

37. PROPOSED LEGISLATIVE PROGRAM - 1970 GENERAL SESSION - W-7070.2.

Following consideration of Calendar Item 36 attached, and upon motion duly made and carried, the following resolution was adopted:

THE COMMISSION AUTHORIZES THE STAFF OF THE STATE LANDS DIVISION TO DRAFT AND INTRODUCE LEGISLATION DURING THE 1970 GENERAL SESSION OF THE LEGISLATURE TO ACCOMPLISH THE FOLLOWING:

1. AMEND PUBLIC RESOURCES CODE SECTION 6503 TO ELIMINATE THE RENTAL EXEMPTION CURRENTLY PROVIDED LITTORAL LAND OWNERS HAVING PRIVATE RECREATIONAL PIERS ON PUBLIC LANDS. EXHIBIT "A".
2. AMEND PUBLIC RESOURCES CODE SECTION 6826.1 TO PERMIT ADDITIONAL AGENCIES ENGAGED IN VALID RESEARCH WORK TO TAKE CORES IN RESTRICTED AREAS. EXHIBIT "B".
3. AMEND PUBLIC RESOURCES CODE SECTION 6891 TO AUTHORIZE THE STATE LANDS COMMISSION TO DETERMINE FEES FOR PROSPECTING PERMITS. EXHIBIT "C".
4. AMEND PUBLIC RESOURCES CODE SECTION 6895 TO AUTHORIZE THE STATE LANDS COMMISSION TO DETERMINE ANNUAL RENTAL FEES FOR LANDS LEASED BY PROSPECTING PERMITTEES. EXHIBIT "D".
5. ADD SECTION 6387 TO THE PUBLIC RESOURCES CODE TO PROVIDE THAT FINANCIAL REPORTS ON TIDELAND GRANTS BE FILED WITH THE STATE LANDS COMMISSION RATHER THAN WITH THE DEPARTMENT OF FINANCE. EXHIBIT "E".
6. ADD ARTICLE 4 TO CHAPTER 4, PART 1, DIVISION 6 OF THE PUBLIC RESOURCES CODE TO ESTABLISH PROCEDURES PERTAINING TO TIDELAND GRANTS, WITH THE DRAFT OF PROPOSED LEGISLATION TO BE BROUGHT BACK TO THE COMMISSION FOR CONSIDERATION OF CONCURRENCE AND ENDORSEMENT.

Attachment

Calendar Item 36 (21 pages)

36.

PROPOSED LEGISLATIVE PROGRAM
1970 GENERAL SESSION

It is proposed that legislation be drafted and introduced during the 1970 General Session to accomplish the following:

1. Amend Public Resources Code Section 6503 to eliminate the rental exemption currently provided littoral land owners having private recreational piers on public lands. Exhibit "A".
2. Amend Public Resources Code Section 6826.1 to permit additional agencies engaged in valid research work to take cores in restricted areas. Exhibit "B".
3. Amend Public Resources Code Section 6891 to authorize the State Lands Commission to determine fees for prospecting permits. Exhibit "C".
4. Amend Public Resources Code Section 6895 to authorize the State Lands Commission to determine annual rental fees for lands leased by prospecting permittees. Exhibit "D".
5. Add Section 6387 to the Public Resources Code to provide that financial reports on tideland grants be filed with the State Lands Commission rather than with the Department of Finance. Exhibit "E".
6. Add Article 4 to Chapter 4, Part 1, Division 6 of the Public Resources Code to establish procedures pertaining to tideland grants. Exhibit "F".

IT IS RECOMMENDED THAT THE EXECUTIVE OFFICER BE AUTHORIZED TO SUBMIT DRAFTS OF PROPOSED LEGISLATION TO ACCOMPLISH THE ABOVE STATED PURPOSES FOR INTRODUCTION IN THE 1970 LEGISLATIVE SESSION.

Attachments: Exhibits "A", "B", "C", "D", "E" and "F".

