

AMENDED IN SENATE MAY 28, 2014

AMENDED IN SENATE APRIL 8, 2014

SENATE BILL

No. 1424

Introduced by Senator Wolk
(Principal coauthor: Assembly Member Bonilla)
(Coauthor: **Senator DeSaulnier**)

February 21, 2014

An act to repeal Section 3 of Chapter 815 of the Statutes of 1976, relating to tidelands, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1424, as amended, Wolk. State property: tidelands transfer: City of Martinez.

(1) Existing law grants to the City of Martinez all right, title, and interest of the state to 3 specified parcels of land in the Straits of Carquinez, to be held in trust for specified uses. The Kapiloff Land Bank Act creates the Land Bank Fund and continuously appropriates moneys in the fund, subject to a statutory trust, to the State Lands Commission, acting as the Land Bank Trustee, to acquire real property or any interest in real property for the purposes of public trust title settlements.

This bill would repeal that grant of trust lands to the City of Martinez and would instead provide for a new grant of trust lands to the City of Martinez that would include an additional 4th parcel. The bill would require the trust lands to be held by the city, as trustee, for the benefit of all the people of the state for purposes consistent with the public trust doctrine, including the protection of maritime or ~~water-dependent~~ *water-dependent* commerce, navigation, and fisheries, ~~and~~ the preservation of the lands in their natural state for scientific study, open

space, wildlife habitat, and water-oriented recreation. The bill would authorize the city to lease trust lands under specified conditions for purposes consistent with the grant ~~and the public trust doctrine.~~

The bill would require the City of Martinez to submit to the commission by January 1, 2020, for its approval, a trust lands use plan, as prescribed. The bill would require the city to file with the commission by September 30, 2025, and every 5 years thereafter, a detailed report of its trust lands uses and, ~~by October 1~~ *December 31* of each year, a statement of trust revenues and expenditures. The bill would require the city to file a specific document with the commission before expending trust revenues for any single capital improvement on the trust lands greater than \$250,000 and would prohibit that expenditure of funds if the commission determines it is not authorized.

The bill would require, ~~on June 30, 2015, if the Department of Parks and Recreation determines that specified loans have been repaid, and at the end of every fiscal year thereafter, commencing June 30, 2015, and at the end of every fiscal year thereafter, and subject to an exception,~~ that 20% of all gross revenues generated from the trust lands be transmitted to the commission, for allocation by the Treasurer, of which 80% would be deposited in the General Fund and 20% in the Land Bank Fund, thereby making an appropriation.

By imposing new duties on the City of Martinez with respect to the trust lands, the bill would impose a state-mandated local program.

(2) 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: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.
 State-mandated local program: yes.

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

- 1 SECTION 1. Section 3 of Chapter 815 of the Statutes of 1976,
- 2 as amended by Section 1 of Chapter 387 of the Statutes of 2002,
- 3 is repealed.
- 4 SEC. 2. (a) For purposes of this act, the following definitions
- 5 shall apply:
- 6 (1) "Commission" means the State Lands Commission.

1 (2) “Public trust doctrine” means the common law doctrine, as
2 enunciated by the court in *National Audubon Soc. v. Superior*
3 *Court* (1983) 33 Cal.3d 419, and other relevant judicial decisions,
4 specifying the state’s authority as sovereign to exercise continuous
5 supervision and control over the navigable waters of the state, the
6 lands underlying those waters, and nonnavigable tributaries to
7 navigable waters, including the protection of maritime or
8 water-dependent commerce, navigation, and fisheries, and the
9 preservation of the lands in their natural state for scientific study,
10 open space, wildlife habitat, and water-oriented recreation.

11 (3) “State” means the State of California.

12 (4) “Trustee” means the City of Martinez, a municipal
13 corporation.

14 (5) “Trust lands” means Parcel “A,” Parcel “B,” Parcel “C,”
15 and Parcel “D”, as described in subdivision (b), situated in the
16 County of Contra Costa. The descriptions of these parcels are based
17 on the California Coordinate System Zone 3 as shown on Map of
18 “City of Martinez Waterfront Area” filed March 10, 1955, in
19 Volume 16, Pages 39 to 43, Licensed Surveyor’s Maps in the
20 Office of the Contra Costa County Recorder.

21 (6) “Trust revenues” means all revenues received from trust
22 lands and trust assets.

23 (7) “Trust lands use plan” or “plan” means the trust lands use
24 plan required to be submitted by the trustee to the commission
25 pursuant to Section 4 of this act.

26 (8) “Trust lands use report” means the report of the trustee’s
27 utilization of the trust lands required to be submitted by the trustee
28 pursuant to Section 5 of this act.

