



SB-1372 Wildlife corridors and connectivity: Wildlife and Biodiversity Protection and Movement Act of 2020. (2019-2020)

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CALIFORNIA LEGISLATURE— 2019–2020 REGULAR SESSION

SENATE BILL

NO. 1372

**Introduced by Senators Monning and Stern
(Coauthor: Assembly Member Robert Rivas)**

February 21, 2020

An act to amend Section 1930.5 of, and to add Chapter 13 (commencing with Section 1950) to Division 2 of, the Fish and Game Code, and to amend Sections 800.6 and 800.9 of the Streets and Highways Code, relating to fish and wildlife, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1372, as amended, Monning. Wildlife corridors and connectivity: Wildlife and Biodiversity Protection and Movement Act of 2020.

(1) Existing law requires the Department of Fish and Wildlife, contingent upon funding being provided by the Wildlife Conservation Board or from other appropriate bond funds, upon appropriation by the Legislature, 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, and requires the department to prioritize vegetative data development in these areas.

This bill would additionally require the department to investigate, study, and identify impacts to those wildlife corridors from state infrastructure projects, including transportation and water projects, large-scale development projects not covered by an existing natural community conservation plan or habitat conservation plan, and planned or potential land conversions. The bill would also require the department to prioritize wildlife movement and habitat data development in those areas of the state that are most essential as wildlife corridors and habitat linkages.

(2) Existing law requires the Department of Fish and Wildlife to administer the Significant Natural Areas Program and requires the department, among other things, to develop and maintain a spatial data system that identifies those areas in the state that are most essential for maintaining habitat connectivity, including wildlife corridors and habitat linkages. Existing law requires the department to seek input from representatives of other state agencies, local government, federal agencies, nongovernmental conservation organizations, landowners, agriculture, recreation, scientific entities, and industry in determining essential wildlife corridors and habitat

linkages. Existing law also declares that it is the policy of the state to encourage, wherever feasible and practicable, voluntary steps to protect the functioning of wildlife corridors through various means.

This bill would enact the Wildlife and Biodiversity Protection and Movement Act of 2020 and would require the state to build off of existing programs and plans, including the State Wildlife Action Plan, to proactively protect and enhance wildlife corridors and design infrastructure to maximize wildlife connectivity. The bill would require the Secretary of the Natural Resources Agency and the Secretary of Transportation to coordinate with the Habitat Conservation Planning Branch of the Department of Fish and Wildlife and the Division of Environmental Analysis of the Department of Transportation to ensure that the Significant Natural Areas Program and the California Essential Habitat Connectivity Project are updated, as specified, and incorporated into future transportation and water infrastructure planning and design to allow for maximum wildlife passage features. ~~The bill would require the State Wildlife Action Plan to be updated every 5 years.~~ *The bill would require the secretaries, in implementing these provisions, to identify and incorporate, as appropriate, specified information as an addendum in both the Significant Natural Areas Program and the California Essential Habitat Connectivity Project.*

The bill would require the Secretary of the Natural Resources Agency, in coordination with the Secretary of Transportation, to establish the Ira Ruskin Wildlife Habitat Connectivity Advance Mitigation Pilot Program to create compensatory mitigation credits that can be used to address existing barriers identified in the California Essential Habitat Connectivity Project and offset significant California Environmental Quality Act impacts of future transportation and water projects that impact wildlife connectivity. The bill would require the Department of Transportation to identify a corridor coordinator in each ~~fish and game~~ *Department of Transportation (Caltrans)* district to, among other things, lead the wildlife habitat connectivity program for that region and to coordinate with regional staff of the Department of Fish and Wildlife. The bill would require the Strategic Growth Council to hold one public hearing each year focused on infrastructure design and wildlife corridors. *The bill would require the Secretary of the Natural Resources Agency, in developing guidelines to implement these provisions, to consider specified project impacts for a Caltrans district to be eligible for an application of mitigation credits.*

