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AB-2393 Tidelands and submerged lands: County of Orange and Newport Bay: franchises or leases.
(2023-2024)

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Assembly Bill No. 2393

CHAPTER 107

An act to amend Section 1 of Chapter 415 of the Statutes of 1975, relating to tidelands.

[Approved by Governor July 15, 2024. Filed with Secretary of State July 15, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2393, Dixon. Tidelands and submerged lands: County of Orange and Newport Bay: franchises or leases.

Existing law grants to the County of Orange all the right, title, and interest of the State of California in and to certain tidelands and submerged lands situated upon and under Newport Bay, as specified, in trust for certain purposes, including, among other things, for the establishment, improvement, and conduct of public bathing beaches, public marinas, public aquatic playgrounds, and similar recreational facilities open to the general public.

Existing law requires that the county, and its successors, only use those granted lands for prescribed purposes, and prohibits the county from granting franchises or leases for those tidelands and submerged lands for periods that exceed 50 years for public uses and purposes.

This bill would extend to 66 years the maximum period for which the county may grant franchises or leases for the use of those tidelands and submerged lands for those trust purposes.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

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

SECTION 1. Section 1 of Chapter 526 of the Statutes of 1919, as amended by Section 1 of Chapter 415 of the Statutes of 1975, is amended to read:

Sec.1. There is hereby granted to the County of Orange and to its successors all of the right, title, and interest of the State of California held by said state by virtue of its sovereignty in and to all that portion of the tidelands and submerged lands, whether filled or unfilled, bordering upon and under Newport Bay in the said County of Orange, that were outside of the corporate limits of the City of Newport Beach, a municipal corporation, on July 25, 1919, the same to be forever held by said county and by its successors in trust for the uses and purposes and upon the following express conditions:

(a) That said lands shall be used by said county and its successors for purposes there is a general statewide interest in, as follows:

(1) For the establishment, improvement, and conduct of a public harbor, and for the construction, maintenance, and operation thereon of wharves, docks, piers, slips, quays, ways, and streets, and other utilities, structures, and appliances necessary or convenient for the promotion or accommodation of commerce and navigation, provided that any use of any portion of the lands described in subdivision (a) of Section 2 shall be permitted only if the use is compatible and does not unreasonably interfere with the use of any portion of said lands for one of the purposes set forth in paragraph (3).

(2) For the establishment, improvement, and conduct of public bathing beaches, public marinas, public aquatic playgrounds, and similar recreational facilities open to the general public, and for the construction, reconstruction, repair, maintenance, and operation of all works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient for the promotion and accommodation of any uses, provided that any use of any portion of the lands described in subdivision (a) of Section 2 shall be permitted only if the use is compatible and does not unreasonably interfere with the use of any portion of said lands for one of the purposes set forth in paragraph (3).

(3) For the preservation, maintenance, and enhancement of said lands in their natural state and the reestablishment of the natural state of said lands so that they may serve as ecological units for scientific study, as open space and as environments that provide food and habitat for birds and marine life, and that favorably affect the scenery and climate of the area.

(b) Except as otherwise provided in this section, said county or its successors shall not, at any time, grant, convey, give, or alienate said lands, or any part thereof, to any individual, firm, or corporation for any purposes whatever, provided that said county or its successors may grant franchises thereon for a period not exceeding 66 years for wharves and other public uses and purposes, and may lease said lands or any part thereof for a period not exceeding 66 years for purposes consistent with the trust permitting that said lands are held by the State of California, and with the uses specified in this section.

(c) Said lands shall be improved without expense to the state, provided, however, that nothing contained in this act shall preclude expenditures for the development of said lands for any public purpose not inconsistent with commerce, navigation, and fishery, by the state, or any board, agency, or commission thereof, nor by the county of any funds received for these purposes from the state or any board, agency, or commission thereof.

(d) In the management, conduct, operation, and control of said lands or any improvements, betterments, or structures thereon, the county or its successors shall make no discrimination in rates, tolls, or charges for any use or service in connection therewith.

