

Date of Hearing: April 24, 2024

ASSEMBLY COMMITTEE ON AGRICULTURE  
Esmeralda Soria, Chair  
AB 2528 (Arambula) – As Amended March 18, 2024

**SUBJECT:** Williamson Act contracts: cancellation: energy projects

**SUMMARY:** This bill would authorize a landowner to petition the board or council to allow to cancel a Williamson Act (WA) contract or a farmland security zone (FSZ) contract if the land meets specified criteria, including, among other things, not having permanent access to sufficient water to support commercially viable irrigated agricultural use on the land, and the landowner would be subject to a land use entitlement for specified energy projects, as specified. Specifically, *this bill*:

- 1) Makes legislative finding and declarations as follows:
  - a) California has set an ambitious path to achieve a zero net carbon economy by 2045.
  - b) California has set goals of at least 60 percent of California's electricity is renewable by 2030 and for 100 percent by 2045.
  - c) California mandates that local water management agencies bring groundwater use to sustainable levels by the early 2040s.
  - d) WA should be updated to provide alternative paths for lands that can no longer stay in agricultural production due to water constraints.
  - e) States intent of the Legislature to provide a streamlined WA cancellation option to allow the development of renewable energy projects and storage on water-constrained agricultural lands.
- 2) Allows a landowner to petition the board or council for cancellation of any WA or FSZ contract if the land meets both of the following criteria:
  - a) The land meets one of the following criteria:
    - i) The land is located in a basin that is either of the following:
      - (1) Designated as high or medium and is subject to a groundwater sustainability plan pursuant to the Sustainable Groundwater Management Act (SGMA), as specified.
      - (2) Subject to a final judgment in an adjudication action under SGMA.
  - b) There are no water or overlying groundwater rights associated with the land sufficient to support commercially viable irrigated agricultural use.
  - c) The land does not have permanent access to sufficient water to support commercially viable irrigated agricultural use on the land.

- d) The landowner would be subject to a land use entitlement to use the land for any of the following projects:
  - i) A solar photovoltaic or wind electrical generating power plant and appurtenant facilities.
  - ii) An energy storage system.
  - iii) An electric transmission line carrying electric power from a facility, as specified, that is located in the state to a point of junction with any interconnected electrical transmission system.
- 3) Upon petition pursuant to subdivision (a), the board or council may approve the cancellation of the contract only if it makes both of the following findings:
  - a) The land does not have permanent access to sufficient water to support commercially viable irrigated agricultural use on the land.
  - b) The landowner would be subject to a land use entitlement to use the land for a project, as specified that would use less water than the agricultural use on the land.
- 4) Requires that no cancellation fee shall be imposed on any cancellation in this law.
- 5) Does not prevent a board or council from determining a project, as specified, is a compatible use on contracted land.
- 6) Defines the following terms:
  - a) “Adjudication action” means as defined by subdivision (a) of Section 10721 of the Water Code.
  - b) “Basin” means as defined by subdivision (b) of Section 10721 of the Water Code.
  - c) “Bulletin 118” means as defined by subdivision (c) of Section 10721 of the Water Code.
  - d) “Energy storage system” means as defined by subdivision (a) of Section 2835 of the Public Utilities Code.

**EXISTING LAW:**

- 1) Authorizes a city or county to enter into contracts with owners of agricultural land to preserve the land for agricultural use, as specified, in return for reduced property tax assessments. (*Food and Agriculture code (FAC) 51200 - 51297.4*)
- 2) Authorizes a landowner to petition the city council or board of supervisors, as applicable, for cancellation of the WA contract under specified circumstances and imposes a cancellation fee equal to 12.5% of the fair market value of the land without the restriction of the Williamson Act contract. (*FAC 51200 - 51297.4*)

- 3) Authorizes a landowner of specified agricultural land to petition the board to cancel the Williamson Act contract in order to designate the land as a farmland security zone, whereby the land is eligible for a specified property tax valuation and taxed at a reduced rate for specified special taxes. (*FAC 51200 - 51297.4*)
- 4) Authorizes a landowner to petition the council or board, as applicable, to cancel a farmland security zone contract under specified circumstances and imposes a cancellation fee equal to 25% of the fair market value of the land without the restriction of the contract. (*FAC 51200 - 51297.4*)
- 5) Requires a board or council, as applicable, to adopt rules governing the administration of agricultural preserves, including rules related to compatible uses consistent with specified principles of compatibility. (*FAC 51200 - 51297.4*)

