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AB-1759 Public trust lands: City of Sacramento. (2017-2018)

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Assembly Bill No. 1759

CHAPTER 250

An act to repeal Chapter 1266 of the Statutes of 1970, and to repeal Chapter 625 of the Statutes of 1973, relating to public trust lands, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 05, 2018. Filed with Secretary of State September 05, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1759, McCarty. Public trust lands: City of Sacramento.

Under existing law, known as the public trust doctrine, the state has title as trustee to all tidelands and navigable lakes and streams and is charged with preserving these waterways for navigation, commerce, and fishing, as well as for scientific study, recreation, and as an open space and habitat for birds and marine life. Existing law authorizes the State Lands Commission to enter into an exchange with any person or any private or public entity of filled or reclaimed tide and submerged lands or beds of navigable waterways, or interests in these lands, that are subject to the public trust if the commission determines that certain conditions are met, including that the exchange is for one or more specified purposes. Existing law grants the rights and interests of the state in specified portions of the old bed of the American River to the City of Sacramento, subject to certain conditions and requirements.

This bill would grant and convey in trust in relation to real property known as the Sand Cove Parcels, as described, to the City of Sacramento, in the County of Sacramento, and to its successors, all of the rights, title, and interests of the state, to be held by the city in trust for the benefit of all the people of the state for public trust purposes, as provided. The bill would authorize the city to use the trust lands for the construction, reconstruction, repair, and maintenance of any transportation, utility, or other infrastructure that is incidental, necessary, or convenient to promote or accommodate uses consistent with the public trust doctrine. The bill would require the city to comply with various requirements regarding the use of the trust lands, including that the city submit a trust lands use plan and a trust lands use report to the State Lands Commission. If the commission determines that the city is violating or about to violate the terms of the trust grant or other law relating to its obligations under the public trust doctrine or this bill, the bill would authorize the commission, after providing notice and an opportunity to correct the violation, to bring an action to enforce the rights of the state and people as settlor beneficiary of the public trust doctrine. The bill would repeal specified statutes to facilitate the transfer of these trust lands to the city pursuant to the bill.

By adding to the duties on the City of Sacramento with respect to the use and management of trust lands, this bill would impose a state-mandated local program.

Existing law, the Kapiloff Land Bank Act, creates the Land Bank Fund and continuously appropriates money 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 settlements.

This bill would require that, commencing June 30, 2019, and at the end of every fiscal year thereafter, 20% of all annual gross revenues generated from leases or improvements to the trust lands granted to the City of Sacramento pursuant to the bill be transferred to the commission, and would require the commission to allocate 80% of those revenues to the Treasurer for deposit in the General Fund, and 20% to the Treasurer for deposit in the Land Bank Fund for expenditure for management of the commission's granted lands program. By providing for the deposit of moneys in a continuously appropriated fund, this bill would make an appropriation.

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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

This bill would make legislative findings and declarations as to the necessity of a special statute for the City of Sacramento.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3 Appropriation: yes Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. (a) The Legislature finds and declares all of the following:

- (1) Since the admission of California into the United States, certain tidelands and submerged lands have been, and are now held, in trust by the state for the benefit of all Californians for public trust purposes of navigation, commerce, fisheries, water-oriented recreation and public access, open space, scientific study, and ecological preservation.
- (2) The state has a trusteeship duty to govern, administer, and control those lands for public trust purposes that benefit the statewide public.
- (3) The state is authorized, when the interests of the statewide public will benefit, to delegate, grant and convey in trust to local governments, limited and defined areas of public trust lands along with the authority and responsibility to govern, control, improve, and develop those lands in the interests of all of the inhabitants of the state for public trust purposes.

(b) In enacting this act, it is the intent of the Legislature to do both of the following:

- (1) To set forth the trust provisions, conditions, uses and purposes established for the City of Sacramento's government, management, and control of the public trust lands along the Sacramento River granted under this act.
- (2) To convey in trust to the City of Sacramento the state's right, title, and interest to the parcels of land known as the Sand Cove Parcels.

