

Assembly Bill No. 2490

CHAPTER 342

An act to amend Sections 3954, 3960, 3965, 3965.1, 4051.2, and 4057 of, to add Section 4061 to, to repeal Section 4053 of, and to repeal and add Section 4051 of, the Food and Agricultural Code, to amend and add Section 13332.09 of the Government Code, to repeal Sections 10320 and 10321 of the Public Contract Code, and to amend Section 42926 of the Public Resources Code, relating to district agricultural associations.

[Approved by Governor September 15, 2014. Filed with
Secretary of State September 15, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2490, Eggman. District agricultural associations.

(1) Existing law divides the state into agricultural districts, and provides for the management of these districts by district agricultural associations. Existing law provides for a board of directors for each district agricultural association, and provides for the appointment of each director by the Governor. Existing law sets forth the duties and responsibilities of the board of directors and the district agricultural associations, and requires a district agricultural association to take certain actions only with the approval of the Department of Food and Agriculture or the Department of General Services, or both.

This bill would authorize the Governor to remove any director of a district agricultural association for cause prior to the expiration of the director's term. The bill would revise the oversight responsibilities of the Department of Food and Agriculture and the Department of General Services in connection with district agricultural associations by deleting the requirement that a district agricultural association obtain approval of the Department of Food and Agriculture or the Department of General Services prior to exercising certain powers, including the power to sue, entering into a settlement agreement for less than \$100,000, or contracting or exercising certain powers over its own real or personal property. The bill would require a district agricultural association to comply with specified contracting procedures, including, among others, soliciting bids in writing if the cost of a project exceeds \$25,000. The bill would authorize the board of directors of a district agricultural association, with the approval of the Department of General Services, to purchase, acquire, hold, sell, exchange, or convey any interest in real property. The bill would require a district agricultural association to adopt a fiscal review policy that would provide for annual audits, as specified. The bill would also specify that a district agricultural association shall not be required to prepare or submit any written report to the Governor, the Legislature, or a state agency, except as specified.

(2) Existing law requires the Department of General Services to exercise oversight of the acquisition and replacement of motor vehicles and other mobile equipment by a state agency. Existing law defines “state agency” for purposes of those provisions. Existing law requires the Trustees of the California State University to purchase vehicles using statewide commodity contracts, to the greatest extent feasible, and to make an interim report to the Governor and the Legislature on January 1, 2014, and a final report on January 1, 2015, containing certain information relative to motor vehicle procurement by the California State University. Existing law repeals these provisions as of July 1, 2015.

This bill would exclude district agricultural associations from the definition of “state agency” for purposes of those provisions and would continue the operation of these provisions beyond July 1, 2015, except for the requirement on the Trustees of the California State University.

(3) Existing law requires the Department of General Services to annually prepare a delegation program for district agricultural associations, to be administered by the Department of Food and Agriculture and the Department of General Services. Existing law also requires the Department of Food and Agriculture, for district agricultural associations and other fairs, to develop criteria to be applied for purchases made locally at a price equal to or lower than the price available through the state purchasing program.

This bill would repeal those provisions.

(4) Existing law requires each state agency to submit an annual report to the Department of Resources Recycling and Recovery summarizing its progress in reducing solid waste that is due on or before May 1 each year.

This bill would exclude district agricultural associations from the definition of “state agency” for purposes of those provisions.

(5) This bill would make conforming and nonsubstantive changes.

The people of the State of California do enact as follows:

SECTION 1. Section 3954 of the Food and Agricultural Code is amended to read:

3954. Each association by its name has perpetual succession. It may have a seal. An association may sue and be sued, and may do any and all things necessary to carry out the powers and the objects and purposes for which the association is formed.

SEC. 2. Section 3960 of the Food and Agricultural Code is amended to read:

3960. The term of office of each director, except that of a member of the first board, is four years from the beginning of the term for which he or she is appointed. Any vacancy shall be filled for the unexpired term. However, any director may be removed for cause by the Governor prior to the expiration of the director’s term.