(e) The State of California shall have the right to use without charge any transportation, landing or storage improvements, betterments or structures constructed upon said lands for any vessel or other watercraft or railroad owned or operated by the State of California.

(f) There is hereby reserved to the people of the State of California the right to fish in the waters on said lands with the right of convenient access to said water over said lands for said purpose, and these rights shall be subject to the rules and regulations as are necessary for the accomplishment of the uses specified in subdivision (a).

(g) There is hereby excepted and reserved in the State of California all deposits of minerals, including oil and gas, in said lands, and to the State of California, the right to prospect for, mine, and remove deposits from said lands, provided, however, that the prospecting, mining, and removal shall not unreasonably interfere with the use of the lands granted herein for the purposes set forth in paragraph (3) of subdivision (a).

(h) Within 90 days of the effective date of the amendment of this section at the 1975–76 Regular Session of the Legislature, the county shall grant to the State of California, acting by and through the State Lands Commission, such portions of said lands as are located within the parcel of property described in subdivision (a) of Section 2, for the establishment, and improvement and conduct of an ecological reserve, or wildlife refuge, or both, and other compatible uses by the Department of Fish and Wildlife, provided, however, that if at any time the Department of Fish and Wildlife no longer uses the portions of the lands so granted by the county to the State Lands Commission for that purpose, the lands so granted shall revert to the county to be held pursuant to the provisions of this grant. Forthwith upon receipt of the grant from the county to the State Lands Commission, the State Lands Commission shall lease the lands so granted to the Department of Fish and Wildlife. The public benefit shall be the sole consideration to be received by the State Lands Commission from the Department of Fish and Wildlife for said lease. Any and all income received by the Department of Fish and Wildlife from the lands so leased shall be used only in connection with the department's improvement and administration of the leased lands. For purposes of this subdivision, the term "ecological reserve" means the same as defined in Sections 1580 to 1584, inclusive, of the Fish and Game Code.

(i) The county may grant to the City of Newport Beach, a municipal corporation, that portion of said lands described in subdivision (b) of Section 2 (presently known as North Star Beach) for the establishment, improvement, and conduct of a public beach and related public facilities, provided, however, that if at any time the City of Newport Beach no longer uses said portion of said lands so granted by the county to the City of Newport Beach for that purpose, the lands so granted shall revert to the county to be held pursuant to the provisions of this grant. The use of any lands conveyed by the county pursuant to the provisions of this

subdivision shall be compatible and not unreasonably interfere with any use of adjacent lands in accordance with paragraph (3) of subdivision (a) and subdivision (h).

(j) The provisions of Section 6359 of the Public Resources Code shall not be applicable to this amendment of the grant to the county.

(k) The county shall establish a separate tidelands trust fund or funds in a manner as may be approved by the State Lands Commission and the county shall deposit in the fund or funds all moneys received directly from, or indirectly attributable to, the granted tidelands in the county.

(l) Notwithstanding any other law, the county, acting either alone or jointly with another local or state agency, may use revenues accruing from or out of the use of the granted tidelands for any or all of the purposes set forth in this act.

(m) The revenues may be deposited in one or more reserve funds for use in accordance with the terms and conditions set forth in this act.

(n) As to the accumulation and expenditure of revenues for any single capital improvement on the granted lands involving an amount in excess of two hundred fifty thousand dollars (\$250,000) in the aggregate, the county shall file with the State Lands Commission a detailed description of the capital improvement not less than 90 days before the time of any disbursement therefor or in connection therewith, excepting preliminary planning. The State Lands Commission may, within 90 days after the time of the filing, determine and notify the county that the capital improvement is not in the statewide interest and benefit or is not authorized by the provisions of subdivision (l). The State Lands Commission may request the opinion of the Attorney General on the matter, and if it does so, a copy of the opinion shall be delivered to the county with the notice of its determination. In the event the State Lands Commission notifies the county that the capital improvement is not authorized, the county shall not disburse any revenue for or in connection with the capital improvement, unless and until it is determined to be authorized by a final order or judgment of a court of competent jurisdiction. The county is authorized to bring suit against the state for the purpose of securing an order or adjudication, and the suit shall have priority over all other civil matters. Service shall be made upon the Executive Officer of the State Lands Commission and the Attorney General, and the Attorney General shall defend the state in the suit. If judgment be given against the state in the suit, no costs shall be recovered against it.