EXHIBIT "A"

Amend Section 6503 of the Public Resources Code:

6503. Upon receipt of an application to lease lands under this chapter, the commission shall appraise the lands and fix the annual rental per acre or other consideration therefor; provided, no rental fee shall be charged for private recreational piers constructed for the use of a littoral land owner. A littoral land owner, as used in this section shall be only a natural person or persons, using the littoral land solely for a private single family dwelling house and shall not include the owner of unimproved land.

EXHIBIT "B"

Amend Section 6826.1 of the Public Resources Code:

6826.1. The State Lands Commission shall not permit the taking of cores or other samples by means of drilling operations on or under the tide and submerged lands described in subdivision (d) of Section 6871.2 or on tide or submerged lands of the state along the coast of the Pacific Ocean extending from the southerly boundary of the state to the northerly boundary of the City of Newport Beach in Orange County, and any permit issued by the commission for the conduct of geological or geophysical surveys on such lands shall contain a provision expressly prohibiting the taking of such cores or samples on or under such lands. The provisions of this section shall not apply to permit applications by the Department of Public Works for soil surveys or bridge foundation exploration studies; to the University of California and other accredited institutions of higher education which are engaged in oceanographic research and not engaged in an activity of commercial exploration or exploitation; to core drilling in connection with the location of nuclear plant sites; or the United States Bureau of Mines, the United States Army Corps of Engineers, the United States Geological Survey, the Resources Agency or any of its components, or similar agencies when the work performed is for the purpose of studying beach erosion, fresh water aquifers, earthquake faults, flood control, harbor works, or similar studies.

EXHIBIT "C"

Amend Section 6891 of the Public Resources Code:

6891. The commission shall issue a prospecting permit, under such rules and regulations as it may prescribe, for lands which are not known mineral lands to any qualified applicant, upon the payment to the commission of one dollar (~~\$1~~) per acre for each acre in a fee to be determined by the commission for the area embraced within the boundaries of the lands described in the permit. No permit shall be issued for any lands which have been classified by the commission prior to such application as containing commercially valuable mineral deposits. Upon receipt of an application for a permit, the commission shall determine whether the lands described therein are known mineral lands. If it determines that the lands are known mineral lands, it shall thereupon so classify them and shall reject the application for a prospecting permit.

Subject to such terms and conditions as the commission may determine to be in the best interest of the State, a prospecting permit shall give to the permittee the exclusive right for a period not exceeding two years to prospect for minerals other than oil and gas or other hydrocarbon substances upon lands wherein such mineral deposits belong to the State.

The commission may, in its discretion, extend the term of any permit for a period not exceeding one year, but the term of any such permit, including extensions, shall be limited to a total three years.

EXHIBIT "D"

Amend Section 6895 of the Public Resources Code:

6895. Upon establishing to the satisfaction of the commission that commercially valuable deposits of minerals have been discovered within the limits of any permit, the permittee shall be entitled to a lease for not more than 160 acres of the land embraced in the prospecting permit, if there be that number of acres within the permit. The area selected by the permittee shall be in compact form, and if surveyed shall be described by the legal subdivisions of the public lands surveys; if unsurveyed, the area shall be surveyed by the commission at the expense of the applicant for the lease, in accordance with rules and regulations to be prescribed by the commission, and the lands leased shall be conformed to and taken in accordance with the legal subdivisions of such surveys. The lease shall be upon a royalty, as specified by the commission in the permit, and the annual payment in advance of a rental of one dollar (~~\$1~~) per acre to be determined by the commission. Notwithstanding the 160 acreage limitation provision of this section, whenever the lands for which a lease is sought are tide and submerged lands, the commission shall be, and is, authorized to divide such lands into such size and number of parcels as the commission shall determine will not substantially impair the public rights to navigation and fishing or interfere with the trust upon which such lands are held.

EXHIBIT "E"

Add Section 6387 to the Public Resources Code:

6387. Notwithstanding any other provision of law, whenever legislative enactment, granting or conveying state tide or submerged lands, requires the filing of any financial report with the Department of Finance, such financial report will be filed, instead, with the State Lands Commission.

