

Senate Bill No. 1172

Passed the Senate August 25, 2016

Secretary of the Senate

Passed the Assembly August 15, 2016

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2016, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to repeal Chapter 211 of the Statutes of 1919, relating to tidelands and submerged lands in the Bay of San Francisco, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1172, Hancock. Tidelands and submerged lands: City of Albany.

Existing law grants in trust to the City of Albany certain designated tidelands and submerged lands, both filled and unfilled, for specified uses. The grant, among other things, requires that those lands be used in conformity with the Albany Waterfront Plan and be improved in accordance with the plan on or before January 1, 1988, or title therein shall revert to the state. Existing law imposes various requirements regarding public rights in the granted lands, leasing of lands by the city, management and disposition of revenues from the lands, and the determination of boundaries of the lands granted that are subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission. Existing law requires 85% of excess trust revenues, as specified, to be transmitted to the Treasurer and deposited in the General Fund.

This bill would delete those provisions and instead require that, on and after January 1, 2022, the use of those trust lands, as described, conform to an approved trust lands use plan, prescribed by the bill, and all leases or agreements proposed or entered into by the City of Albany, as trustee of those lands, also be consistent with the public trust doctrine, as defined, and conform to the plan. The bill would require the trustee, on or before September 30, 2022, and on or before September 30 of every succeeding 5th year thereafter, to submit a report to the State Lands Commission. By imposing new duties on a local government with regard to providing for the use and management of those trust lands, the bill would impose a state-mandated local program.

Existing law, the Kapiloff Land Bank Act, creates the Land Bank Fund and continuously appropriates money 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 settlements.

The bill would require on June 30, 2021, and at the end of every fiscal year thereafter, that 20% of all gross revenue generated from the City of Albany trust lands be transmitted to the commission and, of this amount transmitted, would require the commission to allocate 80% to the Treasurer for deposit in the General Fund and 20% for deposit in the Land Bank Fund for expenditure by the commission pursuant to the act, thereby making an appropriation.

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.

Appropriation: yes.

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

SECTION 1. Chapter 211 of the Statutes of 1919, as amended by Chapter 1223 of the Statutes of 1977, is repealed.

SEC. 2. (a) For the purposes of this act, the following definitions shall apply:

(1) “Act” means Sections 2 to 10, inclusive, of the act enacting this section.

(2) “Commission” means the State Lands Commission.

(3) “Public trust doctrine” means the common law doctrine, as enunciated by the court in *Marks v. Whitney* (1971) 6 Cal.3d 251 and *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419 and other relevant judicial decisions, specifying the state’s authority as sovereign to exercise a continuous supervision and control over the navigable waters of the state, the lands underlying those waters, and nonnavigable tributaries to navigable waters, including the protection of maritime or water dependent commerce, navigation, and fisheries, and the preservation of lands in their natural state for scientific study, open space, wildlife habitat, and water-oriented recreation.

(4) “State” means the State of California.

(5) “Trustee” means the City of Albany, a municipal corporation.

(6) “Trust lands” means Parcel 1, Parcel 2, and Parcel 3, as described in Section 10 of this act, situated in the County of Alameda.

(7) “Trust revenues” means all revenues received from trust lands and trust assets.

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

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

(b) There is hereby granted in trust to the City of Albany, and to its successors, all of the rights, title, and interest of the state, held by the state by virtue of its sovereignty, in and to three parcels of land situated in the County of Alameda as described in Section 10 of this act.

(c) The Legislature finds and declares that the City of Albany intends that the lands granted in subdivision (b) shall be included as part of McLaughlin Eastshore State Park.

SEC. 3. The trust grant specified in subdivision (b) of Section 2 of this act is subject to all of the following express conditions:

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

(b) On and after January 1, 2022, the use of the trust lands shall conform to an approved trust lands use plan, as required by Section 4 of this act.

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

(d) The trustee may lease the trust lands, or any part of the trust lands, for limited periods, not exceeding 49 years, for purposes consistent with the trust upon which those lands are held, as specified in subdivision (a). The trustee may collect and retain rents and other trust revenues from those leases, under rules and regulations adopted in accordance with subdivision (d) of Section

4 of this act, and in accordance with all of the following requirements:

(1) On and after January 1, 2022, all leases or agreements proposed or entered into by the trustee shall be consistent with the trust lands use plan approved by the commission, as required by Section 4 of this act. Any leases entered into prior to January 1, 2022, shall be consistent with the public trust doctrine and the terms of subdivision (a).

