

The Williamson Act: Past, Present, Future?

A Legislative Oversight Hearing

Wednesday, March 3, 2010
State Capitol, Room 112

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To promote the conservation, preservation and continued existence of open space lands, the Legislature may define open space land and shall provide that when this land is enforceably restricted, in a manner specified by the Legislature, to recreation, the enjoyment of scenic beauty, use or conservation of natural resources, or production of food or fiber, it shall be valued for property tax purposes only on a basis that is consistent with its restrictions and uses.

California Constitution Article XIII §8
Originally added by Proposition 3 (1966)

The Williamson Act: Past, Present, Future? A Legislative Oversight Hearing

This briefing paper prepares the members of the Senate Local Government Committee for their March 3, 2010 oversight hearing on the Williamson Act.

With 16.6 million acres under Williamson Act contracts, the statute affects about half of California's farmland. That's nearly one-third of all private real estate. These voluntary contracts between landowners and local officials stretch from urbanism's edges to the far reaches of the most rural counties. Fifty-three of the 58 counties have land under contract. Alpine, Del Norte, Inyo, San Francisco, and Yuba counties are the exceptions. Since 1972-73, the State General Fund has paid about \$875 million as direct subventions to the participating county governments.

Despite the law's broad application, the 2009-10 State Budget all but eliminated the State General Fund's direct subventions to counties for this 45-year old effort. Landowners, conservation groups, and county officials now question the state government's commitment to conserving farmland and open space.

The March 3 hearing is an opportunity for the five Senators who serve on the Senate Local Government Committee to review the California Land Conservation Act of 1965. When the future of the Williamson Act comes up in other policy committees, during debates over the State Budget, and in closed caucuses, other legislators can turn for advice to Senators Cox, Kehoe, Aanestad, Price, and Wiggins.

How It Works

What most call the Williamson Act is the result of three interlocking statutes:

The California Land Conservation Act of 1965 ("Williamson Act") allows landowners to contract with counties to conserve their properties as farmland and open space (Government Code §51200, et seq.).

Mandatory property tax reassessments for the lands that are enforceably restricted to open space uses (California Constitution Article XIII §8; Revenue & Taxation Code §421, et seq.).

Open space subventions paid by the State General Fund to counties for the Williamson Act contracted lands (Government Code §16140, et seq.).

Land in agricultural production and other open space uses are eligible for Williamson Act contracts. Landowners and counties can voluntarily sign ten-year contracts that automatically renew annually, so that a contract's termination date is always a decade away. The Farmland Security Zone program within the Williamson Act allows landowners to sign 20-year contracts, resulting in lower property tax assessments and more protection for their agricultural and open space lands.

It is relatively difficult to end a Williamson Act contract, but there are five main methods:

- *Nonrenewal*: contracts run out over the next nine years.
- *Cancellation*: contracts can end immediately if counties make findings and landowners pay penalties.
- *Rescission*: contracts end when other programs protect the land.
- *Public acquisition*: contracts end when agencies buy or condemn the land.
- *Annexation*: contracts may end when certain cities annex the lands.

While their lands are subject to Williamson Act contracts, landowners give up the right to develop their farms, ranches, and open space lands. In return, counties must reassess the contracted lands to reflect these enforceable restrictions. County assessors rely on clear constitutional authority and complicated statutory formulas to determine “use value” preferential tax assessments for the contracted lands.

The State General Fund pays direct subventions to counties (and a few cities) to replace the property tax revenues that the local governments forgo because of the preferential tax assessments. The subvention payments for prime agricultural land are higher than subventions for nonprime land. The State General Fund also pays indirect subventions to school districts to replace all of the property tax revenues that schools lose because of the lower property tax assessments on the Williamson Act contracted lands.

State Policies, State Programs

California's efforts to conserve agricultural and open space lands rely on constitutional and statutory foundations, but also need the willing cooperation of the affected landowners and county officials. Underlying the subventions and contracts is the language added to the California Constitution by Proposition 3 (1966). This briefing paper reprints the key language in the box on the Table of Contents page.

