

AMENDED IN SENATE JULY 15, 2021

AMENDED IN ASSEMBLY APRIL 29, 2021

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 379

Introduced by Assembly Member Gallagher

February 1, 2021

An act to amend Sections 1348, 1350, 1352, and 1501.5 of the Fish and Game Code, and to amend Section 5096.516 of the Public Resources Code, relating to conservation.

LEGISLATIVE COUNSEL'S DIGEST

AB 379, as amended, Gallagher. Wildlife conservation: conservation lands.

(1) The Wildlife Conservation Law of 1947 establishes the Wildlife Conservation Board in the Department of Fish and Wildlife. Existing law requires the board to investigate, study, and determine the areas in the state that are most suitable for certain wildlife-related purposes.

Existing law requires the board to authorize the acquisition of real property, rights in real property, water, or water rights, as specified. Existing law authorizes the board to authorize the department to, among other things, accept federal grants and receive financial support from public or private sources, lease degraded potential wildlife habitat real property to nonprofit organizations, local governmental agencies, or state and federal agencies, and acquire former wildlife habitat real property and restore and sell the real property to private owners, local governmental agencies, or state departments and agencies.

This bill would also authorize the board to grant funds to, and enter into agreements, loans, or contracts with, a California Native American

tribe to the same extent as any public or private entity as authorized under specified laws. The bill would authorize the board to authorize the department to also accept federal grants and other financial support from California Native American tribes, and to also lease degraded potential wildlife habitat real property and sell former wildlife habitat real property to California Native American tribes. The bill would also make conforming changes.

Existing law authorizes the department, with the approval of the board, to enter into agreements with any other department or agency of this state, any local agency, or nonprofit organization, to provide for the construction, management, or maintenance of the facilities authorized by the board, and authorizes such other department or agency of this state, local agency, or nonprofit organization, and each of them to construct, manage, or maintain those facilities pursuant to the agreement. Existing law authorizes the board to make grants or loans to nonprofit organizations, local governmental agencies, federal agencies, and state agencies for various purposes in connection with fish and wildlife habitats.

This bill would authorize the department to also enter into that type of agreement with a California Native American tribe. The bill would also authorize the board to make grants or loans to California Native American tribes for various purposes in connection with fish and wildlife habitats.

Existing law authorizes the department to enter into contracts for fish and wildlife habitat preservation, restoration, and enhancement with public and private entities, and to grant funds for fish and wildlife habitat preservation, restoration, and enhancement to public agencies, Indian tribes, and nonprofit entities, whenever the department finds that doing so would assist in meeting its duty to preserve, protect, and restore fish and wildlife.

This bill would authorize the department to also enter into those contracts with California Native American tribes, and to instead grant funds for fish and wildlife education, public use and access, and habitat preservation, restoration, and enhancement, and to California Native American tribes instead of Indian tribes. The bill would also authorize the department to grant funds to, and enter into agreements, loans, or contracts with, a California Native American tribe to the same extent as any public or private entity as authorized under specified laws.

(2) Existing law authorizes various agencies to acquire land for purposes related to conservation. Existing law prohibits, with specified

exceptions, conservation lands from being sold to another owner, or having possession and control transferred to another agency, unless specified actions occur. Existing law requires proceeds from the sale or transfer of conservation lands to be used solely for certain purposes, including the acquisition of wildlife habitat to further the purposes of the Wildlife Conservation Law of 1947. *Existing law exempts from these provisions, among other things, the sale or transfer of conservation lands to other public agencies or nonprofit organizations to improve conservation management, public access, or historic preservation, or to protect or enhance the biological value of conservation lands.*