(o) (1) At the end of every third fiscal year, beginning June 30, 1977, that portion of the county tideland trust revenues in excess of two hundred fifty thousand dollars (\$250,000) remaining after current and accrued operating costs and expenditures directly related to the operation or maintenance of tideland trust activities have been made shall be deemed excess revenues, provided that any funds deposited in a reserve fund for future capital expenditures or any funds used to retire bond issues for the improvement or operation of the granted lands shall not be deemed excess revenue. Capital improvements of the granted lands for purposes authorized by this act, including improvements that may be paid for by the county from revenues within the lands to be conveyed to the state pursuant to this act, may be considered as expenditures for the purposes of determining net revenues, provided, however, that if made after the effective date of this act they may be so considered only if made in accordance with subdivision (n).

(2) The excess revenue, as determined pursuant to subdivision (n), shall be divided as follows:

(A) 85 percent to the General Fund in the State Treasury.

(B) 15 percent to the county to be deposited in the trust fund and used for any purpose authorized by subdivision (l).

(p) The State Lands Commission, at the request of the county, shall grant an extension of time, not to exceed 30 calendar days, for filing any report or statement required by this act that was not filed due to mistake or inadvertence.

(q) In the event that the county fails or refuses to file with the State Lands Commission any report, statement, or document required by any provision of this act, or any extension period granted pursuant to this act, or fails or refuses to carry out the terms of this act, the Attorney General shall, upon the request of the State Lands Commission, bring judicial proceedings for correction and enforcement as are appropriate, and shall act to protect any improvements to, or assets situated upon, the granted lands or diverted therefrom. The State Lands Commission shall notify the Chief Clerk of the Assembly and the Secretary of the Senate within 30 days of the occurrence of any failure or refusal and of actions taken as a result thereof.

(r) The State Lands Commission shall, from time to time, recommend to the Legislature amendments as it may deem necessary in the terms and conditions of this act.

(s) The State Lands Commission shall, from time to time, institute a formal inquiry to determine that the terms and conditions of this act, and amendments thereto, have been complied with in good faith.

(t) The State Lands Commission shall, on or before December 31 of each year, report to the Chief Clerk of the Assembly and to the Secretary of the Senate the full details of any transaction or condition reported to the commission pursuant to this act that it

deems in probable conflict with the requirements of this act, or with any other provision of law.

(u) The Attorney General, on request by resolution of either house of the Legislature, or upon formal request of the State Lands Commission made only after a noticed public hearing where the grantee has been given an opportunity to fully express any disagreement with the commission's findings or to describe any extenuating circumstances causing the violation, shall bring an action in the Superior Court in the County of Orange to declare that the grant under which the county holds the tidelands and submerged lands is revoked for gross and willful violation of the provisions of this act or other legislative enactment, or to compel compliance with the terms and conditions of the grant and any other provision of law, including, but not limited to, this act.

(v) The county shall cause to be made and filed with the State Lands Division, annually, a detailed statement of receipts and expenditures by it of all rents, revenues, issues, and profits in any manner hereafter arising from the granted lands or any improvements, betterments, or structures thereon. The Department of Fish and Wildlife and City of Newport Beach, in lieu of the county, shall establish funds, make deposits, and make statements as to any lands conveyed to said department and city pursuant to subdivisions (h) and (i).

(w) The provisions of Sections 6701 to 6706, inclusive, of the Public Resources Code shall be applicable to this section.