

AMENDED IN ASSEMBLY MAY 27, 2011
AMENDED IN ASSEMBLY MARCH 30, 2011
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 752

**Introduced by Assembly Member Brownley
(Coauthor: Assembly Member Chesbro)**

February 17, 2011

An act to add Section 6315 to the Public Resources Code, relating to tidelands and submerged lands.

LEGISLATIVE COUNSEL'S DIGEST

AB 752, as amended, Brownley. Tidelands and submerged lands: sea level action plan.

Existing law grants to various local entities the right, title, and interest of the State of California in and to certain tidelands and submerged lands in trust generally for purposes of commerce, navigation, and fisheries, and for other public trust purposes.

~~This bill would require each local trustee of granted public trust lands, as defined, to give management priority to, and take all reasonable actions that are necessary for, the preparation of a sea level action plan for all of its legislatively granted public trust lands. The bill would require a local trustee to prepare the plan by January 1, 2013, and submit the plan to the State Lands Commission which would make the plan available to the public on its Web site specify that the preparation of a sea level action plan for all of its legislatively granted public trust lands shall be among the management priorities of a local trustee of granted public lands, as defined. The bill would require a local trustee whose gross public trust revenues, as defined, exceed \$250,000 to prepare a~~

sea level action plan for those lands by July 1, 2013, but would specify that all other local trustees may, but are not required to, prepare a plan. The bill would require the plan to include, among other things, an assessment of the impact of *a range of* sea level rise on granted public trust lands, an estimate of the financial cost of this impact, and strategies to prevent or mitigate damage to development and infrastructure and to protect and enhance habitat.

This bill would require the State Lands Commission to exempt a local trustee of granted public trust lands from the requirement to prepare a sea level action plan or grant a deadline extension if the revenues derived from its granted public trust lands and assets or funding to it from *other sources such as the Ocean Protection Council* are not sufficient to pay for the cost of developing the plan.

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) Upon admission to the United States, and as incident of its
- 4 sovereignty, the State of California received title to the tidelands,
- 5 submerged lands, and beds of navigable waterways within its
- 6 borders to be held subject to the public trust doctrine for statewide
- 7 public purposes, including commerce, navigation, fisheries,
- 8 preservation of lands in their natural state, and other recognized
- 9 public trust uses.
- 10 (b) The state has made grants of public trust lands to over 80
- 11 local public entities, each of which manages the state's public trust
- 12 lands as trustee pursuant to the public trust doctrine, legislative
- 13 grants, the California Constitution, and other laws governing the
- 14 trust and the trustee's fiduciary responsibilities.
- 15 (c) A local trustee of granted public trust lands is charged with
- 16 managing the state's granted public trust lands on behalf of the
- 17 state for the benefit of all the people of California.
- 18 (d) As part of its fiduciary duty, a local trustee of granted public
- 19 trust lands is required to take reasonable steps under the
- 20 circumstances to take and keep control of and preserve the trust
- 21 property.

1 (e) The effects of climate change and sea level rise will have
2 significant implications for the state’s economic and social future.

3 (1) Approximately 80 percent of California’s ~~33~~ 38 million
4 residents live within 50 kilometers of the Pacific Ocean.

5 (2) The coastal economy contributes more than \$50 billion
6 annually to the State of California.

7 (3) Port activities alone in California generate an estimated \$7
8 billion in state and local tax revenues annually and employ more
9 than one-half million people in California. Nationwide more than
10 2 million jobs are connected to California ports.

11 (4) *Research funded by the state has shown that a 55-inch sea*
12 *level rise, with a 100-year storm event along the California coast*
13 *places approximately 480,000 people (based on population in*
14 *2009) and nearly one hundred billion dollars (\$100,000,000,000)*
15 *of property at risk.*

16 (5) *Coastal habitats, including wetlands and beaches, provide*
17 *important ecological, recreational, and scenic functions and values,*
18 *which are threatened by sea level rise, unless actions are taken to*
19 *effectively manage these habitats and adjacent lands.*

20 (6) *Many state entities, such as the Governor’s Office of*
21 *Planning and Research, the Strategic Growth Council, the Ocean*
22 *Protection Council, the San Francisco Bay Conservation and*
23 *Development Commission, the California Coastal Commission,*
24 *and the State Lands Commission have supported efforts to develop*
25 *tools and to increase accessibility to existing state data, and to*
26 *provide additional data and tools to help local, regional, and state*
27 *agencies make informed decisions.*

28 ~~(4)~~

29 (7) In 2007, more than 40 percent of the total containerized
30 cargo entering the United States arrived at California ports, and
31 almost 30 percent of the nation’s exports left from California ports.

