

STAFF REPORT

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CONSIDER SPONSORING LEGISLATION IN THE 2019-20 LEGISLATIVE SESSION THAT WOULD REPEAL OBSOLETE SCHOOL LAND STATUTES AND RECAST OR MODERNIZE OTHER SCHOOL LAND STATUTES

SUMMARY:

This past year, staff assessed the Commission's school lands statutes and identified ways to improve and modernize them. The proposed legislation discussed in this staff report would repeal obsolete and redundant school land statutes and recast or modernize other school land statutes.

BACKGROUND:

In 1853, Congress granted the State of California 5.5 million acres of land to support public schools. These lands, known as school lands, consisted of the 16th and 36th sections of land in each township, with certain exceptions. A township is 36 square miles containing 36 sections. Each section within a township is roughly 1 square mile, generally 640 acres. Over time, the state sold several million acres of school land (nearly 90 percent of them). There are now 458,843± acres of school land that the Commission manages, along with the reserved mineral interests on another 790,000± acres where the surface estate has been sold.

The state was not granted every 16th and 36th section; some were excluded because they were reserved for other public purposes or were previously conveyed. Because of the exclusions, the state was given the opportunity to, in the future, select replacement lands from the United States in lieu of a Section 16 or a Section 36. Replacement lands are known as indemnity school lands. Staff estimates that the Commission has acquired roughly 81,643± acres of indemnity school land and is owed roughly 51,000 additional acres.

Indemnity lands must equal the acres to which the state is entitled (equal acreage). To acquire indemnity lands, the state prepares and files with the United States a list describing the lands lost to the state (Sections 16 and 36 that were not conveyed) and a list describing the lands selected in place of the lost lands. Lost lands are known as base lands. Selected lands are put on a "clear list." When the federal Bureau of Land Management approves the clear list, the state's rights or claims to the base lands are relinquished to the United States and title to

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the selected lands then vests in the state. The clear list is the vesting document that transfers title from the United States to the State of California.

PROPOSED STATUTORY CHANGES:

Repeal obsolete indemnity scrip statutes:

An indemnity scrip is an entitlement to take title to lands that may in the future be granted to the Commission as indemnity land. Existing law, enacted in 1943, contains a cache of now defunct indemnity scrip statutes. These statutes were created to codify a process for the Commission to sell indemnity lands, which, nearly 80 years ago, was regarded as sensible. Under this process, a prospective purchaser could identify potential indemnity lands and if the Commission acquired these lands, the Commission would convey them to the prospective purchaser. If the Commission agreed to the proposal, the Commission would issue an indemnity scrip in exchange for payment, entitling the prospective purchaser to take title to the future indemnity lands. But this process no longer occurs. These days, indemnity lands usually become available when the federal government, primarily the Bureau of Land Management, notifies the Commission that there are surplus lands or when it posts on its website information about surplus land availability. The Commission has not issued an indemnity scrip in at least 50 years, and it rarely sells school lands—only doing so when the lands possess a low potential for revenue generation, provides a greater benefit to the school land trust, or the sale serves some greater public purpose (such as the expansion of a military base or the improvement of a public highway).

Staff also proposes adding statutory language to clarify that rights perfected under statutory sections proposed for repeal are preserved. This language would clarify that repealing obsolete indemnity scrip statutes does not affect any existing vested rights or other contracts, leases, or agreements entered into under any other provision of previous law. And that it does not affect the rights of any purchase of school lands sold before the effective date of the repeal.

Reorganize indemnity land selection statutes:

Existing indemnity land selection statutes are scattered throughout the Public Resources Code. Staff proposes to gather these statutes together, creating a unified area where all the indemnity land selection statutory language would reside. Staff also proposes to update these statutes to repeal extraneous language, allow the Commission to select lands by any method provided in federal law, not just based on acreage, and to provide more transparency by specifying what indemnity lands mean. Specifically, existing state law allows the Commission to select on an acreage basis; federal law requires states to select based on acreage and comparable value. The proposed legislative change would

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allow the Commission to consider value in addition to acreage, but the amendment is intentionally left broad because federal law is likely to change.

General plan requirement for the sale of school lands:

Existing law, enacted in 1970, requires that before any state lands are disposed of, the recipient shall submit to the Commission and to the Legislature a general plan for the use of the lands—together with the review and comments of other interested state agencies. Staff recommends repealing this statute because it is redundant. The information envisioned in a general plan would already be obtained independently through the Commission's application review process and would be necessary to determine if a requested land conveyance were in the state's best interests.

School Land Bank Fund:

The School Land Bank Fund is a fund in the state treasury. All monies in the Fund are appropriated to the Commission, who is Trustee of the Fund. Staff proposes that the Commission be authorized to use revenue in the School Land Bank Fund for typical costs and expenses attributable to selling school land. Expense examples are escrow or other third-party costs, which are generally tens of thousands of dollars. In the past, the Commission required a purchaser to pay these costs, deterring potential purchasers and undermining the Commission's ability to sell school lands when doing so would be in the state's best interests. Authority to pay some of the typical costs and expenses would allow the Commission to better negotiate a sale when it is in the state's best interests.

EXHIBIT:

- A. Copy of the proposed legislation

RECOMMENDED ACTION:

Staff recommends that the Commission sponsor legislation in the 2019-20 legislative session that would repeal obsolete school land statutes and recast or modernize other school land statutes.

