

**BILL:** SB 790 (Stern, D-Calabasas)  
Introduced February 19, 2021  
Amended March 22, 2021  
Amended April 14, 2021  
Amended May 20, 2021

**SUBJECT:** SB 790 would create a new environmental mitigation credit program to improve wildlife connectivity for transportation projects.

**STATUS:** Pending in the Assembly  
Passed Senate 39-0  
Passed Senate Appropriations Committee 7-0  
Passed Senate Natural Resources and Water Committee 9-0  
Passed Senate Transportation Committee 16-0

**SUMMARY AS OF June 2, 2021:**

In 2017, AB 1282 (Chapter 643, Statutes of 2017), a bill supported by the Orange County Transportation Authority (OCTA), established a Transportation Permitting Task Force (Task Force) and required a report to the California State Legislature on recommendations for permitting reform to advance transportation projects. This report described a variety of challenges and found that mitigation is one of the main causes of delays and inefficiencies in transportation project delivery. Chiefly, among the recommendations, the Task Force concluded that it would be most prudent to establish an in-lieu fee program whereby California Department of Transportation (Caltrans) could pay a fee to fund mitigation projects. SB 790 (Stern, D-Calabasas) was developed to implement these strategies.

SB 790 would create a new compensatory environmental mitigation program. The California Department of Fish and Wildlife (CDFW) would be required to coordinate with Caltrans in order to provide mitigation credits for future highway improvements that enhance local and regional habitat connectivity. These improvements could include an overpass/underpass, vegetation management, directional fencing, barrier modification, among others. If a Caltrans transportation project meets certain standards evaluated by the CDFW, including physical roadway factors and overall benefit to wildlife ability to cross the roadway, then they would have the opportunity to request CDFW to issue the credits. These compensatory mitigation credits could then be used by Caltrans to satisfy obligations to mitigate the impacts of transportation projects required by the California Environmental Quality Act, the California Endangered Species Act, and the Lake and Streambed Alteration program. Through this bill, CDFW can only issue 10 credits for new transportation projects in a given fiscal year and no more than two in each region.

**EFFECTS ON ORANGE COUNTY:**

OCTA has been a leader in the state in establishing advanced mitigation options for transportation projects. As a part of the Measure M sales tax program, OCTA's

Environmental Mitigation Program allocates five percent of net freeway revenues toward a comprehensive effort to offset the environmental impacts of the Measure M freeway projects by acquiring and preserving large swaths of open space land and protecting plant and animal species in their native habitats. SB 790 promotes the concept of advanced environmental mitigation, complementing the work OCTA is already undertaking. If passed, SB 790 would allow OCTA to work with Caltrans on potential wildlife connectivity improvements as part of transportation projects and use any mitigation credit from those improvements to help mitigate environmental impacts from future transportation projects.

SB 790 is supported by a variety of environmental groups and the Ventura County Transportation Commission. A SUPPORT position on SB 790 is consistent with OCTA's 2021-2022 State Legislative Platform principle to "Support streamlined environmental review and permitting processes for transportation projects and programs to avoid potentially duplicative and unnecessary analysis, while still maintaining traditional environmental protections

**OCTA POSITION:**

Staff recommends: SUPPORT

AMENDED IN SENATE MAY 20, 2021

AMENDED IN SENATE APRIL 14, 2021

AMENDED IN SENATE MARCH 22, 2021

## SENATE BILL

**No. 790**

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**Introduced by Senators Stern and Cortese**  
(Principal coauthor: Assembly Member Friedman)  
(*Coauthor: Senator Archuleta*)  
(Coauthor: Assembly Member Bloom)

February 19, 2021

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An act to add Chapter 13 (commencing with Section 1950) to Division 2 of the Fish and Game Code, relating to fish and wildlife.

### LEGISLATIVE COUNSEL'S DIGEST

SB 790, as amended, Stern. Wildlife connectivity mitigation credits.

Existing law vests the Department of Fish and Wildlife (DFW) with jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. Existing law vests the Department of Transportation (Caltrans) with full possession and control of the state highway system.

This bill would require DFW, in consultation with Caltrans, to provide compensatory mitigation credits to support modifications and planning of projects on the state highway system that improve local and regional habitat connectivity and result in fish passage, wildlife connectivity, and other environmental improvements. *The bill would prohibit, in each fiscal year, DFW from providing compensatory mitigation credits for more than 10 new projects, as described above, or for more than 2 of those projects in each region.* The bill would authorize Caltrans to

request DFW to issue credits for actions that Caltrans takes to improve fish and wildlife connectivity in connection with a project on the state highway system in excess of any legally required mitigation. The bill would authorize Caltrans to use those credits to satisfy obligations to mitigate the impacts of projects on the state highway system on fish and wildlife in the same Caltrans district.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

