

AMENDED IN SENATE AUGUST 12, 2013

AMENDED IN SENATE JULY 1, 2013

AMENDED IN ASSEMBLY APRIL 22, 2013

AMENDED IN ASSEMBLY MARCH 11, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 691

Introduced by Assembly Member Muratsuchi

February 21, 2013

An act to add Section 6311.5 to the Public Resources Code, relating to state lands.

LEGISLATIVE COUNSEL'S DIGEST

AB 691, as amended, Muratsuchi. State lands: granted trust lands: sea level rise.

Existing law vests with the State Lands Commission control over specified state lands, including tidelands and submerged lands. Existing law grants to various local entities the right, title, and interest of the state 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 provide that addressing the impacts ~~from~~ *of* sea level rise for all of its legislatively granted public trust lands shall be among the management priorities of a local trustee, as defined. The bill would require a local trustee whose gross public trust revenues average over \$250,000 annually between January 1, 2009, and January 1, 2014, to prepare and submit to the commission, no later than July 1, 2019, except as provided, an assessment of how it proposes to address sea level rise.

The bill would permit, but not require, a local trustee whose gross public trust revenues are \$250,000 or less to prepare and submit to the commission an assessment. The bill would require a local trustee to consider and use relevant information from specified reports on sea level rise in preparing the assessment and would permit a trustee that has already completed an assessment on the impacts of sea level rise to submit that assessment to the commission. The bill would require that the commission make those assessments available to the public on its Internet Web site, and send electronic copies to certain other public entities.

By adding to the duties of local agencies that are local trustees of granted public trust lands, this bill would impose a state-mandated local program.

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: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: yes.

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, *States in 1850*, and as
- 4 incident of its sovereignty, the State of California received title to
- 5 the tidelands, submerged lands, and beds of navigable waterways
- 6 within its borders to be held subject to the *common law* public trust
- 7 doctrine for statewide public purposes, including commerce,
- 8 navigation, fisheries, preservation of lands in their natural state,
- 9 open space, wildlife habitat, water-oriented recreation, and other
- 10 recognized public trust uses.
- 11 (b) The state has made grants of public trust lands to over 80
- 12 local public entities, each of which manages the state’s public trust
- 13 lands as trustee pursuant to the common law public trust doctrine,
- 14 statutory grants, the California Constitution, and other laws
- 15 governing the trust and the trustee’s fiduciary responsibilities.

1 (c) A local trustee of granted public trust lands is charged with
2 managing the state’s granted public trust lands on behalf of the
3 state for the benefit of all the people of California.

4 (d) As part of its fiduciary duty, a local trustee of granted public
5 trust lands is required to take reasonable steps under the
6 circumstances to take and keep control of and preserve the trust
7 property.

8 (e) The effects of climate change and sea level rise will have
9 enormous implications for the state’s economic and social future,
10 and have the potential to have a wide range of impacts to critical
11 infrastructure, such as schools, roads, hospitals, emergency
12 facilities, wastewater treatment plants, airports, ports, and energy
13 facilities.

14 (f) Coastal counties in California are home to approximately
15 32,000,000 people.

16 (g) The coastal economy contributes more than \$50 billion
17 annually to the State of California.

18 (h) Port activities in California generate an estimated \$7 billion
19 in state and local tax revenues annually and employ more than
20 500,000 people in California. Nationwide more than two million
21 jobs are connected to California ports.

22 (i) In 2007, more than 40 percent of the total containerized cargo
23 entering the United States arrived at California ports, and almost
24 30 percent of the nation’s exports left from California ports.

25 (j) In 2002, cargo operations shut down at west coast ports for
26 10 days, and the estimated loss to the national economy was \$1
27 billion per day.

28 (k) Research funded by the state has shown that a 55-inch sea
29 level rise, with a 100-year storm event along the California coast,
30 places approximately 480,000 people (based on the population in
31 2009) and nearly \$100 billion of property at risk.

32 (l) Coastal habitats, including wetlands and beaches, provide
33 important ecological, recreational, and scenic functions and values,
34 which are threatened by sea level rise, unless actions are taken to
35 effectively manage these habitats and adjacent lands.

36 (m) Many state entities, such as the Governor’s Office of
37 Planning and Research, the Strategic Growth Council, the Ocean
38 Protection Council, the San Francisco Bay Conservation and
39 Development Commission, the California Coastal Commission,
40 and the State Lands Commission have supported efforts to develop

1 tools and to increase accessibility to existing state data, and to
2 provide additional data and tools to help local, regional, and state
3 agencies make informed decisions about sea level rise.

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

13 (o) Because a local trustee of granted public trust lands holds
14 and manages its public trust property, including the lands and
15 revenue derived from that property, as a state asset for the benefit
16 of the people of California and cannot use the trust corpus for
17 general municipal purposes or other purposes not consistent with
18 the *common law* public trust doctrine and its statutory grant, and
19 because the State Lands Commission is provided with a mechanism
20 in this act to exempt a local trustee that does not have sufficient
21 state funds, either through the trust or other existing funding
22 mechanisms, to pay for the cost of assessing the impacts of sea
23 level rise, Section 6311.5 of the Public Resources Code, as added
24 by this act, will not impose costs on local governments.

25 SEC. 2. Section 6311.5 is added to the Public Resources Code,
26 to read:

27 6311.5. (a) For the purposes of this section, the following
28 terms shall have the following meanings:

29 (1) “Local trustee” means a local trustee of granted public trust
30 lands that is a county, city, or district, including water, sanitary,
31 regional park, port, or harbor district, or any other local political
32 or corporate subdivision that has been granted public trust lands
33 through a legislative grant.

