

Senate Bill No. 551

CHAPTER 422

An act to repeal Article 4 (commencing with Section 6361) of Chapter 4 of Part 1 of Division 6 of the Public Resources Code, relating to tidelands, and making an appropriation therefor.

[Approved by Governor October 2, 2011. Filed with
Secretary of State October 2, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

SB 551, DeSaulnier. State property: tidelands transfer: City of Pittsburg.

(1) Existing law grants tidelands and submerged lands to the City of Pittsburg, subject to specified conditions, for purposes of commerce, navigation, and fisheries, and for other public trust purposes. The Kapiloff Land Bank Act creates the Land Bank Fund and continuously appropriates moneys in the fund, subject to a statutory trust, to the State Lands Commission, acting as the Land Bank Trustee, to acquire real property or any interest in real property for the purposes of public trust title settlements.

This bill would repeal the existing codified legislative grant to the City of Pittsburg and would enact a new uncodified grant of tidelands and submerged lands, as described, to the City of Pittsburg. The bill would require the trust lands to be held by the City of Pittsburg, as trustee, for the benefit of all the people of the state for purposes consistent with the public trust doctrine, including the protection of maritime or water dependent commerce, navigation, and fisheries, and the preservation of the lands in their natural state for scientific study, open space, wildlife habitat, and water-oriented recreation.

The bill would require, on June 30, 2012, and at the end of every fiscal year thereafter, that 20% of all gross revenues generated from the trust lands be transmitted to the commission, for allocation by the Treasurer, of which 80% would be deposited in the General Fund and 20% in the Kapiloff Land Bank Fund, thereby making an appropriation.

The bill would require the commission, by January 1, 2014, to survey, monument, and record a plat and a metes and bounds description of the trust lands subject to the bill.

The bill would impose a state-mandated local program by requiring, among other things, that the City of Pittsburg submit to the commission for its approval a trust lands use plan, as prescribed. The bill would require the city to file a report with the commission by September 30, 2022, and every 5 years thereafter, on its uses of the trust lands, and to annually file a detailed statement of trust revenues and expenditures.

(2) 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.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Article 4 (commencing with Section 6361) of Chapter 4 of Part 1 of Division 6 of the Public Resources Code is repealed.

SEC. 2. (a) For the purposes of this act, the following definitions shall apply:

(1) “Act” means Sections 2 to 10, inclusive, of the act enacting this section.

(2) “Commission” means the State Lands Commission.

(3) “Public trust doctrine” means the common law doctrine, as enunciated by the court in *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, and other relevant judicial decisions, specifying the state’s authority as sovereign to exercise a continuous supervision and control over the navigable waters of the state, the lands underlying those waters, and nonnavigable tributaries to navigable waters, including the maritime or water dependent commerce, navigation, and fisheries, and the preservation of lands in their natural state for scientific study, open space, wildlife habitat, and water-oriented recreation.

(4) “State” means the State of California.

(5) “Trustee” means the City of Pittsburg, a municipal corporation.

(6) “Trust lands” means all tidelands and submerged lands, whether filled or unfilled, situated within the boundaries of the City of Pittsburg including those lands annexed to the City of Pittsburg pursuant to Section 56740 of the Government Code on December 31, 2009, as surveyed, monumented, and recorded pursuant to Section 10 of this act, except as provided in Section 9 of this act.

(7) “Trust revenues” means all revenues received from trust lands and trust assets.

(8) “Trust lands use plan” or “plan” means the trust use land plan required to be submitted by the trustee to the commission pursuant to Section 4 of this act.

(9) “Trust lands use report” means the trust lands use report of its utilization of the trust lands required to be submitted by the trustee pursuant to Section 5 of this act.

(b) There is hereby granted in trust to the City of Pittsburg, and to its successors, all of the rights, title, and interest of the state, held by the state by virtue of its sovereignty in and to all tide and submerged lands, whether filled or unfilled, situated in the City of Pittsburg, County of Contra Costa, including those lands annexed to the City of Pittsburg pursuant to Section

56740 of the Government Code on December 31, 2009, as surveyed, monumented, and recorded pursuant to Section 10 of this act, except as provided in Section 9 of this act.

