

AMENDED IN ASSEMBLY APRIL 1, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 1832

Introduced by Assembly Member Saldana

January 23, 2008

An act to repeal *Chapter 250 of the Statutes of 1913, and to repeal Chapters 642 and 808 of the Statutes of 1929, relating to tidelands and submerged lands.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1832, as amended, Saldana. Tidelands and submerged lands: City of San Diego.

Under existing law, various grants of tidelands and submerged lands have been made in trust to local agencies, including several grants of specified tidelands to the City of San Diego. Existing law provides that certain tidelands granted to the City of San Diego ceased to be tidelands and were free from all trusts and restrictions, subject to specified conditions. Existing law also authorized local agencies that had been granted tidelands and submerged lands to grant some or all of those lands to the United States for public or governmental use.

This bill would repeal the provisions freeing former tidelands granted to the City of San Diego from use restrictions. This bill would also repeal local agency authorization to grant tidelands and submerged lands to the United States, as provided. *The bill would specify that the repeal of these provisions shall not be construed to overturn or to nullify the decision of a federal district court concerning certain tidelands in the City of San Diego or any title settlement agreement entered into by the State of California acting through the State Lands Commission.*

Vote: majority. Appropriation: no. Fiscal committee: no.
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) Sections 3 and 4 of Article X of the California Constitution,
4 formerly Sections 2 and 3 of Article XV of the California
5 Constitution, were adopted both to protect the state’s waterways
6 and promote public access to those waterways.

7 (b) The state’s sovereign interests in tidelands, submerged lands,
8 and the beds of nontidal navigable waters, whether filled or
9 unfilled, are held in trust to be protected as public trust lands
10 pursuant to the California Constitution and the common law public
11 trust doctrine.

12 (c) As trustee of California public trust lands, the state has a
13 duty to protect and promote public access to, and use of, these
14 lands for trust purposes, including, but not limited to, maritime
15 commerce and commercial and recreational navigation and fishing.

16 (d) In the early days of statehood, the Legislature enacted laws
17 authorizing the sale of certain tidelands into private ownership and
18 the transfer of public trust lands to the United States.

19 (e) In many instances California courts have either struck down
20 the legislation authorizing the sale of public trust lands or found
21 that the sale and transfer of the land did not terminate the public
22 trust interest in the lands sold or transferred.

23 (f) Since Chapter 573 of the Statutes of 1870, regarding the sale
24 of tidelands within two miles of a city by the state, and the
25 enactment of Chapter 444 of the Statutes of 1909, now Section
26 7991 of the Public Resources Code, all tidelands have been
27 withheld from sale statewide.

28 (g) Chapter 700 of the Statutes of 1911 granted certain tide and
29 submerged lands in trust to the City of San Diego, with the
30 provision in Section 3 that “[n]o grant, conveyance or transfer of
31 any character shall ever be made by the City of San Diego of the
32 lands ... unless the same revert or be receded to the State of
33 California.” Chapter 700 was subsequently amended on several
34 occasions, including the amendments made by Chapter 642 of the
35 Statutes of 1929.

1 (h) Chapter 642 of the Statutes of 1929, amending Section 4 of
2 Chapter 700 of the Statutes of 1911, declared all land shoreward
3 of the bulkhead “to have ceased to be tidelands and to be free from
4 all trusts and restrictions imposed on said lands under and by any
5 of the provisions of this act, except that said city of its successors
6 shall not at any time grant, convey, give or alien said lands, or any
7 part thereof, to any individual, firm or corporation for any purpose
8 whatsoever; provided, however, that the city of San Diego or its
9 successors may lease, rent or otherwise let said lands ... for limited
10 periods, not to exceed fifty years, with the right of the city to renew
11 the same ”

12 (i) The Legislature also enacted Chapter 778 of the Statutes of
13 1929, that terminated certain public trust use limitations on a parcel
14 of filled tidelands and authorized the city and county to build a
15 public administration thereon.

