

## CHAPTER 1223

An act to amend and renumber Section 66656.1 of, and to repeal Section 66656 of, the Government Code, and to amend Section 1 of, and to add Sections 2, 3, 4, 5, 6, 7, and 8 to, Chapter 211 of the Statutes of 1919, relating to tide and submerged lands in the Bay of San Francisco.

[Approved by Governor September 30, 1977 Filed with  
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*The people of the State of California do enact as follows:*

SECTION 1. Section 66656 of the Government Code is repealed.

SEC. 2 Section 66656.1 of the Government Code is amended and renumbered to read:

66656. (a) Any person claiming an exemption from the permit requirements of Section 66632 for placement of fill within the area of the commission's jurisdiction under subdivisions (a), (c), and (d) of Section 66610 after January 1, 1974, through reliance upon Section 66632.1 or 66655 shall, within 90 days after January 1, 1974, notify the commission by filing a claim of exemption with the commission. Failure of any person to file a claim of exemption within such time shall subject such activity of such person within such area of the commission's jurisdiction to the permit requirements of this act.

(b) The commission shall, by regulation, establish procedures, including public hearings, for determining claims of exemption and

may require documentation, including declarations under penalty of perjury or affidavits, to support any claim of exemption.

(c) The commission shall take reasonable steps to notify persons of this section, but the failure of any person to receive such notice shall not extend the period within which a claim of exemption is required to be filed under this section.

(d) This section shall not apply either to any person who has received a written determination by or on behalf of the commission prior to January 1, 1974, that a specific project is exempt from the provisions of this act or to any person who is a party to a written agreement with the commission relating to a claim of exemption.

SEC. 3. Section 1 of Chapter 211 of the Statutes of 1919 is amended to read:

Section 1. There is hereby granted to the City of Albany, and to its successors, all right, title, and interest of the state held by virtue of its sovereignty in and to those certain tide and submerged lands, whether filled or unfilled, which are situated in the County of Alameda and more particularly described in Section 8. Such lands shall be held by the city, and its successors, in trust for the benefit of all of the people of the state for the statewide tidelands trust purposes of commerce, navigation, and fisheries, and for other public purposes, including, but not limited to, preservation of such lands in their natural state for scientific study, open space, wildlife habitat, and recreational uses, as more particularly provided in this act. This grant is subject to the following express conditions:

(a) That the use of the lands shall be in accordance with the Albany Waterfront Plan as adopted by the city on February 14, 1977, or as amended as provided in this act.

(b) That the lands shall be improved, maintained, preserved, or restored without expense to the state, as more particularly provided in Section 2; provided, however, that nothing contained in this act shall preclude the city from accepting and expending any grant or loan of funds from the state, or any board, agency, department, or commission thereof, for such purposes, in a manner that is consistent with the trust upon which the lands are held.

(c) That the acquisition of property and the rendition of services reasonably necessary for carrying out the uses and purposes described in this section, including the amortization or debt service of any capital improvement funding program, shall be consistent with the terms and conditions set forth in this act.

(d) That the city, or its successors, may not at any time grant, convey, give, or alienate the lands, or any part thereof, to any individual, firm, or corporation for any purposes whatsoever; provided, however, that the city, or its successors, may grant franchises thereon for limited periods, not exceeding 66 years, for wharves and other public uses and purposes, and, subject to the requirements of Section 5, may lease the lands, or any part thereof, for limited periods, not exceeding 66 years, for purposes consistent with the trust upon which the lands are held.

(e) That, in the management, conduct, operation, and control of the lands or any improvements, betterments, or structures thereon, the city or its successors shall make no discrimination in rates, tolls, or charges for any use or service in connection therewith.

(f) That the state shall have the right to use without charge any transportation, landing or storage improvements, betterments, or structures constructed upon the lands for any vessel or other watercraft or railroad owned or operated by the state.

(g) That there is reserved to the people of the state the right to fish in the waters over the tide and submerged lands, or from filled lands, with the right of convenient access to such waters over the lands for that purpose.

