

**CALENDAR ITEM
C97**

A Statewide

08/14/12

S Statewide

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CONSIDER SUPPORTING STATE LEGISLATION REQUIRING THE COMMISSION TO PREPARE A WORKLOAD ANALYSIS TO ENSURE THAT IT IS FULFILLING ITS OVERSIGHT RESPONSIBILITIES OVER LEGISLATIVELY GRANTED PUBLIC TRUST LANDS, CODIFYING TRUSTEE DUTIES IN CONNECTION WITH GRANTED LANDS, AND REQUIRING THE ANNUAL FINANCIAL STATEMENT FILED WITH THE COMMISSION TO BE ACCOMPANIED BY A STANDARDIZED REPORTING FORM DEVELOPED BY THE COMMISSION

INTRODUCTION:

State Lands Commission staff has been reviewing various legislative proposals introduced in the 2011-12 legislative session that involve lands under the Commission's jurisdiction. This report describes proposed legislation (AB 2620 – Achadjian) that would require the Commission to prepare a workload analysis to ensure that it is fulfilling its oversight responsibilities over legislatively granted public trust lands, codify trustee duties in connection with granted lands, and require the annual financial statement trustees file with the Commission to be accompanied by a standardized reporting form developed by the Commission. This report further proposes that the Commission consider adopting a support position on this legislation.

LEGISLATIVE PROPOSAL:

AB 2620 (Achadjian): Tidelands and submerged lands: granted public trust lands

SUMMARY:

AB 2620 would require the Commission to prepare a workload analysis to ensure that it is fulfilling its oversight responsibilities relative to legislatively granted public trust lands. This bill would also improve the Commission's oversight over granted lands by codifying trustee duties, authorizing the Commission to create a standardized reporting form, and allowing the Commission to post on its website trustee statements detailing revenues and expenditures relating to its trust lands and assets.

CALENDAR ITEM NO. C97 (CONT'D)

BACKGROUND:

Over 80 local jurisdictions have been granted state public trust lands. Existing law requires the Commission to oversee these granted public trust lands and ensure that their use is consistent with the Public Trust Doctrine and applicable statutory grant. Existing law requires each local trustee to file with the Commission a detailed statement of all revenues and expenditures relating to its trust lands and assets, including obligations incurred but unpaid, and covering the fiscal year preceding submission of the statement. The statement must be prepared in accordance with generally accepted accounting principles and may take the form of an annual audit prepared by or for the local trustee.

AB 2620 does three things. First, it creates a new section of law with a series of findings and declarations relative to the Commission's duty to oversee granted public trust lands and the fiduciary duties of local trustees that are applicable under common law trust principles. These include: 1) the duty of loyalty; 2) the duty of care; 3) the duty of full disclosure; 4) the duty to keep clear and adequate records and accounts; 5) the duty to administer the trust solely in the interest of the beneficiaries; 6) the duty to act impartially in managing the trust property; 7) the duty to not use or deal with trust property for the trustee's own profit or for any other purpose unconnected with the trust; 8) the duty to take reasonable steps under the circumstances to take and keep control of and to preserve the trust property; 9) the duty to make the trust property productive under the circumstances and furtherance of the purposes of the trust; 10) the duty to keep the trust property separate from other property not subject to the trust and the duty to see that the trust property is designated as property of the trust; 11) the duty to take reasonable steps to enforce claims that are part of the trust property; 12) the duty to take reasonable steps to defend actions that may result in a loss to the trust; and, 13) the duty to not delegate to others the performance of acts that the trustee can reasonably be required to perform and to not transfer the administration of the trust to a co-trustee.

Second, it changes the manner in which trustees provide revenue and use information to the Commission. This is the information that the Commission relies on to fulfill its oversight responsibilities. The bill authorizes the Commission to require that a standardized reporting form from local trustees be filed with the Commission along with their detailed annual statement. The Commission may either use an existing reporting form previously developed for this purpose or develop a reporting form that requires trustees to report on all of the following: 1) a summary of all funds received or generated from trust lands or assets; 2) a summary of all spending of funds received or generated from trust lands or assets; 3) any other disposition of funds received or generated from trust lands or assets or of the trust lands or assets themselves; 4) a description of the manner in which the statement required under current law and the accompanying reporting form is organized; and, 5) any other information that the Commission deems should be included in the accounting of granted lands.

CALENDAR ITEM NO. C97 (CONT'D)

This part of the bill also requires that grantees segregate all funds received or generated from trust lands or assets in separate accounts from non-trust funds, and states that all forms and supporting statements submitted are public records and shall be made available on the Commission's web site.

Third, this bill requires the Commission to prepare a workload analysis by September 1, 2013, that summarizes the resources necessary for the Commission to fulfill its oversight responsibilities relative to legislatively granted public trust lands.

OTHER PERTINENT INFORMATION:

AB 2620 is intended to ensure that the Commission is meeting its oversight responsibilities with respect to granted lands and their assets, and to ensure that the revenue generated from granted lands and their assets are expended in accordance with the common law Public Trust Doctrine and terms of the applicable statutory grant.

Additionally, the findings and declarations that are in this bill are beneficial because they make a trustee's responsibilities explicit. This is helpful because, although these fiduciary duties are identified in case law and individual granting statutes, they are not organized and placed together in one location. AB 2620 creates an organized list that appropriately frames the section of current law requiring that revenues received from trust lands and assets be expended only for trust consistent uses. This will help trustees understand their obligation to the trust and act as a deterrent against misuse of funds dedicated for public trust uses.

The Commission staff invests a significant amount of time and resources responding to and addressing inquiries from trustees about appropriate use of trust resources. In an effort to be more proactive and to improve its financial statement review process, Commission staff recently sent letters to all trustees asking that they also provide a summary annual report detailing gross revenues generated within public trust lands and all expenditures of those revenues beginning with the 2010-11 fiscal reporting year. In the letter, staff stated that another alternative would be for the trustee to pinpoint the areas of their Comprehensive Annual Financial Report that are associated with the revenues and expenditures of public trust assets. The authority in AB 2620 to create a standardized form that requires a trustee to include a summary of funds received or generated from trust lands or assets is consistent with these efforts.

AB 2620 was approved by the Assembly on May 25, 2012, on a 70-0 vote, and by the Senate Natural Resources and Water Committee on June 26, 2012, on a 9-0 vote. It is awaiting consideration on the Senate floor. It is sponsored by the Pacific Merchant Shipping Association and has received no opposition.

CALENDAR ITEM NO. C97 (CONT'D)

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

1. Adopt a support position on AB 2620 (Achadjian).