AMENDED IN ASSEMBLY MAY 14, 2012

AMENDED IN ASSEMBLY MAY 2, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 2620

Introduced by Assembly Member Achadjian

February 24, 2012

An act to amend Sections 6305 and 6306 of, to add Section 6009.1 to, and to add and repeal Section 6320 of, the Public Resources Code, relating to tidelands and submerged lands.

LEGISLATIVE COUNSEL'S DIGEST

AB 2620, as amended, Achadjian. Tidelands and submerged lands: granted public trust lands.

(1) Existing law grants to various local entities the right, title, and interest of the state in and to certain tidelands and submerged lands in trust generally for purposes of commerce, navigation, and fisheries, and for other public trust purposes. Existing law vests the State Lands Commission with all jurisdiction and authority remaining in the state as to tidelands and submerged lands as to which grants have been or may be made.

This bill would make various legislative declarations and findings regarding granted public trust lands, the duties of a trustee of state lands, and the prohibition against common trust principles nullifying an act of the Legislature or modifying its duty under the California Constitution to do all things necessary to execute and administer the public trust. The bill would declare that those findings and declarations are declaratory of existing law.

(2) Existing law confers upon counties and cities certain powers granted to the commission with regard to the leasing or granting of rights or privileges with relation to the lands owned by the state.

This bill would instead confer these powers upon the local trustee of granted public trust lands, as defined.

(3) Existing law requires local and state agencies that have been granted sovereign trust lands to provide accurate records of all revenues received from the trust lands and trust assets and of all expenditures of those revenues and requires all revenues received or generated from trust lands to be expended only for those uses and purposes, consistent with the public trust for commerce, navigation, and fisheries, and the applicable statutory grant. Existing law requires a trustee to annually file a detailed statement of revenues and expenditures with the commission.

This bill would instead require the local trustee of granted public trust lands to undertake those duties and would require all funds received or generated from trust lands or trust assets to be segregated in separate accounts from nontrust received or generated funds. The bill would require the annual statement required to be filed with the commission to include a standardized reporting form, and would provide that the information in the statement and form is a public record, to be made available on the commission's Internet Web site.

The bill would provide that all costs incurred by a local trustee of granted public trust lands to implement the bill be paid from the revenues derived from its granted public trust lands and assets. The bill would require the commission to exempt a local trustee of granted public trust land from the duties imposed by the bill if the revenues derived from its granted public trust lands and assets are not sufficient to pay for those costs, as specified.

The bill would create a state-mandated local program by imposing new duties with regard to the duties that the bill would impose upon local agencies that are local trustees of granted public trust lands.

(4) The bill would require the commission to prepare a workload analysis and implementation plan by September 1, 2013, and to submit the plan to specified committees of the Legislature and the Department of Finance. The bill would make the report provision inoperative September 1, 2017, and would repeal it on January 1, 2018.

~~(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

SECTION 1. The Legislature finds and declares all of the following:

(a) Upon admission to the United States, and as an incident of its sovereignty, the State of California received title to the tidelands, submerged lands, and beds of navigable waterways within its borders to be held subject to the public trust doctrine for statewide public purposes, including commerce, navigation, fisheries, preservation of lands in their natural state, and other recognized public trust uses.

(b) The state has made grants of public trust lands to over 80 local public entities, each of which manages the state's public trust lands as trustee pursuant to the public trust doctrine, legislative grants, the California Constitution, and other laws governing the trust and the trustee's fiduciary responsibilities.

(c) A local trustee of granted public trust lands is charged with managing the state's granted public trust lands on behalf of the state for the benefit of all the people of California.

(d) As part of its fiduciary duty, a local trustee of granted public trust lands is required to take reasonable steps under the circumstances to take and keep control of and preserve the trust property.

(e) All jurisdiction and authority remaining in the state as to tidelands and submerged lands as to which grants have been or may be made is vested in the State Lands Commission.

(f) The use of revenues received from trust lands and trust assets by a local trustee of granted public trust lands is limited by the legislative grant, the public trust doctrine, and other laws governing the trust. An evaluation of the proper use of granted public trust lands necessarily includes evaluating whether the operation and management of these resources managed on behalf of the state by local trustees is consistent with the public trust for commerce, navigation, and fisheries, and the applicable legislative grants.