EXHIBIT "F"

Add Article 4 to Chapter 4, Part 1, Division 6 of the Public Resources Code:

W-7070.2

Article 4. Procedures on Tideland Grants

6360. Every local agency seeking a grant of a parcel or parcels of tidelands in trust by statute from the Legislature shall first submit an application for such grant pursuant to the provisions of this article to the Legislature and to the commission. The application shall be in such form as the commission shall prescribe by its rules and regulations. The commission shall have the authority to require such additional information as it deems necessary with respect to any application. Every application for a grant shall be filed with the commission and a copy thereof with the Secretary of the Senate and the Chief Clerk of the Assembly not less than 180 days preceding the convening of the regular session of the Legislature at which the application for a grant shall be considered.

6361. Every application by a local agency for a grant of tidelands in trust shall, in such form as the commission shall prescribe, include:

- (a) A general area map of the requested tidelands illustrating their geographical relationship to the local agency, to its neighboring local agencies, and to the general geographic region, showing the tidelands applied for and showing the type of development planned for the respective parts of the grant applied for.
- (b) An adequate legal description of the tidelands applied for.
- (c) A report of existing land use of the tidelands, including a list of the present occupants, if any, of the tidelands.
- (d) A description of the present zoning and other restrictions provided by law or deed restrictions on the use of the tidelands and surrounding areas.

- (e) A general plan for use or development of the tidelands applied for, covering a period beginning with the approximate date on which the grant applied for would become effective and extending until December 31, 1999, or for 25 years, whichever period is longer.

6361.1. The general plan shall include:

- (a) The type of use or development which is planned for the requested tidelands and the approximate location of each type of use or development. The predominant type of use or development shall be clearly defined where two or more use or development concepts are planned.
- (b) The projected statewide benefit to be derived from the preservation, use or development of the tidelands, including, but not limited to, the financial benefit, the benefit to commerce, navigation, and fisheries, and the recreational, educational, or industrial benefit.
- (c) The relationship, if known by the local agency, of the plan to tideland use or development programs underway or proposed within a radius of five coastal miles of the exterior limits of the local agency.
- (d) The proposed method of financing any planned use or development of the requested tidelands, including estimated capital costs, annual operating costs, and annual revenues associated with the general plan, where known.
- (e) Estimated dates when financing, if needed, will become available, when construction of each phase of the general plan will begin, and when such phase will become operative.

(f) Proposals for the preservation of natural or manmade resources and local property values.

(g) A statement of any measures to be taken for the protection of the fish and wildlife resources in connection with the planned uses and developments.

6362. The commission shall review all applications for a tideland grant made pursuant to this article to insure compliance with this article, chapter, and any other applicable provision of law, and may conduct such studies and investigations and obtain such other information, reports, documents, memoranda, or other evidence bearing on such application as it deems necessary.

6363. Unless the commission has found that the application requires further study, it shall, by the 10th day prior to the commencing of the next succeeding regular session of the Legislature, file with the secretary of the Senate and the Chief Clerk of the Assembly, its findings, conclusions, and recommendations concerning the application. If the commission concludes and recommends that the Legislature make the grant, it shall also forward draft legislation, setting forth the terms and conditions of the grant in trust of the tidelands applied for in such form as the commission believes will promote and protect the public interests.

6364. The Legislature declares that its policy shall be that it will not act upon a tideland grant application until the requesting local agency has prepared and presented to the Legislature and commission a general plan in accordance with this article and the commission has reviewed such general plan and has made a recommendation to the Legislature. If no recommendation is made

to the Legislature, or if the commission refers the application and general plan to its staff for further study, the Legislature may take the request under consideration and may act upon the measure without recommendation from the commission.

