

Senate Bill No. 1493

CHAPTER 742

An act to amend Section 20092 of the Education Code, to amend Sections 3206, 5018.1, 5080.05, 5080.23, 6107, 6201, 6216.1, 6477, 6914, 7730, 8618, 8622, 30512, 30513, 33503, 71204, 71204.9, 71205.3, 71210, 71211, 71212, 71213, 71215, and 71216 of, to amend the heading of Chapter 2 (commencing with Section 71203) of Division 36 of, to add and repeal Section 3114 of, and to repeal Section 5019.15 of, the Public Resources Code, and to repeal Chapter 1520 of the Statutes of 1967, relating to public resources, and making an appropriation therefor.

[Approved by Governor September 23, 2018. Filed with
Secretary of State September 23, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1493, Committee on Natural Resources and Water. Public resources.

(1) Existing law, the California Cultural and Historical Endowment Act, establishes the California Cultural and Historical Endowment in the Natural Resources Agency. Among other things, the act authorizes the endowment to create a competitive grant program to support small capital projects in museums, as specified. The act also authorizes the endowment to adopt regulations as necessary or convenient for carrying out the purposes of the act, including, but not limited to, establishing grant application criteria and procedures.

This bill would additionally include exhibits, educational programs, outreach programs, public programs, curriculum, marketing, and collections care as purposes for which the endowment is authorized to create a competitive grant program. The bill would exempt the development and adoption of program guidelines and selection criteria for purposes of the competitive grant program from the Administrative Procedure Act, but would require the endowment to hold at least one public hearing before adopting program guidelines and selection criteria.

(2) Existing law requires the operator of any idle well to either (A) no later than January 1 of each year, for each idle well that was an idle well at any time in the last calendar year, file with the State Oil and Gas Supervisor an annual fee or (B) file a plan with the supervisor to provide for the management and elimination of all long-term idle wells.

This bill would make no later than May 1 of each year the deadline for the filing of that annual fee.

(3) The federal Safe Drinking Water Act regulates certain wells as Class II wells, as defined. Under existing federal law, the authority to regulate Class II wells in California is delegated to the Division of Oil, Gas, and Geothermal Resources in the Department of Conservation. Under existing

law, the division implements the Underground Injection Control Program pursuant to this federal delegation. The federal act prohibits certain well activities that affect underground sources of drinking water, unless those sources are located in an exempted aquifer. Existing federal law authorizes a state delegated with the responsibility of regulating Class II wells to propose that an aquifer or a portion of an aquifer be an exempted aquifer and authorizes the United States Environmental Protection Agency to approve the proposal if the aquifer or a portion of the aquifer meets certain criteria.

Existing law requires the Department of Conservation and the State Water Resources Control Board, by January 30, 2016, and every 6 months thereafter, until March 1, 2019, to provide to the fiscal and relevant policy committees of the Legislature certain reports regarding the implementation of the Underground Injection Control Program.

This bill would instead require the Department of Conservation, in consultation with the State Water Resources Control Board, by July 30, 2019, and annually thereafter, until October 1, 2024, to provide to the fiscal and relevant policy committees of the Legislature similar reports regarding the implementation of the Underground Injection Control Program.

(4) Existing law authorizes the Department of Finance to delegate to the Department of Parks and Recreation the right to exercise the same authority granted to the Division of the State Architect and the Real Estate Services Division in the Department of General Services, to plan, design, construct, and administer contracts and professional services for legislatively approved capital outlay projects and authorizes the department to revoke, in whole or in part, this right at any time. Existing law repeals these provisions on January 1, 2019.

This bill would extend the operation of these provisions indefinitely.

(5) Existing law establishes the Parks Project Revolving Fund in the State Treasury, and requires, upon the approval of the Department of Finance, except as provided, the transfer to, or deposit in, the fund of all money appropriated, contributed, or made available from any source, including sources other than state appropriations, for expenditure on work within the powers and duties of the Department of Parks and Recreation with respect to the construction, alteration, repair, and improvement of state park facilities, as specified.

Existing law makes money transferred from state sources for major construction available to the Department of Parks and Recreation without regard to fiscal years and irrespective of specified limitations for encumbrance.

Existing law makes these provisions inoperative on a date that is 3 years after the date the Department of Parks and Recreation's authority to plan, construct, and administer contracts and professional services for capital outlay projects is repealed, and is repealed on the following January 1.

This bill would extend the operation of the fund indefinitely. By extending operation of a continuously appropriated fund, this bill would make an appropriation.

(6) Existing law generally requires that a concession contract within state parks for a period of more than 2 years be awarded to the best responsible bidder.

This bill would instead generally require that a concession contract within state parks for a period of more than 3 years be awarded to the best responsible bidder.

(7) Existing law authorizes the Director of Parks and Recreation to award a concession contract authorizing occupancy of any portion of the state park system for a period of more than 2 years to the best responsible person or entity submitting a proposal, as defined, for a concession contract if the director determines that it is in the best interest of the state, subject to certain requirements and procedures.

This bill would instead authorize the director to award those concession contracts for a period of more than 3 years.

(8) Existing law vests with the State Lands Commission control over specified lands in the state, including certain tidelands and submerged lands, and prescribes the functions and duties of the commission with regard to the protection, preservation, enhancement, and maintenance of those lands. Existing law requires the commission, whenever it enters into any agreement for the compromise or settlement of claims, pursuant to the authority granted to it by law, to submit the agreement to the Governor and, if the agreement is approved by the Governor, specifies that it shall be binding upon the state and any other party to the agreement.

This bill would revise the above provision to specify that it applies to any agreement for the compromise or settlement of title or boundary claims.

(9) Existing law requires the State Lands Commission, whenever a person becomes entitled to a patent, upon the surrender of the full-paid certificate of purchase or the submission of an affidavit by a person having an interest in the land that the certificate of purchase is lost, destroyed, or beyond the control of the owner or owners of the land, to prepare a patent for the land. Existing law further requires that such a patent be signed by the Governor, attested by the Secretary of State, sealed with the Great Seal of the State of California, and countersigned by the commission.

