

**CALENDAR ITEM
72**

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PROPOSED LEGISLATION

INTRODUCTION:

State Lands Commission staff has been reviewing various legislative proposals introduced in the current session that may affect the State Lands Commission's authority or functions. This report describes Senate Bill (SB) 385, analyzes its impacts and sets forth a recommendation for the Commission to consider.

LEGISLATIVE PROPOSAL:

Senate Bill 385 (Gaines): Lake Tahoe

SUMMARY:

SB 385 seeks to eliminate the State's public trust easement interest at Lake Tahoe by establishing the State's landward limits of its public trust interest at the low water mark.

ANALYSIS:

SB 385 is an attempt to overturn two California Supreme Court decisions by limiting the extent of the State's public trust interest at Lake Tahoe to the low water mark and terminating the State's existing Public Trust easement that exists between the low and high water mark. SB 385 is also an attempt to severely limit public access rights that exist between the low and high water mark, essentially turning the shorezone area around Lake Tahoe over to private ownership.

Pursuant to case law, the State owns, subject to the Public Trust Doctrine, the submerged lands at Lake Tahoe waterward of the low water mark (elevation 6,223 feet Lake Tahoe Datum). The State retains a public trust easement in land lying between the elevations of 6,223 feet (low water mark) and 6,228.75 feet (high water mark) Lake Tahoe Datum. *State of California v. Superior Court of Lake County (Lyon)* (1981), 29 Cal. 3d 210; *State of California, et al. v. Superior Court of Placer County (Fogerty I)* (1981) 29 Cal 3d 240, *Fogerty, et al v. State of California, et al.*, (1986) 187 Cal. App. 3d 224. The low water mark constitutes the fee boundary between state sovereign ownership and upland fee ownership. The high water mark of Lake Tahoe constitutes the uppermost limit of the lake subject to the public's easement rights held in trust by the State.

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Nearly 120 years ago, the United States Supreme Court (Court) issued its landmark ruling on the nature of a state's title to its public trust lands and the inability of the Legislature to give up the State's public trust interests to private parties. *Illinois Central Railroad Co. v. Illinois* (1892) 146 U.S. 387. In a decision involving a grant of Chicago's waterfront by the Illinois State Legislature to the Illinois Central Railroad, the Court made it clear that a state's title to its public trust lands is different from that of the proprietary lands it or the federal government holds for sale. The Court found that it was beyond the authority of the legislature to make a wholesale transfer away of the public's rights in public trust lands. The state's title to its public trust lands is "a title held in trust for the people of the state so that those citizens may enjoy the navigation of the waters, carry on commerce over them, have liberty of fishing free from obstruction or interference from private parties." *Id.* at 452. SB 385 seeks to terminate the State's public trust easement interest and effectively convey the State's easement interest into private ownership in clear violation of the Illinois Central decision. The gift of this valuable public property right would also be clear violation of Article XVI, Section 6 of the California Constitution. The "Gift Clause" prohibits the Legislature from making a gift, "of of any public money or thing of value to any individual...."

SB 385, if enacted, would also violate the mandatory provisions of Article X, Section 4 of the California Constitution that not only guarantee the public right of access to waterways, but direct the Legislature to liberally construe the provision. The People of California adopted this section in 1879 to reverse a practice the Legislature had adopted of conveying away the fee title in shore areas to private parties. SB 385 is an attempt to limit the public's access to Lake Tahoe by eliminating the State's public trust easement that now exists between low water and high water.

In conclusion, SB 385 seeks to limit the State's public trust interest at Lake Tahoe to the elevation of 6,223 feet Lake Tahoe Datum, which would terminate the State's public trust easement interest, severely limit public access rights that exist between the low water mark and the high water mark and effectively convey the State's easement interest into private ownership in violation of the Courts' decisions and two California Constitution provisions.

OTHER PERTINENT INFORMATION:

California Environmental Quality Act (CEQA) compliance: Staff has determined this action by the Commission is not subject to the provisions of CEQA because it is not a "project" as defined in Section 15378 of the State CEQA Guidelines (Title 14, California Code of Regulations, section 15000 et seq.). Specifically, the proposed action by the Commission to oppose SB 385 has no potential to result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

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RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

1. Find that the activity is not subject to the requirements of CEQA because the activity is not a project as defined in Section 21065 of CEQA and Section 15378 of the State CEQA Guidelines;
2. Oppose SB 385, which as proposed, seeks to limit the State's public trust interest at Lake Tahoe to the elevation of 6,223 feet Lake Tahoe Datum.