Government Code §51220: Williamson Act's Statement of Legislative Intent

51220. The Legislature finds:

(a) That the preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state's economic resources, and is necessary not only to the maintenance of the agricultural economy of the state, but also for the assurance of adequate, healthful and nutritious food for future residents of this state and nation.

(b) That the agricultural work force is vital to sustaining agricultural productivity; that this work force has the lowest average income of any occupational group in this state; that there exists a need to house this work force of crisis proportions which requires including among agricultural uses the housing of agricultural laborers; and that such use of agricultural land is in the public interest and in conformity with the state's Farmworker Housing Assistance Plan.

(c) That the discouragement of premature and unnecessary conversion of agricultural land to urban uses is a matter of public interest and will be of benefit to urban dwellers themselves in that it will discourage discontinuous urban development patterns which unnecessarily increase the costs of community services to community residents.

(d) That in a rapidly urbanizing society agricultural lands have a definite public value as open space, and the preservation in agricultural production of such lands, the use of which may be limited under the provisions of this chapter, constitutes an important physical, social, esthetic and economic asset to existing or pending urban or metropolitan developments.

(e) That land within a scenic highway corridor or wildlife habitat area as defined in this chapter has a value to the state because of its scenic beauty and its location adjacent to or within view of a state scenic highway or because it is of great importance as habitat for wildlife and contributes to the preservation or enhancement thereof.

(f) For these reasons, this chapter is necessary for the promotion of the general welfare and the protection of the public interest in agricultural land.

Building on that constitutional foundation, the Williamson Act contains very clear legislative findings, as reprinted on page 3.

In addition to these constitutional and statutory provisions, a collaboration among landowners, county governments, and state officials implements the Williamson Act to achieve at least five very broad policy goals:

- Promoting food security by protecting the land base.
- Encouraging agricultural support industries.
- Complementing regulatory efforts to curb sprawl.
- Avoiding costly public facilities and public services.
- Promoting environmental quality and resource values.

Other state laws contain links to Williamson Act contracted land:

The *Planning and Zoning Law* requires county and city general plans to identify agricultural and open space lands in their land use, conservation, and open space elements. Further, 33 counties and 21 cities report adopting optional agricultural elements as part of their state-mandated general plans.

The *Subdivision Map Act* prohibits county supervisors and city councils from approving the subdivision of Williamson Act contracted lands if the resulting parcels would be too small to sustain their agricultural use, or if the subdivision would result in residential development that wasn't incidental to commercial agricultural production.

The *Cortese-Knox-Hertzberg Local Government Reorganization Act* generally prohibits a local agency formation commission (LAFCO) from placing Williamson Act contracted lands within the sphere of influence of a city or special district that provides sewers, nonagricultural water, or streets. State law also prohibits a LAFCO from annexing contracted land to those cities and districts.

The *Community Redevelopment Law* prohibits local officials from including Williamson Act contracted lands in redevelopment project areas.

Appendix G of the *CEQA Guidelines*, the formal state regulations that interpret the *California Environmental Quality Act (CEQA)*, require public officials who conduct an initial study for a proposed development to determine whether the project would conflict with a Williamson Act contract.

The Past: An Historical Sketch

After efforts to preserve open space and agricultural land suffered discouraging defeats, in 1963 the Assembly created an interim committee and an expert advisory group to develop an acceptable solution. The result was AB 2117 (Williamson, 1965) which enacted the California Land Conservation Act of 1965. In 1967, the Legislature added the title “Williamson Act” to honor the statute’s author, Assemblyman John C. Williamson who represented Kern County from 1959 to 1966.

Based on a chronology prepared by University of California researchers, **Table 1** on pages 6 and 7, traces the Williamson Act’s key historical milestones and shows other related actions in *italics*.