(g) According to the State Auditor's report of August 2011, the State Lands Commission "has not developed an audit plan designed to ensure that the revenues generated on these granted lands are used properly," and that "without oversight of granted lands, the commission is neglecting its responsibility to protect the public trust and risks having to address additional ongoing abuses of funds dedicated for public trust uses."

(h) As a result of the August 2011 review, the State Auditor concluded that the State Lands Commission should establish a monitoring program to ensure that the funds generated from granted lands are expended in accordance with the public trust. The State Auditor further concluded that, despite current understaffing concerns, "the commission should perform a workload analysis to determine the staffing levels it needs to fulfill its oversight responsibilities of granted lands."

(i) ~~As a~~ *A* local trustee of granted public trust lands holds and manages its public trust property, including the lands and revenue derived from that property, as a state asset for the benefit of the people of California and cannot use the trust corpus for general municipal purposes or other purposes not consistent with the public trust doctrine and its legislative grant~~, and because~~. *Because the costs that may be incurred by a local trustee of granted public trust lands to implement this act are required to be paid solely from the revenues derived from that property, and because* the State Lands Commission is ~~only being provided with a mechanism in~~ *required by* this act to ~~sufficiently monitor the use and application of these state funds, there is no state-mandated local program that results from~~ *exempt a local trustee that does not derive sufficient funds from those assets to pay for the costs imposed by this act, the state would not be required to reimburse a trustee for* the implementation of this act.

SEC. 2. Section 6009.1 is added to the Public Resources Code, to read:

6009.1. The Legislature finds and declares all of the following:

(a) Granted public trust lands remain subject to the supervision of the state and the state retains its duty to protect the public interest in granted public trust lands.

(b) The state acts both as the trustor and the representative of the beneficiaries, who are all of the people of this state, with regard to public trust lands, and a grantee of public trust lands, including tidelands and submerged lands, acts as a trustee, with the granted tidelands and submerged lands as the corpus of the trust.

(c) A grantee may fulfill its fiduciary duties as trustee by determining the application of each of the following duties, all of which are applicable under common trust principles:

(1) The duty of loyalty.

(2) The duty of care.

(3) The duty of full disclosure.

(4) The duty to keep clear and adequate records and accounts.

(5) The duty to administer the trust solely in the interest of the beneficiaries.

(6) The duty to act impartially in managing the trust property.

(7) The duty to not use or deal with trust property for the trustee's own profit or for any other purpose unconnected with the trust, and to not take part in a transaction in which the trustee has an interest adverse to the beneficiaries.

(8) The duty to take reasonable steps under the circumstances to take and keep control of and to preserve the trust property.

(9) The duty to make the trust property productive under the circumstances and in furtherance of the purposes of the trust.

(10) The duty to keep the trust property separate from other property not subject to the trust and to see that the trust property is designated as property of the trust.

(11) The duty to take reasonable steps to enforce claims that are part of the trust property.

(12) The duty to take reasonable steps to defend actions that may result in a loss to the trust.

(13) The duty to not delegate to others the performance of acts that the trustee can reasonably be required to perform and to not transfer the administration of the trust to a cotrustee. If a trustee has properly delegated a matter to an agent, the trustee has a duty

to exercise direct supervision over the performance of the delegated matter.

(d) All duties endowed upon a trustee of state lands shall depend upon the terms of the trust, and if there is no provision, express or implied, within the terms of the trust, a statute, or a grant, the trustee's duties shall be interpreted and determined by principles and rules evolved by courts of equity with respect to common trust principles.

(e) Common trust principles do not nullify an act of the Legislature or modify its duty under the California Constitution to do all things necessary to execute and administer the public trust.

SEC. 3. Section 6305 of the Public Resources Code is amended to read:

6305. The powers granted by this chapter to the commission as to leasing or granting of rights or privileges with relation to the lands owned by the state are hereby conferred upon the local trustee of granted public trust lands to which those lands have been granted.