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

**Williamson Act Background**

WA is a program administered by the California Department of Conservation (DOC) to conserve agricultural and open space land. WA allows private property owners to sign voluntary contracts with counties and cities that restrict their land to agriculture, open space, and compatible uses for the next 10 years. WA contracts automatically renew each year, so that the term is always 10 years in the future. In return for these voluntary contracts, county assessors lower the value of WA contracted lands to reflect the value of their use as agriculture, or open space instead of their market value under Proposition 13. In 1998, the Legislature created an option of establishing a FSZ, which offers landowners a greater property tax reduction for a minimum 20-year contract. The Revenue and Taxation Code sets out valuation procedures for land under WA and FSZ contracts, as well as for other lands whose use is enforceably restricted in various ways, including scenic restrictions, open space easements, restrictions for timber cultivation, and wildlife habitat contracts.

A landowner who wants to develop land restricted by a WA contract has three options: nonrenewal, cancellation, and rescission. The normal way to end a WA contract is for either the landowner or local officials to give "notice of nonrenewal," which stops the automatic annual renewals and allows the contract to run down over the next 10 years (20 years for Farmland Security Zones).

Alternatively, local officials can cancel a contract at the request of the landowner. To do so, local officials must make findings that cancellation is in the public interest and that cancellation is consistent with the purposes of the WA. In addition, the landowner must pay a cancellation fee that is equal to 12.5% of the "cancellation valuation" of the property (25% in the case of FSZs). Typically, the county assessor determines the cancellation valuation, which is set at the property's unrestricted market value. However, a landowner and DOC can separately agree on a cancellation valuation for the land, which takes the place of the value identified by the county

assessor. Local officials may approve or deny a cancellation once the cancellation value is determined.

Rescission occurs when the county supervisors cancel a WA contract, but the landowner simultaneously puts an agricultural conservation easement or open space easement on other land of equal or greater value. In addition, state law allows a property owner and a city or county to mutually agree to rescind the WA or FSZ contract on marginally productive or physically impaired land to enter a solar-use easement contract (SB 618, Wolk, 2011). Such a rescission requires a payment of a rescission fee of 10% of the fair market value of the land, half of which goes to the county and half of which goes to the state General Fund. The DOC, in consultation with the Department of Food and Agriculture, must review and approve all solar-use easements.

Land may also be designated as “devoted to open-space uses of statewide significance” if it: (1) could be developed as prime agricultural land; or (2) is open-space land which constitutes a resource whose preservation is of more than local importance for ecological, economic, educational, or other purposes. The Secretary of the Resources Agency is the final judge of whether the land is in fact devoted to open-space use of statewide significance.

Historically, the state made subvention payments to counties in order to make up for a portion of the resulting losses in local property tax revenue from WA and FSZ contracts, and other enforceable open space restriction programs. Specifically, state law requires the Secretary of Natural Resources to direct the Controller to pay counties, out of continuously appropriated funds, at the following annual rates for enforceably restricted land:

- Five dollars per acre for prime agricultural land that is subject to open space easement, WA or FSZ contract, or timber production easement.
- One dollar per acre for other land devoted to open-space uses of statewide significance.
- Eight dollars per acre for land under a FSZ contract and is within three miles of the boundaries of the sphere of influence of an incorporated city.

In total, about 15.4 million acres of land in 52 counties are protected under these types of enforceable restrictions, mostly under WA contracts. Subvention payments totaled about \$35 million to \$40 million each year from 1994 to 2008. However, the state stopped making subvention payments in Fiscal Year 2009-10 in response to budgetary pressures. In the intervening years, only one county, Imperial, has exited the WA program.

## **Comments**

According to the author, Central Valley residents deserve to live in healthy communities powered by renewable energy. This bill ensures that California meets its climate goals, protects groundwater, and improves air quality by increasing the availability of land for renewable energy projects.