32 ~~(5)~~

33 (8) In 2002, cargo operations shut down at west coast ports for
34 10 days, and the estimated loss to the national economy was \$1
35 billion per day.

36 (f) The use of revenues received from trust lands and trust assets
37 by a local trustee of granted public trust lands is limited by the
38 legislative grant, the public trust doctrine, and other laws governing
39 the trust. An evaluation of the impacts of sea level rise on granted
40 public trust lands is directly related to the operation and

1 management of these resources managed on behalf of the state by
2 local trustees and is, therefore, a purpose consistent with the public
3 trust for commerce, navigation, and fisheries, and the applicable
4 legislative grants.

5 (g) Whereas a local trustee of granted public trust lands holds
6 and manages its public trust property, including the lands and
7 revenue derived from that property, as a state asset for the benefit
8 of the people of California and cannot use the trust corpus for
9 general municipal purposes or other purposes not consistent with
10 the public trust doctrine and its legislative grant, and because the
11 State Lands Commission is provided with a mechanism in this act
12 to exempt a local trustee that does not have sufficient state funds,
13 either through the trust or other existing funding mechanisms, to
14 pay for the cost of developing a sea level action plan, there is no
15 state-mandated local program that results from the implementation
16 of this act.

17 SEC. 2. Section 6315 is added to the Public Resources Code,
18 to read:

19 6315. (a) For the purposes of this section, “a local trustee of
20 granted public trust lands” means a county, city, or district,
21 including water, sanitary, regional park, port, or harbor district, or
22 any other local political or corporate subdivision that has been
23 granted public trust lands through a legislative grant.

24 ~~(b) A local trustee of granted public trust lands shall give~~
25 ~~management priority to, and take all reasonable actions that are~~
26 ~~necessary for, the preparation of a sea level action plan pursuant~~
27 ~~to this section for all of its legislatively granted public trust lands.~~

28 ~~(c) The plan shall be prepared by July 1, 2013, and in~~
29 ~~consideration of, and using relevant information contained in, the~~
30 ~~2009 California Climate Adaptation Strategy prepared by the~~
31 ~~Natural Resources Agency, the Report on Sea Level Rise~~
32 ~~Preparedness prepared by the State Lands Commission, the Sea~~
33 ~~Level Rise Assessment Report prepared by the National Academy~~
34 ~~of Science if the report becomes available before the plan is due,~~
35 ~~and any subsequent updates to these reports, and any other related~~
36 ~~resource. The plan shall include all of the following:~~

37 ~~(1) An assessment of the impact of sea level rise on granted~~
38 ~~public trust lands.~~

1 **(b)** For purposes of this section, “gross public trust revenues”
2 means those gross revenues that are subject to subdivision (b) of
3 Section 6306.

4 **(c)** The preparation of a sea level action plan for all of its
5 legislatively granted public trust lands pursuant to this section
6 shall be among the management priorities of a local trustee of
7 granted public lands. The geographic scope of a local trustee’s
8 sea level action plan is not required to go beyond the local trustee’s
9 granted public trust lands.

10 **(d)** For a local trustee whose gross public trust revenues exceed
11 two hundred fifty thousand dollars (\$250,000), the sea level action
12 plan shall be prepared by July 1, 2013. All other local trustees
13 may, but are not required to, prepare a plan.