(h) That there is excepted and reserved all remains of archaeological and historical importance and all deposits of minerals, including, but not limited to, all substances specified in Section 6407 of the Public Resources Code, in the lands, and the right to prospect for, mine, and remove such deposits from the lands.

(i) That the city may not authorize a capital outlay project, lease, or agreement, for port facilities such as marine terminals, pipelines, or other related energy facilities on state tide and submerged lands which have been granted in trust without first requesting and receiving the approval, in writing, of the State Lands Commission. Prior to approving any such project, lease, or agreement, the commission shall consult with other governmental agencies and shall determine whether such project, lease, or agreement is in and for the best interests of the people of the state and conforms to provisions of law and whether the allocation between the state and the city of any revenues generated as a result of such a project, lease, or agreement will be in accordance with the provisions for allocation of excess revenues contained in Section 6.

SEC. 4. Section 2 is added to Chapter 211 of the Statutes of 1919, to read:

Sec. 2. (a) The city shall diligently and reasonably pursue the funding and implementation of the Albany Waterfront Plan; and on or before January 1, 1983, or five years after funds necessary to complete the plan are received by the city, whichever is later, but in no event later than January 1, 1988, the lands shall be substantially improved, restored, preserved, or maintained by the city without expense to the state and in accordance with the initial phase of the plan unless the commission determines that the plan cannot be implemented in the manner specified in this section because of unavoidable delay that was out of the control of the city. However, if the commission determines that the city has not improved, restored, preserved, or maintained the lands as required by the initial phase of the plan, all right, title, and interest of the city in and to all lands granted by this act shall cease, and all right, title, and interest in the lands shall revert to the state. All improvement, restoration, preservation, or maintenance shall be effected in accordance with the Albany Waterfront Plan

(b) Nothing contained in this section shall be construed as precluding the city from taking action pursuant to the ultimate phase of the plan for shoreline park development prior to completion of all initial phases of the plan.

SEC. 5. Section 3 is added to Chapter 211 of the Statutes of 1919, to read:

Sec. 3. The city shall submit all material changes and amendments to the Albany Waterfront Plan to the commission for its approval. "Material changes and amendments" consists of any change of boundaries of the commercial area, any change of use, or any change of basic configuration of the shoreline. The commission shall review such changes and amendments with reasonable promptness to determine whether the change or amendment is in accord with the public purposes permitted by this act and the trust established by Section 1. The decision of the commission shall take one of the following forms: approval as proposed, approval subject to recommended changes, disapproval with recommendations for an alternative plan, or disapproval with a statement of the reason therefor.

SEC. 6. Section 4 is added to Chapter 211 of the Statutes of 1919, to read:

Sec. 4. (a) For the purposes of this act only and to clarify the geographic extent of the jurisdiction of the San Francisco Bay Conservation and Development Commission over the lands, whether filled or unfilled, described in Section 8, the San Francisco Bay Conservation and Development Commission shall use February 14, 1977, as the date with respect to which it shall determine the extent of the area of granted lands that are subject to tidal action as specified in subdivision (a) of Section 66610 of the Government Code and the extent of the area of granted lands that constitute the shoreline band as specified in subdivision (b) of Section 66610 of the Government Code.

(b) On and after January 1, 1978, the agreement between the city and the San Francisco Bay Conservation and Development Commission concerning the exemption from the commission's permit requirements for work that was based on the former waterfront plan for the submerged and reclaimed lands within the city is terminated.

(c) Nothing contained in this act or in the specifications of the Albany Waterfront Plan shall be construed to limit the authority of the San Francisco Bay Conservation and Development Commission, and the city shall be subject to all the provisions of the McAteer-Petris Act (commencing with Section 66600 of the Government Code) and all rules and regulations promulgated thereunder as if it were any other applicant.

(d) In addition to the requirements of Section 3 of this act, any change or amendment to the Albany Waterfront Plan shall be submitted to the San Francisco Bay Conservation and Development Commission for consideration under the same circumstances and in

the same manner as if it were a change or amendment to a special area plan that is subject to approval by that commission.

