

FISH AND GAME CODE - FGC

DIVISION 2. DEPARTMENT OF FISH AND WILDLIFE [700 - 1940]

(Heading of Division 2 amended by Stats. 2015, Ch. 154, Sec. 21.)

CHAPTER 4. Wildlife Conservation Law of 1947 [1300 - 1375]

(Chapter 4 enacted by Stats. 1957, Ch. 456.)

ARTICLE 1. Generally [1300 - 1301]

(Article 1 enacted by Stats. 1957, Ch. 456.)

1300.

This chapter is known and may be cited as the Wildlife Conservation Law of 1947.

(Enacted by Stats. 1957, Ch. 456.)

1301.

The preservation, protection and restoration of wildlife within the State is an inseparable part of providing adequate recreation for our people in the interest of public welfare; and it is the policy of the State to acquire and restore to the highest possible level, and maintain in a state of high productivity, those areas that can be most successfully used to sustain wildlife and which will provide adequate and suitable recreation. To carry out these purposes, a single and coordinated program for the acquisition of lands and facilities suitable for recreational purposes, and adaptable for conservation, propagation, and utilization of the fish and game resources of the State, is established.

(Enacted by Stats. 1957, Ch. 456.)

ARTICLE 2. The Wildlife Conservation Board [1320 - 1324]

(Article 2 enacted by Stats. 1957, Ch. 456.)

1320.

There is in the department the Wildlife Conservation Board, hereafter referred to as the board. The board consists of the president of the commission, the director, and the Director of Finance.

(Enacted by Stats. 1957, Ch. 456.)

1321.

The chairman of the board shall be elected by the members of the board.

(Enacted by Stats. 1957, Ch. 456.)

1322.

The members of the board shall receive their actual and necessary traveling expenses, which shall be paid from the Wildlife Restoration Fund.

(Enacted by Stats. 1957, Ch. 456.)

1323.

Three Members of the Senate, appointed by the Committee on Rules thereof, and three Members of the Assembly, appointed by the Speaker thereof, shall meet with the board and participate in its activities to the extent that such participation is not incompatible with their respective positions as Members of the Legislature.

(Enacted by Stats. 1957, Ch. 456.)

1324.

For the purposes of this chapter, the Members of the Legislature shall constitute an interim investigating committee on the subject of this chapter and as such shall have the powers and duties imposed upon such a committee by the Joint Rules of the Senate and the Assembly.

(Enacted by Stats. 1957, Ch. 456.)

ARTICLE 3. Powers and Purposes [1345 - 1356]

(Article 3 enacted by Stats. 1957, Ch. 456.)

1345.

(a) The board shall investigate, study, and determine what areas within the state are most essential and suitable for wildlife production and preservation, and will provide suitable recreation; and shall ascertain and determine what lands within the state are suitable for game propagation, game refuges, bird refuges, waterfowl refuges, game farms, fish hatcheries, game management areas, and what streams and lakes are suitable for, or can be made suitable for, fishing and hunting.

(b) In determining which areas are suitable for fishing and hunting, the board, in consultation with the department, shall take into consideration areas of the state where public access and opportunity for fishing and hunting are most needed.

(Amended by Stats. 2009, Ch. 294, Sec. 6. Effective January 1, 2010.)

1346.

The board shall also ascertain what lands are suitable for providing cover for the propagation and rearing in a wild state of waterfowl, shore birds, and upland birds, and the possibilities of acquiring easements on such lands to provide such cover.

(Enacted by Stats. 1957, Ch. 456.)

1347.

As a result of the studies, the board shall determine what areas, lands, or rights in lands or waters should be acquired by the state in order to effectuate a coordinated and balanced program resulting in the maximum restoration of wildlife in the state and in the maximum recreational advantages to the people of the state.

This section shall become operative on July 1, 1993.

(Repealed (in Sec. 1) and added by Stats. 1992, Ch. 452, Sec. 2. Effective January 1, 1993. Section operative July 1, 1993, by its own provisions.)

1348.

(a) The board shall authorize the acquisition of real property, rights in real property, water, or water rights as may be necessary to carry out the purposes of this chapter. The board may authorize acquisition by the department, but the department shall not acquire any property pursuant to this subdivision by eminent domain proceedings except that property as may be necessary to provide access roads or rights-of-way to areas to be used for fishing the coastal waters of the Pacific Ocean, and then only if the board of supervisors of the affected county has agreed by resolution to those proceedings for each parcel of land, and has further agreed by resolution to maintain the road or right-of-way. The board may authorize acquisition by the State Public Works Board, which may effect acquisitions pursuant to the Property Acquisition Law, Part 11 (commencing with Section 15850) of Division 3 of Title 2 of the Government Code.

