

Date of Hearing: April 30, 2025

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Juan Carrillo, Chair

AB 769 (Wilson) – As Amended April 7, 2025

SUBJECT: Regional park and open-space districts

SUMMARY: Makes numerous changes to the laws governing Regional park and open-space districts (RPOSDs). Specifically, **this bill:**

- 1) Specifies that as an alternative to the compensation authorized in existing law, the board of a RPOSD may provide, by ordinance or resolution, that each of its members may receive compensation of \$1,000 per month for their service as a board members. For purposes of calculating compensation, service on a board for at least 14 days shall constitute a month of service. A board member may elect to waive the monthly compensation.
- 2) Provides that, commencing January 1, 2026, the amount of per diem or monthly compensation received by a board member shall be increased by 5% each calendar year unless the board, by ordinance or resolution, waives the increase or implements an increase that is less than 5%.
- 3) Removes the requirement that an RPOSD shall appoint a controller.
- 4) Specifies that consent of a majority of voters does not need to be obtained for a lease of any real property for a period not exceeding 50 years, instead of 25 years.
- 5) Provides that a RPOSD, with approval by a two-thirds vote, instead of a unanimous vote of the members of its board of directors, may exchange real property or an interest in real property for real property or an interest in real property of equal or greater value, as specified.
- 6) Specifies that, if a proposed exchange of real property or an interest in real property is not feasible due to inability to identify a compatible or comparable exchange on an equal or greater value basis or for park or open-space, the East Bay Regional Park District (EBRPD) may accept monetary compensation concluded by a highest and best market value determined and documented by a certified, licensed appraiser.
- 7) Provides that the acceptance of monetary compensation under 6), above, is only permissible when the real property or interest in real property exchange is with another public agency. Monetary compensation accepted pursuant 6), above, shall be used to purchase real property or an interest in real property for park and open-space purposes.
- 8) Specifies that the EBRPD, the Midpeninsula Regional Open Space District (MROSD), and the Sonoma County Agricultural Preservation and Open Space District (SCAPOSD) may exchange up to a maximum of 80 acres, instead of 40 acres, of district-owned real property or an interest in real property in a calendar year for other real property or an interest in real property, and real property or an interest in real property acquired by each district shall be adjacent to other real property owned by each district.

- 9) Provides that, in order to effectuate the purposes of RPOSD Law, the RPOSD's broad authorization to improve, extend, control, operate and maintain facilities for public recreation shall not be subject to the regulations, permitting requirements, or other requirements of municipalities and counties that would delay, restrict, or otherwise interfere with the specified activities under this authorization.
- 10) Deletes provisions related to EBRPD's authority to levy and collect taxes if the assessed value of real and personal property within EBRPD.
- 11) Specifies that, in a RPOSDs with a population of 200,000 or more, and with the approval of the board, the general manager may bind the district, in accordance with board policy that has been adopted in an open meeting, for the payment for equipment, supplies, and materials for any purpose, including new construction of a building, structure, or improvement, excluding labor and services, when the annual aggregate cost does not exceed \$200,000.
- 12) Provides that 11), above, applies only to the procurement of tangible equipment, supplies, and materials and shall not be interpreted to authorize the general manager to bind the district for labor or services that are customarily or historically performed by district employees.
- 13) Deletes provision related to EBRPD's authority to superintend, control, and make available vehicular recreational areas and trails.
- 14) Authorizes the MROSD and the EBRPD, without the consent of the voters to lease *any* property for a term not exceeding 99 years, instead of 50 years.
- 15) Removes a provision pertaining to EBRPD's authority to lease real property for the San Leandro Bay Restaurant Project.
- 16) Requires all contracts for furnishing supplies, material, labor, or other valuable consideration furnished the district, for maintenance projects involving contractor services to preserve, maintain, or repair any existing building, structure, or improvement, or for constructing any new building, structure, or improvement, as specified, to be noticed on the RPOSD's internet website instead of in a newspaper in the RPOSD.
- 17) Makes numerous technical, clarifying, and conforming changes.
- 18) Provides that, in regard to 6) and 7), above, the Legislature declares that a special statute is necessary and that a general statute cannot be made applicable because of the unique circumstances concerning EBRPD's exchange of real property or interests in real property for park and open-space purposes.