~~This bill would also exempt from these provisions the sale or transfer of conservation lands to California Native American tribes to improve conservation management, public access, historic preservation, or to protect or enhance the biological value of conservation lands.~~ *modify this exemption by also exempting the sale or transfer of conservation lands to California Native American tribes for an above-described purpose and by making the exemption applicable only when there is an agreement that the lands are managed for an above-described purpose and are subject to relevant environmental and land use laws and regulations and existing conservation easements.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1348 of the Fish and Game Code is
2 amended to read:
3 1348. (a) The board shall authorize the acquisition of real
4 property, rights in real property, water, or water rights as may be
5 necessary to carry out the purposes of this chapter. The board may
6 authorize acquisition by the department, but the department shall
7 not acquire any property pursuant to this subdivision by eminent
8 domain proceedings except that property as may be necessary to
9 provide access roads or rights-of-way to areas to be used for fishing
10 the coastal waters of the Pacific Ocean, and then only if the board
11 of supervisors of the affected county has agreed by resolution to
12 those proceedings for each parcel of land, and has further agreed
13 by resolution to maintain the road or right-of-way. The board may
14 authorize acquisition by the State Public Works Board, which may
15 effect acquisitions pursuant to the Property Acquisition Law, Part

1 *Law* (*Part* 11 (commencing with Section 15850) of Division 3 of
2 Title 2 of the Government ~~Code~~. *Code*).

3 (b) For the purposes of this chapter and Chapter 4.1
4 (commencing with Section 1385), the board may authorize the
5 acquisition of interests in real property and water rights by means
6 of gifts, purchases, leases, easements, the transfer or exchange of
7 property for other property of like value, transfers of development
8 rights or credits, and purchases of development rights, conservation
9 easements, and other interests.

10 (c) The board may grant funds to, and enter into agreements,
11 loans, or contracts with, a California Native American tribe, as
12 defined in Section 21073 of the Public Resources Code, to the
13 same extent as any public or private entity as authorized in Sections
14 1364, 1374, 1390, and 1416.

15 (d) To further implement this chapter and Chapter 4.1
16 (commencing with Section 1385), the board may authorize the
17 department to do any of the following:

18 (1) Accept federal grants and receive gifts, donations,
19 subventions, rents, royalties, and other financial support from
20 public or private sources or California Native American tribes.
21 Proceeds received from any of these sources shall be deposited in
22 the Wildlife Restoration Fund.

23 (2) Notwithstanding any other provision of law, lease, sell,
24 exchange, or otherwise transfer any real property, interest in real
25 property, or option acquired by or held under the jurisdiction of
26 the board or the department. Except as provided in Section 1355,
27 proceeds from transactions entered into pursuant to this paragraph
28 shall be deposited in the Wildlife Restoration Fund.

29 (3) Lease degraded potential wildlife habitat real property to
30 nonprofit organizations, local governmental agencies, California
31 Native American tribes, or state and federal agencies if the lessee
32 agrees to restore the real property to its highest possible wildlife
33 habitat value and maintain the real property at that highest possible
34 wildlife habitat value. If feasible, during the period of lease, the
35 board may require that the real property be open to the public for
36 compatible recreational opportunities. Proceeds from any lease or
37 rental and interest thereon shall be deposited in the Wildlife
38 Restoration Fund.

39 (4) Acquire former wildlife habitat real property, including
40 riparian habitat real property, restore and sell the real property, or

1 any interest therein, to private owners, local governmental agencies,
2 California Native American tribes, or state departments and
3 agencies, or exchange the property for other real property, if a
4 written and recorded agreement is first secured to keep and
5 maintain the real property as wildlife habitat in perpetuity. The
6 agreement shall contain a reversion if the real property sold or
7 exchanged is not maintained as wildlife habitat. The agreement
8 containing the reversion shall be set forth in any conveyance
9 transferring any real property, interest in real property, or option
10 subject to this section. Proceeds from the sales shall be deposited
11 in the Wildlife Restoration Fund.

12 SEC. 2. Section 1350 of the Fish and Game Code is amended
13 to read:

14 1350. (a) (1) The department shall, when authorized by the
15 board, construct in accordance with law those facilities as are
16 suitable for the purpose for which the real property or rights in
17 real property or water, or water rights, were acquired. Each
18 completed project shall be managed and maintained by the
19 department.