29 (b) There is hereby granted in trust to the City of Martinez and
30 to its successors, all of the rights, title, and interest of the state,
31 held by the state by virtue of its sovereignty, in and to four parcels
32 of land situated in the County of Contra Costa and described as
33 follows:

34 Parcel “A”

35 Commencing at the intersection of the north line of Tideland
36 Survey No. 9 and the east line of North Court Street as shown on
37 Map of “City of Martinez Waterfront Area” filed March 10, 1955,
38 in Volume 16, Pages 39 to 43, Licensed Surveyor’s Maps in the
39 Office of the Contra Costa County Recorder; thence along said
40 northerly line of Tideland Survey No. 9 North 76° 56’ 53” East

1 488.36 feet; thence leaving said northerly line North 20° 03' 30"
2 West 130.00 feet; thence North 63° 50' 00" East 85.00 feet to the
3 true point of beginning; thence North 03° 30' 00" East 110.00 feet;
4 thence North 12° 10' 00" East 660.00 feet; thence North 05° 05'
5 39" West 119.71 feet; thence North 88° 03' 16" East 242.85 feet;
6 thence South 12° 10' 00" West 797.24 feet; thence South 63° 50'
7 00" West 233.84 feet to the point of beginning.

8 Parcel "B"

9 Commencing at the intersection of the north line of Tideland
10 Survey No. 9 and the east line of North Court Street as shown on
11 Map of "City of Martinez Waterfront Area" filed March 10, 1955,
12 in Volume 16, Pages 39 to 43, Licensed Surveyor's Maps in the
13 Office of the Contra Costa County Recorder; thence along said
14 northerly line of Tideland Survey No. 9 North 76° 56' 53" East
15 488.36 feet; thence leaving said northerly line North 20° 03' 30"
16 West 130.00 feet; thence North 63° 50' 00" East 318.84 feet to the
17 true point of beginning being the southeasterly corner of Parcel
18 "A" described above; thence North 12° 10' 00" East 797.24 feet
19 along the east line of said Parcel "A"; thence leaving said east line
20 North 88° 03' 16" East 156.26 feet; thence South 89° 00' 00" East
21 100.00 feet; thence South 66° 20' 00" East 120.00 feet; thence
22 South 25° 45' 00" East 453.00 feet; thence South 68° 10' 00" West
23 385.00 feet; thence South 63° 50' 00" West 416.16 feet to the point
24 of beginning.

25 Parcel "C"

26 That parcel of land described in the lease to the Southern Pacific
27 Transportation Company by the City of Martinez per Resolution
28 No. 111 (1959 series) dated August 5, 1959, and Resolution No.
29 72-75 dated June 4, 1975.

30 Parcel "D"

31 Commencing at the intersection of the north line of Tideland
32 Survey No. 9 and the east *west* line of North Court Street as shown
33 on Map of "City of Martinez Waterfront Area" filed March 10,
34 1955, in Volume 16, Pages 39 to 43, Licensed Surveyor's Maps
35 in the Office of the Contra Costa County Recorder; thence South
36 20° 03' 30" East 240.00 feet to the true point of beginning; thence
37 South 69° 56' 30" West 50.00 feet to the centerline of North Court
38 Street; thence North 20° 03' 30" West 630.00 feet along the
39 centerline of North Court Street; thence leaving said centerline
40 North 63° 05' 00" West 410.36 feet; thence North 20° 03' 30"

1 West 530.00 feet; thence North 17° 02' 14" East 272.81 feet; thence
2 North 16° 00' 00" West 380.00 feet; thence South 79° 47' 48"
3 ~~East 380.00 West 300.00~~ feet; thence North 10° 12' 12" West 200.00
4 feet; thence North 79° 47' 48" East 380.00 feet; thence North 69°
5 56' 30" East 810.00 feet; thence South 81° 03' 30" East ~~710~~ 710.00
6 feet; thence South 07° 00' 00" West 900.00 feet; thence South 05°
7 05' 39" East 119.71 feet; thence South 12° 10' 00" West 660.00
8 feet; thence South 03° 30' 00" West 110.00 feet; thence South 63°
9 50' 00" West 85.00 feet; thence South 20° 03' 30" East 130.00 feet
10 to the intersection with the northerly line of the Tideland Survey
11 No. 9; thence along said northerly line South 76° 56' 53" West
12 35.00 feet; thence leaving said northerly line South 20° 03' 30"
13 East 184.70 feet; thence South 69° 56' 30" West 450.00 feet to the
14 point of beginning.