FISCAL EFFECT: None.

COMMENTS:

- 1) **RPOSDs.** The Legislature first authorized the creation of regional park districts in 1933 'for the purpose of acquiring, improving, and maintaining parks, playgrounds, beaches, parkways, scenic drives, boulevards, and other facilities for public recreation. [AB 1114 (Roland), Chapter 1043, Statutes of 1933]. To provide these services, RPOSDs can use special taxes, benefit assessments, and general obligation bonds to acquire property by purchase or eminent

domain.

Some RPOSDs are classified as independent and have their own directly-elected boards of directors with fixed terms. Independent special districts are a separate, autonomous form of government not controlled by a city or county. Other special districts are defined as dependent and act more comparable to a county or city department. For a dependent RPOSDs, the relevant board of supervisors serves as the district's board of directors.

RPOSDs have broad authority to develop, improve, and control their property for the purposes of parks, playgrounds, golf courses, trails, open space preserves, among others. RPOSDs may also select, designate, and acquire land and conduct programs and classes. The Public Resources Code authorizes RPSODs to do all other things necessary or convenient to carry out the purposes for which they were created.

- 2) **Board Member Compensation.** Currently, a RPOSD board can provide, by ordinance or resolution, that each of its members receive a maximum of \$100 per day for each attendance at a meeting of the board. However, an ordinance can be adopted to increase the amount of by 5% each calendar year. A meeting of a RPOSD board includes, but is not limited to, closed sessions of the board, board field trips, district public hearings, or meetings of a committee of the board. RPOSD board members cannot receive compensation for more than six meetings of the board in a calendar month, except that board members of the EBRPD may receive compensation for up to 10 days in any one calendar month.
- 3) **Lease and Exchange of Property.** RPOSDs must currently receive consent of the voters to convey an interest in real property dedicated and used for park or open-space purposes. However, consent of the voters is not needed for a lease of real property for up to 25 years. An exception to the 25-year limitation has been provided to the EBRPD, with respect to the Alameda Creek Quarries located in Alameda County, and MROSD for the lease of property. These RPOSDs are authorized to lease such properties for up to 50 years without consent of the voters.

In order to exchange property that is dedicated and used for park or open-space purposes a RPSOD must first obtain unanimous approval of its board of directors. No RPOSD can exchange more than 10 acres of RPOSD-owned property; except, the EBRPD, MROSD, and the SCAPOSD may exchange up to 40 acres per calendar year.

- 4) **Contracting.** Prior law sets bid limits for these districts at \$10,000 for non-construction work, and \$25,000 for construction contracts. However, the Legislature allowed exceptions to these thresholds for three districts: EBRPD, MROSD, and SCAPOSD. These districts were allowed to contract for any purpose for up to \$25,000 without bidding. These exceptions were based on a recognition that public bidding may not be cost-effective in all cases, particularly when the costs of time delays and resources expended on contract preparation and bidding are disproportionate to a contract's scope and total cost.

AB 745 (Levine), Chapter 42, Statutes of 2014, raised the limit to \$25,000 for all park and open space districts for all purposes, both construction and non-construction, resulting in a uniform statute for all of these districts. However, two subsequent bills – AB 495 (Gordon), Chapter 149, Statutes of 2015, and SB 1082 (McGuire), Chapter 52, Statutes of 2016 – once again created exceptions for EB RPD, MROSD, and the SC APOSD by raising their bid

thresholds for both construction and non-construction contracts to \$50,000. AB 2137 (Mayes), Chapter 278, Statutes of 2018, increased, from \$25,000 to \$50,000, the amount for which all RPOSDs may enter into contracts without a formal bid process. A RPOSD may increase the \$50,000 limit up to 2% each fiscal year.