This bill would also require that a deed be signed by the Governor, attested by the Secretary of State, sealed with the Great Seal of the State of California, and countersigned by the commission.

(10) The California Coastal Act of 1976 requires a land use plan of a proposed local coastal program to be submitted to the California Coastal Commission for certification. The act requires a local government to submit to the commission the zoning ordinances, zoning district maps, and, where necessary, other implementing actions that are required under the act. The act establishes various time deadlines for the commission to act in regard to the submitted land use plan, zoning ordinances, zoning district maps, and other implementing actions.

This bill would specify that those deadlines are expressed in working days.

(11) Existing law creates the Coachella Valley Mountains Conservancy in the Natural Resources Agency and, among other things, authorizes the conservancy to acquire and hold specified lands in the Coachella Valley and the surrounding mountains for certain open-space, wildlife protection, and recreational uses. Existing law provides that the governing board of the conservancy consists of 23 voting members, as specified.

This bill would reduce to 20 the membership of the governing board of the conservancy, as provided.

(12) Existing law, the Marine Invasive Species Act, requires the State Lands Commission to implement and administer laws regulating the uptake or discharge of ballast water from vessels that impact marine species in the state's waterways. The act, among other things, requires the master, owner, operator, or person in charge of a vessel carrying, or capable of carrying, ballast water, that operates in the waters of the state to take various actions to minimize the uptake and release of nonindigenous species, including, among other things, to clean the ballast tanks regularly in mid-ocean waters, or under controlled arrangements in port or in drydock, to remove fouling organisms and sediments, as specified.

This bill would revise that requirement to require the removal of sediments and biofouling organisms, would make related changes, and would make nonsubstantive changes in certain provisions of the act.

(13) Existing law grants all right, title, and interest of the state in and to all tidelands and submerged lands within a specified area in trust to the Metropolitan Water District of Southern California for the purposes of the construction, maintenance, and operation on the tidelands and submerged lands of a plant for the production of fresh water employing a nuclear powered sea water desalting process or a plant for the production of electric energy using nuclear means, or both, and any other facilities, equipment, or plants necessary or desirable in connection with the production and delivery of fresh water, electricity, and any byproducts incident to the production and delivery of fresh water and electricity. Existing law imposes on the grant certain conditions and reservations, including, among other things, the conditions that the district is prohibited from granting, conveying, or alienating the lands to any individual, firm, or corporation for any purpose, but is allowed to grant easements, licenses, and leases for any of the purposes of the grant, as specified. Existing law reserves, among others, the rights of navigation and fishing in the waters surrounding the facilities to be constructed in the people and, in the state, all deposits of minerals in the lands granted.

Existing law authorizes the district to reclaim, fill, and raise portions of the tidelands and submerged lands to levels that may be necessary or convenient to create an island and a causeway to connect the island with the mainland, as specified. Existing law grants to the district an easement across certain state beach lands for the construction of the causeway and terminates the easement unless a payment is made to the Department of Parks and Recreation, as specified.

Existing law directs the State Lands Commission, upon completion of the reclamation, filling and raising of the lands to create the island, and upon completion of the causeway, or when any extensions or additions are constructed, to execute and record appropriate instruments describing the lands comprising the island and causeway, as specified. Upon the recording of those instruments, existing law frees those lands from public use and trust for commerce, navigation, and fisheries and existing law sets forth findings that the freeing of those lands is promotive of the public interest and in aid of the construction, maintenance, and operation of the plant described above.

This bill would repeal these provisions.

(14) This bill would make legislative findings and declarations as to the necessity of a special statute due to the unique circumstances involving a grant of tidelands and submerged lands to the Metropolitan Water District of Southern California.

Appropriation: yes.

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

SECTION 1. Section 20092 of the Education Code is amended to read:

20092. (a) The endowment may create a competitive grant program to support small capital projects, exhibits, educational programs, outreach programs, public programs, curriculum, marketing, and collections care in museums pursuant to subdivision (b) of Section 20057. The grant program shall give priority to the objectives listed in Section 20091. Funding for the grant program shall only be made, upon appropriation by the Legislature, from the funds collected pursuant to Section 5169 of the Vehicle Code.

(b) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to the development and adoption of program guidelines and selection criteria for purposes of this section. The endowment shall hold at least one public hearing before adopting program guidelines and selection criteria.

SEC. 2. Section 3114 is added to the Public Resources Code, to read:

3114. (a) By July 30, 2019, and annually thereafter, the Department of Conservation, in consultation with the State Water Resources Control Board, shall report to the fiscal and relevant policy committees of the Legislature on the Underground Injection Control Program. The report shall include, but is not limited to, all of the following about activities in the previous 12 months:

(1) The number and location of underground injection control project approvals issued by the department, including projects that were approved but subsequently lapsed without having commenced injection.

(2) The monthly average number of pending project applications.

(3) The average length of time to obtain an underground injection control project approval from date of receipt of complete application to the date of issuance.

(4) The average amount of time to review an underground injection control project proposal by the Division of Oil, Gas, and Geothermal Resources and the average combined review time by the State Water Resources Control Board and regional water quality control boards for each proposed underground injection control project.

(5) The number of project proposals pending for over one year.

(6) A list of pending aquifer exemptions, if any, and their status in the review process.

(7) The average length of time to process an aquifer exemption and the average amount of time to review a proposed aquifer exemption by the Division of Oil, Gas, and Geothermal Resources and the average combined review time by the State Water Resources Control Board and regional water quality control boards for each aquifer exemption proposal.

(8) The number and description of underground injection control related violations identified.

(9) The number of enforcement actions taken by the department.

(10) The number of shut-in orders or requests to relinquish permits and the status of those orders or requests.

(11) The number, classification, and location of staff with work related to underground injection control.