SEC. 3. Section 3965 of the Food and Agricultural Code is amended to read:

3965. The board may, with the approval of the department:

(a) Fix the term of office, the amount of bond and salary, and prescribe the duties of the secretary and of the treasurer.

(b) Manage the affairs of the association.

(c) Make all necessary bylaws, rules, and regulations for the government of the association.

(d) Delegate, as it may deem advisable, to its officers or employees any of the powers that are vested in the board under subdivision (b). Any delegation of power may be revoked at any time.

SEC. 4. Section 3965.1 of the Food and Agricultural Code is amended to read:

3965.1. (a) Notwithstanding Section 3965 or 4051, the board, without prior approval from the department, may arrange for and conduct, or cause to be conducted, or by contract permit to be conducted, any activity by any individual, institution, corporation, or association upon its property at a time as it may be deemed advisable, except for the following:

(1) Revenue-generating contracts involving hazardous activities, as determined by the department, unless adequate insurance coverage is provided, as determined by the department in consultation with the Department of General Services.

(2) The activities specified in Section 4051.2 and Section 19130 of the Government Code.

(b) This section shall not be construed and is not intended to extend or limit the authority specified in Section 19130 of the Government Code.

SEC. 5. Section 4051 of the Food and Agricultural Code is repealed.

SEC. 6. Section 4051 is added to the Food and Agricultural Code, to read:

4051. (a) An association may do any of the following:

(1) Contract, in accordance with all of the following:

(A) The written policies and procedures for contracting that are developed and maintained by the board of directors of the association in accordance with this section.

(B) All applicable state laws governing contracts, except as follows:

(i) Any grant or contract entered into by an association for goods is not subject to Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

(ii) Any grant or contract entered into by an association is not subject to Chapter 3 (commencing with Section 12100) of Part 2 of Division 2 of the Public Contract Code.

(C) If the estimated total cost of any construction project or similar work carried out under this section exceeds twenty-five thousand dollars (\$25,000), the association shall solicit bids in writing and shall award the work to the lowest responsible bidder or reject all bids. The association is subject to all applicable provisions of the Public Contract Code.

(D) An association may elect to become subject to the provisions of the Uniform Public Construction Cost Accounting Act (Chapter 2 (commencing with Section 22000) of Part 3 of Division 2 of the Public Contract Code)

and the Small Business Procurement and Contract Act (Chapter 6.5 (commencing with Section 14835) of Part 5.5 of Division 3 of Title 2 of the Government Code), but exempt from the reporting requirements noted in subdivision (f) of Section 14838.1 of the Government Code.

(2) Accept funds or gifts of value from the United States or any person to aid in carrying out the purposes of this part.

(3) Conduct or contract for programs, and contract for the purchase or lease of goods that are necessary to effectuate the purposes of this chapter, either independently or in cooperation with any individual, public or private organization, or federal, state, or local governmental agency.

(4) Establish and maintain a bank checking account or other financial institution account, approved by the Director of Finance in accordance with Sections 16506 and 16605 of the Government Code, for depositing funds received by the district agricultural association. All funds maintained in an account authorized by this paragraph shall be used in accordance with Section 4001.

(5) Approve the annual budget of the association and establish a program for paying vendors who contract with the district agricultural association.

(6) Contract with any county or county fair association for holding a fair jointly with the county or county fair association. The joint fair is a district fair of the association.

(7) Make or adopt all necessary orders, rules, or regulations for governing the activities of the association. Notwithstanding paragraph (14), any orders, rules, or regulations adopted by the board are exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For informational purposes only, however, any order, rule, or regulation adopted by the board may be transmitted to the Office of Administrative Law for filing with the Secretary of State pursuant to Section 11343 of the Government Code.

(8) Operate a payroll system for paying employees, and a system for accounting for vacation and sick leave credits of employees.

(9) Delegate to the officers and employees of the association the exercise of powers vested in the board, as the board may deem desirable, for the orderly management and operation of the association.