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

- (a) "City" means the City of Sacramento, a municipal corporation located within the County of Sacramento.
- (b) "Commission" means the State Lands Commission.
- (c) "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 protection of 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.
- (d) "Public trust purposes" includes, but is not limited to, 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.
- (e) "Sand Cove Parcels" means those parcels described in Section 3 of this act.
- (f) "State" means the State of California.
- (g) "Trustee" means the city.
- (h) "Trust lands" means the Sand Cove Parcels.
- (i) "Trust revenues" means all revenues received from trust lands and trust assets.

(j) "Trust lands use plan" or "plan" means the trust lands use plan required to be submitted by the trustee to the commission pursuant to subdivision (f) of Section 4 of this act.

(k) "Trust lands use report" means the report of the trustee's utilization of the trust lands required to be submitted by the trustee pursuant to subdivision (g) of Section 4 of this act.

SEC. 3. There is hereby granted and conveyed in trust to the City of Sacramento, in the County of Sacramento, and to its successors, all of the rights, title, and interests of the state, held by the state acting by and through the commission, in real property acquired and held by the state subject to the common law public trust doctrine and pursuant to an agreement that was approved as Calendar Item 37 of the December 3, 2007, meeting of the commission, which is further described as follows:

Parcel No. 1:

A portion of Parcel B as said parcel is shown on the Parcel Map entitled "A Portion of Lots 13 & 14 of Natomas Riverside Subdivision No. 1, Book 15 of Maps, Map No. 26", filed in the office of the Recorder of Sacramento County, California, on March 17, 1982, in Book 70 of Parcel Maps, Map No. 6, described as follows:

Beginning at a point in said Parcel B from which the Northwest corner of said Parcel B bears the following two courses and distances: (1) West 100 feet and (2) North 270.00 feet; thence from said point of beginning North 134.79 feet and parallel to the Westerly line of said Parcel B; thence Northeasterly along a curve to the left having an arc of 1115.37 feet radius, said arc being subtended by a chord bearing North 60°45'40" East 360.85 feet; thence North 51°28'30" East 13.00 feet; thence South 38°31'30" East 116.00 feet; thence South 51°28'30" West 115.51 feet; thence South 35°39'55" East 25.83 feet to a point on the Southeasterly line of said Parcel B; thence Westerly along said Southeasterly line the following two courses and distances: (1) South 54°20'05" West 110.90 feet and (2) South 32°16'17" West 67.47 feet; thence leaving said line North 57°43'43" West 35.25 feet; thence South 32°16'17" West 105.00 feet; thence West 110.00 feet; thence North 56.21 feet to the point of beginning; being further described as Parcel A in the Certificate of Compliance recorded October 2, 1985, in Book 851002, Page 1029, Official Records.

Excepting therefrom that portion of Parcel B as shown upon that Parcel Map entitled "A Portion of Lots 13 & 14 of Natomas Riverside Subdivision No. 1, Book 15 of Maps, Map No. 26", filed in the office of the Recorder of Sacramento County, California, on March 17, 1982, in Book 70 of Parcel Maps, Map No. 6, described as follows:

Beginning at a point on the West line of said Parcel B; thence from which the Northwest corner of said Parcel B bears North 72.99 feet; thence from said point of beginning in a curve to the left, concave to the North, through a central angle of 4°30'36", having a radius of 1025.37 feet and subtended by a chord bearing North 71°53'15" East 80.69 feet; thence South 15°39'11" East 202.19 feet; thence North 74°11'41" East 86.30 feet; thence South 80°58'17" East 53.38 feet thence South 5°25'04" West 10.00 feet; thence South 32°16'17" West 105.00 feet; thence West 110.00 feet; thence North 56.21 feet; thence West 100 feet to the West line of said Parcel B; thence coincident with said West line of Parcel B North 197.01 feet to the point of beginning, as described in Deed executed by Walter M. Harvey, recorded May 31, 1996, in Book 19960531, Page 101, Official Records.

