

- 4) Creates the Advance Mitigation Account as a revolving fund. Specifies the account shall be continuously appropriated and that the program is intended to become self-sustaining, with expenditures from the account later reimbursed with project funding available at the time a planned transportation project is constructed.
- 5) Authorizes Caltrans to implement the AMP by developing a programmatic mitigation plan.
- 6) Specifies that funds in the Advance Mitigation Account shall be used only to do the following, as specified:
 - a) Purchase, or fund the purchase of, credits from mitigation banks, conservation banks, or in-lieu fee programs approved by one or more permitting agencies.
 - b) Establish, or fund the establishment of, credits by establishing a mitigation bank, conservation bank, or in-lieu fee program in accordance with applicable state and federal standards.
 - c) Pay mitigation fees associated with coverage for Caltrans' or another transportation agency's projects under a natural community conservation plans or habitat conservation plans.
 - d) Prepare regional conservation assessments and regional conservation investment strategies (RCIS) or, where an RCIS has been approved by DFW, authorizes Caltrans to enter into mitigation credit agreements (MCA) with DFW or perform mitigation activities that advance the advance the RCIS, as specified.
 - e) If it is demonstrated that (a) through (d) are infeasible, authorizes Caltrans to allocate no more than 25% of the funds in the AMA to implement or fund other forms of advance mitigation.

Transportation Permitting Taskforce

- 7) Directs the California State Transportation Agency (CalSTA) Secretary, by April 1, 2018, to create a task force with the specific purpose of developing a process for early engagement of all parties in developing transportation project to improve timeliness and reliability of environmental permit approvals.

- 8) Prescribes the membership of the task force to include representatives of the following agencies:
 - a) Transportation Agency;
 - b) Natural Resources Agency;
 - c) Environmental Protection Agency;
 - d) Californian Transportation Commission;
 - e) Caltrans;
 - f) California Department of Fish and Wildlife;
 - g) California Department of Water Resources; and,
 - h) California Coastal Commission.
- 9) Directs the Secretary of CalSTA to prepare and submit a report of the task force's findings to the appropriate legislative policy and fiscal committees by December 1, 2018.
- 10) Sets forth specific requirements to be included in the report, including:
 - a) A description of the existing permitting process for transportation projects, including a discussion of where in the process delays are most likely to occur;
 - b) An identification of existing personnel positions that are supported by Caltrans and resourced to various state agencies and their costs, as well as a discussion of the benefits these resources bring to transportation programs;
 - c) Recommendations for improving the permitting process through early engagement in project development;
 - d) An identification of the resource levels needed at resource agencies to implement the improved process, as proposed; and,
 - e) An identification of legislative and/or regulatory hurdles that would need to be addressed to implement the improved process, as proposed.

Conservation

- 11) Authorizes the development of Natural Community Conservation Plans (NCCPs) to provide comprehensive management and conservation of wildlife,

pursuant to specified requirements.

- 12) Establishes a pilot project for a regional conservation investment strategy (RCIS) program that identifies and prioritizes regional conservation through a science-based public process while also encouraging investments in conservation through advance mitigation.
- 13) Required the DFW to investigate, study, and identify those areas in the state that are most essential as wildlife corridors and habitat linkages, as well as the impacts to those wildlife corridors from climate change.
- 14) Require DRW to report annually to the Legislature on the subject of mitigation banking, including data on the number of new bank applications, number of bank applications approved, number of credits sold, and other information, as specified.

This bill:

- 1) Defines a “region” as a Caltrans district.
- 2) Defines “transportation project” as a project to construct or improve a portion of the state highways system.
- 3) Requires the Department of Fish and Wildlife, in consultation with Caltrans, to provide compensatory mitigation credits to support modifications and planning of transportation projects that improve local and regional habitat connectivity and result in fish passage, wildlife connectivity, and other environmental improvements.
 - a) Specifies that these improvements may include an overpass or underpass, vegetation management, directional fencing, or barrier modification.
 - b) Requires DFW to take all of the following into account when determining the value of compensatory mitigation credits for actions undertaken by Caltrans:
 - i. The impact on the ability of wildlife to access the opposite side of the roadway, including the length of the barrier, the distance of roadway until the next wildlife crossing, and the number of lanes wildlife would need to cross.