20 (2) The department, with the approval of the board, may enter
21 into agreements with any other department or agency of this state,
22 any local agency, any California Native American tribe, as defined
23 in Section 21073 of the Public Resources Code, or any nonprofit
24 organization, to provide for the construction, management, or
25 maintenance of the facilities authorized by the board, and such
26 other department or agency of this state, local agency, California
27 Native American tribe, or nonprofit organization, and each of them
28 may construct, manage, or maintain those facilities pursuant to the
29 agreement. Work performed by a local agency, California Native
30 American tribe, or nonprofit organization under those agreements
31 is exempt from Chapter 1 (commencing with Section 10100) of
32 Part 2 of Division 2 of the Public Contract Code. However, nothing
33 in this section shall be construed to exempt any work from Part 7
34 (commencing with Section 1720) of Division 2 of the Labor Code.

35 (b) The department, when authorized by the board, may apply
36 for and accept federal grants, and receive gifts, donations, and
37 other financial support from public or private sources to be used
38 for fish and wildlife habitat enhancement, including riparian habitat
39 restoration projects on real property or waters for which the state

1 obtains an interest. Funds received from any of those sources shall
2 be deposited in the Wildlife Restoration Fund.

3 (c) The board may award grants or loans to nonprofit
4 organizations, local governmental agencies, federal agencies, state
5 agencies, and California Native American tribes for the purposes
6 of fish and wildlife habitat restoration, enhancement, management,
7 protection and improvement of riparian resources, and for
8 development of compatible public access facilities in the same
9 manner and subject to the same terms and conditions as prescribed
10 in Section 31116 of the Public Resources Code. Proceeds from
11 repayment of any loans and the interest thereon shall be deposited
12 in the Wildlife Restoration Fund.

13 SEC. 3. Section 1352 of the Fish and Game Code is amended
14 to read:

15 1352. (a) The money in the Wildlife Restoration Fund, as
16 provided for by Section 19632 of the Business and Professions
17 Code, is available for expenditure under any provision of this
18 chapter.

19 (b) All federal moneys made available for projects authorized
20 by the board shall be deposited in the Wildlife Restoration Fund.
21 Any unexpended balances of the federal moneys remaining on or
22 after June 30, 1979, in any other fund shall be transferred to the
23 Wildlife Restoration Fund.

24 (c) Any moneys received in the Wildlife Restoration Fund from
25 leases authorized pursuant to paragraph (2) or (3) of subdivision
26 (d) of Section 1348 shall be expended, upon appropriation, by the
27 department for the purposes of managing, maintaining, restoring,
28 or operating lands owned and managed by the department.

29 SEC. 4. Section 1501.5 of the Fish and Game Code is amended
30 to read:

31 1501.5. (a) The department may enter into contracts for fish
32 and wildlife habitat preservation, restoration, and enhancement
33 with public and private entities or California Native American
34 tribes, as defined in Section 21073 of the Public Resources Code,
35 whenever the department finds that the contracts will assist in
36 meeting the department's duty to preserve, protect, and restore
37 fish and wildlife.

38 (b) The department may grant funds for fish and wildlife
39 education, public use and access, and habitat preservation,
40 restoration, and enhancement to public agencies, California Native

1 American tribes, and nonprofit entities whenever the department
2 finds that the grants will assist it in meeting its duty to preserve,
3 protect, and restore fish and wildlife.

4 (c) The department may grant funds to, and enter into
5 agreements, loans, or contracts with, a California Native American
6 tribe to the same extent as any public or private entity as authorized
7 in Sections 1572, 1573, 1745, 1773.2, 2127, 3460, 3469, 3684,
8 3686, 3702, 3704.5, and 3953 of this code, and Section 8670.73
9 of the Government Code.

10 (d) Contracts authorized under this section are contracts for
11 services and are governed by Article 4 (commencing with Section
12 10335) of Chapter 2 of Part 2 of Division 2 of the Public Contract
13 Code. No work under this section is public work or a public
14 improvement, and is not subject to Chapter 1 (commencing with
15 Section 1720) of Part 7 of Division 2 of the Labor Code.