SEC. 3. The trust grant specified in Section 2 of this act is subject to all of the following express conditions:

(a) The trust lands shall be held by the trustee in trust for the benefit of all the people of the state for purposes consistent with the public trust doctrine, including, but not limited to, maritime or water dependent commerce, navigation, and fisheries, preservation of the lands in their natural state for scientific study, open space, wildlife habitat, and water-oriented recreation.

(b) On and after January 1, 2017, the use of the trust lands shall conform to an approved trust lands use plan, as required by subdivision (e) of Section 4 of this act.

(c) The trustee shall not, at any time, grant, convey, give, or otherwise alienate or hypothecate the trust lands, or any part of the trust lands, to any person, firm, entity, or corporation for any purposes whatsoever.

(d) The trustee may lease the trust lands, or any part of the trust lands, for limited periods, not exceeding 49 years, for purposes consistent with the trust upon which those lands are held, as specified in subdivision (a). The trustee may collect and retain rents and other trust revenues from those leases, under rules and regulations adopted in accordance with Section 7 of this act, and in accordance with all of the following requirements:

(1) On and after January 1, 2017, all leases or agreements proposed or entered into by the trustee shall be consistent with the trust lands use plan approved by the commission, as required by subdivision (e) of Section 4 of this act. Any leases entered into prior to January 1, 2017, shall be consistent with the public trust doctrine and the terms of subdivision (a).

(2) The lease rental rates shall be for a fair annual rent.

(3) The lease shall be in the best interest of the state.

(e) When managing, conducting, operating, or controlling the trust lands or an improvement, betterment, or structure on the trust lands, the trustee or his or her successor shall not discriminate in rates, tolls, or charges for any use or service in connection with those actions and shall not discriminate against or unlawfully segregate any person or group of persons because of sex, race, color, creed, national origin, ancestry, or physical disability for any use or service in connection with those actions.

(f) The state shall have the right to use without charge, a transportation, landing, or storage improvement, betterment, or structure constructed upon the trust lands for a vessel or other watercraft or railroad owned or operated by, or under contract to, the state.

(g) The trust lands are subject to the express reservation and condition that the state may, at any time in the future, use those lands, or any portion of those lands, for highway purposes without compensation to the City of Pittsburg or a person, firm, or public or private corporation claiming a right to those lands, except if the improvements have been placed with legal authority upon the property taken by the state for highway purposes,

compensation shall be made to the person entitled to the value of the interest in the improvements taken or the damages to that interest.

(h) There is reserved to the people of the state the right to fish in the waters over the trust lands, with the right of convenient access to those waters over the trust lands for this purpose.

(i) There is excepted and reserved to the state all remains or artifacts of archaeological or historical significance and all deposits of minerals, including, but not limited to, all substances specified in Section 6407 of the Public Resources Code in the trust lands, and the right to prospect for, mine, and remove those deposits from the lands.

(j) The trustee shall not authorize a capital outlay project, lease, or agreement for port industrial facilities, including, but not limited to, a marine terminal, pipeline, or other related energy facility, on the trust lands without first requesting and receiving the approval of the commission. Prior to approving a capital outlay project, lease, or agreement, the commission shall consult with other governmental agencies, and the commission shall not approve the project, lease, or agreement, unless the commission determines that the project is in, and for, the best interest of the people of the state and consistent with applicable provisions of law.

(k) The trustee shall reimburse the commission for all expenses incurred in the administration of this act, including periodic audits or investigations.

SEC. 4. (a) On or before January 1, 2017, the trustee shall submit to the commission a trust lands use plan describing any proposed development, preservation, or other use of the trust lands. The trustee shall thereafter submit to the commission for approval all changes of, amendments to, or extensions of, the trust lands use plan.

