

Introduced by Senator Harman
(Coauthor: Assembly Member Wagner)

February 17, 2011

An act to amend Section 1 of Chapter 74 of the Statutes of 1978, as amended by Chapter 317 of the Statutes of 1997, relating to tidelands and submerged lands.

LEGISLATIVE COUNSEL'S DIGEST

SB 501, as introduced, Harman. Tidelands and submerged lands: City of Newport Beach.

Existing law grants to the City of Newport Beach the right, title, and interest of the State of California in and to certain tidelands and submerged lands in trust for specified purposes. Under existing law, the City of Newport Beach is authorized to lease certain lots, as described, for specified purposes as provided in the grant to the city and for terms not to exceed 50 years.

This bill would revise that grant to the City of Newport Beach to authorize the city to lease those certain lots for those specified purposes for terms not to exceed 50 years, or until January 1, 2060, whichever comes later.

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. Section 1 of Chapter 74 of the Statutes of 1978,
- 2 as amended by Section 1 of Chapter 317 of the Statutes of 1997,
- 3 is amended to read:

1 Section 1. There is hereby granted to the City of Newport Beach
2 and its successors all of the right, title, and interest of the State of
3 California held by the state by virtue of its sovereignty in and to
4 all that portion of the tidelands and submerged lands, whether
5 filled or unfilled, bordering upon and under the Pacific Ocean or
6 Newport Bay in the County of Orange, which were within the
7 corporate limits of the City of Newport Beach, a municipal
8 corporation, on July 25, 1919; the same to be forever held by the
9 city and its successors in trust for the uses and purposes and upon
10 the following express conditions:

11 (a) The lands shall be used by the city and its successors for
12 purposes in which there is a general statewide interest, as follows:

13 (1) For the establishment, improvement, and conduct of a public
14 harbor; and for the construction, maintenance, and operation
15 thereon of wharves, docks, piers, slips, quays, ways, and streets,
16 and other utilities, structures, and appliances necessary or
17 convenient for the promotion or accommodation of commerce and
18 navigation.

19 (2) For the establishment, improvement, and conduct of public
20 bathing beaches, public marinas, public aquatic playgrounds, and
21 similar recreational facilities open to the general public; and for
22 the construction, reconstruction, repair, maintenance, and operation
23 of all works, buildings, facilities, utilities, structures, and appliances
24 incidental, necessary, or convenient for the promotion and
25 accommodation of any such uses.

26 (3) For the preservation, maintenance, and enhancement of the
27 lands in their natural state and the reestablishment of the natural
28 state of the lands so that they may serve as ecological units for
29 scientific study, as open space, and as environments which provide
30 food and habitat for birds and marine life, and which favorably
31 affect the scenery and climate of the area.

32 (b) Except as otherwise provided in this section, the city or its
33 successors shall not, at any time, grant, convey, give, or alienate
34 the lands, or any part thereof, to any individual, firm, public or
35 private entity, or corporation for any purposes whatever; except
36 that the city or its successors may grant franchises thereon for a
37 period not exceeding 50 years for wharves and other public uses
38 and purposes and may lease the lands, or any part thereof, for terms
39 not exceeding 50 years for purposes consistent with the trust upon

1 which the lands are held by the state and with the uses specified
2 in this section.

3 (c) The lands shall be improved without expense to the state;
4 provided, however, that nothing contained in this act shall preclude
5 expenditures for the development of the lands for the purposes
6 authorized by this act, by the state, or any board, agency, or
7 commission thereof, or expenditures by the city of any funds
8 received for such purpose from the state or any board, agency, or
9 commission thereof.

10 (d) In the management, conduct, operation, and control of the
11 lands or any improvements, betterments, or structures thereon, the
12 city or its successors shall make no discrimination in rates, tolls,
13 or charges for any use or service in connection therewith.

14 (e) The state shall have the right to use without charge any
15 transportation, landing, or storage improvements, betterments, or
16 structures constructed upon the lands for any vessel or other
17 watercraft or railroad owned or operated by the state.

18 (f) There is hereby reserved to the people of the state the right
19 to fish in the waters on the lands with the right of convenient access
20 to the waters over the lands for such purpose, which rights shall
21 be subject, however, to such rules and regulations as are necessary
22 for the accomplishment of the purposes specified in subdivision
23 (a).