To achieve its goal of a net zero carbon economy by 2045, California must add more than 114,000 Megawatts of new utility-scale renewables to the grid, including at least 70,000 Megawatts of utility-scale solar. However, siting these projects is difficult, as most open land is in the desert, which is home to sensitive habitat and protected species and is federally protected, with a majority of lands precluded from solar development.

Parallel to California's clean energy goals is Sustainable Groundwater Management Act (SGMA), which aims to bring groundwater to sustainable levels by the early 2040s. The new reality is that the need to conserve vital water resources will unavoidably place many agricultural landowners at risk of losing the ability to farm their land with no viable economic alternative.

This nexus between clean energy goals, water sustainability, and land scarcity presents a rare opportunity to craft policy that achieves multiple statewide goals. This effort will require strategic planning, creativity, and compromise. This bill strikes this balance and will help fulfill the promise of a carbon free future with good-paying jobs, children breathing cleaner air, and mitigation of the worst impacts of climate change on our communities and economy.

### **Support**

Supporters state this bill provides a streamlined WA cancellation option to facilitate faster siting of energy infrastructure on former agricultural parcels and provide relief to landowners and local communities. Simplifying WA cancellations on water-constrained lands addresses SGMA challenges and renewable energy land constraints while providing farmers with alternative economic opportunities for their lands for the benefit for the community and the county where their land is located thus keeping the value of the land for property tax revenue. Otherwise, the land will just sit fallowed for 10 years while waiting for the WA to sunset.

SGMA specifically authorizes Groundwater Sustainability Agencies (GSAs) to control groundwater by regulating, limiting, or suspending extractions from individual wells or extractions in the aggregate. In many basins, GSAs are currently limiting extractions. If groundwater is a farmers only water source, limiting these extractions means taking land out of production. Further, if a farmer's surface water is cut off due to water shortages and they are unable to use groundwater, the farmer must make a hard business decision on whether keeping the land in production is possible. This bill streamlines the process for a farmer to transition some of their fields from agricultural production to solar thereby saving millions of dollars in WA cancellation fees. This bill is a win-win for farmers, local communities, and the state.

### **Oppose**

Opponents state current law the cancellation of a WA contract carries a 12.5% fee of the fair market value of that land to the local government, reflecting that lowered property tax assessment enjoyed during the contract. This bill prohibits this 12.5% contract cancellation fee, making the entire structure of WA essentially meaningless. This bill effectively eliminates the Solar Use Easement program, created by SB 618 (Wolk), Chapter 596, Statutes of 2011, allowing developers to avoid those fees instead of working with the DOC to ensure that substantial evidence has been provided to ensure no alternative land is available for the solar project, that additional agricultural lands will not be impacted by the solar project and other factors.

Furthermore, opponents state the water-related provisions in this bill are both unnecessary and potentially irresponsible for the long-term sustainability of California agriculture. The bill allows for a declaration of permanent water unavailability, attested to by the landowner and essentially ratified by a County Board of Supervisors, as part of the justification for early and penalty-free

WA cancellations. The appropriate entities for setting water allocations in adjudicated basins or critically overdrafted basins are the courts and groundwater sustainability agencies, respectively, designated entities for determining water allocations in groundwater basins. This bill requires no such involvement or coordination with these local regulatory authorities who are charged with overseeing setting and enforcing allocations for landowners. Further, any such declaration is almost certainly irreversible in the future, posing enormous land management challenges for landowners once a solar lease or other energy-related use ends and the development company removes its infrastructure. All other potential future land uses, such as conversion to habitat or construction of dedicated recharge basins, will still require water. Even fallowed land needs some amount of water if it is to be managed responsibly.

Lastly opponents state seeking to cancel WA contracts for free as structured under this is an effort by solar developers to cherry pick lands without worry to the impact to the solar projects neighbors' (whether other agriculture or open space areas) at no cost. The bill shuns a market-based approach to water availability impacts from SGMA, takes prime agricultural land out of production potential into perpetuity, and limits other potential uses for former agricultural land, such as for groundwater recharge or habitat. Moreover, the bill extends this paradigm to FSZ contracted lands, where the cancellation fees are greater than WA contracts. Instead of supporting California's approach of cohesive agricultural production, this will lead to a pockmarked landscape of solar energy and storage development littered across California's prime agricultural lands.