(12) The number of staff vacancies for positions associated with underground injection control.

(13) Any state or federal legislation, administrative, or rulemaking changes to the program.

(14) The number of underground injection control projects reviewed for compliance with statutes and regulations in each district and a summary of findings from project reviews completed during the reporting period, including any steps taken to address identified deficiencies.

(15) The number of underground injection control projects that have not been reviewed for compliance with applicable statutes and regulations within the prior two years.

(16) Summary of significant milestones in their compliance schedule agreed to with the United States Environmental Protection Agency, as indicated in the March 9, 2015, letter to the division and the state board from the United States Environmental Protection Agency, including, but not limited to, regulatory updates, evaluations of injection wells, and aquifer exemption applications.

(17) Summary of activities undertaken by the underground injection control review panel established pursuant to Section 46 of Chapter 24 of the Statutes of 2015.

(b) This section shall become inoperative on October 1, 2024, and, as of January 1, 2025, is repealed.

SEC. 3. Section 3206 of the Public Resources Code is amended to read:

3206. (a) The operator of any idle well shall do either of the following:

(1) No later than May 1 of each year, for each idle well that was an idle well at any time in the last calendar year, file with the supervisor an annual fee equal to the sum of the following amounts:

(A) One hundred fifty dollars (\$150) for each idle well that has been an idle well for three years or longer, but less than eight years.

(B) Three hundred dollars (\$300) for each idle well that has been an idle well for eight years or longer, but less than 15 years.

(C) Seven hundred fifty dollars (\$750) for each idle well that has been an idle well for 15 years or longer, but less than 20 years.

(D) One thousand five hundred dollars (\$1,500) for each idle well that has been an idle well for 20 years or longer.

(2) File a plan with the supervisor to provide for the management and elimination of all long-term idle wells.

(A) For the purposes of the plan required by this paragraph, elimination of an idle well shall be accomplished when the well has been properly abandoned in accordance with Section 3208, or it has been shown to the division's satisfaction that, since the well became an idle well, the well has maintained production of oil or gas or been used for injection for a continuous six-month period.

(B) A plan filed pursuant to this paragraph shall meet all of the following requirements and conditions:

(i) The plan shall specify the time period that it covers. The plan and any renewal of the plan shall cover a time period of no more than five years and shall be subject to approval by the supervisor who may prioritize the order in which idle wells are addressed.

(ii) The plan shall be reviewed for performance annually by the supervisor, and be subject to amendment by the supervisor, or by the operator with the approval of the supervisor.

(iii) The required rate of long-term idle well elimination shall be based upon the number of idle wells under the control of an operator on January 1 of each year, as specified in clause (iv). If the operator has eliminated more wells than required in the prior two years, the supervisor may deduct from the new requirement the net total of long-term idle wells eliminated in excess of those previously required. In addition, the supervisor may require additional well testing requirements as part of the plan.

(iv) Unless and until the operator has no long-term idle wells, the plan shall require that operators with 250 or fewer idle wells eliminate at least 4 percent of their long-term idle wells each year, and, in no case, less than one long-term idle well; operators with 251 to 1,250, inclusive, idle wells eliminate at least 5 percent of their long-term idle wells each year, and, in no case, less than one long-term idle well; and operators with more than 1,250 idle wells eliminate at least 6 percent of their long-term idle wells each year, and, in no case, less than one long-term idle well.

(v) An operator who fails to comply with the plan, as determined by the supervisor after the annual performance review, is not eligible to use the requirements of this paragraph, for purposes of compliance with this section, for any of its idle wells. That operator may not propose a new idle well plan for the next five years. An operator may appeal to the director pursuant to Article 6 (commencing with Section 3350) regarding the supervisor's rejection of a plan and plan amendments and the supervisor's determination

of the operator's failure to comply with a plan. If the supervisor's determination that the operator failed to comply with the plan is not timely appealed, or if the director upholds the supervisor's determination upon appeal, then the operator shall immediately file the fees required under paragraph (1) for each year that the operator failed to comply with the plan.

(b) All fees received under this section shall be deposited in the Hazardous and Idle-Deserted Well Abatement Fund, which is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, the moneys in the Hazardous and Idle-Deserted Well Abatement Fund are hereby continuously appropriated to the department for expenditure without regard to fiscal year, to mitigate a hazardous or potentially hazardous condition, by well plugging and abandonment, decommissioning the production facilities, or both, at a well of an operator subject to the requirements of this section.

(c) Failure to file, for any well, the fee required under this section shall be conclusive evidence of desertion of the well, permitting the supervisor to order the well abandoned pursuant to Section 3237.

(d) Nothing in this section prohibits a local agency from collecting a fee for regulation of wells.

(e) This section shall become operative on January 1, 2018.

SEC. 4. Section 5018.1 of the Public Resources Code is amended to read:

5018.1. (a) Notwithstanding any other law, the Department of Finance may delegate to the department the right to exercise the same authority granted to the Division of the State Architect and the Real Estate Services Division in the Department of General Services, to plan, design, construct, and administer contracts and professional services for legislatively approved capital outlay projects.

(b) Any right afforded to the department pursuant to subdivision (a) to exercise project planning, design, construction, and administration of contracts and professional services may be revoked, in whole or in part, by the Department of Finance at any time.

SEC. 5. Section 5019.15 of the Public Resources Code is repealed.

SEC. 6. Section 5080.05 of the Public Resources Code is amended to read:

5080.05. (a) Except as provided in Section 5080.16, all contracts authorizing occupancy of any portion of the state park system for a period of more than three years shall be awarded to the best responsible bidder.

(b) "Best responsible bidder" means the bidder, as determined by specific standards established by the department, that, as determined by the department, will operate the concession (1) consistent with the contract, (2) in a manner fully compatible with, and complementary to, the characteristics, features, and theme of the unit in which the concession will be operated, (3) in the best interests of the state and public, and (4) in a manner that protects the state's trademark and service mark rights in the names associated with a state park venue and its historical, cultural, and recreational resources.