24 (g) Notwithstanding any provision of this section to the contrary,
25 the city may lease the lots located within Parcels A, B, and C
26 described in Section 6 of this act for the purposes set forth in this
27 act and for terms not to exceed 50 years, *or until January 1, 2060,*
28 *whichever comes later.* The consideration to be received by the
29 city for such leases shall be the fair market rental value of such
30 lots as finished subdivided lots with streets constructed and all
31 utilities installed. The form of such leases and the range of
32 consideration to be received by the city shall be approved by the
33 State Lands Commission prior to the issuance of any such lease.
34 All money received by the city from existing and future leases of
35 those lots shall be deposited in the city tideland trust funds as
36 provided in Section 2.

37 (h) With the approval of the State Lands Commission, the city
38 may transfer portions of the lands granted by this act, or held
39 pursuant to this act, to the state acting by and through the State
40 Lands Commission, for lease to the Department of Fish and Game

1 for an ecological reserve or wildlife refuge, or both, and other
2 compatible uses to be undertaken by the department; provided,
3 however, that, if at any time the Department of Fish and Game no
4 longer uses those portions of the lands so transferred by the city
5 to the state for those purposes, the lands so transferred shall revert
6 to the city to be held pursuant to the provisions of this act. Upon
7 approving such a transfer from the city to the state, the State Lands
8 Commission shall lease the lands so transferred to the Department
9 of Fish and Game. The public benefits shall be the sole
10 consideration to be received by the State Lands Commission from
11 the Department of Fish and Game for that lease. Any and all
12 income received by the Department of Fish and Game from the
13 lands so leased shall be used only in connection with the
14 department's improvement and administration of the leased lands.

15 (i) The city shall establish a separate tidelands trust fund or
16 funds in such a manner as may be approved by the State Lands
17 Commission, and the city shall deposit in the fund or funds all
18 money received directly from, or indirectly attributable to, the
19 granted tidelands in the city.

20 (j) In accordance with this act, the city, acting either alone or
21 jointly with another local or state agency, may use revenues
22 accruing from or out of the use of the granted tidelands or from
23 any additional trust assets, for any or all of the purposes set forth
24 in this act on public trust lands within the City of Newport Beach.
25 Those revenues may be deposited in one or more reserve funds
26 for use in accordance with the terms and conditions set forth in
27 this act.

28 (k) As to the accumulation and expenditure of revenues for any
29 single capital improvement on the public trust lands within the
30 city involving an amount in excess of two hundred fifty thousand
31 dollars (\$250,000) in the aggregate, the city shall file with the State
32 Lands Commission a detailed description of such capital
33 improvement not less than 30 days prior to the time of any
34 disbursement therefor or in connection therewith. The executive
35 officer of the commission shall notify the city within 30 days from
36 the date of the filing, if the proposed expenditure raises significant
37 issues. Upon receipt of the notification, the city shall not make
38 any disbursement in connection with the proposed expenditure for
39 60 days or until the commission has acted on the proposed
40 expenditure, whichever is the shorter period. Within 60 days of

1 the notification by the executive officer, the State Lands
2 Commission may determine and notify the city that the capital
3 improvement is not in the statewide interest and benefit or is not
4 authorized by the provisions of subdivision (j). The State Lands
5 Commission may request the opinion of the Attorney General on
6 the matter; and, if it does so, a copy of the opinion shall be
7 delivered to the city with the notice of its determination. If the
8 State Lands Commission notifies the city that the capital
9 improvement is not authorized, the city shall not disburse any
10 revenue for or in connection with the capital improvement unless
11 and until it is determined to be authorized by a final order or
12 judgment of a court of competent jurisdiction. The city is
13 authorized to bring suit against the state for the purpose of securing
14 such an order or adjudication, which suit shall have priority over
15 all other civil matters. Service of process shall be made upon the
16 Executive Officer of the State Lands Commission and the Attorney
17 General, and the Attorney General shall defend the state in such
18 suit. If judgment be given against the state in the suit, no costs
19 shall be recovered against it.