(3) Existing law creates the Advance Mitigation Program in the Department of Transportation to enhance communications between the department and stakeholders to, among other things, protect natural resources and accelerate project delivery. Existing law authorizes the department, for the purpose of implementing the program, to develop a programmatic mitigation plan to address the potential environmental impacts of future transportation projects for the purpose of required mitigation approved by federal, state, and local agencies. Existing law requires the department to set aside not less than \$30,000,000 annually for 4 years, commencing with the 2017–18 fiscal year, for the program from specified state transportation programs for purposes of the Advance Mitigation Program. Existing law creates the Advance Mitigation Account and continuously appropriates moneys in the account for purposes of the program, and specifies what those funds can be used for.

This bill would additionally require those funds to be used to modify or remove wildlife connectivity barriers not covered by existing regulatory programs. The bill would require that a programmatic mitigation plan also include wildlife corridor connectivity enhancement or protection. By expanding the purposes for which a continuously appropriated account may be used, the bill would make an appropriation.

Vote: majority Appropriation: yes Fiscal Committee: yes Local Program: no

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

SECTION 1. The Legislature finds and declares all of the following:

(a) California’s climate is changing. Rising temperatures, increases in the frequency and severity of extreme events like drought and wildfire, changing ocean conditions, and shifts in precipitation patterns all pose threats to California’s plants and animals.

(b) These extreme changes alter the temperature ranges in which species thrive and survive, causing stress to plants and animals. This creates a series of cascading effects like altering predator-prey relationships, causing fluctuations in food and water supplies, and exacerbating human-caused stressors like contaminants and habitat loss.

(c) Land use has been changing as the state’s population continues to grow. Development decisions sometimes result in the conversion of grasslands, rangelands, and other natural lands and working lands to urban uses. This destroys natural habitats and corridors necessary for migration of species, which are even more important under changing climate conditions.

(d) As regional weather patterns and habitat continue to shift due to climate change, wildlife populations will likely require new foraging, breeding, and sheltering locations. Connectivity between existing core habitat areas and those required to support future wildlife populations will be crucial to allow safe migration of species between protected areas as climate patterns shift.

(e) It is the policy of the state to encourage, wherever feasible and practicable, steps to protect the functioning of wildlife corridors through various conservation and mitigation efforts and to promote a regional conservation investment strategy that encourages investments in conservation through advance mitigation efforts.

(f) Wildlife corridors and connected habitat are necessary to help native species like mountain lions, bobcats, porcupines, badgers, and deer, as well as birds, fish, insects, reptiles, and amphibian species that suffer from increasingly fragmented habitats, to maintain healthy populations, support genetic diversity, and protect wildlife from lands or infrastructure where they have the potential to face negative human-wildlife interactions or cause traffic collisions.

SEC. 2. Section 1930.5 of the Fish and Game Code is amended to read:

1930.5. (a) Contingent upon funding being provided by the Wildlife Conservation Board from moneys available pursuant to Section 75055 of the Public Resources Code, or from other appropriate bond funds, upon appropriation by the Legislature, the department shall do both of the following:

(1) 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 all of the following:

(A) Climate change.

(B) State infrastructure projects, including transportation and water projects.

(C) Large-scale development projects not covered by an existing natural community conservation plan or habitat conservation plan.

(D) Planned or potential land conversions.

(2) Prioritize vegetative, wildlife movement, and habitat data development in areas identified pursuant to paragraph (1).

(b) It is the intent of the Legislature that the Wildlife Conservation Board use various funds to work with the department to complete a statewide analysis of wildlife corridors and connectivity to support conservation planning and climate change adaptation activities.

(c) (1) It is the policy of the state to promote the voluntary protection of wildlife corridors and habitat strongholds in order to enhance the resiliency of wildlife and their habitats to climate change, protect biodiversity, and allow for the migration and movement of species by providing connectivity between habitat lands. In order to further these goals, it is the policy of the state to encourage, wherever feasible and practicable, voluntary steps to protect the functioning of wildlife corridors through various means, as applicable and to the extent feasible and practicable, those means may include, but are not limited to:

(A) Acquisition or protection of wildlife corridors as open space through conservation easements.