For purposes of this section, a bidder who would be subject to subdivision (b) of Section 5080.22 is not a best responsible bidder.

SEC. 7. Section 5080.23 of the Public Resources Code is amended to read:

5080.23. (a) Notwithstanding any other provision of this article, with respect to concession contracts entered into on and after October 1, 1994, if the director determines that it is in the best interests of the state, the director may, upon giving notice to the State Parks and Recreation Commission, in lieu of the process for awarding contracts otherwise prescribed in this article, award contracts authorizing occupancy of any portion of the state park system for a period of more than three years to the best responsible person or entity submitting a proposal for a concession contract.

(b) For any concession contract authorizing occupancy by the concessionaire for a period of more than three years of any portion of the state park system that is entered into pursuant to this section, the department shall prepare a request for proposal, which shall include the terms and conditions of the concession sufficient to enable a person or entity to submit a proposal for the operation of the concession on the basis of the best benefit to the state. Proposals shall be completed only on the basis of the request for proposal.

(c) Any concession contract entered into pursuant to this section that is expected to involve a total investment or gross sales in excess of one million dollars (\$1,000,000) shall comply with the requirements for entry into contract that are set forth in Section 5080.20.

(d) For purposes of this section, “best responsible person or entity submitting a proposal” means the person or entity submitting a proposal, as determined by specific standards established by the department, that will operate the concession in the best interests of the state and the public.

SEC. 8. Section 6107 of the Public Resources Code is amended to read:

6107. Whenever the commission, pursuant to authority granted to it by law, enters into any agreement for the compromise or settlement of title or boundary claims, the agreement shall be submitted to the Governor, and if approved by him or her shall thereupon, but not before, be binding upon the state and the other party to the agreement.

SEC. 9. Section 6201 of the Public Resources Code is amended to read:

6201. The commission may periodically classify any or all state land for its different possible uses, and, when it is deemed advisable, may require the Department of Parks and Recreation, the Department of Conservation, the Department of Food and Agriculture, or any other officer, organization, agency, or institution of the state government to make that classification. It is the duty of any such officer, organization, agency, or institution to make that classification and to submit a report thereon upon the application of the commission.

SEC. 10. Section 6216.1 of the Public Resources Code is amended to read:

6216.1. The commission may remove or cause to be removed any artificial structures or obstructions from ungranted lands under its jurisdiction if the commission determines that the removal is appropriate and the Attorney General advises that there is no legal recourse to compel other responsible parties to effect that removal.

SEC. 11. Section 6477 of the Public Resources Code is amended to read:

6477. (a) The State Lands Commission shall report quarterly to the Teachers' Retirement Board and annually to the Legislature and the Governor on both of the following:

(1) The management of school and lieu lands.

(2) Waivers, suspensions, reductions, alterations, or amendments made by the commission pursuant to Section 6916, together with the reasons therefor.

(b) The commission shall file a report with the Legislature annually on all waivers, suspensions, reductions, alterations, or amendments made by the commission pursuant to this section, together with the reasons therefor.

(c) The reports required pursuant to this section shall be prepared in compliance with Section 9795 of the Government Code.

SEC. 12. Section 6914 of the Public Resources Code is amended to read:

6914. The holder of any geothermal resources permit or lease may quitclaim or relinquish his or her rights under that permit or lease pursuant to the provisions of Section 6804.1 of this code.

SEC. 13. Section 7730 of the Public Resources Code is amended to read:

7730. The patent or deed shall then be signed by the Governor, attested by the Secretary of State, sealed with the Great Seal of the State of California, and countersigned by the commission.

SEC. 14. Section 8618 of the Public Resources Code is amended to read:

8618. (a) On or before January 2 of each year, the trustee shall prepare and submit to the Governor and the Legislature a report describing its progress in achieving the objectives of this division, including the status of property acquisitions and an accounting of the moneys in the fund.

(b) The report to the Legislature required pursuant to this section shall be prepared in compliance with Section 9795 of the Government Code.

SEC. 15. Section 8622 of the Public Resources Code is amended to read:

8622. As soon as practicable after initiating a title and parcel acceptability study for possible acquisition pursuant to this division, the trustee shall mail a "Notice of Potential Land Bank Acquisition" to the Department of Fish and Wildlife, the San Francisco Bay Conservation and Development Commission, the State Coastal Conservancy, the district office of the United States Army Corps of Engineers for the district in which the real property is located, other persons, entities, or public agencies who have previously requested to be placed on the mailing list for the notices, and any others deemed appropriate by the trustee. The notice shall contain a "Plat of Potential Land Bank Parcel," showing the approximate location, character, and size of the parcel.

SEC. 16. Section 30512 of the Public Resources Code is amended to read:

30512. (a) The land use plan of a proposed local coastal program shall be submitted to the commission. The commission shall, within 90 working days after the submittal, after public hearing, either certify or refuse certification, in whole or in part, of the land use plan pursuant to the following procedure:

(1) No later than 60 working days after a land use plan has been submitted to it, the commission shall, after public hearing and by majority vote of those members present, determine whether the land use plan, or a portion thereof applicable to an identifiable geographic area, raises no substantial issue as to conformity with the policies of Chapter 3 (commencing with Section 30200).

If the commission determines that no substantial issue is raised, the land use plan, or portion thereof applicable to an identifiable area, which raises no substantial issue, shall be deemed certified as submitted. The commission shall adopt findings to support its action.

(2) Where the commission determines pursuant to paragraph (1) that one or more portions of a land use plan applicable to one or more identifiable geographic areas raise no substantial issue as to conformity with the policies of Chapter 3 (commencing with Section 30200), the remainder of that land use plan applicable to other identifiable geographic areas shall be deemed to raise one or more substantial issues as to conformity with the policies of Chapter 3 (commencing with Section 30200). The commission shall identify each substantial issue for each geographic area.