15 SEC. 3. The trust grant specified in Section 2 of this act is
16 subject to all of the following express conditions:

17 (a) The trust lands shall be held by the trustee in trust for the
18 benefit of all the people of the state for purposes consistent with
19 the public trust doctrine, including, but not limited to, maritime
20 ~~or water-dependent~~ *water-dependent* commerce, navigation, and
21 fisheries, *the* preservation of the lands in their natural state for
22 scientific study, open space, wildlife habitat, and water-oriented
23 recreation.

24 (b) On and after January 1, 2020, the use of the trust lands shall
25 conform to an approved trust lands use plan, as required by Section
26 4 of this act.

27 (c) The trustee shall not, at any time, grant, convey, give, or
28 otherwise alienate or hypothecate the trust lands, or any part of
29 the trust lands, to any person, firm, entity, or corporation for any
30 purpose whatsoever.

31 (d) The trustee may lease the trust lands, or any part of the trust
32 lands, for limited periods, not exceeding 49 years, for purposes
33 consistent with the trust upon which those lands are held, as
34 specified in subdivision (a) ~~and the public trust doctrine~~. The
35 trustee may collect and retain rents and other trust revenues from
36 those leases, under rules and regulations adopted in accordance
37 with Section 7 of this act, and in accordance with all of the
38 following requirements:

39 (1) On and after January 1, 2020, all leases or agreements
40 proposed or entered into by the trustee shall be consistent with the

1 trust lands use plan approved by the commission, as required by
2 Section 4 of this act. Any leases entered into prior to January 1,
3 2020, shall be consistent with ~~the public trust doctrine and the~~
4 terms of subdivision (a).

5 (2) The lease rental rates shall be for a fair annual rent.

6 (3) The lease shall be in the best interest of the state.

7 (e) When managing, conducting, operating, or controlling the
8 trust lands or an improvement, betterment, or structure on the trust
9 lands, the trustee or his or her successor shall not discriminate in
10 rates, tolls, or charges for any use or service in connection with
11 those actions and shall not discriminate against or unlawfully
12 segregate any person or group of persons because of sex, race,
13 color, creed, national origin, ancestry, or physical disability for
14 any use or service in connection with those actions.

15 (f) The state shall have the right to use, without charge, a
16 transportation, landing, or storage improvement, betterment, or
17 structure constructed upon the trust lands for a vessel or other
18 watercraft or railroad owned or operated by, or under contract to,
19 the state.

20 (g) The trust lands are subject to the express reservation and
21 condition that the state may, at any time, use those lands, or any
22 portion of those lands, for highway purposes without compensation
23 to the trustee or a person, firm, or public or private corporation
24 claiming a right to those lands, except that, if the improvements
25 have been placed with legal authority upon the property taken by
26 the state for highway purposes, compensation shall be made to the
27 person entitled to the value of the interest in the improvements
28 taken or the damages to that interest.

29 (h) There is reserved to the people of the state the right to fish
30 in the waters over the trust lands, with the right of convenient
31 access to those waters over the trust lands for this purpose.

32 (i) There is excepted and reserved to the state all remains or
33 artifacts of archaeological or historical significance and all deposits
34 of minerals, including, but not limited to, all substances specified
35 in Section 6407 of the Public Resources Code, in the trust lands
36 and the right to prospect for, mine, and remove those deposits from
37 the lands.

38 (j) The trustee shall reimburse the commission for all expenses
39 incurred in the administration of this act, including periodic audits
40 or investigations.

1 SEC. 4. (a) On or before January 1, 2020, the trustee shall
2 submit to the commission a trust lands use plan describing any
3 proposed development, preservation, or other use of the trust lands.
4 The trustee shall thereafter submit to the commission for approval
5 all changes of, amendments to, or extensions of, the trust lands
6 use plan.

7 (b) The commission shall review with reasonable promptness
8 the trust lands use plan submitted by the trustee and any changes
9 or amendments to determine whether they are consistent with the
10 public trust and the requirements of this act. Based upon its review,
11 the commission shall either approve or disapprove the plan. If the
12 commission disapproves the plan, the commission shall notify the
13 trustee and the trustee shall submit a revised plan to the commission
14 no later than 180 days after the date of notice of disapproval. If
15 the commission determines the revised plan is inconsistent with
16 the ~~common law~~ public trust doctrine and the requirements of this
17 act, all rights, title, and interest of the trustee in and to the trust
18 lands and improvements on the trust lands shall revert to the state.

19 (c) The trust lands use plan shall consist of a plan, program, or
20 other document that includes all of the following:

21 (1) A general description of the type of uses planned or proposed
22 for the trust lands. The location of these land uses shall be shown
23 on a map or aerial photograph.

