

**CALENDAR ITEM
C01**

A Statewide

06/02/14

S Statewide

S. Pemberton

CONSIDER SUPPORTING STATE LEGISLATION THAT WOULD ELIMINATE A PAYMENT OBLIGATION FROM THE CITY OF EUREKA TO THE STATE CONTROLLER RESULTING FROM AN AGREEMENT FOR THE STATE'S ASSISTANCE IN LITIGATION OF THE TIDELANDS BOUNDARY IN THE 1970s

INTRODUCTION:

State Lands Commission (Commission) staff has been reviewing various legislative proposals introduced in the 2013-14 legislative session that involve lands under the Commission's jurisdiction. This report describes proposed legislation (AB 1943 – Chesbro), pertaining to a legislative grant of public trust lands to the City of Eureka.

LEGISLATIVE PROPOSAL

AB 1943 (Chesbro): Tidelands: City of Eureka

SUMMARY:

AB 1943 would eliminate a payment obligation from the City of Eureka (City) to the State's General Fund resulting from an agreement for the State's assistance in litigation of tidelands boundary settlements in the 1970s. The bill also requires the City to annually transmit 4% of all gross revenue generated from the trust lands to the Commission for management of its granted lands program.

BACKGROUND AND ANALYSIS:

In 1970, the City initiated a lawsuit to protect a legislative grant of public trust lands from private encroachment. In subsequent years, the City found that it could no longer financially support the lawsuit. At that time, the Commission determined that the defense of the litigation was essential to statewide public trust interests and that it would be more expensive for the State to enter into its own litigation to protect those interests. As a result, the State entered into an agreement where it loaned the City up to \$750,000 to continue the litigation.

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In making the loan, the Legislature found that it would provide significant fiscal and time savings to the State, because the City would continue to pursue litigation that the State would otherwise be required to undertake. In exchange for the loan, the City agreed to undergo additional grant oversight in a number of ways, including audits of its granted lands revenues and expenditures and oversight of leases involving the granted lands. Additionally, the City was required to pay 15% of the revenue generated from its granted lands each year to the State Controller for deposit in the State's General Fund, in perpetuity, as repayment for the loan. The Commission staff is unsure why the repayment obligation was made permanent.

Over the years this payment has ranged between \$30,000 and \$60,000 annually. In total, the City states that through fiscal year 2012-13 it has paid approximately \$1.2 million to the State Controller since obtaining the loan. Because the loan has been more than repaid, the City wishes to be released from the permanent repayment obligation and instead reinvest revenue generated from its granted lands back into protecting and developing the granted public trust lands within the City's jurisdiction.

AB 1943 would eliminate the ongoing 15% repayment to the State and require the City to instead annually transmit 4% of its gross revenue from the trust lands to the Commission for management of its granted lands oversight duties.

Kapiloff Land Bank Fund

The Commission is the trustee of the Kapiloff Land Bank Fund created by the Kapiloff Land Bank Act (Act) of 1982 (commencing with Public Resources Code § 8600) for the purpose of facilitating public trust settlements and mitigation projects. The Act was introduced by former Assemblymember Lawrence Kapiloff and is an extension of Commission authority provided for in Public Resources Code § 6307. The Act was created to facilitate settlements of title to real property with cash payments where exchange parcels are not readily available or are not of equal value and to facilitate mitigation and management of those lands through the pooling of such payments. The Commission holds and administers the acquired lands as sovereign public trust lands of the legal character of tidelands and submerged lands. The Land Bank Fund may receive revenues for mitigation, title settlements, or the administration of the Commission's granted lands oversight duties.

Granted Public Trust Lands

The Commission exercises oversight authority over sovereign public trust lands granted in trust by the Legislature to approximately 80 local jurisdictions, including those lands

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underlying the ports of Los Angeles, Long Beach, San Diego, San Francisco and Oakland.

Several granting statutes require that the Commission receive a percentage of gross revenues from granted lands for its granted lands oversight duties. For example, pursuant to Chapter 728, Statutes of 1994, and Chapter 317, Statutes of 1997, the City of Newport Beach is required to remit certain income from activities on trust lands into the Land Bank Fund for costs related to the administration of granted trust lands by the Commission. Additionally, Chapter 422, Statutes of 2011 (SB 551, DeSaulnier) requires that 20% of income generated by the City of Pittsburg's grant be remitted to the Commission, which then transmits 80% of that to the General Fund and 20% to the Kapiloff Land Bank Fund for administration of granted trust lands.

The Bureau of State Audits Report: 2010-125 released on August 23, 2011, found that the Commission had been unable to adequately implement its oversight duties and recommended that the Commission establish a monitoring program to ensure that the funds generated from granted lands are used in accordance with the public trust. The transfer of 4% of gross trust revenues from the City of Eureka, consistent with the Newport Beach and Pittsburg granting statutes, is intended to ensure that the State's public trust lands and resources are used appropriately as required by the Legislature and the courts.

STAFF RECOMMENDATION:

Commission staff recommends that the Commission adopt a support position on AB 1943 because the loan to the City has been paid in full and should be reinvested back into maintaining and improving the granted public trust lands, consistent with the structure of other legislative grants of public trust land throughout California. Additionally, re-directing 4% of the revenue generated from the granted lands to the Commission to support its management and oversight duties is beneficial to the State's granted lands and assets.

AB 1943 was approved on May 8, 2014 on the Assembly Floor on a 72-0 vote and is pending in the Senate Rules Committee. The bill is supported by the City of Eureka and has not received any opposition.

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RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

1. Adopt a support position on AB 1943 (Chesbro).