(3) The commission shall hold at least one public hearing on the matter or matters that have been identified as substantial issues pursuant to paragraph (2). No later than 90 working days after the submittal of the land use plan, the commission shall determine whether or not to certify the land use plan, in whole or in part. If the commission fails to act within the required 90-day period, the land use plan, or portion thereof, shall be deemed certified by the commission.

(b) If the commission determines not to certify a land use plan, in whole or in part, the commission shall provide a written explanation and may suggest modifications, which, if adopted and transmitted to the commission by the local government, shall cause the land use plan to be deemed certified upon confirmation of the executive director. The local government may elect to meet the commission's refusal of certification in a manner other than as suggested by the commission and may then resubmit its revised land use plan to the commission. If a local government requests that the commission not recommend or suggest modifications which, if made, will result in certification, the commission shall refuse certification with the required findings.

(c) The commission shall certify a land use plan, or any amendments thereto, if it finds that a land use plan meets the requirements of, and is in conformity with, the policies of Chapter 3 (commencing with Section 30200). Except as provided in paragraph (1) of subdivision (a), a decision to certify shall require a majority vote of the appointed membership of the commission.

SEC. 17. Section 30513 of the Public Resources Code is amended to read:

30513. (a) The local government shall submit to the commission the zoning ordinances, zoning district maps, and, where necessary, other implementing actions that are required pursuant to this chapter.

(b) If within 60 working days after receipt of the zoning ordinances, zoning district maps, and other implementing actions, the commission, after public hearing, has not rejected the zoning ordinances, zoning district maps, or other implementing actions, they shall be deemed approved. The commission may only reject zoning ordinances, zoning district maps, or other implementing actions on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. If the commission rejects the zoning ordinances, zoning district maps, or other implementing actions, it shall give written notice of the rejection specifying the provisions of land use plan with which the rejected zoning ordinances do not conform or which it finds will not be adequately carried out together with its reasons for the action taken.

(c) The commission may suggest modifications in the rejected zoning ordinances, zoning district maps, or other implementing actions, which, if adopted by the local government and transmitted to the commission, shall be deemed approved upon confirmation by the executive director.

(d) The local government may elect to meet the commission's rejection in a manner other than as suggested by the commission and may then resubmit its revised zoning ordinances, zoning district maps, and other implementing actions to the commission.

(e) If a local government requests that the commission not suggest modifications in the rejected zoning ordinances, zoning district maps, or other implementing ordinances, the commission shall not do so.

SEC. 18. Section 33503 of the Public Resources Code is amended to read:

33503. (a) The governing board of the conservancy consists of the following 20 voting members:

(1) The mayor or a member of the city council of each of the Cities of Cathedral City, Coachella, Desert Hot Springs, Indian Wells, Indio, La Quinta, Palm Desert, Palm Springs, and Rancho Mirage, appointed by a majority of the membership of the respective city council of each city.

(2) The Chairperson of the Tribal Council of the Agua Caliente Band of Cahuilla Indians.

(3) One member of the Board of Supervisors of the County of Riverside, appointed by a majority of the membership of the board of supervisors.

(4) Three members chosen from the general public who reside within the conservancy's territory, one of whom shall be appointed by the Governor, one of whom shall be appointed by the Senate Committee on Rules, and one of whom shall be appointed by the Speaker of the Assembly.

(5) The Secretary of the Natural Resources Agency.

(6) The Director of Fish and Wildlife.

(7) The Executive Director of the Wildlife Conservation Board.

- (8) The Director of Parks and Recreation.
- (9) The Director of Finance.
- (10) The Vice President, Division of Agriculture and Natural Resources, of the University of California.

(b) Any state official who is a member of the governing board and whose principal office is not within the territory of the conservancy may designate a member of his or her executive staff to vote on his or her behalf and otherwise discharge the duties of the member when the member is not in attendance. Notice of that designation shall be promptly communicated in writing to the chairperson of the conservancy.

(c) Each city council, the Tribal Council of the Agua Caliente Band of Cahuilla Indians, and the Board of Supervisors of the County of Riverside may appoint an alternate member from its respective entity to attend the governing board meetings and vote on behalf of the appointed member and otherwise discharge the duties of the member when that member is not in attendance. Notice of the designation shall be promptly communicated in writing to the chairperson of the conservancy.

SEC. 19. The heading of Chapter 2 (commencing with Section 71203) of Division 36 of the Public Resources Code is amended to read:

CHAPTER 2. BALLAST WATER AND
BIOFOULING MANAGEMENT REQUIREMENTS

SEC. 20. Section 71204 of the Public Resources Code is amended to read:

71204. Subject to Section 71203, the master, owner, operator, or person in charge of a vessel carrying, or capable of carrying, ballast water, that operates in the waters of the state shall do all of the following to minimize the uptake and the release of nonindigenous species:

(a) Discharge only the minimal amount of ballast water essential for vessel operations while in the waters of the state.

(b) Minimize the discharge or uptake of ballast water in areas within, or that may directly affect, marine sanctuaries, marine preserves, marine parks, or coral reefs.

(c) Minimize or avoid uptake of ballast water in all of the following areas and circumstances:

(1) Areas known to have infestations or populations of nonindigenous organisms and pathogens.

(2) Areas near a sewage outfall.

(3) Areas for which the master, owner, operator, or person in charge of a vessel has been informed of the presence of toxic algal blooms.

(4) Areas where tidal flushing is known to be poor or in turbid waters.

(5) In darkness when bottom-dwelling organisms may rise up in the water column.

(6) Areas where sediments have been disturbed, such as near dredging operations or where propellers may have recently stirred up the sediment.

(d) Clean the ballast tanks regularly in mid-ocean waters, or under controlled arrangements in port or in drydock, to remove sediments and biofouling organisms and dispose of those organisms and sediments in accordance with local, state, and federal law.

(e) Rinse anchors and anchor chains when retrieving the anchor to remove organisms and sediments at their place of origin.