- 5) **Public Notice.** According to the Public Notice Resource Center, "The purpose of public notice is to display information in places where the public is likely to come into notice. The important premise is that information about government activities must be accessible in order for people to make well-informed decisions. Public notice laws in this country serve to outline the most effective method of reaching the public. Before a state designates a newspaper to publish public notices, states generally require the newspaper to have a paid circulation, a minimum percentage of news content, a local publishing address, and a continuous publishing history. The latter requirement ensures stability in the venue for public notices, so that the public will have a reliable place to search for public notices.

"There is a long tradition that there are four elements that mark a valid public notice. The notice must be published from an independent party, the publication must be archivable, the publication must be accessible, and the publication must be verifiable. If any one of these elements is absent, the public loses and the notice itself may be challenged."

The Public Notice Resource Center further expands on the four elements of valid public notices, as follows:

- a) **Public Notice Must Be Published by an Independent Third Party.** A public notice must be published in a forum independent of the government, typically in a local newspaper. An independent and neutral third party has an economic and civic interest in ensuring that the notice delivery requirements are followed.
- b) **Public Notice Must Be Archivable.** A public notice must be archived in a secure and publicly available format. Print newspapers have always fulfilled this element because a public notice published in a newspaper is easily archivable, and can be archived now, in several different places, formats, and without wait. Newspapers are usually archived by the publishing company and by libraries. These archiving venues provide the public with the option to retrieve the notices for years after date of publication.
- c) **Public Notice Must Be Accessible.** A public notice must be capable of being accessed by all segments of society.
- d) **Public Notice Must Be Verifiable.** The public must be able to verify that the public notice was not altered once published. In a newspaper notice, an affidavit is provided by the publisher, which can be used in an evidentiary proceeding to demonstrate that a true copy was published as well as the exact wording that was used.

"Thousands of laws in all 50 states of our nation require governmental and non-governmental entities to publish public notices. The types of notices required to be published range from public budgets, to notices of public hearings, to notices informing creditors of dissolving corporations. While these laws vary greatly with regard to the details of publication, they all share the same goal: to ensure that the public is adequately informed of the actions of its

government and other entities in their communities...(There are) an estimated 30,000 public notice laws between the states and federal government."

- 6) **RPOSDs and Public Notices.** As noted above, California law contains dozens if not hundreds of requirements for public notices of various types and by various entities. Public notices typically require publication in a newspaper, and often contain a set number of times the notice must be published, a time frame during which the notice must be published, the size of the notice, and specifications regarding the content of the notice. RPOSDs are specifically required to publish notices in a newspaper. For instance, RPOSD law provides that all ordinances shall be published once within 30 days after adoption, in a newspaper of general circulation printed, published, and circulated in the district. In regards to contracts, RPOSDs are also required to publish, in a newspaper within the RPOSD, all contracts above a certain amount for furnishing supplies, materials, or labor or repair or construct buildings, structures, or improvements for at least one week before receiving bids. A RPOSD may reject all bids and readvertise, or by a five-sevenths vote may choose to purchase the materials or supplies in the open market or construct the building, structure, or improvement by force account.
- 7) **Bill Summary.** This bill makes numerous changes to laws pertaining to RPOSDs including:
 - a) As an alternative to existing board compensation requirements, authorizes the board to provide board compensation of no more than \$1,000 on a monthly basis. This bill also makes other changes related to board compensation, including requiring the daily or monthly amount to be increased by 5% each calendar year unless waived by the board.
 - b) Requires the consent of the district's voters voting at a special election when the lease of the land exceeds 50 years, instead of 25 years.
 - c) Provides that a RPOSD, with approval by a two-thirds vote, instead of a unanimous vote of the members of its board of directors, may exchange real property.
 - d) Authorizes EBRPD to accept monetary compensation in an exchange of real property and specifies the conditions EBRPD must meet.
 - e) Specifies that the EBRPD, the MROSD, and the SCAPOSD may exchange up to a maximum of 80 acres, instead of 40 acres, of district-owned real property in a calendar year.
 - f) Provides that, in order to effectuate the purposes of RPOSD Law, the RPOSD's broad authorization to improve, extend, control, operate and maintain facilities for public recreation shall not be subject to the regulations, permitting requirements, or other requirements of municipalities and counties that would delay, restrict, or otherwise interfere with the specified activities under this authorization.
 - g) Deletes provisions related to EBRPD's authority to levy and collect taxes if the assessed value of real and personal property within EBRPD.
 - h) Specifies that, in RPOSDs with a population of 200,000 or more, the general manager may bind the district, for the payment for equipment, supplies, and materials for any

