

M e m o r a n d u m

Date: June 6, 2011

To: The Commission
(Meeting of June 9, 2011)

From: Edward Randolph, Director
Office of Governmental Affairs (OGA) — Sacramento

**Subject: SB 618 (Wolk) – Local government solar-use easement.
As amended: May 11, 2011**

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: SUPPORT

SUMMARY OF BILL:

This bill would allow local governments and landowners to mutually rescind a Williamson Act contract on marginally productive or physically impaired land and simultaneously entered into a solar-use easement. The Williamson Act provides landowners with lower property tax assessments in return for a ten-year commitment to use land for only agricultural or open use purposes. The solar-use easement would require that the land be used for solar photovoltaic facilities under similar terms of a Williamson Act contract.

The bill would also require any lead or responsible agency to expedite its review of permits for solar photovoltaic facilities that are located on marginally productive, physically impaired, or disturbed land, as defined in the bill.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

If landowners choose to use the solar use easement option offered by the bill, the bill could speed development of solar projects and reduce the cost of meeting the goals of the Renewable Portfolio Standard (RPS) by expanding the viable options the utility could follow to meet their 33% obligations. The bill would not result in the conversion of prime farm land into solar facilities, since it would only apply to land that can be shown to be “marginally productive” or “physically impaired,” as approved by the Secretary of Food and Agriculture.

As currently proposed, the bill would have little effect on the core functions and responsibilities of the California Public Utilities Commission (CPUC), and would not bind

the CPUC to any particular generation resource mix, procurement strategy, or infrastructure investment. At the same time, the bill provides local governments with an additional tool to develop solar projects pursuant to their local land use authority.

DIVISION ANALYSIS (Energy Division):

Under the Williamson Act, landowners can sign contracts with counties, agreeing to restrict the use of their property to agriculture, open space, or compatible uses for the next 10 years. These contracts automatically renew each year so that the termination date is always a decade away. In return for the landowner's agreement to not develop the land, county officials must assess the property based on its use, not its market value.

AB 618 supports the goals of the RPS program, which requires all load serving electricity providers to meet 33% of their load with renewable energy by 2020. CPUC staff estimates that the 33% RPS might require development of about 20,000 MW of new renewable generation. Some agricultural land which is currently deed restricted to agricultural uses under the Williamson Act could be prime location for solar generation if the deed restrictions were not in place. If landowners choose to use the solar use easement option offered by the bill, the bill could speed development of solar projects and reduce the cost of meeting the RPS goals by expanding the viable options a utility could follow to meet their 33% obligations.

STATUS: The bill was approved by the Senate 39-0 and awaits committee assignment in the Assembly.

SUPPORT/OPPOSITION:

Support: California Farm Bureau Federation
Trust for Public Land
Westland Solar Park

Opposition: None on file.

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BILL LANGUAGE:

BILL NUMBER: SB 618 AMENDED
BILL TEXT

AMENDED IN SENATE MAY 11, 2011
AMENDED IN SENATE MAY 3, 2011
AMENDED IN SENATE APRIL 25, 2011

INTRODUCED BY Senator Wolk

FEBRUARY 18, 2011

An act to add Sections 51255.1 and 65924 to, and to add Chapter 6.9 (commencing with Section 51190) to Part 1 of Division 1 of Title 5 of, the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

SB 618, as amended, Wolk. Local government: solar-use easement.

(1) Existing law, the Williamson Act, authorizes a city or county to enter into 10-year contracts with owners of land devoted to agricultural use, whereby the owners agree to continue using the property for that purpose, and the city or county agrees to value the land accordingly for purposes of property taxation. Existing law authorizes the parties to a Williamson Act contract to mutually agree to rescind a contract under the act in order to simultaneously enter into an open-space easement for a certain period of years.

This bill would authorize the parties to a Williamson Act contract to mutually agree to rescind the contract in order to simultaneously enter into a solar-use easement that would require that the land be used for solar photovoltaic facilities for a term no less than 10 years. This bill would require a county or city to include certain restrictions, conditions, or covenants in the deed or instrument granting a solar-use easement. This bill would provide that a solar-use easement would be automatically renewed annually, unless either party filed a notice of nonrenewal. This bill would provide that a solar-use easement may only be terminated by either party filing a notice of nonrenewal. This bill would require that if the landowner terminates the solar-use easement, the landowner shall restore the property to the conditions that existed before the easement by the time the easement terminates. This bill would provide that specified parties may bring an action to enforce the easement if it is violated. This bill would provide that construction of solar photovoltaic facilities on land subject to a solar-use easement that qualifies as a active solar energy system, as defined, would be excluded from classification as newly constructed.

(2) Under the Permit Streamlining Act, a state or local agency and a public agency that is the lead agency for a development project are required to act upon an application for a development project within specified time periods prescribed by the act and may not include a waiver of these time periods, as specified, as a condition of accepting or processing the application for a development project.

