

ASSEMBLY BILL

No. 752

Introduced by Assembly Member Brownley

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 introduced, 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. The bill would require the plan to include, among other things, an assessment of the impact 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

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.

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

24 (1) Approximately 80 percent of California's 33 million
25 residents live within 50 kilometers of the Pacific Ocean.

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

28 (3) Port activities alone in California generate an estimated \$7
29 billion in state and local tax revenues annually and employ more
30 than one-half million people in California. Nationwide more than
31 2 million jobs are connected to California ports.

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

4 (5) In 2002, cargo operations shut down at west coast ports for
5 10 days, and the estimated loss to the national economy was \$1
6 billion per day.

7 (f) The use of revenues received from trust lands and trust assets
8 by a local trustee of granted public trust lands is limited by the
9 legislative grant, the public trust doctrine, and other laws governing
10 the trust. An evaluation of the impacts of sea level rise on granted
11 public trust lands is directly related to the operation and
12 management of these resources managed on behalf of the state by
13 local trustees and is, therefore, a purpose consistent with the public
14 trust for commerce, navigation, and fisheries, and the applicable
15 legislative grants.

16 (g) Whereas a local trustee of granted public trust lands holds
17 and manages its public trust property, including the lands and
18 revenue derived from that property, as a state asset for the benefit
19 of the people of California and cannot use the trust corpus for
20 general municipal purposes or other purposes not consistent with
21 the public trust doctrine and its legislative grant, and because the
22 State Lands Commission is provided with a mechanism in this act
23 to exempt a local trustee that does not have sufficient state funds,
24 either through the trust or other existing funding mechanisms, to
25 pay for the cost of developing a sea level action plan, there is no
26 state-mandated local program that results from the implementation
27 of this act.

28 SEC. 2. Section 6315 is added to the Public Resources Code,
29 to read:

30 6315. (a) For the purposes of this section, "a local trustee of
31 granted public trust lands" means a county, city, or district,
32 including water, sanitary, regional park, port, or harbor district, or
33 any other local political or corporate subdivision that has been
34 granted public trust lands through a legislative grant.

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

39 (c) The plan shall be prepared by July 1, 2013, and in
40 consideration of, and using relevant information contained in, the

1 2009 California Climate Adaptation Strategy prepared by the
2 Natural Resources Agency, the Report on Sea Level Rise
3 Preparedness prepared by the State Lands Commission, the Sea
4 Level Rise Assessment Report prepared by the National Academy
5 of Science if the report becomes available before the plan is due,
6 and any subsequent updates to these reports, and any other related
7 resource. The plan shall include all of the following:

8 (1) An assessment of the impact of sea level rise on granted
9 public trust lands.

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

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

19 (4) Strategies to prevent or mitigate damage to existing
20 development and infrastructure, and to protect and enhance
21 undeveloped, vulnerable shoreline areas containing critical habitat
22 and opportunities for habitat creation, including wetland
23 restoration, habitat migration, or the creation of buffer zones on
24 granted public trust lands. When developing these strategies,
25 especially along the coastline, a grantee shall consider feasible,
26 nonengineered measures, such as coastal setback lines and managed
27 retreat of structures.

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

30 (6) Implementation measures and timetables.

31 (d) In preparing a sea level action plan, a local trustee shall
32 conduct at least one public hearing and consult with its lessees,
33 local, state, and federal agencies, and other users of the granted
34 public trust lands.

35 (e) A copy of the plan shall be submitted to the commission in
36 hard copy and electronic form. The commission shall make the
37 plan available to the public on its Internet Web site and, for
38 informational purposes, send an electronic copy to each member
39 of the Climate Action Team, the Climate Change Program Manager

1 in the office of the Secretary for Environmental Protection, and
2 the Governor's Office of Planning and Research.

3 (f) The commission may exempt a local trustee of granted public
4 trust lands from this section or allow a local trustee to submit a
5 modified sea level action plan if the commission finds either of
6 the following:

7 (1) None of the local trustee's public trust lands is subject to
8 sea level rise by 2100.

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

13 (g) The commission shall exempt a local trustee of granted
14 public trust lands from this section or grant a deadline extension
15 if the revenues derived from its granted public trust lands and
16 assets subject to subdivision (b) of Section 6306 or funding made
17 available to it from sources such as the Ocean Protection Council
18 are not sufficient to pay for the cost of developing the plan.

19 (h) The commission shall consider a local trustee's request for
20 an exemption pursuant to subdivision (f) or (g) at a properly noticed
21 commission meeting if the request is made before November 1,
22 2012.