

CALENDAR ITEM

98

A Statewide

02/20/15

S Statewide

S. Pemberton

**CONSIDER SPONSORING STATE LEGISLATION (SB 141, MCGUIRE) THAT AMENDS
THE HUMBOLDT BAY HARBOR, RECREATION AND CONSERVATION DISTRICT
GRANTING STATUTE TO CLARIFY HOW THE DISTRICT CAN DISPOSE
OF CERTAIN PROPERTY**

SUMMARY:

The Humboldt Bay Harbor, Recreation and Conservation District (District) is trustee of sovereign lands granted to it by the Legislature pursuant to Chapter 1283, Statutes of 1970 and as amended (Granting Statute). This legislation, SB 141 (McGuire) would amend the District's Granting Statute to delete a provision prohibiting irrevocable grants of fee title.

EXISTING LAW:

The Granting Statute prohibits the District from transferring sovereign property but authorizes the District to acquire and dispose of interests in private (non-sovereign) property. The Granting Statute also prohibits the District from issuing irrevocable grants of fee title.

BACKGROUND:

The state of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its admission to the United States in 1850. The state holds these lands for the benefit of all people of the state for uses consistent with the common law Public Trust Doctrine, which include but are not limited to, waterborne commerce, navigation, fisheries, water-related recreation and visitor-serving facilities, habitat preservation, and open space.

The Commission has oversight authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions. Except for certain statutory authorizations, the Commission is not typically involved in day-to-day management operations for legislatively granted public trust lands. The grantee has the primary responsibility of administering the trust within the parameters of the public trust and its granting statutes.

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The District's Granting Statute allows the District to purchase and dispose of any interest in real property. Real property purchased with trust revenues is acquired by the District in its capacity as a trustee of the state and is held as an asset of the trust (often referred to as after-acquired land or property). The District, like all grantees, is not allowed to dispose of sovereign tide and submerged land, although the District may grant leases for limited periods of time not to exceed 66 years. Unless otherwise restricted, a trustee is generally not prohibited from transferring after-acquired lands because these lands do not have the constitutional and statutory restrictions on alienation that exist with sovereign tide and submerged lands.

A provision in the District's Granting Statute, added in 1976, prevents the District from transferring irrevocable grants of fee title. The remainder of the 1976 grant amendment provides authorization for the District to enter into land exchanges of filled and reclaimed tide and submerged lands, provided the Commission is involved. After reviewing the legislative history, it appears that the provision prohibiting irrevocable grants of fee title was intended to clarify that the District did not have the authority on its own to transfer, sell, or otherwise alienate sovereign tide and submerged lands – a restriction already well established in the Granting Statute, state Constitution, and common law. But, as written, this ambiguous provision may also restrict the District's ability to sell or transfer after-acquired property.

The proposed legislation eliminates this restriction because it creates ambiguity as to the District's authority to dispose of fee simple interests in after-acquired lands. The existing law that provides authorization for the District to purchase after-acquired lands seemingly prevents it from selling these lands, detrimentally restricting the District in its ability to manage its trust assets and to act in the best interests of the state. Removing this provision to clarify the District's authority will enhance the public trust and facilitate economic development. This clarification is beneficial to the District and to the State because the sale of after-acquired lands provides funds that the District can reinvest into administering and improving its trust lands within Humboldt Bay for the statewide public's use and enjoyment.

STAFF RECOMMENDATION:

Commission staff recommends that the Commission sponsor legislation in the 2015-16 legislation session to amend the District's Granting Statute grant to delete the provision that prevents irrevocable grants of fee title.

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EXHIBIT:

- A. Proposed bill language

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

1. Sponsor SB 141 (McGuire), which amends the Humboldt Bay Harbor, Recreation and Conservation District granting statute to clarify how the District can dispose of certain property.

EXHIBIT A

SENATE BILL

No. 141

Introduced by Senator McGuire
(Principal coauthor: Assembly Member Wood)

January 26, 2015

An act to amend Section 23 of the Humboldt Bay Harbor, Recreation, and Conservation District Act (Chapter 1283 of the Statutes of 1970), relating to tide and submerged lands.

LEGISLATIVE COUNSEL'S DIGEST

SB 141, as introduced, McGuire. Humboldt Bay Harbor, Recreation, and Conservation District Act: land use.

Existing law, the Humboldt Bay Harbor, Recreation, and Conservation District Act regulates the use of specified tide and submerged lands within Humboldt Bay and provides for the fill, improvement, and reclamation of those tidelands, as prescribed. The act further requires that all grants, franchises, leases, permits, rights or privileges be made in accordance with those rules and regulations as the board of commissioners of the district prescribes by resolution, and prohibits irrevocable grants of fee title from being granted or issued.

This bill would eliminate that provision prohibiting irrevocable grants of fee title, thereby authorizing these grants subject to the other provisions of the act.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

- 1 SECTION 1. Section 23 of the Humboldt Bay Harbor,
- 2 Recreation, and Conservation District Act (Chapter 1040 of the
- 3 Statutes of 1976), is amended to read:

1 Sec. 23. All grants, franchises, leases, permits, rights, or
2 privileges shall be made in accordance with ~~such~~ *those* rules and
3 regulations as the board shall prescribe by resolution. ~~Irrevocable~~
4 ~~grants of fee title shall not be granted or issued.~~

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