purpose, including new construction of a building, structure, or improvement, excluding labor and services, when the annual aggregate cost does not exceed \$200,000.

- i) Authorizes the MROSD and the EBRPD, without the consent of the voters to lease *any* property for a term not exceeding 99 years, instead of 50 years.
- j) Requires contracts for furnishing supplies, material, labor, or other valuable consideration furnished the district, for maintenance projects to be noticed on the RPOSD's internet website instead of in a newspaper in the RPOSD.
- k) Makes numerous technical and clarifying changes.

The East Bay Regional Park District is the sponsor of this bill.

- 8) **Author's Statement.** According to the author, "The East Bay Regional Park District and Midpeninsula Regional Open Space District, along with similar agencies, play a critical role in preserving natural spaces while also providing valuable recreational opportunities for millions of Californians. However, existing applicable provisions in the Public Resources Code are increasingly outdated and do not fully address the current demands of land management, governance, or sustainable environmental practices. Over time, challenges such as climate change, equity in access to open space, and the need for more efficient administrative processes have become more pronounced. This bill's proposed amendments aim to address these issues through select updates of Article 3 of the Public Resources Code (PRC)."
- 9) **Policy Considerations.** The Committee may wish to consider the following:
 - a) **Too Broad?** This bill adds the following language to RPOSD: "In order to effectuate the purposes of this article, a district's authority under this section shall not be subject to the regulations, permitting requirements, or other requirements of municipalities and counties that would delay, restrict, or otherwise interfere with the activities authorized by this section." The sponsors state that this is "intended as clarifying language and stems from the California Court of appeals opinion in *Save Lafayette Trees v. East Bay Regional Parks District*, 66 Cal. App. 5th 21 (2021). That case clarified that a city ordinance requiring landowners to obtain city tree removal permits is preempted and did not apply to a regional park and open space district because such a local ordinance interferes with the RPOSD's broad grant of authority found in Section 5541 to manage its parklands and recreational resources."

While there may be instances where a RPOSD authority may supersede a local ordinance as detailed in *Lafayette*, the application of this provision is ultimately unclear. For instance, Government Code Section 53090 et seq. generally require local agencies to comply with "all applicable building ordinances and zoning ordinances of the county or city in which the territory of the local agency is situated", subject to certain exceptions. It is not known how many other provisions this might provide an exemption for, or at least be in conflict with, RPOSDs. Would this provision exempt RPOSDs from local taxes and fees or laws that cities and counties are required to implement by mandate of state law like health and safety requirements? Would it exempt RPOSDs from a county or city's

land use authority? The Committee may wish to consider the impact this provision may have on requirements RPOSDs are currently required to follow.

- b) **Compensation.** This bill authorizes RPOSDs to provide their board member a monthly stipend of \$1,000 per month for their service as a board member when they are currently limited to \$100 per day for conducting district business and can only be compensation for 6 days per month (except EBRPD can compensate its board members for up to 10 days per month). This change to law would seemingly guarantee RPSOD board members up to \$1,000 per month with no assurance that service is being provided. While some local governments, like cities and counties, can receive a salary for serving as an elected official, it is unclear if any other special district has this same authority. Given the many differences between cities, counties, and special districts, the committee may wish to consider if similar compensation authority should be given to RPOSDs?