(10) With the approval of the Department of General Services, purchase, acquire, hold, sell, or exchange, or convey any interest in real property. Any acquisition of land or other real property shall be subject to the Property Acquisition Law (Part 11 (commencing with Section 15850) of Division 3 of Title 2 of the Government Code).

(11) With the approval of the Department of General Services, make permanent improvements upon publicly owned real property adjacent to, or near the vicinity of, the real property of the district agricultural association when the improvements materially benefit the property of the association pursuant to Section 11011 of the Government Code.

(12) With the approval of the Department of General Services, lease for the use of its real property, or any portion of that property, to any person or public body for whatever purpose as may be approved by the board.

(13) Use or manage any of its property jointly or in connection with any lessee or sublessee, for any purpose approved by the board.

(14) With the approval of the Department of General Services, pledge any revenues, moneys, accounts, accounts receivable, contract rights, and other rights to payment of whatever kind, pursuant to terms and conditions approved by the board. The revenues, moneys, accounts, accounts receivable, contract rights, and other rights to payment of whatever kind pledged by the association or its assignees constitute a lien or security interest that immediately attaches to the property pledged, and is effective, binding, and enforceable against the association, its successors, purchasers of the property pledged, creditors, and all others asserting rights therein, to the extent set forth, and in accordance with, the terms and conditions of the pledge, irrespective of whether those persons have notice of the pledge and without the need for physical delivery, recordation, filing, or further action.

(15) With the approval of the Secretary of Food and Agriculture, enter into a joint powers agreement pursuant to the Joint Exercise of Powers Act (Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code).

(b) In developing the written policies and procedures for contracting, the board shall incorporate the following to apply to contracts or procurement by the association:

(1) To ensure the fullest competition, the board shall adopt and publish competitive bidding procedures for the award of a procurement or contract involving an expenditure of more than one hundred thousand dollars (\$100,000). The competitive bidding procedures shall include, but not be limited to, requirements for submission of bids and accompanying documentation, guidelines for the use of requests for proposals, invitations to bid, or other methods of bidding, and a bid protest procedure. The general manager shall determine whether the goods or services subject to this paragraph are available through existing contracts or price schedules of the Department of General Services. The Legislature finds and declares that fairs are a valuable community resource and recognizes that local businesses and local communities make valuable contributions to fairs that include direct and indirect support of fair programs. The Legislature further finds and declares that local businesses often provide opportunity purchases to local fairs that, for similar things available through the state purchasing program, may be purchased locally at a price equivalent to or less than that available through the state purchasing program. As used in this subdivision, opportunity purchases means purchases made locally, either individually or cooperatively, at a price equal to or less than the price available through the state purchasing program on or off state contract.

(2) The contracting standards, procedures, and rules contained in this subdivision shall also apply with respect to any subcontract involving an expenditure of more than one hundred thousand dollars (\$100,000). The board shall establish, as part of the bidding procedures for general contracts, subcontracting guidelines that implement this requirement.

(3) With the approval of the Department of General Services, pledge any and all revenues, moneys, accounts, accounts receivable, contract rights, and other rights to payment of whatever kind, pursuant to terms and conditions approved by the board. Any issuance of bonds, contracts entered into, debts incurred, settlements, judgments, or liens under this section or pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, shall not directly, indirectly, or contingently obligate the state or any political subdivision of the state to levy or to pledge any form of taxation therefor or to make any appropriation for their payment. The bond shall contain on its face a statement to the following effect: "Neither the full faith and credit nor the taxing power of the State of California is pledged to the payment of the principal of, or interest on, this bond."

(4) This section shall not apply to Article 1 (commencing with Section 4101) of Chapter 6 of Part 3.

(c) (1) Notwithstanding any other law, an association shall adopt a fiscal review policy as follows:

(A) An association with an annual budget exceeding five million dollars (\$5,000,000) shall conduct an annual audit by an independent certified public accountant or certified public accountancy firm selected by the board.

(B) An association with an annual budget of less than five million dollars (\$5,000,000) shall have its books and accounts examined and reviewed annually and audited once every three years by an independent certified public accountant or certified public accountancy firm selected by the board.