EXHIBIT A

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An act to amend the heading of Chapter 1 (commencing with Section 7301) of Part 3 of Division 6 of, to add Section 6010 to, to add Article 2 (commencing with Section 7400) to Chapter 1 of Part 3 of Division 6 of, to repeal Sections 6373 and 7304 of, to repeal Article 2 (commencing with Section 7401) of Chapter 1 of Part 3 of Division 6 of, and to repeal and add Section 7301 of, the Public Resources Code, relating to state lands, and making an appropriation therefor.



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

SECTION 1. Section 6010 is added to the Public Resources Code, to read:
6010. The repeal of any provision of law codified in this division shall not affect any existing vested rights under those repealed provisions or under any contract, permit, lease, or agreement entered into under those repealed provisions, or the rights of any purchaser of school lands sold before the effective date of that repeal.

SEC. 2. Section 6373 of the Public Resources Code is repealed.

~~6373. Before any disposition of state lands to a private party or other governmental agency, the intended recipient of such lands shall submit to the commission and to the Legislature a general plan, as specified by the commission, for the use of the subject lands to be transferred, together with the review and comments of other interested state agencies.~~

SEC. 3. The heading of Chapter 1 (commencing with Section 7301) of Part 3 of Division 6 of the Public Resources Code is amended to read:

CHAPTER 1. ~~SALE OF SCHOOL LANDS AND~~ IN LIEU INDEMNITY LANDS

SEC. 4. Section 7301 of the Public Resources Code is repealed.

~~7301. The unsold portions of the 16th and 36th sections of school lands, the unsold portions of the 500,000 acres granted to the state for school purposes, and the unsold portions of the listed lands selected of the United States in lieu of the 16th and 36th sections and losses to the school grant, may be sold by the commission under rules and regulations prescribed, and at a price fixed, by the commission.~~

SEC. 5. Section 7301 is added to the Public Resources Code, to read:

7301. The commission may, in the best interest of the state, sell school lands. The commission may pay from the School Land Bank Fund typical costs and expenses attributable to a sale of school lands, such as escrow or other third-party costs, when it is in the best interest of the state to do so.

SEC. 6. Section 7304 of the Public Resources Code is repealed.

~~7304. Nothing in this article affects the right of the commission to use as bases for indemnity scrip any lands embraced within the exterior boundaries of a National reservation and not otherwise disposed of under this article.~~

SEC. 7. Article 2 (commencing with Section 7401) of Chapter 1 of Part 3 of Division 6 of the Public Resources Code is repealed.

SEC. 8. Article 2 (commencing with Section 7400) is added to Chapter 1 of Part 3 of Division 6 of the Public Resources Code, to read:

Article 2. Indemnity Land Selections

7400. The Legislature finds and declares that, as of January 1, 2020, the commission has acquired roughly 81,643 acres of indemnity school lands and is owed roughly 51,000 additional acres of indemnity school lands.

7401. The commission shall ascertain from time to time the number of acres of land to which the state is entitled as indemnity and shall keep on file a statement showing of what those bases consist.



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7402. Whenever the commission determines it to be in the best interest of the state, it may select lands of the United States equal in area to the number of acres or as otherwise provided under federal law to which the state is entitled as indemnity for any losses sustained by the state to its school land grants.

7403. The commission is the general agent of the state for the selection of indemnity lands in lieu of the losses sustained by the state to its school land grants.

7404. The commission may accept the benefits of the act of Congress approved July 17, 1914, enacted as Section 121 of Title 30 of the United States Code.

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LEGISLATIVE COUNSEL'S DIGEST

Bill No. _____
as introduced, _____.
General Subject: State lands: school lands.

(1) Existing law grants to the State Lands Commission control over specified public lands in the state, including indemnity lands selected in lieu of specified land granted to the state by the United States for the use of the public schools that was lost. Existing law authorizes the commission, whenever the commission determines it to the advantage of the state to do so, to select lands of the United States equal in area to the number of acres to which the state is entitled as indemnity.

This bill would repeal the provisions of existing law relating to indemnity lands and lieu lands, except that it would preserve the general authority of the commission to select indemnity lands for any losses sustained by the state to its school land grants.

(2) Existing law requires, before any disposition of state lands to a private party or governmental agency, the intended recipient of the lands to submit to the commission and to the Legislature a general plan for the use of the lands, as prescribed. Existing law provides that nothing in the provisions relating to the sale of school lands affects the right of the commission to use as bases for indemnity scrip any lands embraced within the exterior boundaries of a national reservation and not otherwise disposed of.

This bill would repeal those provisions. The bill would provide that repeal of certain provisions of law related to public lands shall not affect any existing vested rights under the repealed provisions or under certain transactions entered into under the repeal provisions, or the rights of any purchaser of school lands sold before the effective date of that repeal.

(3) Existing law establishes the School Land Bank Fund in the State Treasury, composed of all net revenues, moneys, and remittances from the sale of school lands and lieu lands, and continuously appropriates the moneys in the fund to the commission, acting as the School Land Bank Trustee, to administer the fund and the interest in acquired real property, including the selection, acquisition, and conveyance of real property, for the support of the public school system. Existing law authorizes the commission, in addition to the purchase price, to pay from the fund the costs and expenses attributable to an acquisition, and also to pay expenses attributable to management and remediation efforts on state school lands.

This bill would explicitly authorize the commission to pay from the fund typical costs and expenses attributable to a sale of school lands, such as escrow or other



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third-party costs, when it is in the best interest of the state to do so. By expanding the purposes of a continuously appropriated fund, the bill would make an appropriation.

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



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