This bill would require every lead agency and responsible agency to expedite its review for issuing any necessary permits for solar photovoltaic facilities that are located on marginally productive or physically impaired, or disturbed land, as defined.

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

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

SECTION 1. Chapter 6.9 (commencing with Section 51190) is added to Part 1 of Division 1 of Title 5 of the Government Code, to read:

CHAPTER 6.9. SOLAR-USE EASEMENT

Article 1. Definitions

51190. As used in this chapter, the following terms have the following meanings:

(a) "~~Marginally productive or physically impaired~~ productive" means ~~one of the following:~~

~~(1) - Parcels~~

~~parcels~~ consisting predominately of soil with significantly reduced agricultural productivity due to chemical or physical limitations. A parcel of land may only be designated as marginally productive ~~or physically impaired~~ pursuant to this paragraph if ~~the~~ all of the following apply:

(1) The parcel was not used for agricultural purposes during the prior 6 ~~years, and~~ years.

(2) Any voluntary transfer or retirement of the water rights was due to significant chemical or physical soil limitations on the parcel or parcels that severely limit agricultural productivity.

(3) The parcel is unusable for agricultural practices due to its topography, drainage, flooding, adverse soil conditions, or other physical reasons.

~~(2) Land that does not support livestock used for the production of food and fiber with an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture.~~

~~(3) Notwithstanding paragraphs (1) or (2), a parcel or parcels of land shall not qualify as marginally productive or physically impaired if it is composed primarily of either of the following:~~

~~(A) Land that qualifies for rating as class I or class II in the United States Department of Agriculture's land capability classification system.~~

~~(B) Land previously designated by the Farmland Mapping and Monitoring Program as Prime Farmland, Farmland of Statewide Importance, or Unique Farmland where the water rights have been voluntarily transferred or retired, unless the transfer or retirement of the water rights was due to significant chemical or physical soil~~

~~limitations on the parcel or parcels that severely limit agricultural productivity.~~

(b) "Physically impaired land" means land with severely adverse soil conditions that are detrimental to continued agricultural cultivation and production. Severely adverse soil conditions may include, but are not limited to, contamination by salts or selenium, or other naturally occurring contaminants. The Secretary of Food and Agriculture may consult with the Secretary of Natural Resources and consider information from the agricultural commissioner in the county where the land is located.

~~—(4)~~

(c) A parcel shall be designated as marginally productive or physically impaired under this subdivision based on substantial evidence in the public record, and this designation shall be approved by the Secretary of Food and Agriculture.

~~—(b)~~

(d) "Disturbed lands" means lands that have been mechanically disturbed, including lands that have been converted from native vegetation through plowing, bulldozing, or other mechanical means in support of activities that change the land cover, including, but not limited to, agriculture, mining, and clearance for development purposes. These lands, based on appropriate biological surveys, may also have diminished value as habitat for mitigation purposes for endangered, threatened, candidate, and other sensitive species. Agricultural land shall not qualify for disturbed lands unless it also qualifies as marginally productive or physically impaired pursuant to subdivision (a).

~~—(e)~~

(e) "City" means any city or city and county.

~~—(d)~~

(f) "Landowner" includes a lessee or trustee, if the expiration of the lease or trust occurs at a time later than the expiration of the restriction of the use of the land to photovoltaic solar facilities or any extension of the restriction.

~~—(e)~~

(g) "Solar-use easement" means any right or interest in perpetuity or for a term of years in marginally productive or physically impaired lands acquired by a county, or city pursuant to this chapter where the deed or other instrument granting the right or interest imposes restrictions that, through limitation of future use, will effectively restrict the use of the land to photovoltaic solar facilities. A solar-use easement shall contain a covenant with the county, or city running with the land, either in perpetuity or for a term of years, that the landowner shall not construct or permit the construction of improvements except those for which the right is expressly reserved in the instrument provided that those reservation would not be inconsistent with the purposes of this chapter and which would not be incompatible with the sole use of the property for solar photovoltaic facilities.

Article 2. General Provisions

51191. Any county or city may enter into an agreement with a landowner pursuant to Section 51255.1 to hold marginally productive or physically impaired land in a solar-use easement in the manner provided in this chapter.

51191.1. The execution and acceptance of a deed or other instrument described in subdivision (e) of Section 51190 shall constitute a dedication to the public of the use of the marginally productive or physically impaired lands for solar photovoltaic use for the term specified. Any such easement and covenant shall run for a term of not less than 10 years. A solar-use easement for a term of years shall provide that on the anniversary date of the acceptance of the solar-use easement, or on any other annual date as specified by the deed or other instrument described in subdivision (e) of Section 51190, a year shall be added automatically to the initial term unless a notice of nonrenewal is given as provided in Section 51192.