(2) Notwithstanding paragraph (1), the department may require an audit to be conducted before the times specified in subparagraphs (A) and (B) of paragraph (1) if the department or the state deems the audit is necessary.

SEC. 7. Section 4051.2 of the Food and Agricultural Code is amended to read:

4051.2. An association shall not enter into a settlement agreement for an amount greater than one hundred thousand dollars (\$100,000) without the prior approval of the department.

SEC. 8. Section 4053 of the Food and Agricultural Code is repealed.

SEC. 9. Section 4057 of the Food and Agricultural Code is amended to read:

4057. The state is not liable for any action, obligation, commitment, contract, or premium that is offered, or award that is made, by any association.

SEC. 10. Section 4061 is added to the Food and Agricultural Code, to read:

4061. (a) Notwithstanding any other law, a district agricultural association shall not be required to prepare or submit any written report to the Governor, the Legislature, or a state agency except as follows:

- (1) The report is required by a court or under federal law.
- (2) The report is required in the Budget Act.
- (3) The report is required by the secretary.

(4) The Legislature expressly requires a district agricultural association to prepare and submit a report.

(b) This section shall not be construed and is not intended to extend or limit the provisions of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

SEC. 11. Section 13332.09 of the Government Code is amended to read:

13332.09. (a) A purchase order or other form of documentation for acquisition or replacement of motor vehicles shall not be issued against any appropriation until the Department of General Services has investigated and established the necessity therefor.

(b) A state agency shall not acquire surplus mobile equipment from any source for program support until the Department of General Services has investigated and established the necessity therefor.

(c) Notwithstanding any other law, any contract for the acquisition of a motor vehicle or general use mobile equipment for a state agency shall be made by or under the supervision of the Department of General Services. Pursuant to Section 10298 of the Public Contract Code, the Department of General Services may collect a fee to offset the cost of the services provided.

(d) Any passenger-type motor vehicle purchased for a state officer, except a constitutional officer, or a state employee shall be an American-made vehicle of the light class, as defined by the California Victim Compensation and Government Claims Board, unless excepted by the Director of General Services on the basis of unusual requirements, including, but not limited to, use by the California Highway Patrol, that would justify the need for a motor vehicle of a heavier class.

(e) General use mobile equipment having an original purchase price of twenty-five thousand dollars (\$25,000) or more shall not be rented or leased from a nonstate source and payment therefor shall not be made from any appropriation for the use of the Department of Transportation, without the prior approval of the Department of General Services after a determination that comparable state-owned equipment is not available, unless obtaining approval would endanger life or property, in which case the transaction and the justification for not having sought prior approval shall be reported immediately thereafter to the Department of General Services.

(f) (1) The Trustees of the California State University shall, to the greatest extent feasible, purchase vehicles using statewide commodity contracts.

(2) The trustees shall make an interim report to the Governor and the Legislature on January 1, 2014, and a final report on January 1, 2015, on their motor vehicle procurement, including all of the following:

(A) An inventory, by campus, of motor vehicles that includes the type of vehicle, vehicle usage, and fuel data consistent with the Department of General Services fleet asset management system and reported to the Department of General Services.

(B) The number of motor vehicles purchased during the prior fiscal year, disaggregated by campus and type of vehicle if the passenger vehicle or

truck was purchased through statewide commodity contracts, and the purchase price.

(C) Any change to a policy or procedure made during the prior fiscal year related to motor vehicle procurement and contracts for procurement and identifying any vehicle procured pursuant to the new policy or procedure.

(D) The average time to complete procurements, average administrative costs, reduced charges paid to the Department of General Services, and competitive or reduced market prices obtained for the vehicles.

(3) A report submitted pursuant to this subdivision shall be submitted in compliance with Section 9795.

(g) As used in this section:

(1) “General use mobile equipment” means equipment that is listed in the Mobile Equipment Inventory of the State Equipment Council and capable of being used by more than one state agency, and shall not be deemed to refer to equipment having a practical use limited only to the controlling state agency. Section 575 of the Vehicle Code shall not have application to this section.

