
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2021 - 2022 Regular Session

SB 790 (Stern) - Wildlife connectivity mitigation credits

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Policy Vote: TRANS. 16 - 0, N.R. & W. 9 -
0

Urgency: No

Mandate: No

Hearing Date: May 10, 2021

Consultant: Ashley Ames

Bill Summary: This bill would create a new compensatory mitigation credit program at the California Department of Fish and Wildlife (CDFW) for California Department of Transportation (Caltrans) projects that improve wildlife connectivity, among other environmental improvements.

Fiscal Impact:

- CDFW estimates costs of \$615,000 in 2021-22 and \$1 million annually thereafter (General Fund) to support staff positions (two in 2021-22 and five ongoing) for Habitat Conservation Planning Branch permitting and banking, coordinating connectivity crediting activities, and project review and approvals.
- CalTrans notes that the department could realize project times savings and cost savings through the bill's environmental mitigation programs. CalTrans estimates that its costs to assist with establishing those programs would be minor and absorbable.

Background: The state's transportation system – for example, highways, local roads, and rail – can be an obstacle for wildlife seeking to move between different parcels of the same type of habitat. Wildlife-vehicle collisions are a significant threat to public health and safety, and result in numerous animal fatalities.

There are programs that fund or provide the framework for the environmental mitigation necessary for certain projects.

The California Natural Resources Agency's grant program – the Environmental Enhancement and Mitigation Program – offers grants to local, state and federal government agencies and to nonprofit organizations for projects to mitigate the environmental impacts cause by new or modified public transportation facilities.

According to CDFW, its conservation or mitigation bank program is composed of privately or publicly owned land managed for its natural resource values. In exchange for permanently protecting, managing, and monitoring the land, the bank sponsor is allowed to sell or transfer habitat credits to permittees who need to satisfy legal requirements and compensate for the environmental impacts of certain projects.

The NCCP program is the state analogue to the federal Habitat Conservation Plan (HCP). An HCP describes a project, the anticipated effects of the project on the proposed take of certain species, how those project impacts will be minimized or mitigated, and how the HCP is to be funded. The HCP is an essential component of obtaining an incidental take permit, required where a project will result in the take of a

species listed under the federal Endangered Species Act. HCPs can apply to both listed and non-listed species. NCCPs are generally part of combined NCCP/HCPs. NCCP/HCPs must meet conservation standards that provide for the recovery of species within the planning area. There are at least 14 approved NCCPs as of April 2020 that are located throughout the state.

In 2017, according to CDFW, the RCIS pilot program was established to encourage a voluntary, non-regulatory regional planning process intended to result in higher-quality conservation outcomes. There are four approved RCIS, two in the works, and a mitigation credit agreement pilot program is under development. According to the most recent CDFW report, RCIS projects in various stages of approval cover almost 10 million acres (10% of the state).

Under SB 1 (Beall, Chapter 5, Statutes of 2017), an Advance Mitigation Program was created at Caltrans to protect natural resources through transportation project mitigation, among other things. Funds available within the program can be used to purchase or fund the purchase of credits from mitigation banks, or conservation banks; pay mitigation fees associated with a NCCP or HCP; prepare a regional conservation assessment and RCIS; and participate in a mitigation credit agreement through an approved RCIS or perform mitigation to advance the RCIS.

CDFW Has Experienced a Roughly \$20 Million Ongoing Budget Shortfall. The Fish and Game Preservation Fund (FGPF) is among the department's largest funding sources, providing roughly one-fifth of overall CDFW resources. The fund receives revenues from a variety of fees, including recreational hunting and fishing license and permit fees. Expenditures from the FGPF support many of the department's core activities, including various wildlife conservation efforts, law enforcement, management of both department-owned lands as well as inland and coastal fisheries, and oversight over the state's commercial fishing industries. In recent years, expenditures from the FGPF have exceeded its revenues by roughly \$20 million annually. This gap developed in large part because the state has created new costs for the fund without adding an equivalent amount of new revenues. These costs have resulted from significant employee salary increases negotiated through the state collective bargaining process, assigning new activities to CDFW without providing new funding, and shifting activities from other funding sources to the FGPF.

2018-19 Budget Provided Funding for Three Years to Address Shortfall and Expand Programs. In 2018-19, the Legislature augmented CDFW's budget by roughly \$30 million, with about \$23 million of this amount expiring in 2021-22. The total augmentation consists of:

- \$20 million in additional General Fund for the department to address its funding shortfall and maintain its existing service levels—roughly \$7 million ongoing and about \$13 million for three years.
- \$10 million annually for three years—one-half from the General Fund and one-half from the Tire Recycling Management Fund—along with 30 new positions for CDFW to expand its activities.