SEC. 4. Section 6306 of the Public Resources Code is amended to read:

6306. (a) For purposes of this division, "local trustee of granted public trust lands" means a county, city, or district, including a water, sanitary, regional park, port, or harbor district, or any other local, political, or corporate subdivision that has been granted~~, or in the future may be granted,~~ conveyed, or transferred by statute, public trust lands, including tidelands, submerged lands, or the beds of navigable waters, through a legislative grant. A local trustee of granted public trust lands is a trustee of state lands.

(b) Notwithstanding any other law, every local trustee of granted public trust lands shall establish and maintain accounting procedures, in accordance with generally accepted accounting principles, providing accurate records of all revenues received from the trust lands and trust assets and of all expenditures of those revenues. If a trust grantee has several trust grants of adjacent lands and operates the granted lands as a single integrated entity, separation of accounting records for each trust grant is not required.

(c) All revenues received from trust lands and trust assets administered or collected by a local trustee of granted public trust lands shall be expended only for those uses and purposes consistent with the public trust for commerce, navigation, and fisheries, and the applicable statutory grant.

(d) All funds received or generated from trust lands or trust assets shall be segregated in separate accounts from nontrust received or generated funds.

(e) (1) Unless otherwise prescribed by an applicable statutory grant, on or before October 1 of each year, each local trustee of granted public trust lands shall file with the commission a detailed statement of all revenues and expenditures relating to its trust lands and trust assets, including obligations incurred but not yet paid, covering the fiscal year preceding submission of the statement.

(2) The statement shall be prepared in accordance with generally accepted accounting principles and may take the form of an annual audit prepared by or for the local trustee of granted public trust lands.

(3) (A) The detailed statement shall be submitted along with a standardized reporting form developed by the commission.

(B) The commission shall use an existing reporting form previously developed for purposes of this paragraph, if a finding is made by the commission that it is generally responsive to the needs of the commission as prescribed in this section. Alternatively, the commission may develop a reporting form that requires a local trustee of granted public lands to report on all of the following:

(i) A summary of all funds received or generated from trust lands or trust assets.

(ii) A summary of all spending of funds received or generated from trust lands or trust assets.

(iii) Any other disposition of funds received or generated from trust lands or trust assets or of the trust lands or trust assets themselves.

(iv) A description of the manner in which the statement required by this subdivision and accompanying the reporting form is organized.

(v) Any other information that the commission deems to be included in an accounting of granted public trust lands.

(C) The adoption of the form by the commission pursuant to this subdivision is the prescription of a form for purposes of subdivision (c) of Section 11340.9 of the Government Code.

(4) All forms and supporting statements submitted pursuant to this section shall be public records and be made available on the commission's Internet Web site.

(f) (1) The costs that may be incurred by a local trustee of granted public trust lands that result from any new duties imposed upon that trustee by the act amending this section in the 2011–12 Regular Session of the Legislature, including the requirement to submit a standardized reporting form required by paragraph (3) of subdivision (e), shall be paid from the revenues derived from its granted public trust lands and assets specified in subdivision (b).

(2) If the revenues derived from the granted public trust lands and assets specified in subdivision (b) are not sufficient to pay the costs for the duties specified in paragraph (1), the commission shall exempt the local trustee of granted public trust lands from performing those duties for which the revenues are not sufficient, or grant a deadline extension from the performance of those duties until sufficient funds are available.

SEC. 5. Section 6320 is added to the Public Resources Code, to read:

6320. (a) On or before September 1, 2013, the commission shall prepare a workload analysis that summarizes the resources necessary for the commission to fulfill its oversight responsibilities with respect to all legislatively granted public trust lands.

(b) The workload analysis shall be submitted, in compliance with Section 9795 of the Government Code, to the Assembly Committee on Natural Resources, the Senate Committee on Natural Resources and Water, the Joint Legislative Budget Committee, and the Department of Finance.

(c) This section shall become inoperative on September 1, 2017, pursuant to Section 10231.5 of the Government Code, and, as of January 1, 2018, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2018, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 6. The addition of Section 6009.1 to the Public Resources Code by Section 2 of this act does not constitute a change in, but is declaratory of, existing law.

~~SEC. 7. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made~~

~~pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.~~

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the costs incurred by a local agency to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code, will be paid solely from the revenues derived from the public trust lands and assets that are granted to that local agency by the state.

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