Additionally, this bill would allow RPOSDs to increase their board member compensation up to 5% per year without having to adopt an ordinance or resolution in a public meeting. Instead, RPOSD board member compensation would increase automatically every year unless the increase is waived. The sponsors explain that the reason for this change is to streamline compensation increases for efficiency purposes; however, it is unknown if any other type of local agency can increase its board member compensation without adopting an ordinance or resolution, that is on an agenda, in a public meeting where residents are able to provide public comment. To ensure that residents remain informed of every salary increase, the Committee may wish to consider if the authority for automatic increases should be given to RPOSDs.

- c) **Contracting Thresholds.** State law regulating local contracting attempts to balance the goals of accountability and efficiency. For decisions to be accountable, public officials must spend the public's money in full view. Inviting bids and awarding contracts to the lowest possible bidder is an effective method of ensuring transparency for the expenditures of public funds. While increasing the limits on the amount for which districts may contract without the formal bid process allows for greater efficiency in local government spending, it may also result in a loss of accountability and transparency on the use of public funds.

This bill would increase the contract amount a general manager may bind a RPOSD with a population of 200,000 or more to \$200,000. According to the sponsors, only two RPOSDs meet the 200,000 resident threshold: EBRPD and MROSD. Legislation in recent years to raise contracting thresholds have typically limited increases based on the Consumer Price Index (CPI). Such increases help local agencies' ability to contract to keep pace with the rising costs of materials and labor. If a CPI increase was applied to EBRPD and MROSD based upon the last time their thresholds were increased in 2016, it would amount to approximately \$68,000. In order to keep consistent with past legislative effort, the Committee may wish to consider if the contracting threshold should be increased to \$200,000.

- d) **Public Notice Protections in Existing Law.** As noted above, publication in a newspaper of general circulation offers protections for the public that are not necessarily replicated with web-based notification. While this bill is limited to the publication of bid notices by RPOSDs, it raises a broader policy debate regarding the purpose of public notices – to

provide notice to the *public* – and the most appropriate and effective venue for notifying the public of the activities of its government. It might be appropriate to require local governments to provide more information on their websites – indeed, the Legislature has increasingly been doing so in recent years. However, the Committee may wish to consider if web-based notification proposed by this bill, provide enough assurances that notice to the *public* will be independent, archivable, accessible and verifiable.

10) **Committee Amendments.** In order to respond to the above policy considerations, the Committee may wish to consider amending the bill as follows:

- a) Remove the addition of PRC 5536(c).
- b) Remove the automatic increase for compensation in PRC 5536(e)
- c) Remove this addition in PRC 5541: “In order to effectuate the purposes of this article, a district’s authority under this section shall not be subject to the regulations, permitting requirements, or other requirements of municipalities and counties that would delay, restrict, or otherwise interfere with the activities authorized by this section.”
- d) Remove change regarding publishing in a newspaper in PRC 5594.

11) **Arguments in Support.** EBRPD, MROSD, and the California Association of Recreation and Park Districts state, “Existing laws governing Park and Open Space districts are increasingly outdated and do not fully address the current demands of land management, governance, or sustainable environmental practices. Over time, challenges such as climate change, equity in access to open space, and the need for more efficient administrative processes have become more pronounced.

“AB 769 addresses the challenges facing regional park districts by:

- Updating administrative and governance practices to increase inclusivity, efficiency and responsiveness.
- Incorporating considerations such as climate change, extreme weather events, and the need for equitable, sustainable management of open space.
- Including gender-inclusive language.
- Updating outdated provisions regarding land management, including restrictive property lease terms and acreage limits for land exchanges.
- Providing administrative flexibility for procurement in specified circumstances.

“These updates will provide administrative flexibility and adaptability to environmental and social changes, and safeguard the long-term sustainability of regional park resources.”

12) **Arguments in Opposition.** None on file.

REGISTERED SUPPORT / OPPOSITION:

Support

East Bay Regional Parks District [SPONSOR]
California Association of Recreation and Park Districts
Midpeninsula Regional Open Space District

Opposition

None on file

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