Parcel No. 2:

A portion of Parcel B as shown on the Parcel Map entitled "A Portion of Lots 13 & 14 of Natomas Riverside Subdivision No. 1, Book 15 Maps, Map No. 26", filed in the office of the Recorder of Sacramento County, California, on March 17, 1982, in Book 70 of Parcel Maps, Map No. 6, described as follows:

Beginning at the Northwest corner of said Parcel B; thence from said point of beginning along the Northerly, Easterly and Southeasterly line of said Parcel B the following five courses and distances: (1) Northeasterly along a curve to the left having an arc 955.37 feet radius, said arc being subtended by a chord bearing North 62°11'56" East 356.29 feet; (2) North 51°28'30" East 440.80 feet; (3) South 456.59 feet; (4) South 69°22'46" West 163.18 feet and (5) South 54°20'05" West 105.00 feet; thence leaving said line North "35°39'55" West 25.83 feet; thence North 51°28'30" East 115.51 feet; thence North 38°31'30" West 116.00 feet; thence South 51°28'30" West 13.00 feet; thence Southwesterly along a curve to the right having an arc of 1115.37 feet radius, said arc being subtended by a chord bearing South 60°45'40" West 360.85 feet; thence South and parallel to the Westerly line of said Parcel B 134.79 feet; thence West 100.00 feet to a point on the said Westerly line; thence North 270.00 feet to the point of beginning, being further described as Parcel B in the Certificate of Compliance recorded October 2, 1985, in Book 851002, Page 1029, Official Records. Excepting therefrom that portion of Parcel B, as shown upon that Parcel Map entitled, "A Portion of Lots 13 & 14 of Natomas Riverside Subdivision No. 1," Book 15 of Maps, Map No. 26, recorded in the office of the Recorder of Sacramento County in Book 70 of Parcel Maps, at Page 6, more particularly described as follows:

Beginning at a point on the West line of said Parcel B from which the Northwest corner of said Parcel B bears North 72.99 feet; thence from said point of beginning in a curve to the left, concave to the North, through a central angle of 4°30'36", having a radius of 1025.37 feet and subtended by a chord bearing North 71°53'15" East 80.69 feet; thence South 15°39'11" East 202.19 feet; thence North 74°11'41" East 86.30 feet; thence South 80°58'17" East 53.38 feet; thence South 5°25'04" West 10.00 feet;

thence South 32°16'17" West 105.00 feet; thence West 110.00 feet; thence North 56.21 feet; thence West 100.00 feet to the West line of said Parcel B; thence coincident with said West line of Parcel B North 197.01 feet to the point of beginning, as described in Deed executed by Walter M. Harvey, recorded May 31, 1996, in Book 19960531, Page 101, Official Records.

Parcel No. 3

Lots 11 and 12 of Natomas Riverside Subdivision No. 1, according to the official plat thereof, filed in the office of the Recorder of Sacramento County, California, on August 9, 1915, in Book 15 of Maps, Map No. 26. Excepting therefrom all that portion of said Lots 11 and 12 lying Northerly of the center line of the public road 40 feet in width, as described in that certain deed dated November 21, 1927, recorded July 29, 1928, in Book 193 of Official Records, page 339, executed by Natomas Company of California to the County of Sacramento.

SEC. 4. The trust lands granted to the trustee pursuant to Section 3 of this act 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, and the preservation of lands in their natural state for scientific study, open space, wildlife habitat, and water-oriented recreation. The trustee may use the trust lands for the construction, reconstruction, repair, and maintenance of any transportation, utility, or other infrastructure that is incidental, necessary, or convenient to promote or accommodate uses consistent with the public trust doctrine. The trust lands shall be held by the trustee, subject to the following conditions:

(a) (1) The trustee shall not grant, convey, or otherwise alienate the trust lands, or any part thereof, to any individual, firm, or corporation for any purpose, except as provided in this act. However, the trustee may lease the trust lands, or any part thereof, for limited periods, not exceeding 49 years, for purposes consistent with the trust on which those lands are held. Any lease entered into pursuant to this subdivision shall be subject to any terms or conditions that may be imposed by the trustee that are deemed to be appropriate for public trust purposes. The trustee shall collect and retain rents from any lease entered into pursuant to this subdivision and expend trust revenues only for those uses and purposes that are consistent with the public trust purposes. The purpose of this requirement is to provide for the segregation of funds derived from the use of the trust lands in order to ensure that they are expended only to enhance the trust lands in accordance with the trust uses and purposes upon which the trust lands are held.