(b) The commission shall review with reasonable promptness the trust lands use plan submitted by the trustee and any changes or amendments to determine whether they are consistent with the public trust and the requirements of this act. Based upon its review, the commission shall either approve or disapprove the plan. If the commission disapproves the plan the commission shall notify the trustee and the trustee shall submit a revised plan to the commission no later than 180 days after the date of notice of disapproval. If the commission determines the revised plan is inconsistent with the common law public trust doctrine and the requirements of this act, all rights, title, and interest of the trustee in and to the trust lands and improvements on the trust lands shall revert to the state.

(c) The trust lands use plan shall consist of a plan, program, or other document that includes all of the following:

(1) A general description of the type of uses planned or proposed for the trust lands. The location of these land uses shall be shown on a map or aerial photograph.

(2) The projected statewide benefit to be derived from the planned or proposed uses of the trust lands, including, but not limited to, financial benefit.

(3) The proposed method of financing the planned or proposed uses of the trust lands, including estimated capital costs, annual operating costs, and anticipated annual trust revenues.

(4) An estimated timetable for implementation of the trust land use plan or any phase of the plan.

(5) A description of how the trustee proposes to protect and preserve natural and manmade resources and facilities located on trust lands and operated in connection with the use of the trust lands, including, but not limited to, addressing impacts from sea level rise.

(d) The governing body of the trustee shall also submit to the commission, as part of the trust lands use plan, for its approval, procedures, rules, and regulations to govern the use of or development of the trust lands. These rules and regulations shall include, but are not limited to, lease rates, the basis upon which the rates are established, lease terms and conditions, provisions for renegotiation of rates and terms and assignments, and any other information as may be required by the commission.

(e) Any use of the trust lands, including, but not limited to, all leases or agreements proposed, or entered into, by the trustee after January 1, 2017, shall be consistent with the trust lands use plan submitted by the trustee and approved by the commission.

(f) Upon request, the trustee shall submit to the commission a copy of all leases and agreements entered into, renewed, or renegotiated.

SEC. 5. (a) On or before September 30, 2022, and on or before September 30 of every succeeding fifth year, the trustee shall submit a report of its utilization of the trust lands for each immediately preceding five-calendar-year period ending with June 30 of the calendar year in which the report is required to be submitted.

(b) The report required by this section shall include all of the following:

(1) A general description of the uses to which the trust lands have been placed during the period covered by the report.

(2) A list of the holders of leases or permits that have been granted or issued by the trustee, which list shall specify all of the following, as to each holder:

(A) The use to which the trust lands have been placed by the owner or holder.

(B) The consideration provided for in each lease or permit, and the consideration actually received by the trustee for the lease or permit granted or issued.

(C) An enumeration of the restrictions that the trustee has placed on the use of the trust lands, and each area of the trust lands, for the period covered by the report.

SEC. 6. (a) The trustee shall demonstrate good faith in carrying out the provisions of its trust land use plan and amending it when necessary in accordance with Section 3 of this act.

(b) If the commission determines that the trustee substantially failed to improve, restore, preserve, or maintain the trust lands, as required by the trust land use plan, or has unreasonably delayed implementation of their

trust use plan, all rights, title, and interest of the trustee in and to the trust lands and improvements on the trust lands shall revert to the state.

SEC. 7. (a) (1) The trustee shall establish and maintain accounting procedures, in accordance with generally accepted accounting principles, providing accurate records of all revenues received from the trust lands and trust assets and of all expenditures of those revenues.

(2) All trust revenues received from trust lands and trust assets shall be expended only for those uses and purposes consistent with this act. The trustee shall provide for the segregation of funds derived from the use of the trust lands by the trustee from other city municipal funds, so as to ensure that trust revenues are only expended to enhance or maintain the trust lands in accordance with the uses and purposes for which the trust lands are held.

(3) Trust revenues may be expended to acquire appropriate upland properties to benefit and enhance the trust, subject to a determination by the commission that this acquisition is consistent with this act and in the best interests of the state. Property acquired with these trust revenues shall be considered an asset of the trust and subject to the terms and conditions of this act.