(f) (1) Remove biofouling organisms from the hull, piping, propellers, sea chests, and other wetted portions of a vessel arriving at a California port or place, on a regular basis, and dispose of removed substances in accordance with local, state, and federal law.

(2) For purposes of paragraph (1), prior to and until the date that the regulations described in Section 71204.6 are adopted, “regular basis” means any of the following:

(A) No longer than by the date of expiration on the vessel’s full-term Safety Construction Certificate or an extension of that expiration date.

(B) No longer than by the date of expiration of the vessel’s full-term United States Coast Guard Certificate of Inspection or an extension of that expiration date by the United States Coast Guard.

(C) No longer than 60 months since the time of the vessel’s last out-of-water drydocking. The commission may approve a time extension to this period.

(3) Inwater cleaning that is performed on the wetted portions of a vessel while in the waters of the state shall be conducted using best available technologies economically achievable, and designed to minimize the release of coating and biological materials, cleaning agents, and byproducts of the cleaning process into the surrounding waters. The cleaning shall be performed in accordance with local, state, and federal law.

(g) Provide access to the commission, upon request, for sampling of biofouling and ballast intake and discharge.

(h) Maintain a ballast water management plan that was prepared specifically for the vessel and that shall, upon request, be made available to the commission for inspection and review. This plan shall be specific to each vessel and shall provide, at a minimum, a description of the ballast water management strategy for the vessel that is sufficiently detailed to allow a master or other appropriate ship’s officer or crew member serving on that vessel to understand and follow the ballast water management strategy.

(i) Train the master, operator, person in charge, and those members of the crew who have responsibilities under the vessel’s ballast water management plan, on the application of ballast water and sediment management and treatment procedures, as well as procedures described in this section, in order to minimize other releases of nonindigenous species from vessels.

SEC. 21. Section 71204.9 of the Public Resources Code is amended to read:

71204.9. (a) (1) On or before January 31, 2006, the commission, in consultation with the board and in consideration of the advisory panel

recommendations described in subdivision (b), shall submit to the Legislature and make available to the public, a report that recommends specific performance standards for the discharge of ballast water into the waters of the state, or into waters that may impact waters of the state. The performance standards shall be based on the best available technology economically achievable and shall be designed to protect the beneficial uses of affected, and potentially affected, waters. If the commission, based on the best available information, and in consultation with the board and in consideration of the advisory panel recommendations, determines that it is technologically and economically achievable to prohibit the discharge of nonindigenous species, the commission shall include this recommendation in the report to the Legislature.

(2) As appropriate, the commission may recommend different performance standards for vessels arriving from mid-ocean waters, for vessels that travel exclusively within the Pacific Coast Region, for new or existing vessels, or for different vessel types. Each set of performance standards shall be based on the best available technology economically achievable for the described category of vessel.

(b) (1) The commission shall convene and consult with an advisory panel in developing the report required by subdivision (a). The advisory panel shall be comprised of persons concerned with performance standards for the discharge of treated ballast water. The advisory panel shall include, but not be limited to, representatives from one or more California regional water quality control boards, the Department of Fish and Wildlife, the United States Coast Guard, the United States Environmental Protection Agency, and persons representing shipping, port, conservation, fishing, aquaculture, agriculture, and public water agency interests. The commission shall ensure that the advisory panel meets in a manner that facilitates the effective participation of both the public and panel members.

(2) The advisory panel shall make recommendations regarding the content, issuance, and implementation of the performance standards to the commission.

(3) (A) The advisory panel's meetings shall be open to the public.

(B) The commission shall provide notice of the advisory panel's meetings to any person who requests that notice in writing, as well as on the commission's Internet Web site. The commission shall provide that notice at least 10 days before an advisory panel meeting and shall include a brief general description of the meeting's agenda and the name, address, and telephone number of a person who can provide additional information before the meeting.

(4) The advisory panel shall submit its recommendations to the commission on or before July 1, 2005.

SEC. 22. Section 71205.3 of the Public Resources Code is amended to read:

71205.3. (a) The commission shall adopt regulations that do all of the following:

(1) Except as provided in Section 71204.7, require an owner or operator of a vessel carrying, or capable of carrying, ballast water that operates in the waters of the state to implement the interim performance standards for the discharge of ballast water recommended in accordance with Table x-1 of the California State Lands Commission Report on Performance Standards for Ballast Water Discharges in California Waters, as approved by the commission on January 26, 2006.

(2) Except as provided in Section 71204.7, require an owner or operator of a vessel carrying, or capable of carrying, ballast water that operates in the waters of the state to comply with the interim performance standards by the applicable following date:

(A) Upon first arrival at a California port for new vessels constructed on or after January 1, 2020.

(B) As of the first scheduled drydocking on or after January 1, 2020, for all other vessels.

(3) Notwithstanding Section 71204.7, require an owner or operator of a vessel carrying, or capable of carrying, ballast water that operates in the waters of the state to meet the final performance standard for the discharge of ballast water of zero detectable living organisms for all organism size classes by January 1, 2030.

(b) (1) Not less than 18 months prior to January 1, 2020, and January 1, 2030, the commission, in consultation with the board, the United States Coast Guard, and the advisory panel described in subdivision (b) of Section 71204.9, shall prepare, or update, and submit to the Legislature a review of the efficacy, availability, and environmental impacts, including the effect on water quality, of currently available technologies for ballast water treatment systems. If technologies to meet the performance standards are determined in a review to be unavailable, the commission shall include in that review an assessment of why the technologies are unavailable.

(2) (A) The requirement for submitting a report imposed under this subdivision is inoperative on January 1, 2024, for the interim performance standards, and January 1, 2034, for the final performance standard, pursuant to Section 10231.5 of the Government Code.

(B) A report to be submitted pursuant to this subdivision shall be submitted in compliance with Section 9795 of the Government Code.