(2) The Legislature finds and declares that the requirement that trust revenues be used only for those purposes that are consistent with the public trust purposes is intended to provide for the segregation of trust revenues in order to ensure that they are expended only to enhance the trust lands in accordance with the trust uses and purposes upon which the trust lands are held.

(b) (1) In accordance with Section 6306 of the Public Resources Code, on or before December 31 of each year, the trustee shall file with the commission a detailed statement of all trust revenues and expenditures relating to its use of the trust lands and other trust assets, including obligations that have been incurred, but not yet paid, covering the fiscal year preceding submission of the statement. The statement required by this subdivision shall be prepared according to generally accepted accounting principles and may take the form of an annual audit prepared by or for the trustee. Prior to commission approval of a trust lands use plan, the following requirements shall apply:

(A) At least 30 days before making a capital expenditure of trust revenues in excess of one hundred thousand (\$100,000), but not more than one million (\$1,000,000), in or on the trust lands, the trustee shall give written notice of that proposed expenditure to the commission. The notice shall set forth the trust purposes for which the proposed expenditure will be made.

(B) The trustee shall not make a capital expenditure of trust revenues in excess of one million dollars (\$1,000,000), in or on the trust lands, unless the commission approves the expenditure pursuant to Chapter 2 (commencing with Section 6701) of Part 2 of Division 6 of the Public Resources Code.

(2) As to the commitment of trust revenues for capital improvements as described in paragraph (1), the commission may request the opinion of the Attorney General on the matter. The commission shall provide a copy of any opinion of the Attorney General pursuant to this paragraph to the trustee with the notice of its determination.

(3) If the commission determines that a proposed capital expenditure is not authorized, the trustee shall not disburse any trust revenues for, or in connection with, that capital improvement, unless it is determined to be authorized by a final order or judgment in a civil action filed by the trustee. The trustee may file a civil action against the state, which suit shall have priority over all other civil matters, for purposes of determining whether a proposed capital expenditure is an authorized public trust purpose. 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 the trustee prevails, the court shall not award costs.

(c) Any property acquired by the trustee with trust revenues shall become an asset of the trust lands and be subject to the terms and conditions of this act.

(d) (1) Commencing June 30, 2019, and at the end of every fiscal year thereafter, 20 percent of all annual gross revenues generated from leases or improvements to the trust lands shall be transmitted to the commission.

(2) Of the amount transmitted pursuant to paragraph (1), 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 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) Reimbursement for any expenditures by the trustee of nontrust revenues for improvements made to the trust lands shall be approved by the commission in accordance with subdivision (b) in advance of that expenditure. If reimbursement is not approved as provided in this subdivision, the expenditure of the trustee's nontrust revenues shall be deemed a gift to the trust.

(f) (1) Upon request of the commission, the trustee shall submit to the commission a trust lands use plan indicating details of intended 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. Any use of the trust lands shall be consistent with the trust lands use plan as approved by the commission. Any improvements of the trust land undertaken by the trustee pursuant to a prior lease of the trust land, as authorized by the commission prior to the effective date of this act, shall be deemed an approved component of the trust lands use plan.

(2) The commission shall review with reasonable promptness the trust lands use plan submitted by the trustee and any changes or amendments to determine that they are consistent with the public trust purposes and the requirements of this act. Based upon its review, the commission shall either approve or disapprove the trust lands use plan. In the event the commission disapproves the trust lands use plan, the trustee shall submit a revised plan to the commission within 180 days. If the commission determines that the revised trust lands use plan is inconsistent with the public trust doctrine and the requirements of this act, the commission shall report the matter to the Governor and each house of the Legislature.

(3) The trust lands use plan may consist of any plan, program, or other document that includes all of the following:

(A) A general description of the type of uses planned or proposed for the trust lands, including a map or aerial photograph showing the location of these uses.

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

(C) 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.

(D) Estimated timetable for implementation of the trust lands use plan or any phase of that implementation.

(E) A description of how the trustee proposes to protect and preserve natural and manmade resources in connection with the use of the trust lands.