California Farm Bureau suggests, in place of this bill, convening a WA working group inclusive of agriculture, state and local governments, and energy experts (such as the California Independent Service Operator) to improve provisions like the existing Solar Use Easement within the WA while maintaining its core mission to preserve prime agricultural lands.

Community Alliance with Family Farmers state this bill is much too broad and fails to recognize ongoing planning efforts through the Multibenefit Land Repurposing Program and each basin's groundwater sustainability plans. Any waiver of Williamson Act fees must be much narrower including only applying to critically over-drafted basins in areas consistent with local groundwater and land repurposing planning efforts. In addition, DOC uses cancellation fee revenue to support its work mapping and protecting agricultural land. DOC's agriculture land protection work is underfunded and during these difficult budget times, reductions to the DOC's budget should be avoided.

In its opposition letter, Rural County Representatives of California (RCRC) states this bill establishes low-barrier criteria by which an existing contract may be considered for WA cancellation. The bill makes a contract property eligible for its streamlined cancellation provisions simply for being within the jurisdiction of a regulated or adjudicated groundwater basin, regardless of that basin's groundwater status. Of further concern, a contract property may also be eligible upon a finding that there is "no water...rights...sufficient to support commercially viable irrigated agricultural use" or if the property "does not have permanent access to sufficient water..." In the context of agricultural production, these are insufficiently clear terms, as many agricultural operations employ variable water supply portfolios, switching from temporary to semi-permanent supplies. The bill language does not acknowledge the temporal and logistical realities of securing water supplies for many of the state's agricultural operations. And, in this day of climate extremes, few sources can rightly be considered permanent under an ordinary reading of this bill's criteria.

Furthermore, RCRC states the low bar for seeking cancellations that this bill would enact is certain to result in county boards and staffs receiving several more petitions for cancelled contracts than currently occur, requiring those officials and staff to deal with an administrative load that takes resources away from other priorities. Further, because the bill relies on unclear standards with ambiguous thresholds, counties risk litigation for both approved and denied cancellations.

**Previous Legislation:**

SB 618 (Wolk), Chapter 596, Statutes of 2011, authorized a city or county and a landowner to rescind a WA or FSZ contract on agricultural lands of limited agriculture value and enter into a solar-use easement that restricts the use of land to photovoltaic (PV) solar facilities, with a reduced cancellation fees.

**\*The committee may wish to consider the following amendments:**

- 1) For WA/FSZ cancellation fee on land that does not have sufficient water to be productive and will be used for solar energy projects the WA/FSZ cancellation fee be half the existing WA/FSZ cancellation, changing the fees from 12.5% on WA land to 6.25% and from 25% on FSZ land to 12.5%.
- 2) A waiver of WA fees reduction must be only applying to basins that are subject to critical conditions of overdraft and not interfere with local GSAs and the Multibenefit Land Repurposing Program efforts.
- 3) Mitigation measures that provide community benefits directly or indirectly related to adverse social and economic impacts including but not limited to local hiring for projects, and water and electricity assistance.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Agricultural Council of California  
 Alliance Ag Services  
 Alliance Appraisal  
 Almond Alliance  
 American Clean Power Association  
 Avantis  
 Britz Helm  
 California Association of Winegrape  
 Growers  
 California Solar Energy Industries  
 Association  
 California State Association of Electrical  
 Workers  
 California State Council of Laborers  
 Candela Renewables

Clearway Energy Group LLC  
 Coalition of California Utility Employees  
 Forefront Power, LLC  
 IBEW Local Union 477  
 Independent Energy Producers Association  
 Intersect Power  
 Large Scale Solar Association  
 Longroad Energy Management, LLC  
 Portwood Farms  
 Regenerate California Innovation, INC  
 RWE  
 Schmiederer Family Farms  
 Tjaarda Ranch LLC  
 Tule Fog Farm Land LLC  
 Western Growers Association

**Opposition**

California Farm Bureau Federation  
Farm Bureau of Monterey  
Rural County Representatives of California  
Tulare County Farm Bureau

**Oppose Unless Amended**

Community Alliance with Family Farmers

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