SEC. 7. Section 5 is added to Chapter 211 of the Statutes of 1919, to read:

Sec. 5. (a) On or before July 1, 1979, the city council shall develop and submit to the State Lands Commission, for its approval, procedures, rules, and regulations to govern the issuance, making, renewal, or renegotiation of any lease, agreement, or franchise concerning granted tide and submerged lands or any improvement thereon. Such rules and regulations shall specify the rent or other consideration, the bases upon which the rent is established, terms and conditions, provisions for assignments, and such other matters as may be required by the commission. The commission shall make its decision within 90 days of receipt of the procedures, rules, and regulations. No new lease, franchise, or agreement may be entered into unless and until the commission approves the procedures, rules, and regulations.

(b) Before entering into a lease, franchise, or agreement concerning granted tidelands, the city council shall first adopt a resolution declaring its intention to take such action. The resolution shall describe lands or improvements that are the subject of the lease, franchise, or agreement in such a manner as to identify them accurately, and shall specify the minimum rental or other consideration and the other terms and conditions of the lease, franchise, or agreement.

(c) Upon request, the city shall submit a copy of any lease, franchise, or agreement issued, entered into, renewed, or renegotiated to the commission.

SEC. 8. Section 6 is added to Chapter 211 of the Statutes of 1919, to read:

Sec. 6. (a) All revenues derived from the use of the granted lands and also those lands that are subject to the Albany Waterfront Plan but are not granted by this act, shall be expended only for the trust uses and purposes upon which the granted lands are held.

(b) With approval of the commission, the city shall establish accounting procedures whereby an accurate record of all such revenues and all expenditures of such revenues will be maintained. The purpose of this requirement is to provide for the segregation of revenues derived from the use of such lands from other revenues of the city in order to assure that revenues derived from the use of such lands are only expended for the trust uses and purposes upon which the granted lands are held.

(c) On or before October 1 of each year, the city shall cause to be prepared and filed with the commission a detailed statement of all revenues and all expenditures arising from the administration of such lands, including obligations incurred but not yet paid, for the fiscal year ending on the previous June 30. Until such time as the commission completes its determination under Section 2, the city shall, in addition, furnish cumulative totals of expenditures,

obligations, and revenues arising from all phases of the Albany Waterfront Plan in a supplement to this annual financial statement.

(d) As to the expenditure of revenues for every capital improvement on the granted lands that exceeds two hundred fifty thousand dollars (\$250,000), the city shall file with the commission a detailed description of such capital improvement not less than 90 days prior to the time proposed for making the first disbursement therefor unless the expenditure for such capital improvement is specifically mentioned or reflected in the total estimates set forth in the Albany Waterfront Plan or a change or amendment thereto that has been approved under Section 3. Within 90 days after the time of such filing, the commission shall determine whether such capital improvement is in the statewide interest and benefit and is authorized by the Albany Waterfront Plan as it exists or as it may be changed or amended under Section 3. 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 city with the notice of its determination. In the event the commission notifies the city that such capital improvement is not authorized, the city shall not disburse any revenue for, or in connection with, such capital improvement, unless and until it is determined to be authorized by a final order or judgment of a court of competent jurisdiction. The city is authorized to bring suit against the state for the purpose of securing such an order or judgment, which suit shall have priority over all other civil matters. Service shall be made upon the executive officer of the State Lands Commission and the Attorney General, and the Attorney General shall defend the state in such suit. If judgment is given against the state in such suit, no costs may be recovered.

SEC. 9 Section 7 is added to Chapter 211 of the Statutes of 1919, to read:

Sec. 7. (a) On June 30, 1980, and on the last day of every third fiscal year thereafter, that portion of the city tideland trust revenues, as described in subdivision (a) of Section 6, in excess of two hundred fifty thousand dollars (\$250,000) remaining after current and accrued operating costs and expenditures directly related to the operation or maintenance of tideland trust activities have been made, shall be deemed excess revenues; provided, however, that any funds deposited in a reserve fund to retire bond issues for state loans made for the improvement or operation of the granted lands shall not be deemed excess revenue. Capital improvements of the granted lands made for purposes authorized by this act may be considered as expenditures for the purpose of determining net revenues.