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

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

(e) When managing, conducting, operating, or controlling the trust lands or an improvement, betterment, or structure on the trust lands, the trustee or his or her successor shall not discriminate in rates, tolls, or charges for any use or service in connection with those actions and shall not discriminate against or unlawfully segregate any person or group of persons because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, in accordance with Article 1 (commencing with Section 12940) of Chapter 6 of Part 2.8 of Division 3 of Title 2 of the Government Code and other state antidiscrimination laws, for any use or service in connection with those actions.

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

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

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

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

(j) Prior to entering into a lease, franchise, or agreement concerning the trust lands, the governing body of the trustee shall first adopt a resolution declaring its intention to take that action. The resolution shall describe the lands or improvements that are the subject of the lease, franchise, or agreement in such a manner as to identify them accurately and shall specify the minimum rental or other consideration and the other terms and conditions of the lease, franchise, or agreement. The resolution shall be submitted to the commission prior to entering into a lease, franchise, or agreement.

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

SEC. 4. (a) On or before January 1, 2022, the trustee shall submit to the commission a trust lands use plan describing any proposed development, preservation, or other use of the trust lands. The trustee shall thereafter submit to the commission for approval all changes or amendments to, or extensions of, the trust lands use plan. The trustee may apply to the commission for, and the commission may approve, reasonable extensions of time to meet this deadline.

(b) The commission shall review with reasonable promptness the trust lands use plan submitted by the trustee and any changes or amendments to determine whether they are consistent with the public trust doctrine and the requirements of this act. Based upon its review, the commission shall either approve or disapprove the plan. If the commission disapproves the plan, the commission shall notify the trustee and the trustee shall submit a revised plan to the commission no later than 180 days after the date of notice of disapproval. If the commission determines the revised plan is inconsistent with the public trust doctrine or the requirements of

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

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

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

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

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

(4) An estimated timetable for the implementation of the trust lands use plan or each phase of the plan.

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

(d) The governing body of the trustee shall also submit to the commission, as part of the trust lands use plan, for its approval procedures, rules, and regulations to govern the use of or development of the trust lands. These rules and regulations shall include, but are not limited to, lease rates, the basis upon which the rates are established, lease terms and conditions, provisions for renegotiation of rates and terms and assignments, and any other information as may be required by the commission.

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

SEC. 5. (a) On or before September 30, 2022, and on or before September 30 of every succeeding fifth year, the trustee shall submit a report of its utilization of the trust lands for each immediately preceding five-calendar-year period ending with June 30 of the calendar year in which the report is required to be submitted.

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

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

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

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

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

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

(c) A report shall not be required if the utilization of the trust lands within the immediately preceding five-calendar-year period is identical to the utilization of the trust lands as stated in a previously submitted report. If a new report is not submitted, the trustee shall submit a letter to the commission stating that its utilization of the trust lands has not changed during the immediately preceding five-calendar-year period. The letter required in this section shall also include the name and date of the utilization report that contains the applicable uses of the trust lands.

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

(b) If the commission determines that the trustee has substantially failed to improve, restore, preserve, or maintain the trust lands, as required by the trust lands use plan, or has unreasonably delayed implementation of the trust lands use plan, all rights, title, and interest of the trustee in and to the trust lands and improvements on the trust lands shall revert to the state.

SEC. 7. (a) (1) The trustee 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.

(2) All trust revenues received from trust lands and trust assets shall be expended only for those uses and purposes consistent with this act. The trustee shall provide for the segregation of the

revenues derived from the use of the trust lands by the trustee from other city municipal funds, so as to ensure that trust revenues are only expended to enhance or maintain the trust lands in accordance with the uses and purposes for which the trust lands are held.

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

(b) The trustee shall comply with Section 6306 of the Public Resources Code.