(2) “State agency” means a state agency, as defined pursuant to Section 11000. The University of California is requested and encouraged to have the Department of General Services perform the tasks identified in this section with respect to the acquisition or replacement of motor vehicles by the University of California. “State agency” does not include a district agricultural association, as defined in Section 3951 of the Food and Agricultural Code.

(h) This section shall remain in effect only until July 1, 2015, and as of that date is repealed.

SEC. 12. Section 13332.09 is added to the Government Code, to read:

13332.09. (a) A purchase order or other form of documentation for acquisition or replacement of motor vehicles shall not be issued against any appropriation until the Department of General Services has investigated and established the necessity therefor.

(b) A state agency shall not acquire surplus mobile equipment from any source for program support until the Department of General Services has investigated and established the necessity therefor.

(c) Notwithstanding any other law, any contract for the acquisition of a motor vehicle or general use mobile equipment for a state agency shall be made by or under the supervision of the Department of General Services. Pursuant to Section 10298 of the Public Contract Code, the Department of General Services may collect a fee to offset the cost of the services provided.

(d) Any passenger-type motor vehicle purchased for a state officer, except a constitutional officer, or a state employee shall be an American-made vehicle of the light class, as defined by the California Victim Compensation and Government Claims Board, unless excepted by the Director of General Services on the basis of unusual requirements, including, but not limited to, use by the California Highway Patrol, that would justify the need for a motor vehicle of a heavier class.

(e) General use mobile equipment having an original purchase price of twenty-five thousand dollars (\$25,000) or more shall not be rented or leased from a nonstate source and payment therefor shall not be made from any appropriation for the use of the Department of Transportation, without the prior approval of the Department of General Services after a determination that comparable state-owned equipment is not available, unless obtaining approval would endanger life or property, in which case the transaction and the justification for not having sought prior approval shall be reported immediately thereafter to the Department of General Services.

(f) As used in this section:

(1) “General use mobile equipment” means equipment that is listed in the Mobile Equipment Inventory of the State Equipment Council and capable of being used by more than one state agency, and shall not be deemed to refer to equipment having a practical use limited to the controlling state agency only. Section 575 of the Vehicle Code shall have no application to this section.

(2) “State agency” means a state agency, as defined pursuant to Section 11000. The University of California is requested and encouraged to have the Department of General Services perform the tasks identified in this section with respect to the acquisition or replacement of motor vehicles by the University of California. “State agency” does not include a district agricultural association, as defined in Section 3951 of the Food and Agricultural Code.

(g) This section shall become operative on July 1, 2015.

SEC. 13. Section 10320 of the Public Contract Code is repealed.

SEC. 14. Section 10321 of the Public Contract Code is repealed.

SEC. 15. Section 42926 of the Public Resources Code is amended to read:

42926. (a) In addition to the information provided to the department pursuant to Section 12167.1 of the Public Contract Code, each state agency shall submit an annual report to the department summarizing its progress in reducing solid waste as required by Section 42921. The annual report shall be due on or before May 1, 2012, and on or before May 1 in each subsequent year. The information in this report shall encompass the previous calendar year.

(b) Each state agency’s annual report to the department shall, at a minimum, include all of the following:

(1) Calculations of annual disposal reduction.

(2) Information on the changes in waste generated or disposed of due to increases or decreases in employees, economics, or other factors.

(3) A summary of progress made in implementing the integrated waste management plan.

(4) The extent to which the state agency intends to utilize programs or facilities established by the local agency for the handling, diversion, and disposal of solid waste. If the state agency does not intend to utilize those established programs or facilities, the state agency shall identify sufficient

disposal capacity for solid waste that is not source reduced, recycled, or composted.

(5) Other information relevant to compliance with Section 42921.

(c) The department shall use, but is not limited to the use of, the annual report in the determination of whether the agency's integrated waste management plan needs to be revised.

(d) For purposes of this section, the meaning of "state agency" does not include a district agricultural association, as defined in Section 3951 of the Food and Agricultural Code.