20 (l) On June 30, 1978, and on June 30 of every third fiscal year
21 thereafter, that portion of the city tideland trust revenues in excess
22 of two hundred fifty thousand dollars (\$250,000) remaining after
23 deducting current and accrued operating costs and expenditures
24 directly related to the operation or maintenance of tideland trust
25 activities shall be deemed excess revenues. However, any funds
26 deposited in a reserve fund for future capital expenditures or any
27 funds used to retire bond issues for the improvement or operation
28 of the granted lands shall not be deemed excess revenue. Capital
29 improvements of the granted lands for purposes authorized by this
30 act, including improvements on lands transferred to the state
31 pursuant to subdivision (h) and paid for by the city, may be
32 considered as expenditures for the purpose of determining excess
33 revenues; provided, however, that if made after the effective date
34 of this act they may be so considered only if made in accordance
35 with subdivision (k). The excess revenue, as determined pursuant
36 to this subdivision, shall be allocated as follows: 85 percent shall
37 be transmitted to the Treasurer for deposit in the General Fund in
38 the State Treasury, and 15 percent shall be retained by the city for
39 deposit in the trust fund for use in any purpose authorized by
40 subdivision (j) of this section.

1 (m) At the request of the city, the State Lands Commission shall
2 grant an extension of time, not to exceed 90 calendar days, for
3 filing any report or statement required by this act, that was not
4 filed due to mistake or inadvertence.

5 (n) If the city fails or refuse to file with the State Lands
6 Commission any report, statement, or document required by any
7 provision of this act, or any extension period granted pursuant to
8 this act, or fails or refuses to carry out the terms of this act, the
9 Attorney General shall, upon the request of the State Lands
10 Commission, bring such judicial proceedings for correction and
11 enforcement as are appropriate and shall act to protect any
12 improvements to, or assets situated upon, the granted lands or
13 diverted therefrom. The State Lands Commission shall notify the
14 Chief Clerk of the Assembly and the Secretary of the Senate within
15 30 days from the date of the occurrence of the failure or refusal
16 and of actions taken as a result thereof.

17 (o) The State Lands Commission shall, from time to time,
18 recommend to the Legislature such amendments as it may
19 determine to be necessary in the terms and conditions of this act.

20 (p) The State Lands Commission shall, from time to time,
21 institute a formal inquiry to determine that the terms and conditions
22 of this act, and amendments thereto, have been complied with in
23 good faith.

24 (q) On or before December 31 of each year, the State Lands
25 Commission shall report to the Chief Clerk of the Assembly and
26 to the Secretary of the Senate the full details of any transaction or
27 condition reported to the commission pursuant to this act which it
28 determines to be in probable conflict with this act or with any other
29 provision of law. Upon request by resolution of either house of
30 the Legislature, or upon formal request of the State Lands
31 Commission made only after a noticed public hearing at which the
32 city has been given an opportunity to express fully any
33 disagreement with the commission's findings or to describe any
34 extenuating circumstances causing the violation, the Attorney
35 General shall bring an action in the Superior Court in the County
36 of Orange to declare that the grant under which the city holds the
37 tidelands and submerged lands is revoked for gross and willful
38 violation of this act or any other provision of law or to compel
39 compliance with the requirements of this act and any other
40 provision of law.

- 1 (r) The city shall cause to be made and filed annually with the
2 State Lands Commission a detailed statement of receipts and
3 expenditures by it of all rents, revenues, issues, and profits in any
4 manner arising after the effective date of this act from the granted
5 lands or any improvements, betterments, or structures thereon.
- 6 (s) The Department of Fish and Game shall establish the funds
7 and make the deposits required by subdivision (i) of this section
8 and shall prepare and file statements required by subdivision (r)
9 as to any lands transferred to the state pursuant to subdivision (h).
- 10 (t) The provisions of Chapter 2 (commencing with Section 6701)
11 of Part 2 of Division 6 of the Public Resources Code shall be
12 applicable to this section. The provisions of Section 6359 of the
13 Public Resources Code shall not be applicable to this section.
- 14 (u) Notwithstanding any other provision of this act, the city
15 shall pay to the state all revenues received from the production of
16 oil, gas, and other minerals derived from or attributable to the real
17 property described in Section 6 of this act and the real property
18 acquired by the city pursuant to subdivision (a) of Section 2 of this
19 act. Whenever practicable, the city shall obtain the mineral rights
20 in real property acquired pursuant to subdivision (a) of Section 2
21 of this act.