14 **(e)** **(1)** A sea level action plan shall consider and use relevant
15 information from the 2009 California Climate Adaptation Strategy
16 prepared by the Natural Resources Agency, the Report on Sea
17 Level Rise Preparedness prepared by the State Lands Commission,
18 the Sea Level Rise Assessment Report prepared by the National
19 Academy of Sciences if the report becomes available at least six
20 months prior to the date the plan is due, the resolution of the
21 California Ocean Protection Council on Sea-Level Rise and the
22 State of California Sea-Level Rise Interim Guidance Document
23 and any subsequent updates to those reports that become available
24 6 months prior to the date the plan is due, and any other related
25 resource. The plan shall include all of the following:

26 **(1)** An assessment of the impact of a range of sea level rise on
27 granted public trust lands, as described in the Resolution of the
28 California Ocean Protection Council on Sea-level Rise and the
29 latest version of the State of California Sea-Level Rise Interim
30 Guidance Document.

31 **(2)** Maps showing the areas that may be affected by sea level
32 rise in the years 2050 and 2100. These maps shall include the
33 potential impacts of 100-year storm events. A trustee may rely on
34 appropriate maps generated by other entities.

35 **(3)** An estimate of the financial cost of the impact of sea level
36 rise on granted public trust lands. The estimate shall consider, but
37 is not limited to, both the potential cost of repair of damage to and
38 value of lost use of improvements and land and the anticipated
39 cost to prevent or mitigate potential damage.

1 (4) Strategies to prevent or mitigate damage to existing
2 development and infrastructure, and to protect and enhance
3 undeveloped, vulnerable shoreline areas containing critical habitat
4 and opportunities for habitat creation, including wetland
5 restoration, habitat migration, or the creation of buffer zones on
6 granted public trust lands. ~~When developing these strategies,~~
7 ~~especially along the coastline, a grantee shall consider feasible,~~
8 ~~nonengineered measures, such as coastal setback lines and managed~~
9 ~~retreat of structures. These strategies shall consider, but are not~~
10 ~~limited to, feasible, nonengineered measures.~~

11 (5) Design standards that would avoid or mitigate impacts to
12 new development and infrastructure.

13 (6) Implementation measures and timetables.

14 ~~(d)~~

15 (f) In preparing a sea level action plan, a local trustee shall
16 conduct at least one public hearing and consult with its lessees,
17 local, state, and federal agencies, and other users of the granted
18 public trust lands.

19 ~~(e)~~

20 (g) A copy of the plan shall be submitted to the commission in
21 hard copy and electronic form. The commission shall make the
22 plan available to the public on its Internet Web site and, for
23 informational purposes, send an electronic copy to each member
24 of the Climate Action Team, the Climate Change Program Manager
25 in the office of the Secretary for Environmental Protection, and
26 the Governor's Office of Planning and Research.

27 ~~(f) The commission may~~

28 (h) *The commission shall* exempt a local trustee of granted public
29 trust lands from this section or allow a local trustee to submit a
30 modified sea level action plan if the commission finds either of
31 the following:

32 (1) None of the local trustee's public trust lands is subject to
33 sea level rise by 2100, *based upon the highest projections in the*
34 *most recent version of the State of California Sea-Level Rise*
35 *Guidance Document.*

36 (2) The cost to provide the plan substantially outweighs the
37 benefit the plan would have in preventing the potential economic
38 and environmental harms associated with sea level rise on the local
39 trustee's granted public trust lands.

40 ~~(g)~~

1 (i) The commission shall exempt a local trustee of granted public
2 trust lands from this section or grant a deadline extension if the
3 revenues derived from its granted public trust lands and assets
4 subject to subdivision (b) of Section 6306 or funding made
5 available to it from ~~sources such as the Ocean Protection Council~~
6 *other sources* are not sufficient to pay for the cost of developing
7 the plan.

8 ~~(h)~~

9 (j) The commission shall consider a local trustee's request for
10 an exemption pursuant to subdivision ~~(f) or (g)~~ (h) or (i) at a
11 properly noticed commission meeting if the request is made before
12 November 1, 2012.

13 (k) *This section does not require a local trustee to implement*
14 *the sea level rise plan it develops pursuant to this section.*

15 ~~(i)~~

16 (l) Nothing in this section shall be construed to conflict with
17 Title 14 or Title 50 of the Code of Federal Regulations.