34 (2) “Gross public trust revenues” means those gross revenues
35 that are subject to subdivision (c) of Section 6306.

36 (b) Addressing the impacts ~~from~~ of sea level rise for all of its
37 legislatively granted public trust lands pursuant to this section shall
38 be among the management priorities of a local trustee. The
39 geographic scope of a local trustee’s assessment of the impacts

1 from sea level rise is not required to go beyond the boundaries of
2 the local trustee's granted public trust lands.

3 (c) A local trustee, whose gross public trust revenues average
4 over two hundred fifty thousand dollars (\$250,000) annually
5 between January 1, 2009, and January 1, 2014, shall prepare and
6 submit to the commission, no later than July 1, 2019, an assessment
7 of how the local trustee proposes to address sea level rise. A local
8 trustee whose gross public trust revenues are two hundred fifty
9 thousand dollars (\$250,000) or less may, but is not required to,
10 prepare and submit to the commission an assessment.

11 (d) For the purposes of subdivision (c), a local trustee shall
12 consider and use relevant information from the 2009 California
13 Climate Adaptation Strategy prepared by the Natural Resources
14 Agency, the Report on Sea Level Rise Preparedness prepared by
15 the State Lands Commission, the Sea-Level Rise for the Coasts of
16 California, Oregon, and Washington: Past, Present, and Future, a
17 report prepared by the National Academy of Sciences, the
18 Resolution of the California Ocean Protection Council on
19 Sea-Level Rise, the State of California Sea-Level Rise ~~Interim~~
20 Guidance Document, and any subsequent updates to those reports
21 that become available six months prior to the date the ~~assessment~~
22 ~~is required to be submitted to the commission.~~ *local trustee submits*
23 *the assessment to the commission.* A local trustee's assessment
24 prepared pursuant to subdivision (c) shall include all of the
25 following:

26 (1) An assessment of the impact of ~~a range of~~ sea level rise on
27 granted public trust lands, as described in the Resolution of the
28 California Ocean Protection Council on Sea-level Rise and the
29 latest version of the State of California Sea-Level Rise ~~Interim~~
30 Guidance Document.

31 (2) Maps showing the areas that may be affected by sea level
32 rise in the years 2030, 2050, and 2100. These maps shall include
33 the potential impacts of 100-year storm events. A local trustee may
34 rely on appropriate maps generated by other entities.

35 (3) An estimate of the financial cost of the impact of sea level
36 rise on granted public trust lands. The estimate shall consider, but
37 is not limited to, the potential cost of repair of damage to and the
38 value of lost use of improvements and land, and the anticipated
39 cost to prevent or mitigate potential damage.

1 (4) A description of how the local trustee proposes to protect
2 and preserve natural and manmade resources and facilities located,
3 or proposed to be located, on trust lands and operated in connection
4 with the use of the trust lands. *The description shall include, but*
5 *is not limited to, how wetlands restoration and habitat preservation*
6 *would mitigate impacts of sea level rise.*

7 (e) In addressing the impacts ~~from~~ of sea level rise, a local
8 trustee shall collaborate with its lessees, appropriate local, state,
9 and federal agencies, and other users of the granted public trust
10 lands.

11 (f) (1) A local trustee that prepares an assessment pursuant to
12 subdivision (c) shall submit a copy to the commission in hard copy
13 and electronic form. The commission shall make the assessment
14 available to the public on its Internet Web site and, for
15 informational purposes, shall send an electronic copy to each
16 member of the Climate Action Team, the climate change program
17 manager in the office of the Secretary for Environmental
18 Protection, and the Governor's Office of Planning and Research.

19 (2) For purposes of compliance with this subdivision, if a trustee
20 has already completed an assessment of the impacts of sea level
21 rise that meets the criteria of this section, the trustee may submit
22 that assessment to the commission.

23 (g) The commission shall exempt a local trustee of granted
24 public trust lands from this section if the commission finds either
25 of the following:

26 (1) The local trustee's public trust lands are not subject to sea
27 level rise by 2100, based upon the highest projections in the most
28 recent version of the State of California Sea-Level Rise Guidance
29 Document.

30 (2) The cost to provide an assessment of how the local trustee
31 proposes to address the impacts of sea level rise substantially
32 outweighs the benefit the action would have in preventing the
33 potential economic and environmental harms associated with sea
34 level rise on the local trustee's granted public trust lands. In making
35 this determination, the economic benefits of all ecological services
36 provided by the existing natural resources in the local trustee's
37 granted public trust lands shall be considered.

38 (h) The commission shall exempt a local trustee from this section
39 if the revenues derived from its granted public trust lands and
40 assets subject to subdivision (c) of Section 6306 or funding made

1 available to it from other discretionary sources is not sufficient to
2 pay for the cost of assessing the impacts of sea level rise on granted
3 public trust land and providing this information to the commission.

4 (i) The commission shall consider a local trustee's request for
5 an exemption pursuant to subdivision (g) or (h) at a properly
6 noticed commission meeting if the request is made before
7 November 1, 2018.

8 (j) Other than submission of the assessment required by
9 subdivision (c), this section does not require a local trustee to
10 implement any specific actions to address sea level rise pursuant
11 to this section.

12 (k) Nothing in this section shall be construed to conflict with
13 any federal regulations governing sea level rise.

14 SEC. 3. No reimbursement is required by this act pursuant to
15 Section 6 of Article XIII B of the California Constitution because
16 the costs incurred by a local agency to pay for the program or level
17 of service mandated by this act, within the meaning of Section
18 17556 of the Government Code, will be paid solely from the
19 revenues derived from the public trust lands and assets that are
20 granted to that local agency by the state.