24 (2) The projected statewide benefit to be derived from the
25 planned or proposed uses of the trust lands, including, but not
26 limited to, financial benefit.

27 (3) The proposed method of financing the planned or proposed
28 uses of the trust lands, including estimated capital costs, annual
29 operating costs, and anticipated annual trust revenues.

30 (4) An estimated timetable for implementation of the trust ~~land~~
31 *lands* use plan or any phase of the plan.

32 (5) A description of how the trustee proposes to protect and
33 preserve natural and manmade resources and facilities located on
34 the trust lands and operated in connection with the use of the trust
35 lands, including, but not limited to, addressing impacts from sea
36 level rise.

37 (d) The trustee shall also submit to the commission, as part of
38 the trust lands use plan, for its approval, procedures, rules, and
39 regulations to govern the use or development of the trust lands.
40 These rules and regulations shall include, but are not limited to,

1 lease rates, the basis upon which the rates are established, lease
2 terms and conditions, provisions for *the* renegotiation of rates and
3 terms and assignments, and any other information as may be
4 required by the commission.

5 (e) Any use of the trust lands, including, but not limited to, all
6 leases or agreements proposed, or entered into, by the trustee after
7 January 1, 2020, shall be consistent with the trust lands use plan
8 submitted by the trustee and approved by the commission.

9 (f) Upon request, the trustee shall submit to the commission a
10 copy of all leases and agreements entered into, renewed, or
11 renegotiated.

12 SEC. 5. (a) On or before September 30, 2025, and on or before
13 September 30 of every succeeding fifth year, the trustee shall
14 submit a report of its utilization of the trust lands for each
15 immediately preceding five-calendar-year period ending with June
16 30 of the calendar year in which the report is required to be
17 submitted.

18 (b) The report required by this section shall include all of the
19 following:

20 (1) A general description of the uses to which the trust lands
21 have been placed during the period covered by the report.

22 (2) A list of the holders of leases or permits that have been
23 granted or issued by the trustee, which list shall specify all of the
24 following, as to each holder:

25 (A) The use to which the trust lands have been placed by the
26 holder.

27 (B) The consideration provided for in each lease or permit, and
28 the consideration actually received by the trustee for the lease or
29 permit granted or issued.

30 (C) An enumeration of the restrictions that the trustee has placed
31 on the use of the trust lands, and each area of the trust lands, for
32 the period covered by the report.

33 SEC. 6. (a) The trustee shall demonstrate good faith in carrying
34 out the provisions of its trust lands use plan and amending it when
35 necessary in accordance with Section 4 of this act.

36 (b) If the commission determines that the trustee has
37 substantially failed to improve, restore, preserve, or maintain the
38 trust lands, as required by the trust lands use plan, or has
39 unreasonably delayed implementation of the trust lands use plan,

1 all rights, title, and interest of the trustee in and to the trust lands
2 and improvements on the trust lands shall revert to the state.

3 SEC. 7. (a) (1) The trustee shall establish and maintain
4 accounting procedures, in accordance with generally accepted
5 accounting principles, providing accurate records of all revenues
6 received from the trust lands and trust assets and of all expenditures
7 of those revenues.

8 (2) All trust revenues received from the trust lands and trust
9 assets shall be expended only for those uses and purposes consistent
10 with this act. The trustee shall provide for the segregation of funds
11 derived from the use of the trust lands by the trustee from other
12 city municipal funds, so as to ensure that trust revenues are only
13 expended to enhance or maintain the trust lands in accordance with
14 the uses and purposes for which the trust lands are held.

15 (3) Trust revenues may be expended to acquire appropriate
16 upland properties to benefit and enhance the trust lands, subject
17 to a determination by the commission that the acquisition is
18 consistent with this act and in the best interest of the state. Property
19 acquired with these trust revenues shall be considered an asset of
20 the trust and subject to the terms and conditions of this act.

21 (b) On or before ~~October 1~~ *December 31* of each year, the trustee
22 shall file with the commission a detailed statement of all trust
23 revenues and expenditures relating to its trust lands and trust assets,
24 including obligations incurred but not yet paid, covering the fiscal
25 year preceding submission of the statement. The commission may
26 specify the form and content of this statement. The statement shall
27 meet ~~both~~ *all* of the following requirements:

28 (1) The statement shall be prepared according to generally
29 accepted accounting principles.

30 (2) The statement shall be specific to the trust lands and trust
31 assets and shall not include city municipal financial or accounting
32 information unrelated to the trust lands and trust assets.