6364.1. The Legislature declares that its policy and intention are that all local agencies to which tidelands are granted shall hold said tidelands subject to, but not limited to, the following conditions, which conditions without express reference therein to the provisions hereof, shall be deemed to be included in all tideland grants enacted after the effective date of the chapter unless otherwise expressly provided:

- (a) That the local agency shall put into effect by definite action the provision of its general plan for the tidelands upon which the tideland grant was based on or before the fifth anniversary of the effective date of the grant of the tidelands.
- (b) That a special trust fund or funds shall be established for the purpose of deposit of all revenues and accounting for all financial and monetary transactions associated with the granted tidelands.
- (c) That an annual statement of financial condition and operations shall be submitted to the Auditor General pursuant to Sec. III, 1.
- (d) That all minerals, including, but not limited to, those described in Section 6407 shall be reserved to the state.
- (e) That any substantial change in the general plan shall be submitted for review to the commission, following, so far as applicable, the procedure provided for in this article, and the commission shall file the proposed amendments together with its

determinations thereon to the Secretary of the Senate and the Chief Clerk of the Assembly.

- (f) That the general plan is financially sound and the estimated costs and revenues are reasonable.

The commission may transmit copies of all such applications, reports and general plans to any other state agency it deems proper for its comments on the planning aspects thereof (which office shall within 30 days submit to the commission its written report).

- (g) That the Legislature reserves the right to amend or revoke the grant, under which circumstances, the state would assume all lawful financial obligations thereunder as trustee.

6365. Every trustee of tidelands granted prior to the effective date of this article, shall submit to the commission on or before September 30, 1973, a report of the utilization of its subject tidelands for the five-year period commencing on July 1, 1968, and ending with June 30, 1973, and on or before September 30 of every succeeding fifth year after September 30, 1973, every such trustee and, also, every trustee of tidelands granted after the effective date of this article, shall submit a report of the utilization of its granted tidelands for each immediately preceding five-calendar-year period ending with June 30 of the calendar year during which the report is required to be submitted.

The report required by this section shall include:

- (a) A general description of the uses to which the granted tidelands have been placed during the period covered by the report;
- (b) A list of the owners and holders of leases, permits and franchises granted or issued by the trustee, which list shall specify, as to each such owner or holder:

- (1) The use to which the granted tidelands have been placed by the owner or holder.
- (2) The consideration provided for in each such lease, permit, or franchise and the consideration actually received by the trustee for the lease, permit or franchise granted or issued; and
- (c) An enumeration of the restrictions which the trustee has placed on the use of the granted tidelands and each area thereof for the period covered by the report.

6365.1. The commission shall transmit a copy of any such report to the Chief Clerk of the Assembly and to the Secretary of the Senate at the request of any committee of either house.

6366. Every trustee of tidelands granted prior to the effective date of this article shall prepare and submit not later than September 30, 1973, a general plan to the commission, indicating details of intended use or improvement of the granted tidelands during the period commencing with September 1, 1973, and ending with December 31, 1999, which plan shall specify:

- (a) The type of use or development which is planned as to each general area within the grant, and the predominate type of use or development shall be clearly defined where two or more use or development concepts are planned;
- (b) The expected statewide benefit to be derived from the use or development plan, including the financial benefit, and the navigational, commercial, recreational, or industrial benefit;
- (c) The proposed method of financing the plan, any estimated capital costs, annual operating costs, and annual revenues of the plan;

(d) The estimated dates when development financing, if needed, will become available and when each phase of the general plan will begin; and

(e) The values that have been considered in the plan, such as encouragement of industrial growth, promotion of recreation, or the preservation or improvement of natural or manmade resources and local property.

6366.1. The commission shall, on or before November 30, 1974, transmit a copy of each general plan required to be filed by a trustee pursuant to Sec. II, 1 to the Chief Clerk of the Assembly and to the Secretary of the Senate, together with its recommendations thereon.

6366.2. The commission shall, on or before October 15, 1973, transmit a copy of each general plan upon request to any other state agency for its comments thereon. Such state agency comments shall be transmitted to the commission and to the affected trustee by June 30, 1974, for consideration by the commission in its recommendations to the Legislature. The commission shall also transmit a copy of any report of an amendment to a general plan upon request to any other state agency upon receipt of such amendment or comments. Such state agency shall submit its comments to the commission and to the affected trustee within 60 days of receipt of such amendment.