Statutory evolution. Like all statutory programs, the Williamson Act reflects the economic and political conditions that existed when the Legislature passed the statute. Similarly, statutory amendments and program adjustments over the last 45 years reflect continually changing conditions and concerns. When legislators created the Williamson Act in 1965, the *Planning and Zoning Law* already mandated counties and cities to adopt general plans, but the statute required only three elements: land use, circulation, and housing. Legislators didn’t add the requirements for the conservation and open space elements until 1970. That year, the Legislature also passed the *California Environmental Quality Act (CEQA)*. Bills passed in 1971 adopted the *vertical consistency requirement*, requiring local zoning and subdivision decisions to be consistent with county and city general plans. Also in 1971, legislators told the local agency formation commissions (LAFCOs) to adopt policy documents called *spheres of influence* to guide development away from open space lands. *Proposition 13* (1978) fundamentally changed how counties assess property tax values. The state government lacked a reliable way to track agricultural acreage until the 1982 bill that created the *Farmland Mapping and Monitoring Program* within the California Department of Conservation.

Other approaches. The Williamson Act is not the only statutory program that allows landowners to voluntarily conserve agricultural, open space, and other resource lands. The Open-Space Easement Act of 1974, the 1979 conservation easement law, and the 1995 California Farmland Conservancy Program Act all rely on voluntary easements to protect land resources. In addition, the California Timberland Productivity Act of 1982 uses landowners’ contracts to trigger the preferential property tax assessments, similar to the Williamson Act’s approach.

Table 1: Key Milestones in the Williamson Act's History

1965	<p>AB 2117 (Williamson) creates the California Land Conservation Act.</p> <p><i>Legislature requires the equalization of local property tax assessments, resulting in higher property tax bills on rural lands.</i></p>
1966	<p>Proposition 3 amends the California Constitution to allow for the preferential assessment of open space lands.</p>
1967	<p>Legislature adopts the capitalization of income method for assessing contracted lands.</p>
1967-70	<p>Bills expand the definition of the lands that are eligible for contracts.</p>
1969	<p>Legislature allows contract cancellations, but requires county officials to make findings and landowners to pay cancellation fees.</p>
1970	<p><i>Legislature passes the California Environmental Quality Act (CEQA).</i></p> <p><i>Legislature requires counties and cities to include conservation elements and open space elements in their general plans.</i></p>
1971	<p>Legislature creates the state subvention program.</p> <p><i>Legislature requires county and city zoning and subdivision decisions to be consistent with their general plans.</i></p>
1974	<p><i>Legislature authorizes open space easements.</i></p>
1976	<p>Legislature changes subventions to eliminate direct payments to schools and to emphasize urban prime lands.</p> <p><i>Legislature begins to equalize school funding after <u>Serrano</u> decision.</i></p> <p>Legislature creates Timber Preserve Zones, starting the transfer of timberland out of Williamson Act contracts.</p>
1978	<p><i>Proposition 13 amends the California Constitution to roll back the full cash value of property assessments and to limit reassessments.</i></p>

- 1979 Legislature caps contracted lands' assessments to their Proposition 13 assessments.
- Legislature authorizes conservation easements.*
- 1981 California Supreme Court limits contract cancellations to "extraordinary" situations. Legislature adopts tighter cancellation rules.
- 1982 Legislature allows counties to limit contracted lands' assessments to 70% of their Proposition 13 assessments.
- Legislature creates the Farmland Mapping and Monitoring Program.*
- 1984 Legislature limits the subdivision of contracted lands.
- 1987 Legislature codifies fair market value as the basis for computing landowners' cancellation fees.
- 1988 Department of Conservation starts its audit program.
- 1989 Department of Conservation publishes *Land in the Balance*.
- 1993 Legislature triples the state subventions for contracted land.
- 1994 Legislature creates specific standards for compatible uses.
- 1995 *Legislature authorizes agricultural conservation easements, now called the California Farmland Conservancy Program.*
- 1996 *Proposition 218 amends the California Constitution to limit local taxes, assessments, and fees.*
- 1998 Legislature creates Farmland Security Zones within the Williamson Act with longer contracts, lower assessments, and other protections.
- 2008 Legislature reduces the state subventions for contracted land by 10%.
- 2009 Governor cuts the state subventions for contracted lands to \$1,000.

Source: Based on *Land in the Balance* (1989)

Statewide review. *Land in the Balance* was the state government's most comprehensive look at the Williamson Act. The University of California's Agricultural Issues Center reviewed the law and its implementation, and the California Department of Conservation published the results in December 1989. Although more than two decades old, *Land in the Balance* remains a valuable resource for policy advisors and the decision makers they serve.

