

SENATE THIRD READING  
SB 716 (McGuire)  
As Introduced September 3, 2021  
Majority vote

## SUMMARY

Extends the sunset dates of the Habitat Restoration and Enhancement Act (Act) and authority to convey mitigation endowments to specified entities by five years.

### Major Provisions

- 1) Extends sunset date for the Act from January 1, 2022 to January 1, 2027, and adds an additional departmental report to the Legislature due no later than December 31, 2025.
- 2) Extends the sunset date on state and local agencies' authority to convey an endowment that is used to provide for the long-term stewardship of mitigation properties to the governmental entity, special district, or nonprofit organization that holds the mitigation properties from January 1, 2022 to January 1, 2027.

## COMMENTS

The mission of DFW is to manage California's diverse fish, wildlife, and plant resources, and the habitats upon which they depend for their ecological values and for their use and enjoyment of the public. AB 2193 (Gordon), Chapter 604, Statutes of 2014, established the Act, with the goal of facilitating the approval of small voluntary habitat restoration and enhancement projects by providing an expedited approval pathway for projects that meet certain criteria.

Before the Act was authorized, restoration projects of all sizes needed to first secure standard permits such as Scientific Collection permits, Water Board permits, Lake and Streambed Alteration Agreement (LSAA) permits, and/or approval via California Environmental Quality Act (CEQA), and the California Endangered Species Act (CESA). This permitting process led to substantial backlogs and delays, limiting the ability of many small, voluntary restoration projects to be successfully implemented. The Act provides a more efficient process for reviewing and approving small, voluntary restoration projects, by limiting eligible projects to those of five acres or less, and requiring applicants to demonstrate, among other things, that the project is consistent with existing state or federal recovery plans and policies to provide a net benefit to affected habitats and species.

According to DFW, 93 projects have been approved under the Act in 20 counties since its inception. Currently, this program is set to sunset on January 1, 2022. If allowed to sunset, the program would require significant new legislation to begin again, and projects currently hoping to use the act would likely be delayed.

SB 436 (Kehoe), Chapter 590, Statutes of 2011, and SB 1094 (Kehoe), Chapter 705, Statutes of 2012, established a set of requirements for mitigation agreements and the entities that may hold endowments dedicated to mitigation lands. Prior to the passage of SB 436 and SB 1094, there was a lack of clarity about who could hold and mitigation lands and any associated endowment set up to cover the long-term management costs of mitigation lands. In some instances nonprofit organizations held and managed mitigation lands, but because there was not explicit authority under law for this arrangement, many public agencies that required mitigation for projects did

not use this option for the long-term management of mitigation lands. Additionally, land managers that did hold and manage mitigation lands had to seek reimbursement for their management costs from the public agency that required the mitigation, sometimes experiencing delays in reimbursement payments of up to six months to a year. To resolve this situation, SB 436 and SB 1094 clarified that land managers could hold the mitigation endowment associated with the mitigation lands. If this authority sunsets, it would throw many existing mitigation agreements into limbo.

### **According to the Author**

The Act is one of many tools the state already has in place to create an expedited permitting process for small-scale habitat restoration projects. The Act was created by AB 2193 by then Assemblymember Gordon in 2014. The original program included a sunset of January 1, 2022. This bill will extend this important Act to January 1, 2027. The Act has consolidated the permitting process at DFW for landowners, state and local government agencies, and conservation organizations to expedite the implementation of small-scale, voluntary habitat restoration and enhancement projects. Eligible projects include revitalizing streams, removing barriers to fish passage, restoring wetlands and replenishing natural water supplies.

If the authority to allow governmental entities, special districts, and nonprofit organizations to hold mitigation endowments sunsets, it will lead to confusion among current mitigation land managers and increase workload of DFW. A sunset could also lead to delays in approving future mitigation agreements. This extension is necessary to avoid these adverse outcomes.

### **Arguments in Support**

According to the California Habitat Conservation and Planning Coalition, "Governor Newsom's Executive Order N-82-20 highlights the critical role California's biodiversity plays in the state's communities and economy and that biodiversity is in decline. The Executive Order specifically calls out the need to '[i]mplement actions to increase the pace and scale of environmental restoration and land management efforts by streamlining the State's process to approve and facilitate these projects.' The Act is a tool that already exists in the state's toolbox to meet this need, enabling DFW to streamline the approval of voluntary habitat restoration projects and increase the pace and scale of implementing these projects. Extending the sunset by another five years and maintaining this successful policy will help implement EO N-82-20."

Sonoma Water, in its letter of support, states that the process "has been used several times to implement fish passage improvement projects in the Russian River and its tributaries, contributing to implementation of the Russian River Biological Opinion." (The Russian River Biological Opinion relates to the recovery of steelhead, coho salmon and chinook salmon.) Sanctuary Forest, in its letter of support, states that it has undertaken two streamflow enhancement projects under the act (beaver dam analogues and terrace infiltration ponds) to help improve low summer flows for endangered salmonids and "test innovative restoration strategies" for drought resilience and restoring native salmon populations. Sustainable Conservation, a nonprofit focused on improving the restoration process, reports that California Tribes, state and Federal Agencies, non-profit organizations, cities, private landowners, Resource Conservation Districts, and others have successfully implemented over 70 projects using the act.

### **Arguments in Opposition**

None on file.

**FISCAL COMMENTS**

- 1) According to the Assembly Appropriations Committee, "unknown significant funding shortfalls over the next five years due to the inability of the fee to fully cover the costs of the program (Habitat Restoration and Enhancement Account). The Habitat Restoration Account is within the Fish and Game Preservation Fund which has been in structural deficit for many years."
- 2) Unknown costs associated with extending the authority for specified entities to hold mitigation endowments by five years.

**VOTES****SENATE FLOOR: 39-0-1**

**YES:** Allen, Archuleta, Atkins, Bates, Becker, Borgeas, Bradford, Caballero, Cortese, Dahle, Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hertzberg, Hueso, Hurtado, Jones, Kamlager, Laird, Leyva, Limón, McGuire, Min, Newman, Nielsen, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener, Wilk

**ABS, ABST OR NV:** Melendez

**ASM WATER, PARKS, AND WILDLIFE: 14-0-1**

**YES:** Eduardo Garcia, Megan Dahle, Bennett, Bigelow, Friedman, Cristina Garcia, Kalra, Levine, Muratsuchi, Nguyen, Blanca Rubio, Salas, Smith, Ward

**ABS, ABST OR NV:** Villapudua

**ASM APPROPRIATIONS: 16-0-0**

**YES:** Lorena Gonzalez, Bigelow, Bryan, Calderon, Carrillo, Chau, Megan Dahle, Davies, Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Kalra

**UPDATED**

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