(B) Installing of wildlife-friendly or directional fencing.

(C) Siting of mitigation and conservation banks in areas that provide habitat connectivity for affected fish and wildlife resources.

(D) Provision of roadway undercrossings, overpasses, oversized culverts, or bridges to allow for fish passage and the movement of wildlife between habitat areas.

(2) The fact that a project applicant does not take voluntary steps to protect the functioning of a wildlife corridor before initiating the application process for a project shall not be grounds for denying a permit or requiring additional mitigation beyond what would be required to mitigate project impacts under other applicable laws, including, but not limited to, the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3) and the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(d) The Legislature finds and declares that there are a number of existing efforts, including, but not limited to, efforts involving working landscapes, that are already working to achieve the policy described in subdivision (c).

(e) Subdivision (c) shall not be construed to create new regulatory requirements or modify the requirements of subparagraphs (B) and (E) of paragraph (4) of subdivision (a) of Section 2820 of the Fish and Game Code, or the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(f) For purposes of this section, the following terms have the following meanings:

(1) "Habitat stronghold" means high-quality habitat that supports wildlife in being more resilient to increasing pressures on species due to climate change and land development.

(2) "Wildlife corridor" means a habitat linkage that joins two or more areas of wildlife habitat, allowing for fish passage or the movement of wildlife from one area to another.

SEC. 3. Chapter 13 (commencing with Section 1950) is added to Division 2 of the Fish and Game Code, to read:

CHAPTER 13. Wildlife and Biodiversity Protection and Movement Act of 2020

1950. This chapter shall be known, and may be cited, as the Wildlife and Biodiversity Protection and Movement Act of 2020.

1951. For purposes of this chapter, the following definitions shall apply:

(a) "Caltrans district" means District-1 to District-12, inclusive, established by the Department of Transportation (Caltrans).

~~(a)~~

(b) "Wildlife corridor" means a linkage that joins two or more areas of wildlife use or habitat that allows or potentially allows for fish passage or the movement and dispersal of wildlife from one area to another.

~~(b)~~

(c) "Wildlife passage features" means culverts, undercrossings, overcrossings, elevated roadways, bridges, directional fencing, scuppers, barrier breaks, roadside animal detection systems, fish ladders, wildlife monitoring devices, or other features that improve the ability for wildlife to move safely across transportation infrastructure.

1952. (a) The state shall build off of existing programs and plans, including the State Wildlife Action Plan, to proactively protect and enhance wildlife corridors and design infrastructure to maximize wildlife connectivity.

(b) (1) The Secretary of the Natural Resources Agency and the Secretary of Transportation shall coordinate with the Habitat Conservation Planning Branch of the Department of Fish and Wildlife and the Division of Environmental Analysis of the Department of Transportation to ensure that the Significant Natural Areas Program, established pursuant to Section 1932, and the California Essential Habitat Connectivity Project are updated and incorporated into future transportation and water infrastructure planning and design to allow for maximum wildlife passage features.

(2) ~~The following elements shall be included in the updates of~~*In implementing this section, the Secretary of the Natural Resources Agency and the Secretary of Transportation shall identify and incorporate, as appropriate, any of the following information as an addendum in* both the Significant Natural Areas Program and the California Essential Habitat Connectivity Project:

(A) ~~Assessment~~*Assessments* of highest impact barriers to wildlife connectivity.

(B) ~~Inclusion of impacts~~*Impacts* and projections of habitat connectivity needs based on future climate change, including fire, floods, and sea level rise.

(C) Identification of existing populations and strongholds, as well as regions requiring additional monitoring or research.

(D) Identification of best available design standards.

(E) Guidance on data collection and dissemination.

(F) Identification of new science important to the state on wildlife connectivity.