16 (e) This section does not apply to contracts for any of the
17 following:

18 (1) Construction of office, storage, garage, or maintenance
19 buildings.

20 (2) Drilling wells and installation of pumping equipment.

21 (3) Construction of permanent hatchery facilities, including
22 raceways, water systems, and bird exclosures.

23 (4) Construction of permanent surfaced roadways and bridges.

24 (5) Any project requiring engineered design or certification by
25 a registered engineer.

26 (6) Any contract, except contracts with public agencies,
27 nonprofit organizations, or California Native American tribes that
28 exceed fifty thousand dollars (\$50,000) in cost, excluding the cost
29 for gravel, for fish and wildlife habitat preservation, restoration,
30 and enhancement for any one of the following:

31 (A) Fish screens, weirs, and ladders.

32 (B) Drainage or other watershed improvements.

33 (C) Gravel and rock removal or placement.

34 (D) Irrigation and water distribution systems.

35 (E) Earthwork and grading.

36 (F) Fencing.

37 (G) Planting trees or other habitat vegetation.

38 (H) Construction of temporary storage buildings.

39 SEC. 5. Section 5096.516 of the Public Resources Code is
40 amended to read:

1 5096.516. (a) Except as provided in subdivision (c),
2 conservation lands may not be sold to another owner, or have
3 possession and control transferred to another agency, unless all of
4 the following occur:

5 (1) The selling or transferring agency prepares and makes
6 available to the public a detailed report that identifies why the
7 conservation lands no longer serve a needed conservation purpose.

8 (2) The selling or transferring agency holds a duly noticed public
9 hearing to accept public comment on the proposed sale or transfer
10 of conservation lands.

11 (3) After compliance with paragraphs (1) and (2), the selling or
12 transferring agency finds, based on substantial evidence, that the
13 property no longer serves a needed conservation purpose.

14 (4) The sale or transfer of the land is authorized or approved as
15 part of the annual Budget Act or pursuant to specific legislation
16 authorizing the sale or transfer.

17 (b) Proceeds from the sale or transfer of conservation lands shall
18 be used solely for one or more of the following purposes:

19 (1) The acquisition of conservation lands to achieve the same
20 or equivalent objectives as the original acquisition of the property
21 that was sold or transferred.

22 (2) To further the purposes of Division 21 (commencing with
23 Section 31000).

24 (3) The acquisition of wildlife habitat to further the purposes
25 of the Wildlife Conservation Law of 1947 (Chapter 4 (commencing
26 with Section 1300) of Division 2 of the Fish and Game Code).

27 (4) The acquisition of wildlife habitat to further the purposes
28 of Article 2 (commencing with Section 1410) of Chapter 4.3 of
29 Division 2 of the Fish and Game Code.

30 (c) This section does not apply to any of the following:

31 (1) The sale or transfer of conservation lands solely for the
32 purpose of boundary adjustments or consolidation of property
33 ownership.

34 (2) The sale or transfer of lands subject to a conservation
35 easement to keep lands in agricultural production.

36 (3) The sale or transfer to other public agencies, California
37 Native American tribes, as defined in Section 21073, or nonprofit
38 organizations to improve conservation management, public access,
39 or historic preservation, or to protect or enhance the biological
40 value of conservation ~~lands~~. *lands, when there is an agreement*

1 *that the lands are managed for that purpose and are subject to*
2 *relevant environmental and land use laws and regulations and*
3 *existing conservation easements.*

4 (4) The sale or transfer of conservation lands by the State
5 Coastal Conservancy when the sale or transfer of interests in land
6 is provided for, consistent with Division 21 (commencing with
7 Section 31000), at the time of acquisition of real property.

8 (5) The exchange of conservation lands for land of greater
9 biological value as wildlife habitat.

10 (6) The sale or transfer of conservation lands that have a fair
11 market value of less than one million dollars (\$1,000,000).

12 (d) The requirements imposed by this section are in addition to
13 any other requirements imposed by law or regulation.