

Assembly Bill No. 691

Passed the Assembly September 9, 2013

Chief Clerk of the Assembly

Passed the Senate September 6, 2013

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2013, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Section 6311.5 to the Public Resources Code, relating to state lands.

LEGISLATIVE COUNSEL'S DIGEST

AB 691, Muratsuchi. State lands: granted trust lands: sea level rise.

Existing law vests with the State Lands Commission control over specified state lands, including tidelands and submerged lands. 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.

This bill would provide that addressing the impacts of sea level rise for all of its legislatively granted public trust lands shall be among the management priorities of a local trustee, as defined. The bill would require a local trustee whose gross public trust revenues average over \$250,000 annually between January 1, 2009, and January 1, 2014, to prepare and submit to the commission, no later than July 1, 2019, except as provided, an assessment of how it proposes to address sea level rise. The bill would permit, but not require, a local trustee whose gross public trust revenues are \$250,000 or less to prepare and submit to the commission an assessment. The bill would require a local trustee to consider and use relevant information from specified reports on sea level rise in preparing the assessment and would permit a trustee that has already completed an assessment on the impacts of sea level rise to submit that assessment to the commission. The bill would require that the commission make those assessments available to the public on its Internet Web site, and send electronic copies to certain other public entities.

By adding to the duties of local agencies that are local trustees of granted public trust lands, this bill would impose a state-mandated local program.

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.

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 in 1850, and as 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 common law public trust doctrine for statewide public purposes, including commerce, navigation, fisheries, preservation of lands in their natural state, open space, wildlife habitat, water-oriented recreation, 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 common law public trust doctrine, statutory 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) The effects of climate change and sea level rise will have enormous implications for the state's economic and social future, and have the potential to have a wide range of impacts to critical infrastructure, such as schools, roads, hospitals, emergency facilities, wastewater treatment plants, airports, ports, and energy facilities.

(f) Coastal counties in California are home to approximately 32,000,000 people.

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

(h) Port activities in California generate an estimated \$7 billion in state and local tax revenues annually and employ more than 500,000 people in California. Nationwide more than two million jobs are connected to California ports.

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

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

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

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

(m) Many state entities, such as the Governor's Office of Planning and Research, the Strategic Growth Council, the Ocean Protection Council, the San Francisco Bay Conservation and Development Commission, the California Coastal Commission, and the State Lands Commission have supported efforts to develop tools and to increase accessibility to existing state data, and to provide additional data and tools to help local, regional, and state agencies make informed decisions about sea level rise.

(n) The use of revenues received from trust lands and trust assets by a local trustee of granted public trust lands is limited by the statutory grant, the common law public trust doctrine, and other laws governing the trust. An evaluation of the impacts of sea level rise on granted public trust lands is directly related to the operation and management of these resources managed on behalf of the state by local trustees and is, therefore, a purpose consistent with the public trust for commerce, navigation, and fisheries, and the applicable statutory grants.

(o) Because 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 common law public trust doctrine and its statutory grant, and because the State Lands Commission is provided with a mechanism in this act to exempt a local trustee that does not have sufficient state funds, either through the trust or other existing funding mechanisms, to pay for the cost of assessing the impacts of sea level rise, Section 6311.5 of the Public Resources Code, as added by this act, will not impose costs on local governments.

SEC. 2. Section 6311.5 is added to the Public Resources Code, to read:

6311.5. (a) For the purposes of this section, the following terms shall have the following meanings:

(1) “Local trustee” means a local trustee of granted public trust lands that is a county, city, or district, including water, sanitary, regional park, port, or harbor district, or any other local political or corporate subdivision that has been granted public trust lands through a legislative grant.

(2) “Gross public trust revenues” means those gross revenues that are subject to subdivision (c) of Section 6306.

(b) Addressing the impacts of sea level rise for all of its legislatively granted public trust lands pursuant to this section shall be among the management priorities of a local trustee. The geographic scope of a local trustee’s assessment of the impacts from sea level rise is not required to go beyond the boundaries of the local trustee’s granted public trust lands.

(c) A local trustee, whose gross public trust revenues average over two hundred fifty thousand dollars (\$250,000) annually between January 1, 2009, and January 1, 2014, shall prepare and submit to the commission, no later than July 1, 2019, an assessment of how the local trustee proposes to address sea level rise. A local trustee whose gross public trust revenues are two hundred fifty thousand dollars (\$250,000) or less may, but is not required to, prepare and submit to the commission an assessment.

(d) For the purposes of subdivision (c), a local trustee shall consider and use relevant information from the 2009 California Climate Adaptation Strategy prepared by the Natural Resources Agency, the Report on Sea Level Rise Preparedness prepared by the State Lands Commission, the Sea-Level Rise for the Coasts of California, Oregon, and Washington: Past, Present, and Future, a report prepared by the National Academy of Sciences, the Resolution of the California Ocean Protection Council on

Sea-Level Rise, the State of California Sea-Level Rise Guidance Document, and any subsequent updates to those reports that become available six months prior to the date the local trustee submits the assessment to the commission. A local trustee's assessment prepared pursuant to subdivision (c) shall include all of the following:

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

(2) Maps showing the areas that may be affected by sea level rise in the years 2030, 2050, and 2100. These maps shall include the potential impacts of 100-year storm events. A local trustee may rely on appropriate maps generated by other entities.

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

(4) A description of how the local trustee proposes to protect and preserve natural and manmade resources and facilities located, or proposed to be located, on trust lands and operated in connection with the use of the trust lands. The description shall include, but is not limited to, how wetlands restoration and habitat preservation would mitigate impacts of sea level rise.

(e) In addressing the impacts of sea level rise, a local trustee shall collaborate with its lessees, appropriate local, state, and federal agencies, and other users of the granted public trust lands.

(f) (1) A local trustee that prepares an assessment pursuant to subdivision (c) shall submit a copy to the commission in hard copy and electronic form. The commission shall make the assessment available to the public on its Internet Web site and, for informational purposes, shall send an electronic copy to each member of the Climate Action Team, the climate change program manager in the office of the Secretary for Environmental Protection, and the Governor's Office of Planning and Research.

(2) For purposes of compliance with this subdivision, if a trustee has already completed an assessment of the impacts of sea level rise that meets the criteria of this section, the trustee may submit that assessment to the commission.

(g) The commission shall exempt a local trustee of granted public trust lands from this section if the commission finds either of the following:

(1) The local trustee's public trust lands are not subject to sea level rise by 2100, based upon the highest projections in the most recent version of the State of California Sea-Level Rise Guidance Document.

(2) The cost to provide an assessment of how the local trustee proposes to address the impacts of sea level rise substantially outweighs the benefit the action would have in preventing the potential economic and environmental harms associated with sea level rise on the local trustee's granted public trust lands. In making this determination, the economic benefits of all ecological services provided by the existing natural resources in the local trustee's granted public trust lands shall be considered.

(h) The commission shall exempt a local trustee from this section if the revenues derived from its granted public trust lands and assets subject to subdivision (c) of Section 6306 or funding made available to it from other discretionary sources is not sufficient to pay for the cost of assessing the impacts of sea level rise on granted public trust land and providing this information to the commission.

(i) The commission shall consider a local trustee's request for an exemption pursuant to subdivision (g) or (h) at a properly noticed commission meeting if the request is made before November 1, 2018.

(j) Other than submission of the assessment required by subdivision (c), this section does not require a local trustee to implement any specific actions to address sea level rise pursuant to this section.

(k) Nothing in this section shall be construed to conflict with any federal regulations governing sea level rise.

SEC. 3. 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.

Approved _____, 2013

Governor