The UC researchers estimated a \$12 billion difference between the restricted and unrestricted assessed valuations on Williamson Act contracted land in 1988-89. The general funds of the (then) 48 participating counties received about \$44.5 million less in property tax revenues than they would have without the Williamson Act contracts. Special districts and other county funds received about \$16.4 million less; K-14 school districts about \$59.4 million less. The State General Fund replaced the schools' foregone revenues. In 1988-89, the \$14.5 million in direct state subventions covered about a third of the counties' foregone revenues, although there were county-by-county variations.

Since *Land in the Balance*, both the state-local fiscal relationship and the open space subvention program have changed in significant ways. The Educational Revenue Augmentation Fund (ERAF) shifts that began in 1992-93 moved property tax revenues from cities, counties, special districts, and redevelopment agencies to favor the schools and the State General Fund. The state government significantly increased its direct subvention payments to county governments, starting in 1992.

Because of these important changes, it's impossible to extrapolate from the 1989 findings in *Land in the Balance* to reach detailed conclusions about the Williamson Act's 2010 fiscal effects on counties and school districts.

The Present: Where We Are

In 2007, the last year for which the California Department of Conservation has published its data, 16,565,519 acres were under Williamson Act contracts.

Of those 16.6 million acres, 15.6 million acres were eligible for open space subvention payments from the State General Fund to county governments. Local officials claimed \$37,737,344 in direct General Fund subventions, of which nearly 60% went to San Joaquin Valley counties. **Table 2** on page 9 reports the 10 counties with the highest subventions.

Table 2: Top 10 Subvention Counties (2007)

1. Fresno	\$5,270,408	6. Stanislaus	\$1,466,943
2. Kern	\$4,733,094	7. Merced	\$1,429,352
3. Tulare	\$3,411,417	8. Yolo	\$1,283,038
4. Kings	\$2,681,127	9. Madera	\$1,246,397
5. San Joaquin	\$1,908,313	10. San Luis Obispo	\$1,088,726

Source: California Department of Conservation

Other facts from this 2007 statistical snapshot can help legislators appreciate how landowners and county officials use the Williamson Act:

- Contract nonrenewals covered 535,372 acres.
- Landowners and officials successfully cancelled contracts on 1,788 acres.
- Public agencies terminated contracts when they acquired 14,901 acres.
- Cities annexed 481 acres.

These data shifted over time as the Williamson Act gained acceptance among increasing numbers of landowners and counties. Economic pressures --- commodity prices, energy and labor costs, global competition, land speculation, development pressures --- influenced participation rates. The behavior of landowners and county officials also changed in response to changes in state law. For example, historical records show that in the first two years after the Legislature passed the Williamson Act, counties had signed contracts affecting only 200,000 acres. By 1970-71, about 6.2 million acres were under contract. Five years later (1975-76), with the advent of state subvention payments, 14.4 million acres were subject to Williamson Act contracts.

Subvention payments grew as landowners signed more contracts and the state government increased the subvention formulas. In 1972-73, the first year for the subvention program, the State General Fund paid about \$8.8 million to county governments and some cities. By 1990-91, the direct subventions were \$13.6 million, reflecting the additional acreage under contracts. When the Legislature changed the subvention formulas after the ERAF shifts, payments climbed. In 2005-06, the direct subventions were about \$38.7 million.

Skepticism. As the State General Fund faces a profound structural imbalance between expenditures and revenues, some have questioned the wisdom of the subvention program. When Governor Schwarzenegger's proposed 2003-04 Budget wanted to save about \$39 million by ending the state subvention payments, the Legislative Analyst's Office instead recommended a ten-year phase-out.

The LAO has been generally skeptical of the Williamson Act's benefits. In 2004, the LAO restated its two main concerns about the subventions' effectiveness:

The state exercises no control over the specific land parcels that are put under contract, and as such, cannot ensure that participating lands are in fact at risk in terms of development pressures. As a consequence, it is likely that some lands under contract would not be developed even absent the Williamson Act subventions. As a result, a portion of the tax reduction may result in no behavioral change by the landowner at all.