- ii. The value of the habitat on the opposite side of the roadway, including impacts on genetic diversity, wildlife migration, and access to additional latitudes and altitudes of habitat to adapt to climate change.
 - iii. The impact on critical terrestrial habitat linkages, including, but not limited to, the Santa Monica Mountains, Santa Ana Mountains, San Gabriel Mountains, San Bernardino Mountains, Santa Cruz Mountains, and the Gabilan Mountain Range.
 - iv. Topography, watercourse presence, vegetative cover, mortality data, or other factors that increase the likelihood of use, or value of, a particular location for connectivity.
- 4) Authorizes DFW and Caltrans to consult with the United States Fish and Wildlife Service, the National Marine Fisheries Service, and the United States Army Corps of Engineers to determine the value of the compensatory mitigation credits.
- 5) Authorizes Caltrans to request that DFW issue credits for any action that Caltrans completed in excess of any legally required mitigation, if Caltrans takes actions to improve fish and wildlife connectivity in connection with a transportation project.
- 6) Authorizes Caltrans to use these compensatory mitigation credits to satisfy obligations to mitigate impacts of transportation projects on fish and wildlife required by:
 - a) The California Environmental Quality Act
 - b) The California Endangered Species Act
 - c) The Lake and Streambed Alteration Program
- 7) Authorizes DFW to develop an in-lieu fee program for purpose of implementing these provisions.
- 8) Prohibits Caltrans from using these compensatory mitigation credits outside the regional in which the credits were issued.
- 9) Modifies the Advance Mitigation Program created under SB 1 to authorize the AMP to be used to modify or remove wildlife connectivity barriers not covered by existing regulatory programs.

COMMENTS:

- 1) *Purpose.* According the author, “Iconic California megafauna, such as mountain lions, are being decimated as they are forced to cross busy roadways to find habitat with sufficient prey and fewer competitors, putting them at risk of extinction. Many other species, including deer, badger, and endangered frogs, are also killed at alarming rates. Our warming climate amplifies the need for wildlife to roam to reach appropriate habitat. Transportation and Wildlife agencies want to work together to reduce barriers for wildlife to cross roadways, but often lack adequate incentives to invest in such projects. This bill builds off an existing crediting framework created by Caltrans and the Department of Fish & Wildlife to create an additional tool for those agencies to work together to reduce and remove barriers to wildlife connectivity. The bill is in alignment with recommendations made by the Transportation Permitting Task Force created by AB 1282 (Mullin, 2017), comprised of CalEPA, CNRA, and CalSTA, to facilitate delivery of transportation projects while protecting state natural resources.”

- 2) *Getting a jump-start on mitigation.* Obtaining environmental mitigation in advance or, rather than during, transportation projects can avoid mitigation-relayed delays. Historically, transportation agencies have implemented mitigation on a project-by-project basis once funding is approved for the final stages of a project and environmental permits are obtained. More recently, many local transportation agencies and Caltrans have begun to look at advance mitigation as a streamlined option, and agencies are in varying stages of developing comprehensive advance mitigation programs.

SB 1 (Beall, 2017) increased transportation funding for deferred maintenance and other funding, increasing the pace of transportation projects in the state. To facilitate project delivery SB 1 established the Caltrans Advance Mitigation Program (AMP) which allows the department to plan and implement mitigation solutions for its future transportation projects. Caltrans adopted program guidelines in October 2019 and, throughout 2020, began conducting mitigations needs assessments to establish Caltrans’ need for advanced mitigation in various areas throughout the state. After a needs assessment, planning may proceed to scoping advanced mitigation projects that meet the need for future transportation project.

To ensure that AMP mitigation projects provide real environmental benefits, SB 1 required that most of the mitigation funding be spent on projects that advance a regional conservation investment strategy. These strategies are voluntary, non-regulatory, non-binding conservation assessment that includes information

and analyses of important species, ecosystems, protected areas, and habitat linkages. SB 1 did not target any single type of mitigation project.

3) *Addressing transportation permitting challenges: AB 1282 Report.*

Transportation projects can take many years from inception to completion. AB 1282 (Mullin, 2017) established the Transportation Permitting Task Force to address state transportation permitting challenges, including mitigation. The Task Force includes representatives of eight state agencies, including Caltrans and DFW. The Task Force's analysis showed that mitigation is one of the main topics that cuts across all of the delay causes they identified (unclear understanding of requirements, lack of coordination, ineffective design change management, need for updated procedures and guidance, staffing and workload, etc.). Challenges in mitigation design, land acquisition for mitigation, and mitigation implementation and monitoring all create delays and inefficiencies in transportation project delivery. SB 790 aims to implement several of the report's recommendations, including establishment of an in-lieu fee program, through which Caltrans could pay a fee to fund mitigation projects.