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

rights or credits, and purchases of development rights, conservation easements, and other interests.

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

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

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

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

(4) Acquire former wildlife habitat real property, including riparian habitat real property, restore and sell the real property, or any interest therein, to private owners, local governmental agencies, or state departments and agencies, or exchange the property for other real property, if a written and recorded agreement is first secured to keep and maintain the real property as wildlife habitat in perpetuity. The agreement shall contain a reversion if the real property sold or exchanged is not maintained as wildlife habitat. The agreement containing the reversion shall be set forth in any conveyance transferring any real property, interest in real property, or option subject to this section. Proceeds from the sales shall be deposited in the Wildlife Restoration Fund.

(Amended by Stats. 2009, Ch. 294, Sec. 7. Effective January 1, 2010.)

1348.1.

Before the board authorizes the purchase of any land, or any interest therein, the board shall notify all owners of record of adjacent parcels of land of the intent of the board to purchase the land. The notice to the adjacent owners of land and the public notice shall include an explanation of the proposed use of the land by the department.

(Added by Stats. 1990, Ch. 1287, Sec. 1.)

1348.2.

When the board acquires real property, other than by eminent domain, the purchase price for the real property shall not exceed the fair market value of the property, as defined in Section 1263.320 of the Code of Civil Procedure. The fair market value shall be set forth in an appraisal that is (a) prepared by a licensed real estate appraiser, and (b) approved by the Department of General Services.

(Amended by Stats. 1998, Ch. 485, Sec. 73. Effective January 1, 1999.)

1348.3.

(a) No governmental entity may condemn any wildlife conservation easement acquired by a state agency, except as provided in subdivision (b). As used in this section, the following terms have the following meanings:

(1) "Public use" as used in Article 6 (commencing with Section 1240.510) and Article 7 (commencing with Section 1240.610) of Chapter 3 of Title 7 of Part 3 of the Code of Civil Procedure means privately owned lands managed for habitat in public trust.

(2) "Wildlife" has the same meaning as set forth in Section 89.5.

(3) "Wildlife conservation easement" means a recorded conservation easement, as defined in Section 815.1 of the Civil Code, that exists or will exist for at least 10 years and that is acquired and held by a state agency and administered primarily for the benefit of wildlife.

(b) Prior to the initiation by a governmental entity of condemnation proceedings against a wildlife conservation easement acquired by a state agency, the governmental entity shall give notice to the holder of the easement, provide an opportunity for the holder of the easement to consult with the governmental agency, provide the holder of the easement the opportunity to state its objections to the condemnation, and provide a response to the objections. Article 6 (commencing with Section 1240.510) and Article 7 (commencing with Section 1240.610) of Chapter 3 of Title 7 of Part 3 of the Code of Civil Procedure shall apply to condemnation proceedings initiated by a governmental entity against a wildlife conservation easement acquired by a state agency. In those proceedings, the condemning governmental entity shall be required to prove by clear and convincing evidence that its proposed use satisfies the requirements of Article 6 (commencing with Section 1240.510) or Article 7 (commencing with Section 1240.610) of Chapter 3 of Title 7 of Part 3 of the Code of Civil Procedure.

(Amended by Stats. 2015, Ch. 154, Sec. 36. Effective January 1, 2016.)

1349.

No farm lands may be acquired under the provisions of this chapter by proceedings in eminent domain except by specific authorization of the Legislature, notwithstanding any provision of Section 1348. Nothing in this section shall apply to any proceedings to acquire farm lands when the owner thereof has consented to, or requested the institution of, such proceedings.

(Enacted by Stats. 1957, Ch. 456.)

1350.

(a) The department shall, when authorized by the board, construct in accordance with law such facilities as are suitable for the purpose for which the real property or rights in real property or water, or water rights were acquired. Each completed project shall be managed and maintained by the department.

The department, with the approval of the board, may 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 such other department or agency of this state, local agency, or nonprofit organization, and each of them may construct, manage, or maintain those facilities pursuant to the agreement. Work performed by a local agency or nonprofit organization under those agreements is exempt from Chapter 3 (commencing with Section 14250), of Part 5 of Division 3 of Title 2 of the Government Code. However, nothing in this section shall be construed to exempt any work from Part 7 (commencing with Section 1720) of Division 2 of the Labor Code.