~~(3) The State Wildlife Action Plan shall be updated every five years.~~

(c) The Secretary of the Natural Resources Agency, in coordination with the Secretary of Transportation, shall establish the Ira Ruskin Wildlife Habitat Connectivity Advance Mitigation ~~Pilot~~ Program to create compensatory mitigation credits that can be used to address existing barriers identified in the California Essential Habitat Connectivity Project and offset significant California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) impacts of future transportation and water projects that impact wildlife connectivity. *In developing guidelines to implement this section, the Secretary of the Natural Resources Agency shall consider the following project impacts for a Caltrans district to be eligible for application of mitigation credits:*

(1) New construction of, or improvements to, existing state highway system routes that increase traffic speeds or road capacity.

(2) New construction of, or improvements to, existing state highway system routes that result in the loss of roadside habitat.

(3) New construction of, or improvements to, existing state highway system routes that result in the loss of an existing road crossing for wildlife.

(d) The Department of Transportation shall identify a corridor coordinator in each *Caltrans* district to do the following:

(1) Lead the wildlife habitat connectivity program for that region.

(2) Coordinate with regional staff of the Department of Fish and Wildlife.

(3) Identify corridors and support Department of Transportation design and planning to promote best management practices for transportation infrastructure and wildlife connectivity.

(4) Support data collection and dissemination where appropriate.

(e) The Strategic Growth Council shall hold one public hearing each year focused on infrastructure design and wildlife corridors.

SEC. 4. Section 800.6 of the Streets and Highways Code is amended to read:

800.6. (a) The funds in the Advance Mitigation Account created in Section 800.7 shall be used only to do the following:

(1) Purchase, or fund the purchase of, credits from mitigation banks, conservation banks, or in-lieu fee programs approved by one or more regulatory agencies. The department may also establish mitigation banks, conservation banks, or in-lieu fee programs, or fund the establishment of mitigation banks, conservation banks, or in-lieu fee programs, in accordance with applicable state and federal standards, if the department determines that those banks or in-lieu fee programs would provide appropriate mitigation of the anticipated potential impacts of planned transportation improvements identified pursuant to Section 800.8.

(2) Pay, or fund the payment of, mitigation fees or other costs or payments associated with coverage for the department's or other transportation agency's projects under natural community conservation plans approved pursuant to Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code, or habitat conservation plans approved in accordance with the federal Endangered Species Act. The department shall, upon commencement of a regional conservation investment strategy pursuant to paragraph (3), provide written notification thereof to the executive administrative officer of any administrative draft natural community conservation plan, approved natural community conservation plan, or approved regional federal habitat conservation plan that overlaps the proposed area of the regional conservation investment strategy.

(3) Prepare, or fund the preparation of, regional conservation assessments and regional conservation investment strategies. Where a regional conservation investment strategy has been approved by the Department of Fish and Wildlife, the department may do either of the following:

(A) Enter into, or fund the preparation of, mitigation credit agreements with the Department of Fish and Wildlife; purchase credits from an established mitigation credit agreement; or implement, or fund the implementation of,

conservation actions and habitat enhancement actions as needed to generate mitigation credits pursuant to those mitigation credit agreements.

(B) Acquire, restore, manage, monitor, enhance, and preserve lands, waterways, aquatic resources, or fisheries, or fund the acquisition, restoration, management, monitoring, enhancement, and preservation of lands, waterways, aquatic resources, or fisheries that would measurably advance a conservation objective in the regional conservation investment strategy if the department concludes that the action or actions could conserve or create environmental values that are appropriate to mitigate the anticipated potential impacts of planned transportation improvements.

(4) Where the advance mitigation mechanisms in paragraphs (1) to (3), inclusive, are not practicable, the department may implement advance mitigation, or fund the implementation of advance mitigation, in accordance with a programmatic mitigation plan pursuant to Section 800.9. No more than 25 percent of the funds in the Advance Mitigation Account may be allocated for this purpose over a four-year period.

(5) Modify or remove wildlife connectivity barriers not covered by existing regulatory programs.