33 (3) *The statement shall include a summary explaining how the*
34 *trustee is using trust revenues to revitalize the marina and prevent*
35 *its closure.*

36 (c) (1) Before expending trust revenues for any single capital
37 improvement on the trust lands involving an amount in excess of
38 two hundred fifty thousand dollars (\$250,000) in the aggregate,
39 the trustee shall file with the commission a detailed description of
40 the capital improvement not less than 120 days prior to the time

1 of any disbursement of trust revenues for, or in connection with,
2 that capital improvement.

3 (2) Within 120 days after the time of a filing specified in
4 paragraph (1), the commission shall ~~determine whether the capital~~
5 ~~improvement is in the statewide interest and benefit and~~ *determine*,
6 if the filing is made on or before December 31, 2019, whether ~~it~~
7 *the capital improvement* is consistent with subdivision (a) of
8 Section 3 of this act or, if the filing is made on or after January 1,
9 2020, whether ~~it~~ *the capital improvement* is consistent with the
10 trust lands use plan. The commission may request the opinion of
11 the Attorney General on the matter and, if the commission makes
12 this request, the Attorney General shall deliver a copy of the
13 opinion to the trustee with the notice of its determination.

14 (3) If the commission notifies the trustee that the capital
15 improvement is not authorized, the trustee shall not disburse any
16 trust revenues for, or in connection with, the capital improvement,
17 unless it is determined to be authorized by a final order or judgment
18 of a court of competent jurisdiction.

19 (4) The trustee may bring suit against the state for the purpose
20 of securing an order or judgment for purposes of paragraph (3),
21 which suit shall have priority over all other civil matters. Service
22 shall be made upon the executive officer of the commission and
23 the Attorney General, and the Attorney General shall defend the
24 state in that suit. If judgment is given against the state in the suit,
25 no costs may be recovered.

26 (d) (1) ~~Except as provided in paragraph (2), on June 30, 2015,~~
27 ~~and at the end of every fiscal year thereafter, 20~~ *Except as provided*
28 *in paragraph (2), commencing June 30, 2015, and at the end of*
29 *every fiscal year, 20* percent of all gross revenues generated from
30 the trust lands shall be transmitted to the commission. Of this
31 amount transmitted, the commission shall allocate 80 percent to
32 the Treasurer, for deposit in the General Fund, and 20 percent to
33 the Treasurer, for deposit in the Land Bank Fund for expenditure
34 pursuant to Division 7 (commencing with Section 8600) of the
35 Public Resources Code for management of the commission's
36 granted lands program.

37 (2) ~~The trustee shall not transmit the gross revenues to the~~
38 ~~commission as specified in paragraph (1) until the Department of~~
39 ~~Parks and Recreation determines the City of Martinez has repaid~~
40 ~~the five outstanding loans that the city owes to the department.~~

1 (2) *In recognition of the deteriorated conditions at the marina,*
2 *commencing June 30, 2015, and until June 30, 2021, the*
3 *commission may, at its discretion, relieve the trustee of its*
4 *obligation to transmit the gross revenues as specified in paragraph*
5 *(1) so that the trustee can take action to address those conditions,*
6 *including the dredging of sediment to restore adequate depth for*
7 *launching, berthing, and safe navigation at the marina.*

8 (e) The commission may, from time to time, institute a formal
9 inquiry to determine that the terms and conditions of this act, and
10 amendments to this act, have been complied with, and that all other
11 applicable provisions of law concerning the trust lands are being
12 complied with in good faith.

13 (f) The commission shall approve any loan or expenditures of
14 nontrust revenues for improvements made to the trust lands prior
15 to the loan or expenditure. If not approved, those expenditures
16 shall be deemed a gift to the trust.

17 SEC. 8. (a) If the commission finds that the trustee has violated
18 or is about to violate the terms of its trust grant or any other
19 principle of law relating to its obligation under the public trust
20 doctrine or under this act, the commission shall notify the trustee
21 of the violation.

22 (b) The trustee shall have 30 days from receipt of a notice of
23 violation to conform to the terms of its grant and the principles
24 and laws under the public trust doctrine. If the trustee fails or
25 refuses to take those actions, the commission may bring an action
26 to enforce the rights of the state and people as settlor beneficiary
27 under the public trust doctrine.

28 (c) The Attorney General shall represent the state and people
29 in all actions or proceedings taken pursuant to this section. If the
30 judgment is given against the state in the action or proceeding, no
31 costs shall be recovered from the state and people.

32 SEC. 9. No reimbursement is required by this act pursuant to
33 Section 6 of Article XIII B of the California Constitution because
34 a local agency or school district has the authority to levy service
35 charges, fees, or assessments sufficient to pay for the program or
36 level of service mandated by this act, within the meaning of Section
37 17556 of the Government Code.

O