6370. Every trustee shall establish a separate trust fund or funds on or before December 31, 1970, for deposit of all revenue referred to in subdivision (f) of Section 6360. An annual statement of financial conditions and operations shall be submitted by each trustee to the Auditor General on or before September 30 of each year for the preceding fiscal year, beginning in 1971. A copy of such statement shall be filed with the commission.

6370.1. The Auditor General shall, on or before March 30 of each year, report to the Chief Clerk of the Assembly, to the Secretary of the Senate, and to the commission the full details of any transaction or condition reported to him pursuant to this article which he deems in probable conflict with the requirements of this chapter, with any other provision of law, or with any part of the general plan in effect during said fiscal year relative to such tidelands.

6370.2. Notwithstanding any other provision of law to the contrary, a trustee either acting alone or jointly with another local agency, may use granted tidelands or revenues accruing from or out of the use of the granted tidelands for any or all of the following purposes provided the same comply with the trustee's general plan, if any then in effect, which are matters of statewide as distinguished from local or purely private interest and benefit:

- (a) The construction, reconstruction, improvement, repair, operation, maintenance, promotion, and protection of works, lands, waterways, and facilities necessary for the development of such granted tidelands for highest and best use in the public interest, including, but not limited to, commerce, navigation, fisheries, marinas, small boat harbors, marine stadiums, maritime museums, marine parks, beaches, health and educational facilities, and waterways, and such streets, roadways, bridges, bridge approaches, earthfills, bulkheads, piers, supporting structures, buildings, recreational facilities, landscaping and parking lots situated upon such granted tidelands, or adjacent thereto and reasonably necessary to provide access to, or development of, such granted tidelands;

- (b) The promotion, by advertising and such other means as may be reasonable and appropriate, of maximum public use of such granted tidelands or to encourage private investment in development of such granted tidelands for the highest and best use in the public interest;
- (c) Any other uses or purposes of state, as distinguished from purely local or private, interest and benefit, which are in fulfillment of those trust uses and purposes described in the statute making the grant, and which are approved in advance by the commission;
- (d) The acquisition of property and the rendition of services reasonably necessary to the carrying out of the foregoing uses and purposes; and
- (e) The conservation, preservation, restoration or cultivation of natural resources uniquely associated with tidelands and marine ecology including the preservation of natural beaches.

6370.3. Notwithstanding the provisions of Sec. III, 1, a trustee is not required to establish a separate trust fund where a special fund already exists for the deposit of revenues from granted tidelands and uplands under the jurisdiction of the grantee and from which expenditures are made for improvement of upland and tideland development for port or harbor purposes. In such event, however, a trustee shall otherwise comply with the provisions of Sec. III, 1.

6370.4. As to the accumulation and expenditure of revenue for any single capital improvement involving an amount in excess of fifty thousand dollars (\$50,000) in the aggregate, which improvement has not been specifically described in the general plan prepared and put into effect for the subject tidelands, the trustee shall file with the commission a detailed description of such capital improvement not less than 90 days

prior to the time of any disbursement therefor or in connection therewith, excepting preliminary planning. Such description shall specify, in addition, the particular statement of the particular public interest and benefit, the subdivision or subdivisions of Sec. III, 1.2 which the trustee deems applicable, how the expenditure complies with the general plan and granting statute, and its reasons for regarding such expenditure as being so authorized. The commission may, within 90 days after the time of such filing, determine and notify the trustee that such capital improvement is not in the statewide interest and benefit or is not authorized by any of such subdivisions, or does not comply with the trustee's general plan or granting statute. The commission may request the opinion of the Attorney General on the matter, and if it does so, a copy of such opinion shall be delivered to the trustee with the notice of its determination. In the event the commission notifies the trustee that such capital improvement is not authorized, the trustee shall not disburse any revenue for or in connection with such capital improvement, unless and until permitted by an order or judgment of a court of competent jurisdiction in a suit brought for the purpose of determining whether such proposed capital improvement is in the statewide interest and benefit, is authorized by one of such subdivisions and in compliance with the trustee's general plan and granting statute. Any trustee may bring suit against the state for the purpose of securing such an order or adjudication, which suit shall have priority over all other civil matters. Service shall be made upon the executive officer of the commission and the Attorney General, and the Attorney General shall defend the state in such suit. If judgment be given against the state in such suit, no costs shall be recovered against the state.

