to climate change, if the long-term agricultural use of the conserved land is not thereby significantly impaired.

(5) Activities to support water conservation and protection, improved air quality, and fuels reduction and management, including to protect the conserved land and neighboring properties from catastrophic wildfire, if the long-term agricultural use of the conserved land is not thereby significantly impaired.

(6) The construction, reconstruction, and use of secondary dwelling units and farm worker housing, subject to reasonable limitations on size and location, if the long-term agricultural use of the conserved land is not thereby significantly impaired. The limitations on secondary dwelling units and farm worker housing shall not be more restrictive than Section 65852.2 of the Government Code or Section 17021.6 of the Health and Safety Code, respectively, or local building permit requirements.

(7) The construction, reconstruction, or use of renewable energy facilities to generate energy for the agricultural and residential needs of the conserved land if the long-term agricultural use of the conserved land is not thereby significantly impaired.

SEC. 19. Section 10242 of the Public Resources Code is amended to read:

10242. The director shall review, and approve or disapprove, all requests for funding under this division.

SEC. 20. Section 10243 of the Public Resources Code is repealed.

SEC. 21. Section 10243 is added to the Public Resources Code, to read:

10243. A local governmental entity shall not condition the issuance of an entitlement for use on the applicant's granting of a conservation easement pursuant to this division.

SEC. 22. Section 10244 of the Public Resources Code is repealed.

SEC. 23. Section 10246 of the Public Resources Code is amended to read:

10246. Grants may be made for land improvements. Use of these grants shall be limited to the improvement of land protected by a conservation easement or a similar long-term conservation agreement as determined by the director if the improvement will directly benefit the protected land. An application for a land improvement grant shall be evaluated with respect to the extent to which it satisfies one or more of the following criteria:

(a) The improvement will enhance the agricultural value of the land protected by the easement, and promote its long-term sustainable agricultural use such as water supply development and revegetation of eroding streambanks.

(b) The improvement will increase the compatibility of agricultural operations with sensitive natural areas.

(c) The improvement will demonstrate new and innovative best management practices that have the potential for wide application.

(d) The proposed improvement includes the financial and technical involvement of other agencies, such as resource conservation districts, the Wildlife Conservation Board, the University of California Cooperative Extension, the United States Farm Services Agency, and the United States Natural Resources Conservation Service.

(e) The improvement is part of a coordinated watershed management plan or the equivalent.

(f) The improvement will restore or enhance resources on the land.

(g) The application satisfies other relevant criteria established by the department.

SEC. 24. Section 10250 of the Public Resources Code is amended to read:

10250. (a) This chapter shall only apply to acquisitions of agricultural conservation easements.

(b) In reviewing applications for agricultural conservation easements, the department shall determine whether the proposed project meets the applicable requirements set forth in this division and conforms with any rules or regulations adopted by the department pursuant to this division.

SEC. 25. Section 10251 of the Public Resources Code is amended to read:

10251. Applicants for an agricultural conservation easement or fee acquisition grant shall meet all of the following eligibility criteria:

(a) The parcel proposed for conservation is expected to be used for, and is large enough to sustain, commercial agricultural production. The land is also in an area that possesses the necessary market, infrastructure, and agricultural support services, and the surrounding parcel sizes and land uses will support long-term commercial agricultural production.

(b) The applicable city or county has a general plan that demonstrates a long-term commitment to agricultural land conservation. This commitment shall be reflected in the goals, objectives, policies, and implementation measures of the plan, as they relate to the area of the county or city where the acquisition is proposed.

(c) Without conservation, the land proposed for protection is likely to be converted to nonagricultural use in the foreseeable future.

SEC. 26. Section 10252 of the Public Resources Code is amended to read:

10252. The director shall evaluate a proposal for a fee title or agricultural conservation easement acquisition grant based upon the overall value of the project, taking into consideration the goals and objectives for the program, and the extent to which the proposed project satisfies the following selection criteria:

(a) The quality of the agricultural land, based on land capability, farmland mapping and monitoring program definitions, productivity indices, and other soil, climate, and vegetative factors.

(b) The proposal meets multiple natural resource conservation objectives, including, but not limited to, wetland protection, wildlife habitat conservation, and scenic open-space preservation.

(c) The city or county demonstrates a long-term commitment to agricultural land conservation as demonstrated by the following:

(1) The general plan and related land use policies of the city or county.

(2) Policies of the local agency formation commission.

(3) California Environmental Quality Act policies and procedures.

(4) The use of a right-to-farm ordinance.

(5) Applied strategies for the economic support and enhancement of agricultural enterprise, including water policies, public education, marketing support, and consumer and recreational incentives.

(6) Other relevant policies and programs.

(d) If the land is in a county that participates in the Williamson Act (Chapter 7 (commencing with Section 51200) of Part 1 of Division 1 of Title 5 of the Government Code), the land proposed for protection is within a county or city designated agricultural preserve.

(e) The land proposed for conservation is within two miles outside of the exterior boundary of the sphere of influence of a city as established by the local agency formation commission.