SEC. 23. Section 71210 of the Public Resources Code is amended to read:

71210. (a) The commission, in consultation with the board, the United States Coast Guard, and a technical advisory group made up of interested persons, including, but not limited to, shipping and port representatives, shall sponsor pilot programs for the purpose of evaluating alternatives for treating and otherwise managing ballast water and biofouling. The goal of this effort shall be the reduction or elimination of the discharge of nonindigenous species into the coastal waters of the state or into waters that may impact coastal waters of the state. Whenever possible, the pilot programs shall include funding from federal grants and appropriations, vendor funding, and state bond funds, including, but not limited to, bond funds from the

Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002. Priority shall be given to projects to test and evaluate treatment technologies that can be used to prevent the introduction and spread of nonindigenous aquatic species into coastal waters of the state by ship-mediated vectors.

(b) (1) The commission shall provide biennial summaries to the Legislature and the public, beginning on or before January 31, 2005, of the results of the pilot programs conducted pursuant to this section. These summary reports shall include, but not be limited to, a description of the projects, the relative effectiveness of the technologies examined in minimizing the discharge of nonindigenous species, and the costs of implementing the technologies.

(2) The summary reports required by this subdivision shall be in compliance with Section 9795 of the Government Code.

SEC. 24. Section 71211 of the Public Resources Code is amended to read:

71211. (a) (1) The Department of Fish and Wildlife, in consultation with the commission and the United States Coast Guard, shall collect data necessary to establish and maintain an inventory of the location and geographic range of nonindigenous species populations in the coastal and estuarine waters of the state that includes open coastal waters and bays and estuaries. In particular, data shall be collected that does both of the following:

(A) Supplements the existing baseline of nonindigenous species previously developed pursuant to this section, by adding data from investigations of intertidal and nearshore subtidal habitats along the open coast.

(B) Monitors the coastal and estuarine waters of the state, including, but not limited to, habitats along the open coast, for new introductions of nonindigenous species or spread of existing nonindigenous species populations.

(2) Whenever possible, the study shall use appropriate, existing data, including data from previous studies made pursuant to this section. The Department of Fish and Wildlife shall make the inventory and accompanying analysis available to the public through the Internet on or before January 1, 2007, and annually shall provide to the public an update of that inventory.

(b) (1) The Department of Fish and Wildlife, in consultation with the commission and the United States Coast Guard, shall assess the effectiveness of the ballast water and biofouling controls implemented pursuant to this division by comparing the status and establishment of nonindigenous species populations, as determined from the data collected pursuant to subdivision (a), with the baseline data collected pursuant to this division and submitted in a report to the Legislature in 2003.

(2) Whenever possible, this research shall utilize appropriate, existing data.

(c) Information generated by the research conducted pursuant to this section shall be of the type and in a format useful for subsequent studies and reports undertaken for any of the following purposes:

- (1) The determination of alternative discharge zones.
- (2) The identification of environmentally sensitive areas to be avoided for uptake or discharge of ballast water.
- (3) The long-term effectiveness of biofouling management and ballast water discharge control measures.
- (4) The determination of potential risk zones where uptake or discharge of ballast water shall be prohibited.
- (5) The rate and risk of establishment of nonindigenous species in the coastal waters of the state, and resulting impacts.

SEC. 25. Section 71212 of the Public Resources Code is amended to read:

71212. On or before January 31, 2005, and updated biennially, the commission, in consultation with the board, the Department of Fish and Wildlife, and the United States Coast Guard, shall submit to the Legislature, and make available to the public, a report that includes, but is not limited to, all of the following:

(a) A summary of the information provided in the ballast water discharge report forms submitted to the commission, including the volumes of ballast water exchanged, volumes discharged into state waters, types of ballast water treatment, and locations at which ballast water was loaded and discharged.

(b) Monitoring and inspection information collected by the commission pursuant to this division, including a summary of compliance rates, categorized by geographic area and other groupings as information allows.

(c) An analysis of the monitoring and inspection information, including recommendations for actions to be undertaken to improve the effectiveness of the monitoring and inspection program.

(d) An evaluation of the effectiveness of the measures taken to reduce or eliminate the discharge of nonindigenous species from vessels, including recommendations regarding action that should be taken to improve the effectiveness of those measures.

(e) A summary of the research completed during the two-year period that precedes the release of the report, and ongoing research, on the release of nonindigenous species by vessels.

SEC. 26. Section 71213 of the Public Resources Code is amended to read:

71213. The commission, the board, and the Department of Fish and Wildlife, in consultation with interested stakeholders, shall identify and conduct any other research determined necessary to carry out the requirements of this division. The research may relate to the transport and release of nonindigenous species by vessels, the methods of sampling and monitoring of the nonindigenous species transported or released by vessels, the rate or risk of release or establishment of nonindigenous species in the waters of the state and resulting impacts, and the means by which to reduce or eliminate a release or establishment. The research shall focus on assessing or developing methodologies for treating or otherwise managing ballast

water and biofouling to reduce or eliminate the discharge or establishment of nonindigenous species.

SEC. 27. Section 71215 of the Public Resources Code is amended to read:

71215. (a) (1) The Marine Invasive Species Control Fund is hereby created. The money in the fund, upon appropriation by the Legislature, shall be used solely to carry out this division.

(2) All money accruing to the Exotic Species Control Fund shall be transferred to the Marine Invasive Species Control Fund.

(b) (1) The commission shall administer the fund in accordance with this chapter.

(2) The commission shall establish, through regulation, a reasonable and appropriate fee solely for the purposes of carrying out this division. The fee may not exceed one thousand dollars (\$1,000) for each voyage, as described in subdivision (c). This amount may be adjusted for inflation every two years.

(3) In establishing fees, the commission shall consult with a technical advisory group made up of interested persons, including, but not limited to, shipping and port representatives.