(b) The department may use, or allow other transportation agencies to use, mitigation credits or values generated or obtained under the program to fulfill the mitigation requirements of planned transportation improvements if the applicable transportation agency reimburses the program for all costs of purchasing or creating the mitigation credits or values, as determined by the department. Those costs shall be calculated using total cost accounting and shall include, as applicable, land acquisition or conservation easement costs, monitoring and enforcement costs, restoration costs, transaction costs, administrative costs, contingency costs, and land management, monitoring, and protection costs.

(c) The department shall track all implemented advance mitigation projects to use as credits for environmental mitigation.

(d) Projects or plans prepared pursuant to this section that overlap with any approved natural community conservation plan or approved regional federal habitat conservation plan, shall be consistent with that plan and shall include an explanation of whether and to what extent they are consistent with any overlapping state or federal recovery plan, or other state-approved or federal-approved conservation strategy.

(e) Mitigation credits created pursuant to this section may be used for covered activities under an approved natural community conservation plan only in accordance with the requirements of the plan. Individuals and entities eligible for coverage as a participating special entity under an approved natural community conservation plan may use mitigation credits created pursuant to this section only if the plan's implementing entity declines to extend coverage to the covered activity proposed by the eligible individual or entity.

(f) By July 1, 2019, and biennially thereafter, the department, pursuant to Section 9795 of the Government Code, and notwithstanding Section 10231.5 of the Government Code, shall submit to the Legislature a report that describes to what extent the Advance Mitigation Program has accelerated the delivery of transportation projects. At a minimum, the report shall include the following:

(1) An accounting of the Advance Mitigation Account funds.

(2) Identification of expected state and federal resource and regulatory agency mitigation requirements for transportation projects utilizing the Advance Mitigation Program.

(3) A discussion of the extent to which those requirements are satisfied using advance mitigation credits.

(4) The use of funds to prepare, or to fund the preparation of, regional conservation assessments and regional conservation investment strategies.

(5) Recommendations for maximizing the ability of the Advance Mitigation Program to satisfy state and federal mitigation requirements.

(g) By July 1, 2018, or one year after the initial Advance Mitigation Program investments have begun, whichever is earlier, and biennially thereafter, the Department of Fish and Wildlife shall, pursuant to Section 9795 of the Government Code, and notwithstanding Section 10231.5 of the Government Code, submit a report to the Legislature that describes the extent to which the Advance Mitigation Program has improved the quality and effectiveness of habitat mitigation provided by the department for transportation projects and makes related recommendations on how to maximize these attributes. The report shall also include recommendations on how

to maximize the quality and effectiveness of habitat mitigation developed pursuant to the Advance Mitigation Program.

(h) Nothing in this article shall be construed to impose any restrictions or requirements on the department for activities that do not involve the utilization of Advance Mitigation Account funds. Nothing in this article shall be construed to require the department to use the Advance Mitigation Program.

(i) Before making any expenditure from the Advance Mitigation Account, the Director of Transportation shall make a determination and justification that the proposed expenditure is likely to accelerate project delivery of specific projects.

(j) Any state water or transportation infrastructure agency that requests approval of a regional conservation investment strategy pursuant to subdivision (a) of Section 1852 of the Fish and Game Code that may be used to facilitate mitigation for an infrastructure project shall not be subject to the limitation on the number of regional conservation investment strategies set in Section 1861 of the Fish and Game Code.

SEC. 5. Section 800.9 of the Streets and Highways Code is amended to read:

800.9. The department, pursuant to this article and for the purpose of implementing the Advance Mitigation Program, may develop a programmatic mitigation plan pursuant to Section 169 of Title 23 of the United States Code to address the potential environmental impacts of future transportation projects for the purpose of required mitigation approved by federal, state, and local agencies. The programmatic mitigation plans shall include, to the maximum extent practicable, the information required for regional conservation investment strategies and wildlife corridor connectivity enhancement or protection.