4) *SB 790.* Where current highway infrastructure hinders wildlife, crossings culverts, fencing, and construction of an under- or overpass encourages wildlife to use the intended crossing and avoid crossing the roadway itself. This bill aims to unlock a new source of funding for these projects: Caltrans spending on transportation project mitigation. DFW and Caltrans typically exchange mitigation on an acre-for-an-acre basis, which makes it more difficult to quantify the mitigation value of corridor crossing features.

This bill authorizes DFW to give Caltrans mitigation credits for wildlife connectivity projects. It also authorizes DFW to develop an in-lieu fee program for the purposes of wildlife connectivity mitigation crediting, which would enable Caltrans to pay a fee to fund mitigation projects. SB 790 would also explicitly authorize Advanced Mitigation Account dollar to be spent to modify or remove wildlife connectivity barrier.

5) *Committee amendments.* To avoid singling out a particular type of mitigation for consideration under the Advanced Mitigation Program, ***the author and committee may wish to consider amending the bill to remove the provision explicitly authorizing Advance Mitigation Account funds to be used to “modify or remove wildlife connectivity barriers not covered by existing regulatory programs.”***

6) *Double referral.* This bill is double referred to the Senate Committee on Natural Resources and Water.

RELATED LEGISLATION:

SCR 62 (Stern, 2019)—this resolution would have designated a yet-to-be constructed overpass serving as a wildlife crossing over State Route 101 in the County of Los Angeles west of the Liberty Canyon freeway exit as the Wildlife Crossing at Liberty Canyon. *SCR 62 died in the Assembly Appropriations Committee.*

SB 1372 (Monning, 2020)—would have built off of existing programs and plans proactively protect and enhance wildlife corridors and design infrastructure to maximize wildlife connectivity. *The author held SB 1372 in the Senate Transportation Committee due to COVID-19 limitations.*

AB 1282 (Mullin, Chapter 643, Statutes of 2017)—established a Transportation Permitting Taskforce and requires the taskforce to provide a report to the Legislature, as specified.

SB 1 (Beall, Chapter 5, Statutes of 2017)—increases several taxes and fees to raise roughly \$5.2 billion in new transportation revenues annually and makes adjustments for inflation every year. Also established the AMP and tasks Caltrans to oversee the program administration, planning, delivery, implementation, and tracking.

FISCAL EFFECT: Appropriation: Yes Fiscal Com.: Yes Local: No

POSITIONS: (Communicated to the committee before noon on Wednesday, April 7, 2021.)

SUPPORT:

Action for Animals
 Amah Mutsun Tribal Band
 Animal Legal Defense Fund
 Animal Welfare Institute
 Animazonia Wildlife Foundation
 Arroyos & Foothills Conservancy
 Biodiversity First!
 Brentwood Alliance of Canyons & Hillsides
 California Chaparral Institute

California Council for Wildlife Rehabilitators
California Institute for Biodiversity
California Waterfowl Association
California Wildlife Center
California Wildlife Foundation
Center for Biological Diversity
Citizens for Los Angeles Wildlife (CLAW)
City of Thousand Oaks
Coastal Ranches Conservancy
Cougar Conservancy
County of Ventura, Second District County Supervisor Linda Parks
Endangered Habitats League
Escondido Creek Conservancy, the
Extinction Rebellion Sf Bay
Felidae Conservation Fund
Friends of Harbors, Beaches and Parks
Happy Hen Animal Sanctuary
Hills for Everyone
In Defense of Animals
Live Oak Associated, Inc,
Los Padres Forest Watch
Madrone Audubon Society
Madrone Audubon Society, Sonoma County
Midpeninsula Regional Open Space District
Mojave Desert Land Trust
National Wildlife Federation
Nature for All
North County Watch
Ojai Valley Green Coalition
Pathways for Wildlife
Paula Lane Action Network
People for The Ethical Treatment of Animals
Placer Land Trust
Planning and Conservation League
Poison Free Agoura
Poison Free Malibu
Preserve Wild Santee
Protect San Benito
Raptors are The Solution
San Bernardino Valley Audubon Society
Santa Barbara Audubon Society
Santa Clara Valley Audubon Society

Santa Clara Valley Open Space Authority
Santa Susana Mountain Park Association
Sierra Club California
Social Compassion in Legislation
Sonoma County Agricultural Preservation and Open Space District
Temescal Canyon Association
The Cougar Fund
The Federation of Hillside and Canyon Associations, INC.
The Human Society of The United States
The Trust for Public Land
Thousand Oaks; City of
Ventana Wilderness Alliance
Voters for Animal Rights
Western Watersheds Project
Wildcare
Wildfutures
Wildlands Network
Wishtoyo Foundation

OPPOSITION:

None received.

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