6371. At the end of each fiscal year, beginning on June 30, 1972, that portion of the revenue as defined in subdivision (f) of Section 6360 in excess of fifty thousand dollars (\$50,000) remaining after necessary operating costs and expenditures for any purpose authorized by Sec. III, 1.2 have been made, shall be deemed excess revenue and shall be divided between the trustee and the state, in such proportions as shall be agreed upon between the trustee and the commission, as specified by statute, provided that in no case shall the state's share thereof be less than half; and further provided that any funds set aside and deposited in a special trust fund for future capital expenditures for projects, the expenditures for which have been approved in advance by the commission pursuant to Sec. III, 1.3, shall not be deemed excess revenue.

6371.1. The provisions of this article shall not apply to oil revenues and dry gas revenues whose disposition is governed by Chapter 138 of the Statutes of 1964, First Extraordinary Session or any amendment thereto.

6372. Notwithstanding any other provision of law, grantees holding tidelands in trust may grant leases and franchises; provided, that such agreements be limited to a period not exceeding 99 years.

6375. The commission, at the request of any trustee, may grant an extension of time for filing any application, report, statement, or plan required by this chapter which was not filed due to mistake or inadvertence, not to exceed 30 calendar days.

6376. In order to carry out the provisions of this chapter, the commission shall have all the powers of a head of a department as set forth in Article 2 (commencing with Section 11180), Chapter 2, Part 1, Division 3 of the Government Code.

6377. In the event that any trustee fails or refuses to file with the commission or with the Auditor General any report, statement, document or plan required by any provision of this chapter within the time period specified by this chapter, or any extension period granted pursuant to this article, or fails or refuses to carry out the terms of the grant by which the tidelands were conveyed to it, or fails to defend against lawsuits involving the integrity of the title or boundaries of the state's interests conveyed by the grant, the commission or Auditor General shall, within 60 days, notify the Chief Clerk of the Assembly and the Secretary of the Senate.

The Attorney General shall, upon request of the commission, bring such judicial proceedings for correction and enforcement as are appropriate, and shall act to protect any properties and assets situated on the granted tidelands or derived therefrom.

6378. The commission may from time to time, at the request of the Legislature, institute a formal inquiry to determine that the terms and conditions of every grant, and amendments thereto, have been complied with, that every general plan, together with any substantial amendments thereto, has been carried out, and that all other applicable provisions of law concerning either specific granted tidelands or regulating all granted tidelands, are being complied with in good faith.

6379. The Legislature reserves the right to amend or modify or revoke, in whole or in part, any grant of tidelands in trust hereafter made, provided that the state, by special appropriations from the general fund, shall thereupon assume all lawful obligations related to such tidelands as may revert to the state by such action. When deemed proper by the commission or the Attorney General's office or the Legislature, the state may be entitled

to reimbursement or trust funds or any monies expended or loaned by the state for capital improvement for trust lands where such expenditure losses were the result of mismanagement or a violation of the terms of the trust on said tidelands.

6380. The Attorney General, at his own instance, or upon formal request of the commission, or by concurrent resolution of either house of the Legislature, shall bring an action in the superior court of a county in which granted tidelands are located to declare that the grant under which the trustee holding such tidelands is revoked for gross and willful violation of the terms of such grant or the provisions of this chapter, or to compel compliance with the terms and conditions of the grant and this chapter.
6381. In the event there is an amendment, modification or revocation, in whole or in part, of any grant of tidelands in trust heretofore or hereafter made pursuant to Section IV, 5 and 6 or any other provisions of law, such amendment, modification, or revocation shall not impair or affect the rights or obligations of third parties, including lessees, lenders for value or the security of leases, or others who are parties to contracts which, except for such amendment, modification, or revocation would be lawful and binding contracts.