(b) On or before October 1 of each year, the trustee shall file with the commission a detailed statement of all trust revenues and expenditures relating to its trust lands and trust assets, including obligations incurred but not yet paid, covering the fiscal year preceding submission of the statement. The commission may specify the form and content of this statement. The statement shall meet both of the following requirements:

(1) The statement shall be prepared according to generally accepted accounting principles.

(2) The statement shall be specific to the trust lands and trust assets and shall not include city municipal financial or accounting information unrelated to the trust lands and trust assets.

(c) (1) Before expending trust revenues for any single capital improvement on the trust lands involving an amount in excess of two hundred fifty thousand dollars (\$250,000) in the aggregate, the trustee shall file with the commission a detailed description of the capital improvement not less than 120 days prior to the time of any disbursement of trust revenues for, or in connection with, that capital improvement.

(2) Within 120 days after the time of a filing specified in paragraph (1), the commission shall determine whether the capital improvement is in the statewide interest and benefit and, if the filing is made on or before December 1, 2016, whether it is consistent with subdivision (a) of Section 3 of this act or, if the filing is made on or after January 1, 2017, whether it is consistent with the trust use plan. The commission may request the opinion of the Attorney General on the matter, and if the commission makes this request, the Attorney General shall deliver a copy of the opinion to the trustee with the notice of its determination.

(3) If the commission notifies the trustee that the capital improvement is not authorized, the trustee shall not disburse any trust revenues for, or in

connection with, the capital improvement, unless it is determined to be authorized by a final order or judgment of a court of competent jurisdiction.

(4) The trustee may bring suit against the state for the purpose of securing an order or judgment for purposes of paragraph (3), which suit shall have priority over all other civil matters. Service shall be made upon the executive officer of the commission and the Attorney General, and the Attorney General shall defend the state in that suit. If judgment is given against the state in the suit, no costs may be recovered.

(d) On June 30, 2012, and at the end of every fiscal year thereafter, 20 percent of all gross revenue generated from the trust lands shall be transmitted to the commission. Of this amount transmitted, the commission shall allocate 80 percent to the Treasurer, for deposit in the General Fund, and 20 percent to the Treasurer, for deposit in the Kapiloff Land Bank Fund for expenditure pursuant to Division 7 (commencing with Section 8600) of the Public Resources Code for management of the commission's granted lands program.

(e) The commission may, from time to time, institute a formal inquiry to determine that the terms and conditions of this act, and amendments to this act, have been complied with, and that all other applicable provisions of law concerning the trust lands are being complied with in good faith.

(f) The commission shall approve in advance of expenditure any reimbursement for expenditures of nontrust revenues for improvements made to the trust or, if not approved, those expenditures shall be deemed a gift to the trust.

SEC. 8. (a) If the commission finds that the trustee has violated or is about to violate the terms of its trust grant or any other principle of law relating to its obligation under the public trust doctrine or under this act, the commission shall notify the trustee of the violation.

(b) The trustee shall have 30 days from receipt of a notice of violation to conform to the terms of its grant and the principles and laws under the public trust doctrine. If the trustee fails or refuses to take those actions, the commission may bring an action to enforce the rights of the state and people as settlor beneficiary of the public trust doctrine.

(c) The Attorney General shall represent the state and people in all actions or proceedings taken pursuant to this section. If the judgment is given against the state in the action or proceeding, no costs shall be recovered from the state and people.

SEC. 9. The lands identified as Browns Island, Commission Lease Number PRC 4966 CPN Pipeline, and Commission Lease Number PRC 8736 Trans Bay Cable LLC are not included as trust lands for purposes of this act.

SEC. 10. (a) On or before January 1, 2014, the commission shall survey, monument, and record a plat and a metes and bounds description of the trust lands in the office of the county recorder in the county or counties in which the lands are located. Upon recordation, the survey, monuments, plat, and metes and bounds description shall be binding upon the state, the grantee, and their successors in interest.

(b) The cost of the survey and recordation shall be paid by the trustee.

(c) The requirements of Section 6359 of the Public Resources Code do not apply to the trust lands granted pursuant to this act.

SEC. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.