Proposed Law: This bill would create a new compensatory mitigation credit program at CDFW for Caltrans' projects that improve wildlife connectivity, among other environmental improvements. Specifically, this bill would:

1. Require CDFW, in consultation with Caltrans, to provide compensatory mitigation credits to support modification and planning of transportation projects that improve local and regional habitat connectivity and result in fish passage, wildlife connectivity, and other environmental improvements, as provided.
 - a. Environmental improvements include, but are not limited to, an overpass or underpass; vegetation management; directional fencing; and barrier modification.
 - b. A "transportation project" is a project to construct or improve a portion of the state highway system.
2. Require CDFW in determining the value of compensatory mitigation credits for actions taken by Caltrans to consider all of the following:
 - a. Physical roadway factors impacting the ability of wildlife to cross the roadway, as specified;
 - b. The benefit to wildlife to cross the roadway, as specified;
 - c. The impact on critical terrestrial habitat linkages including at a minimum the Santa Monica Mountains, Santa Ana Mountains, San Gabriel Mountains, San Bernardino Mountains, Santa Cruz Mountains, and the Gabilan Mountain Range; and
 - d. Certain additional factors relevant to the value of a particular wildlife crossing, as provided.
3. Authorize Caltrans and CDFW in determining the value of compensatory mitigation credits to consult with the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the U.S. Army Corps of Engineers.
4. Authorize Caltrans to request that CDFW issue credits where Caltrans has taken actions to improve fish and wildlife connectivity in connection with a transportation project in excess of legally-required mitigation. Require CDFW to issue credits, as provided.
5. Authorize CDFW to develop an in-lieu fee program as part of the implementation of the compensatory mitigation credit program, as provided.
6. Authorize Caltrans to use compensatory mitigation credits to satisfy obligations to mitigate the impacts of transportation projects of fish and wildlife required by the California Environmental Quality Act, the California Endangered Species Act, and the Lake and Streambed Alteration Program, as specified.
7. Authorize Caltrans to only use compensatory mitigation credits within the same Caltrans' district the credits are issued in.

8. Make certain related legislative findings.

Related Legislation:

AB 1189 (Bloom, 2021) would prohibit Caltrans from charging for administration indirect cost recovery for any wildlife crossing project that receives private funding for more than 50% of the project cost, as provided. (*This bill is pending before the Assembly.*)

SB 1372 (Monning, 2020) would have instituted structural reforms to facilitate wildlife corridors, among other things. (*This bill was not moved by the author due to the COVID-19 pandemic.*)

SCR 62 (Stern, 2019) would have named a wildlife crossing overpass to-be-constructed over Highway 101 in Los Angeles County west of the Liberty Canyon freeway exit. (*SCR 62 died in the Assembly Appropriations Committee.*)

SB 395 (Archuleta, Chapter 869, Statutes of 2019) authorizes the Fish and Game Commission, upon appropriation, to establish a pilot wildlife salvage permit program authorizing the roadkill of certain game species to be taken for human consumption, and, upon appropriation, authorizes CDFW to take certain actions to support the salvage pilot program, as specified.

AB 1282 (Mullin, Chapter 643, Statutes of 2017) established a Transportation Permitting task force, as specified.

SB 1 (Beall, Chapter 5, Statutes of 2017) increased several taxes and fees to raise roughly \$5.2 billion in new transportation revenues annually, and established the Advance Mitigation Program, among things.

AB 2087 (Levine, Chapter 455, Statutes of 2016) authorizes CDFW to approve regional conservation investment strategies (RCIS) to identify and provide voluntary guidance for regional conservation, and to encourage investments in conservation through advance mitigation.

Staff Comments: CDFW recently completed a service-based budget (SBB) review that identified the gaps between the department's "mission" level of service (defined as the service standards and essential activities required for CDFW to meet its mission and statutory requirements) and its current service levels.

CDFW determined that the number of staff hours currently being spent are far below what would be needed to meet mission levels in most service areas. Current services are less than one-third of mission levels in most areas. Existing service levels in the species and habitat conservation, permitting and environmental protection, law enforcement, and public use and enjoyment service areas each fall short of mission levels by at least 1.4 million hours a year.

The largest shortfall is in the species and habitat conservation service area. CDFW staff currently spend about 750,000 hours per year on species and habitat conservation activities, compared to the 2.9 million hours that the department estimates would be needed to meet its mission in this area. The second largest shortfall is the Permitting

and Environmental Protection service area. This bill would likely impact both of these areas.

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