If such development pressures *should* occur, this results in creating incentives for the landowner to cancel or not renew the contract... As a consequence, the program may not result in permanent changes to land use patterns but simply delay for a relatively short period of time the development of open space and agricultural lands.

Budget cuts. The first cuts came in 2008-09 when legislators passed and Governor Schwarzenegger signed AB 1389 (Assembly Budget Committee, 2008), a State Budget "trailer bill" that ordered the State Controller to reduce the counties' open space subventions by 10%. When it passed the 2009-10 State Budget, the Legislature further reduced the state subventions to \$27.8 million. Exercising his constitutional authority, Governor Schwarzenegger all but eliminated the direct subventions to counties, slashing the annual appropriation to a mere \$1,000.

Reactions. Although agricultural groups and county officials knew about the earlier skepticism, many were shocked by the immediate severity of this year's cut. Landowners, conservation groups, and county officials openly questioned the state government's commitment to conserving farmland and open space.

Newspaper articles last fall reported that some counties stopped accepting and approving landowners' applications for new Williamson Act contracts. Other counties continued to sign new contracts, but expressed wariness about the subvention program's long-term future. A few counties began to explore nonrenewing their existing contracts, which would trigger higher property assessments. On February 23, the Imperial County Board of Supervisors voted to nonrenew its contracts.

At its March 3 oversight hearing, the Committee may wish to consider asking county officials how they are reacting to the subvention cuts:

- ☞ *Have county supervisors nonrenewed existing Williamson Act contracts?*
- ☞ *If so, which counties, how many contracts, and how many acres?*

- ☞ *Have more landowners than usual filed notices of nonrenewal?*
- ☞ *Have more landowners than usual applied for cancellations?*

- ☞ *Have county supervisors stopped signing new Williamson Act contracts?*
- ☞ *If so, in which counties?*

- ☞ *What are the 2009-10 fiscal effects on counties' budgets?*
- ☞ *How have counties responded to this year's loss of subventions?*

The Future: What Comes Next?

The March 3 oversight hearing gives Senators the chance to explore the future of the Williamson Act with county officials, conservation groups, and landowners' representatives. As they think about the future of the Williamson Act, legislators may wish to consider asking the speakers about these topics:

Statewide benefits. Over the last 45 years, landowners, conservation groups, and county officials have claimed at least five statewide benefits of conserving productive agricultural land and open space under the Williamson Act:

- Promoting food security by protecting the land base.
- Encouraging agricultural support industries.
- Complementing regulatory efforts to curb sprawl.
- Avoiding costly public facilities and public services.
- Promoting environmental quality and resource values.

- ☞ *Are these five statewide benefits still important and valuable?*
- ☞ *Should legislators recognize additional statewide benefits?*
- ☞ *Can the Williamson Act help achieve the goals set by AB 32 (2006)?*
- ☞ *Can the Williamson Act help achieve the goals set by SB 375 (2008)?*
- ☞ *Can the Williamson Act help achieve the goals for water conservation and protecting the Sacramento-San Joaquin Delta?*

Land base. The Williamson Act recognizes "prime agricultural land," based on its soil quality, water availability, livestock carrying capacity, and commercial productivity. The Act also defines open space use and compatible uses.

- ☞ *After 45 years, are these statutory definitions still valid?*
- ☞ *Should legislators refocus the Williamson Act on other land categories?*
- ☞ *Should the Act treat cropland, rangeland, and habitat land differently?*

- ☞ *Are the state and local definitions of compatible uses adequate to avoid interference with commercial agriculture and open space uses?*
- ☞ *Should legislators expect pressure from alternative energy producers (solar, wind, biogas) to broaden the compatible use definition?*

Tax relief. The Williamson Act relies on preferential property tax assessments to encourage landowners to voluntarily promote statewide policy goals. Preferential assessments reduce property tax revenues which, in turn, trigger direct and indirect subventions from the State General Fund. Property tax relief helps landowners stay in business, especially ranchers.