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

(2) Within 120 days after the time of a filing specified in paragraph (1), the commission shall determine whether the capital improvement is in the statewide interest and benefit and, if the filing is made on or before December 1, 2021, whether it is consistent with subdivision (a) of Section 3 of this act or, if the filing is made on or after January 1, 2022, whether it is consistent with the trust lands use plan. The commission may request the opinion of the Attorney General on the matter, and if the commission makes this request, the Attorney General shall deliver a copy of the opinion to the trustee with the notice of its determination.

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

(4) The trustee may bring suit against the state to secure an order or judgment for purposes of paragraph (3). The suit shall have priority over all other civil matters. Service shall be made upon the executive officer of the commission and the Attorney General, and the Attorney General shall defend the state in that suit. If

judgment is given against the state in the suit, no costs may be recovered.

(d) On June 30, 2021, and at the end of every fiscal year thereafter, 20 percent of all gross revenue generated from the trust lands shall be transmitted to the commission. Of this amount transmitted, the commission shall allocate 80 percent to the Treasurer for deposit in the General Fund and 20 percent to the Treasurer for deposit in the Land Bank Fund, created pursuant to Section 8610 of the Public Resources Code, for expenditure pursuant to the Kapiloff Land Bank Act (Division 7 (commencing with Section 8600) of the Public Resources Code) for management of the commission's granted lands program.

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

(f) The commission shall approve in advance of expenditure any reimbursement for expenditures of nontrust revenues for improvements made to the trust or, if not approved, those expenditures shall be deemed a gift to the trust.

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

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

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

SEC. 9. The requirements of Section 6359 of the Public Resources Code do not apply to the trust lands granted pursuant to this act.

SEC. 10. The trust lands granted in Section 3 are three parcels of tide and submerged lands situated in and adjacent to the bed of San Francisco Bay, Alameda County, State of California, more particularly described as follows:

PARCEL 1

COMMENCING at point “A” as shown on the Map of the Grant to the City of Albany, recorded July 24, 1963, in Book 43 of Maps, page 12A, Alameda County Records, said point “A” having California Zone 2 coordinates of $x = 1,469,703.82$ feet and $y = 511,851.40$ feet, thence along the northerly boundary of said Grant S 74° 21’ 53” E, 2573.92 feet to point “B” as shown on said map and being the TRUE POINT OF BEGINNING, thence continuing along the boundary of said grant the following ten courses:

- (1) N 01° 08’ 07” E, 661.08 feet;
- (2) S 88° 51’ 53” E, 661.58 feet;
- (3) N 01° 08’ 07” E, 876.29 feet;
- (4) N 75° 19’ 34” E, 1636.95 feet;
- (5) S 88° 51’ 53” E, 409.57 feet;
- (6) S 01° 08’ 07” W, 1321.66 feet;
- (7) N 88° 51’ 53” W, 661.05 feet;
- (8) S 01° 08’ 07” W, 1322.17 feet;
- (9) N 88° 51’ 53” W, 1550.05 feet;
- (10) S 32° 12’ 53” E, 1582.80 feet;

thence N 88° 51’ 53” W, 1305.22 feet; thence N 01° 08’ 07” E, 1983.26 feet to the True Point of Beginning.

Coordinates, bearings, and distances used in the above description are based on the California Coordinate System, Zone 2.

PARCEL 2

BEGINNING at Point “J” as shown on said Map of Grant to the City of Albany, recorded July 24, 1963, said point “J” having California Zone 2 coordinates of $x = 1,474,154.14$ feet and $y = 510,458.00$ feet, thence along the boundary of said grant the following two courses:

- (1) N 88° 51’ 53” W, 1550.05 feet;
- (2) S 32° 12’ 53” E, 1582.80 feet;

thence N 28° 20’ 17” E, 1487.26 feet to the point of beginning.

Coordinates, bearings, and distances used in the above description are based on the California Coordinate System, Zone 2.

PARCEL 3

All of that certain parcel of land described as Parcel 1 in deed to the City of Albany, recorded January 15, 1942, in Liber 4159, page 296, Alameda County Records.

SEC. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district are the result of a program for which legislative authority was requested by that local agency or school district, within the meaning of Section 17556 of the Government Code and Section 6 of Article XIII B of the California Constitution.

Approved _____, 2016

Governor