51191.2. (a) A county or city may require a deed or other instrument described in subdivision (e) of Section 51190 to contain any restrictions, conditions, or covenants as are necessary or desirable to restrict the use of the land to photovoltaic solar facilities.

(b) The restrictions, conditions, or covenants may include, but are not limited to, the following:

(1) Mitigation measures on the land that is subject to the solar-use easement.

(2) Mitigation measures beyond the land that is subject to the solar-use easement.

(3) Performance bonds or other securities to fund, upon the cessation of the solar voltaic use, the restoration of the land that is subject to the easement to the conditions that existed before the approval or acceptance of that easement by the time that the easement terminates.

(c) ~~In the case of a solar use easement that is terminated because of a notice of nonrenewal by the landowner, the~~

For term easements, the restrictions, conditions, or covenants shall include a requirement for the landowner to post a performance bond or other securities to fund the restoration of the land that is subject to the easement to the conditions that existed before the approval or acceptance of the easement by the time the easement terminates.

51191.3. No deed or other instrument described in subdivision (e) of Section 51190 shall be effective until it has been accepted or approved by resolution of the governing body of the county or city and its acceptance endorsed thereon.

51191.4. (a) ~~From and after the time when a solar use easement has been accepted or approved by the county or city and its acceptance or approval endorsed on the easement,~~

During the term of the solar-use easement, the county or city shall not approve any land use that is inconsistent with the easement, and no building permit may be issued for any structure that would violate the ~~easement and the~~ easement. The

county or city shall seek, by appropriate proceedings, an injunction against any threatened construction or other development or activity on the land that would violate the easement and shall seek a mandatory injunction requiring the removal of any structure erected in violation of the easement.

If the county or city fails to seek an injunction against any threatened construction or other development or activity on the land that would violate the easement or to seek a mandatory injunction requiring the removal of any structure erected in violation of the easement, or if the county or city should construct any structure or development or conduct or permit any activity in violation of the

easement, ~~the owner of any property within the county or city, or any resident of the city or county,~~ a person or entity may, by appropriate proceedings, seek an injunction.

(b) The court may award to a plaintiff ~~or defendant~~ who prevails in an action authorized by this section his or her cost of litigation, including reasonable attorney's fees.

(c) Nothing in this chapter shall limit the power of the state or any county, city, school district, or any other local public district, agency or entity, or any other person authorized by law, to acquire land subject to a solar-use easement by eminent domain.

51191.5. Upon the acceptance or approval of any instrument creating a solar-use easement the clerk of the governing body shall record the instrument in the office of the county recorder and file a copy with the county assessor. After the easement is recorded, it shall impart notice to all persons under the recording laws of this state.

51191.6. The construction of solar photovoltaic facilities on land subject to a solar-use easement that qualifies as an active solar energy system pursuant to Section 73 of the Revenue and Taxation Code shall be excluded from classification as newly constructed under Section 2 of Article XIII A of the California Constitution.

51191.7. The Department of Conservation may adopt regulations pursuant to the Administrative Procedures Act (Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2) for the implementation of this chapter.

Article 3. Termination of a Solar-Use Easement

51192. (a) A solar-use easement may be terminated only by nonrenewal.

(b) (1) If either the landowner or the county or city desires in any year not to renew the solar-use easement, that party shall serve written notice of nonrenewal of the easement upon the other party at least 90 days in advance of the annual renewal date of the solar-use easement. Unless written notice is served at least 90 days in advance of the renewal date, the a solar-use easement shall be considered renewed as provided in Section 51191.1.

(2) Upon receipt by the owner of a notice from the county or city of nonrenewal, the owner may make a written protest of the notice of nonrenewal. The county or city may, at any time prior to the renewal date, withdraw the notice of nonrenewal.

(c) If the county, city, or the landowner serves notice of intent in any year not to renew the solar-use easement, the existing solar-use easement shall remain in effect for the balance of the period remaining since the original execution or the last renewal of the solar-use easement, as the case may be.

51192.1. In the case of a solar-use easement that is terminated because of a notice of nonrenewal by the landowner, the landowner shall restore the land that is subject to the easement to the conditions that existed before the approval of the easement by the time the easement terminates.

SEC. 2. Section 51255.1 is added to the Government Code, to read:

51255.1. Notwithstanding any other provision of this chapter, the parties may upon their mutual agreement rescind a contract for a parcel or parcels of marginally productive or physically impaired

lands, as defined in Section 51190, in order to simultaneously enter into a solar-use easement pursuant to Chapter 6.9 (commencing with Section 51190). This action may be taken notwithstanding the prior serving of a notice of nonrenewal.

SEC. 3. Section 65924 is added to the Government Code, to read:

65924. Every lead agency and responsible agency shall expedite its review for issuing any necessary permits for solar photovoltaic facilities that are located on marginally productive or physically impaired, or disturbed land, as those terms are defined in Chapter 6.9 (commencing with Section 51190) of Part 1 of Division 1 of Title 5.