- ☞ *Should the Legislature explore other forms of tax relief that could achieve the same statewide policy goals?*
- ☞ *Would state income tax credits be adequate economic incentives for private landowners to preserve agricultural and open space lands?*
- ☞ *Would counties and school districts prefer to receive property tax revenues rather than state subvention payments?*
- ☞ *Should state income tax credits be proportional to landowners' income?*
- ☞ *Should legislators link a landowner's eligibility for state income tax credits to land, water, and energy conservation practices?*
- ☞ *Should legislators offer state income credits to landowners in every county or should legislators require counties to adopt programs to promote agriculture and open space before landowners are eligible?*

Contracts. The term for a standard Williamson Act contract is 10 years, automatically renewing annually. Farmland Security Zone contracts run for 20 years, offer better protection from development, and require higher cancellation fees.

- ☞ *Are there statutory obstacles that discourage landowners and counties from signing voluntary contracts?*
- ☞ *What is the state government's role in supervising and enforcing Williamson Act contracts between landowners and county governments?*
- ☞ *Should the Legislature close the Williamson Act to new contracts, encouraging landowners and counties to sign Farmland Security Zone contracts instead?*

Terminations. The California Supreme Court said that the constitutionality of preferential property tax assessments depends on enforceable restrictions on agricultural and open space uses. Nevertheless, there have been controversies over how contracts terminate: nonrenewals, cancellations, rescissions, public agency acquisitions, and city annexations.

- ☞ *Are the cancellation fees and findings adequate to discourage speculative investments and development pressures on contracted lands?*
- ☞ *Are there adequate safeguards to discourage public agency acquisition of Williamson Act contracted lands for non-agricultural use? Habitat use?*

County programs. If the Legislature is unlikely to restore subventions to replace lost property tax revenues, some counties may wish to consider running their own land conservation programs. Some have talked about a “Williamson Act 2.0.”

- ☞ *Should legislators pass an alternative law, without state subventions, that allows counties and landowners to agree on enforceable land use restrictions to obtain lower property assessments?*

Subventions. Until recently, the State General Fund invested nearly \$40 million a year in direct subventions to counties; more in indirect subventions to schools.

- ☞ *Is the state government likely to restore the counties’ direct subventions?*
- ☞ *Are there alternatives to State General Fund revenues to pay for the counties’ direct subventions?*
- ☞ *Should legislators earmark cancellation fee revenues as a partial source of funding for county subventions?*
- ☞ *Should legislators increase cancellation fees to recover the landowners’ historical property tax benefits?*
- ☞ *Should legislators impose termination fees on public agencies’ acquisitions? Should the termination fees be similar to the cancellation fees?*
- ☞ *Should legislators impose fees when cities annex land and terminate the contracts? Should these termination fees be similar to cancellation fees?*
- ☞ *Should legislators earmark material breach penalty fee revenues as a partial source of funding for county subventions?*
- ☞ *Should legislators charge annual fees on “compatible uses” that displace agricultural production or open space uses on contracted lands?*
- ☞ *Should legislators recapture some of the historical property tax benefits that occur when contracted land changes ownership?*
- ☞ *Should legislators impose a state surcharge on local building permit fees as a partial source of funding for county subventions?*
- ☞ *Should legislators impose a state mitigation fee on projects that convert agricultural and open space land to new development?*
- ☞ *Are there other revenue streams that legislators should explore to fund county subventions? Oil severance taxes? Tidelands leases? Credits for carbon sequestration? Commercial agricultural marketing orders?*

Sources & Credits

The following publications helped the Senate Local Government Committee's staff prepare this briefing paper:

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The California Department of Conservation's Division of Land Resource Protection maintains a useful website with important information about the Williamson Act, use value property assessments, and open space subventions:

www.conservation.ca.gov/dlrp/Pages/index.aspx



Elvia Diaz, the Committee Assistant, produced this briefing paper. Peter Detwiler, staff consultant, wrote the paper. The mistakes are his, but he gratefully acknowledges the advice he received from Dan Chia, Jim Collin, John Gamper, Bill Geyer, Brian Leahy, Steve Oliva, Marianne O'Malley, and Ed Thompson, among others.