(f) The applicant demonstrates fiscal and technical capability to effectively carry out the proposal. Technical capability may be demonstrated by agricultural land conservation expertise on the governing board or staff of the applicant, or through partnership with an organization that has that expertise.

(g) The proposal demonstrates a coordinated approach among affected landowners, local governments, and nonprofit organizations. If other entities are affected, there is written support from those entities for the proposal and a willingness to cooperate. The support of neighboring landowners who are not involved in the proposal shall be considered.

(h) The conservation of the land supports long-term private stewardship and continued agricultural production in the region.

(i) The amount of matching funds and in-kind services contributed by local governments and other sources toward the acquisition of the fee title or agricultural conservation easement, or both.

(j) The price of the proposed acquisition is cost-effective in comparison to the fair market value.

(k) Other relevant considerations established by the director or in the funding source.

SEC. 27. Section 10252.5 of the Public Resources Code is repealed.

SEC. 28. Section 10254 of the Public Resources Code is repealed.

SEC. 29. Section 10254 is added to the Public Resources Code, to read:

10254. (a) Before applying for funding to acquire an agricultural conservation easement or fee title, the applicant shall notify in writing the planning directors of the relevant county or counties and every city within two miles of the property about the application. The notice shall include all of the following:

(1) The applicant's intent to apply for a grant to acquire an agricultural conservation easement or fee title from the program.

(2) The application deadline.

(3) A statement that the conservation easement may result in reduced property tax revenue pursuant to Article 1.5 (commencing with Section 421) of Chapter 3 of Part 2 of Division 1 of the Revenue and Taxation Code.

(4) The jurisdiction's right to submit comment to the department on the project within 30 days of the application deadline.

(b) The relevant county or counties and every city within two miles of the property shall have 30 days from the application deadline to submit written comments on the project to the department, including on the compatibility of the project with the general plan.

(c) The department shall consider any comments submitted by the county or cities pursuant to subdivision (b) on the project.

SEC. 30. Section 10255 of the Public Resources Code is repealed.

SEC. 31. The heading of Chapter 4 (commencing with Section 10260) of Division 10.2 of the Public Resources Code is amended to read:

CHAPTER 4. Agricultural Conservation Easements and Fee Title

SEC. 32. Section 10260.5 of the Public Resources Code is repealed.

SEC. 33. Section 10260.5 is added to the Public Resources Code, to read:

10260.5. For purposes of this division, any instrument creating, assigning, or otherwise transferring a conservation easement, fee title, and any associate deed restrictions shall be recorded in the office of the county recorder of the county where the land is situated, in whole or in part, and those instruments shall be subject in all respects to the recording laws. Any amendment to any of these instruments shall be recorded in the office of the county recorder of the county where the land is situated, in whole or in part, and shall be subject in all respects to the recording laws.

SEC. 34. Section 10262 of the Public Resources Code is amended to read:

10262. An agricultural conservation easement shall not prevent any of the following:

(a) The granting of rights-of-way by the owner of the subject land in and through the land for the installation, transportation, or use of water, sewage, electric, telephone, gas, oil, or oil product lines, stock water development and storage, energy generation, and fencing if the agricultural productivity of the land and any multiple uses that made the acquisition a priority for selection under the program are not significantly impaired by those activities.

(b) The construction and use of structures on the subject land that are necessary for agricultural production and marketing, including, but not limited to, barns, shops, packing sheds, cooling facilities, greenhouses, roadside marketing stands, stock water development and storage, energy generation, and fencing, if the agricultural productivity of the land and any multiple uses that made the acquisition a priority for selection under the program are not significantly impaired by those activities.

(c) Customary part time or off season rural enterprises or activities, including, but not limited to, hunting and fishing, wildlife habitat improvement, predator control, timber harvesting, and firewood production, if the agricultural productivity of the land and any multiple uses that made the acquisition a priority for selection under the program are not significantly impaired by those activities.

SEC. 35. Section 10262.1 of the Public Resources Code is repealed.

SEC. 36. Section 10262.2 of the Public Resources Code is repealed.

SEC. 37. Section 10263 of the Public Resources Code is amended to read:

10263. (a) The department shall act on an application for a grant within 180 days after the department determines that it is complete.

(b) The department shall notify the applicant of the department's decision in writing. For any decision to disapprove an application, the written notice shall state the reason for the disapproval.

SEC. 38. Section 10264 of the Public Resources Code is amended to read:

10264. The director shall disapprove the application for a grant for the acquisition of an agricultural conservation easement or fee title in any of the following circumstances:

(a) The application does not satisfy the eligibility criteria set forth in Section 10251.

(b) The department has determined that clear title to the agricultural conservation easement cannot be conveyed.

(c) There is insufficient money in the fund to carry out the acquisition.

(d) Other acquisitions have a higher priority.

(e) The application does not satisfy other relevant requirements provided by the fund source or in the guidelines, solicitation, application, or other relevant control documents, as determined by the department.

SEC. 39. Chapter 5 (commencing with Section 10270) of Division 10.2 of the Public Resources Code is repealed.