(F) Procedures, rules, and regulations to governing the use of or development of any leases of the trust lands developed by the governing body of the city, which shall be subject to approval of the commission. These rules and regulations shall include, but not necessarily be limited to, lease rates, the bases upon which the rates are established, lease terms and conditions, provision for renegotiation of rates and terms and assignments, and such other information as may be required by the commission.

(G) If a trust lands use plan for the trust lands is approved by the commission pursuant to subdivision (f), all leases or similar agreements with a third party governing the use of those trust lands proposed or entered into by the trustee after the effective date of this act shall be consistent with the provisions of the trust lands use plan submitted by the trustee and approved by the commission.

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

(g) Upon request of the commission, the trustee shall submit a trust lands use 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 submitted. The updated report 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 all leases and permits granted or issued by the trustee for the trust lands, which list shall specify, as to each lease holder:

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

(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 thereof for the period covered by the report.

(h) The trustee shall reimburse the commission for staff costs related to the review of the trust lands use plan and subsequent report updates described in subdivisions (f) and (g).

(i) The trustee shall demonstrate good faith in carrying out the provision of a trust lands use plan approved pursuant to subdivision (f).

(j) The commission may, from time to time, institute a formal inquiry to determine that the trustee has complied in good faith with terms and conditions of this act, including any amendments, and with any other applicable law concerning the trust lands.

(k) There is hereby reserved in the people of the State of California the right to fish in the waters on and from the trust lands with the right of convenient access to those waters for fishing purposes.

(l) The state shall have the right to use, without charge, any transportation, landing, or storage improvements, betterments, or structures constructed upon the trust lands by trustee for any vessel or other watercraft or railroad owned or operated by, or under contract to, the state as long as that use is consistent with the approved trust lands use plan. The state's use of those facilities shall be governed by the trustee's rules and regulations.

(m) The trust lands granted to the trustee are subject to the express reservation and condition that the state may at any time in the future use those lands, or any portion thereof, for highway purposes without compensation to the trustee, or its successors or assignees, or any person, firm, or public or private corporation claiming any right to those lands, except that in the event 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 compensation for the value of the interest in the improvements taken or the damages to that interest.

(n) The state reserves all rights to any remains or artifacts of archaeological or historical significance and to all minerals and mineral rights in the trust lands, whether now known to exist or hereafter discovered, including, but not limited to, oil and gas and rights thereto, together with the sole, exclusive, and the perpetual right to explore for, remove, and dispose of those minerals by any means or methods suitable to the state or to its successors and assignees. Notwithstanding Section 6401 of the Public Resources Code, any mineral right retained pursuant to this section shall not include the right of the state or its successors or assignees in connection with any mineral reservation, removal, or disposal activity, to do either of the following:

(1) Enter upon, use, or damage the surface of the trust lands or interfere with the use of the surface by the trustee or by the trustee's tenants.

(2) Conduct any mining activities of any nature whatsoever above a plane located five hundred feet below the surface of the trust lands without permission of the trustee.

(o) In the management, conduct, operation, and control of the trust lands or any improvements, or structures on that land, the trustee or its 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 race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, in accordance with Article 1 (commencing with Section 12940) of Chapter 6 of Part 2.8 of Division 3 of Title 2 of the Government Code and other state antidiscrimination laws, for any use or service in connection with those actions.

(p) The trust lands shall be improved by the trustee without expense to the state, except that nothing contained in this act shall preclude the trustee from accepting and retaining any grant of funds or subvention from the state or other governmental agencies made available for the purpose of aiding in the development of those trust lands for any public purpose consistent with the promotion and accommodation of navigation, commerce, fisheries, water-oriented recreation and public access, or ecological preservation.

SEC. 5. (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 the receipt of a notice of violation to conform to the terms of its grant and the principles of law 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 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. 6. Chapter 1266 of the Statutes of 1970 is repealed.

SEC. 7. Chapter 625 of the Statutes of 1973 is repealed.

SEC. 8. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 9. The Legislature finds and declares that 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 regarding the development of property previously granted to the City of Sacramento pursuant to Chapter 519 of the Statutes of 1868, Chapter 1266 of the Statutes of 1970, and Chapter 625 of the Statutes of 1973.

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to grant in trust specified parcels of land to the City of Sacramento at the earliest possible time, it is necessary that this act take effect immediately.