(b) The department, when authorized by the board, may apply for and accept federal grants, and receive gifts, donations, and other financial support from public or private sources to be used for fish and wildlife habitat enhancement, including riparian habitat restoration projects on real property or waters for which the state obtains an interest. Funds received from any of those sources shall be deposited in the Wildlife Restoration Fund.

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

(Amended by Stats. 1991, Ch. 762, Sec. 2.)

1351.

Each recreational area shall be so managed and controlled that the public shall have access to and use of the area for all recreational purposes.

(Enacted by Stats. 1957, Ch. 456.)

1352.

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

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

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

(Amended by Stats. 2013, Ch. 356, Sec. 2. Effective September 26, 2013.)

1352.5.

(a) The San Francisco Baylands Restoration Program Account is hereby established within the Wildlife Restoration Fund, as provided for by Section 19632 of the Business and Professions Code, for the purpose of acquiring and restoring wetlands and lands that may be enhanced to support wetlands in the San Francisco Bay area in order to achieve the objectives of the Baylands Ecosystem Habitat Goals Report (Goals Report).

(b) Funds in the account may be expended by the board to acquire any lands identified in the Goals Report that are available for acquisition subject to the following conditions:

(1) The purchase price shall not exceed the fair market value of the property, as determined by an appraisal conducted pursuant to Section 1348.2. The appraisal shall also consider and describe all the specific requirements and restrictions of relevant state and federal laws, including, but not limited to, the McAteer-Petris Act (Title 7.2 (commencing with Section 66600) of the Government Code), related to the property value and development potential of lands considered for acquisition in the shoreline band of the San Francisco Bay area.

(2) The board has determined any of the following:

(A) Funds are available to implement the recommendations and objectives of the Goals Report for a significant portion of the property to be acquired by the board.

(B) Sufficient funding and authority exists for the long-term maintenance of all levees and dikes and all other land-use management requirements necessary to avoid environmental degradation for the property proposed to be acquired by the board.

(C) The property to be acquired by the board has no unique long-term maintenance requirements or has no land-use management requirements necessary to avoid environmental degradation.

(3) If the board determines to acquire all or a portion of the Cargill property, a matching federal appropriation for the acquisition of the Cargill property shall be deposited into an account solely for the acquisition of the Cargill property or a portion thereof.

(4) The board has consulted with the State Coastal Conservancy and determined that the proposed acquisition is consistent with most of the goals of the San Francisco Bay Area Conservancy Program, as described in Section 31162 of the Public Resources Code.

(5) The acquisition of the property will not result in any liability to the state for the cleanup of hazardous materials.

(c) "Cargill property," for purposes of this section, means all property owned by the Cargill Salt Division that Cargill proposes to sell to the state and federal governments.

(Added by Stats. 2000, Ch. 395, Sec. 2. Effective January 1, 2001.)

1353.

The board may purchase such boats, aircraft, or equipment as it deems necessary for the use of the department for the improvement and protection of marine fisheries.

(Enacted by Stats. 1957, Ch. 456.)

1354.

The board may authorize the acquisition of such lands or rights in land as may be necessary for the purpose of furnishing public access to lands or waters open to the public for fishing, hunting and shooting. The board may authorize such acquisition by the department.

(Added by Stats. 1957, Ch. 754.)

1355.

The net proceeds of the sale or other disposition of real property used as a fish hatchery that has been acquired by or is under the jurisdiction of the board or the department, either in easement or in fee, shall be deposited in the Wildlife Restoration Fund or the Fish and Game Preservation Fund, as determined by the board, and shall be available for acquisition, enhancement, restoration, or construction projects for the benefit of wildlife.

(Added by Stats. 1994, Ch. 935, Sec. 4. Effective January 1, 1995.)

1356.

The board, when it prioritizes the use of available funds for proposed acquisitions, with regard to the priority of a proposal to acquire forestland, may consider and take into account the potential of that proposed acquisition to beneficially reduce or sequester greenhouse gas emissions. The board may use policies, protocols, or other relevant information developed by the California Climate Action Registry as a basis for determining a project's potential to reduce or sequester greenhouse gas emissions.

(Added by Stats. 2006, Ch. 469, Sec. 1. Effective January 1, 2007.)

ARTICLE 4. Cooperation With United States [1375- 1375.]

(Article 4 enacted by Stats. 1957, Ch. 456.)

1375.

The board may act either independently or may cooperate with the United States Fish and Wildlife Service, Department of Interior, or any other federal agency in determining any of the questions referred to in this chapter, or in the acquisition and construction of any of the projects mentioned in this chapter.

(Enacted by Stats. 1957, Ch. 456.)