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

- 1     SECTION 1. The Legislature finds and declares all of the  
2     following:
- 3     (a) California’s climate is changing. Rising temperatures,  
4     increases in the frequency and severity of extreme events like  
5     drought and wildfire, changing ocean conditions, and shifts in  
6     precipitation patterns all pose threats to California’s plants and  
7     animals.
- 8     (b) These extreme changes alter the temperature ranges in which  
9     species thrive and survive, causing stress to plants and animals.  
10    This creates a series of cascading effects like altering predator-prey  
11    relationships, causing fluctuations in food and water supplies, and  
12    exacerbating human-caused stressors like contaminants and habitat  
13    loss.
- 14    (c) Land use has been changing as the state’s population  
15    continues to grow. Development decisions sometimes result in the  
16    conversion of grasslands, rangelands, and other natural lands and  
17    working lands to urban uses. This destroys natural habitats and  
18    corridors necessary for migration of species, which are even more  
19    important under changing climate conditions.
- 20    (d) As regional weather patterns and habitat continue to shift  
21    due to climate change, wildlife populations will likely require new  
22    foraging, breeding, and sheltering locations. Connectivity between  
23    existing core habitat areas and those required to support future  
24    wildlife populations will be crucial to allow safe migration of  
25    species between protected areas as climate patterns shift.
- 26    (e) The report prepared by the Transportation Permitting Task  
27    Force pursuant to Section 155.7 of the Streets and Highways Code  
28    makes the recommendation that agencies should establish a

crediting framework for projects that result in fish passage and wildlife connectivity.

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

CHAPTER 13. WILDLIFE CONNECTIVITY MITIGATION CREDITS

1950. For purposes of this chapter, the following terms apply:

(a) "Region" means a Department of Transportation district.

(b) "Transportation project" means a project to construct or improve a portion of the state highway system.

1951. (a) (1) The Department of Fish and Wildlife, in consultation with the Department of Transportation, shall provide compensatory mitigation credits to support modifications and planning of transportation projects that improve local and regional habitat connectivity and result in fish passage, wildlife connectivity, and other environmental improvements. These environmental improvements may include, but are not limited to, all of the following:

(A) An overpass or underpass.

(B) Vegetation management.

(C) Directional fencing.

(D) Barrier modification.

(2) *In each fiscal year, the Department of Fish and Wildlife shall not provide compensatory mitigation credits for more than 10 new transportation projects that improve local and regional habitat connectivity and result in fish passage, wildlife connectivity, and other environmental improvements, as described in paragraph (1), or for more than two of those projects in each region.*

~~(2)~~

(3) In determining the value of compensatory mitigation credits for actions undertaken by the Department of Transportation, the Department of Fish and Wildlife shall consider all of the following:

(A) The impact on the ability of wildlife to access the opposite side of the roadway, including the length of the barrier, the distance of roadway until the next wildlife crossing, and the number of lanes *that* wildlife would need to cross.

(B) The value of the habitat on the opposite side of the roadway, including impacts on genetic diversity, wildlife migration, and access to additional latitudes and altitudes of habitat to adapt to climate change.

(C) The impact on critical terrestrial habitat linkages, including, but not limited to, the Santa Monica ~~Mountains~~, *Mountains and Rim of the Valley Corridor*, Santa Ana Mountains, San Gabriel Mountains, San Bernardino Mountains, Santa Cruz Mountains, and the Gabilan Mountain Range.

(D) Topography, watercourse presence, vegetative cover, mortality data, or other factors that increase the likelihood of use, or value of, a particular location for connectivity.

(b) In determining the value of the compensatory mitigation credits under this section, the Department of Fish and Wildlife and the Department of Transportation may consult with the United States Fish and Wildlife Service, the National Marine Fisheries Service, and the United States Army Corps of Engineers.

(c) If the Department of Transportation takes actions to improve fish and wildlife connectivity in connection with a transportation project, the Department of Transportation may request that the Department of Fish and Wildlife issue credits for any action that the Department of Transportation ~~completed~~ *completes* in excess of any legally required mitigation. The Department of Fish and Wildlife shall issue the credits to the Department of Transportation in accordance with the requirements of this chapter.

(d) The Department of Fish and Wildlife, for purposes of implementing this section, may develop an in-lieu fee program.

(e) The Department of Transportation may use compensatory mitigation credits issued pursuant to subdivision (c) to satisfy obligations to mitigate the impacts of transportation projects on fish and wildlife required by any of the following laws:

(1) The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

- 1     (2) The California Endangered Species Act (Chapter 1.5
- 2     (commencing with Section 2050) of Division 3).
- 3     (3) The Lake and Streambed Alteration Program established
- 4     pursuant to Chapter 6 (commencing with Section 1600).
- 5     (f) The Department of Transportation may only use
- 6     compensatory mitigation credits issued pursuant to subdivision
- 7     (c) within the same region in which the credits were issued.

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