16 (j) The California Supreme Court in *Atwood v. Hammond*
17 (1935) 4 Cal.2d 31, at page 43, found that, as to the relatively small
18 parcel at issue, it was not beyond the authority of the Legislature
19 to allow a public administration building on that parcel. The court
20 also stated that “it may well be that the inherent nature of the state’s
21 title in tidelands and its duty to protect the public interest is such
22 that it could not free from public interest all reclaimed lands” as
23 provided in Chapter 642 of the Statutes of 1929, “without reserving
24 any land for warehouses or other facilities [however] this question
25 need not be decided in the cases herein” (*Ibid.*).

26 (k) Between 1919 and 1940, the City of San Diego deeded
27 several parcels of land in the city, ~~in what~~ *including parcels within*
28 *the area that* is known today as the Navy Broadway Complex, to
29 the United States for military and other governmental purposes.
30 In 1990, the United States Navy decided to develop these lands
31 for uses, including private commercial uses, and brought a quiet
32 title action against the state and the San Diego Unified Port District.

33 (l) In a case involving the Navy Broadway Complex, the United
34 States District Court for the Southern District of California in
35 *United States of America v. 153.20 15.320 Acres of Land* (1991)
36 U.S. Dist. LEXIS 21875, based its holding that no public trust
37 interest existed in *the lots conveyed to the United States by the*
38 *City of San Diego within* the complex on the language of Chapter
39 642 of the Statutes of 1929. The court ~~states~~ *stated* that California’s
40 only hope to impose the use restrictions on the complex is “a ruling

1 by this court that [Chapter] 642 is invalid” (Id., at p. 14). The court,
 2 however, declines to do so, as “dicta from Atwood notwithstanding,
 3 neither the California [L]egislature nor the California courts have
 4 held [Chapter] 642 invalid or beyond the powers of the Legislature”
 5 (Ibid.).

6 (m) The Legislature also enacted *Chapter 250 of the Statutes of*
 7 *1913 and Chapter 808 of the Statutes of 1929*, authorizing cities
 8 to convey tide and submerged lands to the United States. ~~Chapter~~
 9 ~~808 of the Statutes of 1929, was also the United States. These~~
 10 *statutes were also* relied upon by the court in *United State of*
 11 *America v. 153.20 15.320 Acres of Land*.

12 (n) The Legislature, subsequent to enactment of Chapter 642,
 13 continued to exercise control over the property by ~~statute~~ *numerous*
 14 *statutory enactments evidencing the status of the property as public*
 15 *trust lands of the state*, and provided for the transfer of all lands
 16 held in the City of San Diego pursuant to Chapter 700 of the
 17 Statutes of 1911, to the San Diego Unified Port District by Chapter
 18 67 of the Statutes of 1962, First Extraordinary Session.

19 (o) The Legislature continues to exercise control over the
 20 property involved in Chapter 778 of the Statutes of 1929, as
 21 witnessed by the action taken by the Legislature by Chapter 482
 22 of the Statutes of 1982.

23 (p) In order to clarify the legal status of filled tidelands and
 24 submerged lands that were the subject of Chapter 642, and thereby
 25 prevent any future misinterpretation of their status, *it is the intent*
 26 *of the Legislature that Chapter 642 of the Statutes of 1929 shall*
 27 *not be construed as terminating the state’s public trust interest in*
 28 *those lands or any other public trust lands in the state. It is also*
 29 *the intent of the Legislature to protect all public trust lands in the*
 30 *state from development inconsistent with the trust and to protect*
 31 ~~public trust~~ *these lands from inappropriate transfers to the United*
 32 ~~States, the Legislature finds it necessary and appropriate to take~~
 33 ~~this action.~~

34 *SEC. 2. Chapter 250 of the Statutes of 1913 is repealed.*

35 ~~SEC. 2.~~

36 *SEC. 3. Chapter 642 of the Statutes of 1929 is repealed.*

37 ~~SEC. 3.~~

38 *SEC. 4. Chapter 808 of the Statutes of 1929 is repealed.*

39 *SEC. 5. Sections 2, 3, and 4 of this act shall not be construed*
 40 *to overturn or to otherwise nullify the decision in the United States*

- 1 *of America v. 15,320 Acres of Land (1991) U.S. Dist. LEXIS 21875*
- 2 *or any title settlement agreement entered into by the State of*
- 3 *California acting by and through the State Lands Commission.*

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