(4) The commission may establish lower levels of fees and the maximum amount of fees for individual shipping companies or vessels. Any fee schedule established, including the level of fees and the maximum amount of fees, shall take into account the impact of the fees on vessels operating from California in the Hawaii or Alaska trades, the frequency of calls by particular vessels to California ports within a year, the ballast water and biofouling management practices of the vessels, and other relevant considerations.

(c) The California Department of Tax and Fee Administration, in accordance with Part 22.5 (commencing with Section 44000) of Division 2 of the Revenue and Taxation Code, shall collect the fee from the owner or operator of each vessel that arrives at a California port or place from a port or place outside of California. That fee may not be assessed on any vessel arriving at a California port or place if that vessel comes directly from another California port or place and during that transit has not first arrived at a port or place outside California or moved outside the exclusive economic zone (EEZ) prior to arrival at the subsequent California port or place.

(d) Notwithstanding any other provision of law, all fees imposed pursuant to this section shall be deposited into the Marine Invasive Species Control Fund.

(e) Notwithstanding any other provision of law, all penalties and payments collected for violations of any requirements of this division shall be deposited into the Marine Invasive Species Control Fund.

SEC. 28. Section 71216 of the Public Resources Code is amended to read:

71216. (a) Except as provided in subdivision (b) or (c), a person who intentionally or negligently fails to comply with the requirements of this

division may be liable for an administrative civil penalty in an amount that shall not exceed twenty-seven thousand five hundred dollars (\$27,500) for each violation. Each day of a continuing violation constitutes a separate violation.

(b) A person who fails to comply with the reporting requirements set forth in Section 71205 may be liable for an administrative civil penalty in an amount that shall not exceed twenty-seven thousand five hundred dollars (\$27,500) per violation. Each day of a continuing violation constitutes a separate violation.

(c) A person who, knowingly and with intent to deceive, falsifies a ballast water or biofouling management report form required by this division, or knowingly and with intent to deceive, tampers with or disables a system for controlling the release of nonindigenous species, required by this division, may be liable for an administrative civil penalty in an amount that shall not exceed twenty-seven thousand five hundred dollars (\$27,500) per violation. Each day of a continuing violation constitutes a separate violation.

(d) The executive officer of the commission may issue a complaint to a person on whom civil liability may be imposed pursuant to this division. The complaint shall allege the facts or failures to act that constitute a basis for liability and the amount of the proposed civil liability. The complaint shall be served by personal service or certified mail and shall inform the person served of the right to a hearing. A person served with a complaint pursuant to this subdivision may, within 30 days after service of the complaint, request a hearing by filing with the executive officer a notice of defense, as described in Section 11506 of the Government Code. A notice of defense is deemed to be filed within the 30-day period if it is postmarked within the 30-day period. If a hearing is requested by the person, it shall be conducted within 30 days after the executive officer receives the notice of defense. If no notice of defense is filed within 30 days after service of the complaint, the executive officer shall issue an order setting liability in the amount proposed in the complaint unless the executive officer and the person have entered into a settlement agreement, in which case the executive officer shall issue an order setting liability in the amount specified in the settlement agreement. If the person has not filed a notice of defense or if the executive officer and the person have entered into a settlement agreement, the order shall not be subject to review by a court or agency.

(e) A hearing required pursuant to this section shall be conducted by an independent hearing officer, in accordance with the procedures specified in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, except as otherwise specified in this section. In making a determination, the hearing officer shall take into consideration the nature, circumstances, extent, and gravity of the violation, the violator's past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health and safety of the environment, and the violator's ability to pay the proposed civil penalty. After conducting a hearing required pursuant to this section, the hearing officer shall, within 30 days after the

case is submitted, issue a decision, including an order setting the amount, if any, of the civil penalty to be imposed.

(f) An order setting civil liability and issued pursuant to this section is effective and final upon issuance. The violator shall pay any penalty within 30 days of service, unless he or she seeks judicial review pursuant to subdivision (g), in which case he or she shall pay any penalty within 30 days of service of the court's order setting civil liability. A copy of the order shall be served by personal service or by certified mail upon the person served with the complaint and upon other persons who appeared at the hearing and requested a copy.

(g) Within 30 days after service of a copy of a decision issued by the hearing officer that the person served is liable for a civil penalty, a person so served may file a petition for writ of mandate for review of the decision pursuant to Section 11523 of the Government Code. A person who fails to file the petition within the 30-day period shall not challenge the reasonableness or validity of a decision or order of the hearing officer in any judicial proceedings brought to enforce the decision or order or for other remedies. Except as otherwise provided in this section, Section 1094.5 of the Code of Civil Procedure shall govern a proceeding conducted pursuant to this subdivision. In a proceeding pursuant to this subdivision, the court shall uphold the decision of the hearing officer if the decision is based upon substantial evidence in the whole record. The filing of a petition for writ of mandate shall not stay any corrective action required pursuant to this act or the accrual of any penalties assessed pursuant to this act. This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction.

(h) An order for administrative penalties entered pursuant to this section shall be subject to interest at the legal rate from the filing date of the complaint as specified in subdivision (d).

(i) A provision of this chapter or a ruling of the executive officer shall not be construed to limit, abridge, or supersede the power of the Attorney General, at the request of the executive officer, or upon his or her own motion, to bring an action in the name of the people of the State of California to enjoin a violation of this division, seek necessary remedial action by a person who violates this division, or seek civil and criminal penalties against a person who violates this division.

(j) In lieu of a complaint pursuant to subdivision (d) to impose administrative civil penalties set forth in subdivisions (a), (b), and (c), the Attorney General, at the request of the commission, may bring an action in superior court, in the name of the people of the State of California, to enjoin a violation of this division, seek necessary remedial action by a person who violates this division, or seek civil penalties in the amounts set forth in subdivisions (a), (b), and (c).

SEC. 29. Chapter 1520 of the Statutes of 1967 is repealed.

SEC. 30. The Legislature finds and declares that for Section 29 of this act a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California

Constitution because of the unique circumstances involving a grant of tidelands and submerged lands to the Metropolitan Water District of Southern California.

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