(b) The excess revenue, as determined pursuant to this section, shall be allocated as follows: 85 percent shall be transmitted to the State Treasurer for deposit in the General Fund in the State Treasury; and 15 percent, to the city for deposit in the segregated fund created pursuant to Section 6. The city shall be entitled to reimbursement from excess revenues allocated to the segregated fund for any amount advanced from city tax revenues for

expenditure for any trust use or purpose authorized by this act if the city declared to the commission its intent to such reimbursement at the time that amount was advanced.

SEC. 10. Section 8 is added to Chapter 211 of the Statutes of 1919, to read:

Sec. 8. Lands that are granted pursuant to Section 1 are described as follows:

Three parcels of tide and submerged lands situated in and adjacent to the bed of San Francisco Bay, Alameda County, State of California, more particularly described as follows:

**PARCEL 1**

COMMENCING at point "A" as shown<sup>1</sup> on the Map of the Grant to the City of Albany, recorded July 24, 1963, in Book 43 of Maps, page 12A, Alameda County Records, said point "A" having California Zone 2 coordinates of  $x = 1,469,703.82$  feet and  $y = 511,851.40$  feet, thence along the northerly boundary of said Grant  $S\ 74^{\circ}\ 21'\ 53''\ E$ , 2573.92 feet to point "B" as shown on said map and being the TRUE POINT OF BEGINNING, thence continuing along the boundary of said grant the following ten courses.

- (1)  $N\ 01^{\circ}\ 08'\ 07''\ E$ , 661.08 feet;
- (2)  $S\ 88^{\circ}\ 51'\ 53''\ E$ , 661.58 feet;
- (3)  $N\ 01^{\circ}\ 08'\ 07''\ E$ , 876.29 feet;
- (4)  $N\ 75^{\circ}\ 19'\ 34''\ E$ , 1636.95 feet,
- (5)  $S\ 88^{\circ}\ 51'\ 53''\ E$ , 409.57 feet;
- (6)  $S\ 01^{\circ}\ 08'\ 07''\ W$ , 1321.66 feet;
- (7)  $N\ 88^{\circ}\ 51'\ 53''\ W$ , 661.05 feet;
- (8)  $S\ 01^{\circ}\ 08'\ 07''\ W$ , 1322.17 feet;
- (9)  $N\ 88^{\circ}\ 51'\ 53''\ W$ , 1550.05 feet;
- (10)  $S\ 32^{\circ}\ 12'\ 53''\ E$ , 1582.80 feet;

thence  $N\ 88^{\circ}\ 51'\ 53''\ W$ , 1305.22 feet; thence  $N\ 01^{\circ}\ 08'\ 07''\ E$ , 1983.26 feet to the True Point of Beginning.

Coordinates, bearings, and distances used in the above description are based on the California Coordinate System, Zone 2.

**PARCEL 2**

BEGINNING at Point "J" as shown on said Map of Grant to The City of Albany, recorded July 24, 1963, said point "J" having California Zone 2 coordinates of  $x = 1,474,154.14$  feet and  $y = 510,458.00$  feet, thence along the boundary of said grant the following two courses:

- (1)  $N\ 88^{\circ}\ 51'\ 53''\ W$ , 1550.05 feet;
- (2)  $S\ 32^{\circ}\ 12'\ 53''\ E$ , 1582.80 feet;

thence  $N\ 28^{\circ}\ 20'\ 17''\ E$ , 1487.26 feet to the point of beginning.

Coordinates, bearings, and distances used in the above description are based on the California Coordinate System, Zone 2.

**PARCEL 3**

All of that certain parcel of land described as Parcel 1 in deed to the City of Albany, recorded January 15, 1942, in Liber 4159, page 296, Alameda County Records.

SEC. 11. Notwithstanding Section 2231 of the Revenue and

Taxation Code, there shall be no reimbursement pursuant to that section nor shall there be any appropriation made by this act because this act is in accordance with the request of a local governmental entity which desires legislative authority to act to carry out the program specified in this act.

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