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# SENATE COMMITTEE ON NATURAL RESOURCES AND WATER

Senator Henry Stern, Chair  
2021 - 2022 Regular

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<b>Bill No:</b>	AB 1390	<b>Hearing Date:</b>	June 29, 2021
<b>Author:</b>	Boerner Horvath		
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<b>Urgency:</b>	No	<b>Fiscal:</b>	Yes
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**Subject:** State lands: school and lieu lands

## BACKGROUND AND EXISTING LAW

Existing law:

- 1) Establishes the State Lands Commission (SLC) in the California Natural Resources Agency, consisting of the Controller, the Lieutenant Governor, and the Director of Finance.
- 2) Establishes the School Land Bank Act (Act), which places “school lands” into a statutory trust. School lands are land or interests in land granted to the state by Congress in 1853 to provide support for public schools. The Act:
  - a) Provides that it is in the best interest of the state that school lands be managed as a revenue source and generally credits all revenues, monies, and remittances from school and indemnity lands to the Teachers’ Retirement Fund for the benefit of the California State Teachers’ Retirement System (CalSTRS).
    - i) Requires SLC to take all action necessary to fully develop school lands, indemnity interests, and attendant mineral interests into a permanent and productive resource base.
    - ii) Authorizes SLC to acquire real property or any interest in real property with the objective of facilitating management of school lands for the purpose of generating revenue.
  - b) Establishes the School Land Bank Fund (Fund) and designates SLC as the Fund’s trustee. SLC must deposit all net revenues, monies, and remittances from the sale of school lands into the State Treasury to the credit of the Fund. The Fund is continuously appropriated, without regard to fiscal years, to SLC for the purposes of the Act.
  - c) Provides that acquisition costs and expenses, in addition to the purchase price to be paid, may be payable from the Fund, provided that those costs shall not exceed 5 percent of the expended funds.
- 3) Requires SLC to prepare a master plan for all school and lieu lands under its jurisdiction, as specified.
- 4) Requires, after the survey of any township by the U.S., SLC to obtain a statement from the U.S. Land Office showing whether the sixteenth and thirty-sixth sections therein belong to the state.

- 5) Prohibits the sale, lease, or renting of state land which provides the only convenient means of access to other lands owned by the state without reserving an access easement to the state and its successors, as specified.
- 6) Requires, before any disposition of state lands to a private party or other governmental agency, the intended recipient of such lands to submit a general plan, as specified, for the use of the subject lands with the review and comments of other interested state agencies.

## Background

After California achieved statehood, the federal government granted approximately 5.5 million acres of land to California to be used for the support of schools. This land consisted of the sixteenth and thirty-sixth section of each township. Approximately 90 percent of the school lands were sold prior to SLC's creation in 1938. Proceeds were used primarily to pay for school construction. SLC retains jurisdiction over approximately 458,843 acres of fee-owned school lands and 790,000 acres of reserved mineral interests.

In 1984, the Legislature passed the School Land Bank Act, directing SLC to retain remaining school lands and manage them to generate revenue for CalSTRS. School lands can be difficult to manage because they are broken up into noncontiguous, square-mile parcels in very isolated desert and forest areas with little value for revenue generating purposes. To address this, the School Land Bank Act authorized SLC to sell the isolated, non-economic school lands and use the proceeds to acquire other real property that will generate additional revenues to benefit California's retired teachers.

AB 982 (Skinner, Ch. 485, Statutes of 2011) further reformed the school lands program by directing SLC to partner with the federal government to facilitate land exchanges in the California Desert Conservation Area to consolidate school land parcels into contiguous holdings that are suitable for renewable energy related projects.

## PROPOSED LAW

This bill modernizes laws related to the selling and leasing of SLC's school lands, including by allowing SLC to sell or lease state lands without maintaining an access easement if it determines that selling or leasing the lands without the easement is in the best interests of the state. Specifically, this bill:

- 1) Repeals the requirement that SLC prepare a master plan for all school and lieu lands under its jurisdiction.
- 2) Repeals the requirement that SLC obtain, after the survey of any township by the U.S., a statement from the U.S. Land Office showing whether the sixteenth and thirty-sixth sections therein belong to the state.
- 3) Requires SLC to reserve an access easement when selling or leasing state lands that provide the only convenient access to other state lands, unless SLC determines

that selling or leasing the lands without an easement is in the best interests of the state.

- 4) Repeals the requirement that the intended recipient of state lands to be disposed of by SLC submit a general plan for the use of the subject lands, as specified.
- 5) Requires SLC, at least 10 days before disposing state lands to a private party or other governmental agency, to notify the chair of the relevant policy committees of the Legislature and relevant members of the Legislature, as specified, and make the information available on SLC's internet website.
- 6) Eliminates the 5 percent cap on costs and expenses associated with acquisitions under the School Land Bank Act.
- 7) Provides that the costs and expenses associated with acquisitions include, but are not limited to, the fees and expenses of appraisals, escrow, broker's fees, title insurance, and other third-party costs.
- 8) Authorizes SLC to delegate authority to SLC's executive officer to make a nonrefundable down payment for a potential acquisition of real property or any interest in real property.

### ARGUMENTS IN SUPPORT

According to the author, "AB 1390 provides the State Lands Commission with additional tools to acquire and steward a category of public lands, known as school lands, which have been entrusted to the Commission to generate revenue for retired teachers and facilitate renewable energy development projects. The bill would remove constraints that make it difficult for the Commission to invest in property to generate revenue for CalSTRS. Removing these constraints, would also better position the Commission to avail itself of opportunities to work with the federal government to facilitate renewable energy projects, which would help California transition to a clean energy future, and help contribute to the state and federal 30 by 30 policies."

According to SLC, the sponsor, "This bill would help the Commission generate revenue to support retired teachers. Specifically, it would provide the Commission with additional tools to acquire and steward a category of public lands, known as school lands, that Commission manages to generate revenue for retired teachers and facilitate renewable energy development."

### ARGUMENTS IN OPPOSITION

None Received

### COMMENTS

***This bill repeals obsolete statutes.*** This includes repealing a requirement that SLC obtain specified information following federal surveys of townships. According to SLC, the federal government has completed these surveys and will not conduct any more, making the requirement obsolete. The bill also eliminates a requirement that SLC

prepare a master plan for school and lieu lands. This requirement effectively duplicates a separate annual reporting requirement that details school lands management.

This bill also eliminates an outdated requirement that recipients of state lands submit a general plan for those lands to SLC and the Legislature and instead requires SLC to notify the Legislature 10 days before the disposition of the lands. The Committee may wish to consider a technical amendment to clarify that the requirement is 10 days before SLC authorizes the conveyance of the land (**see Amendment 1**). This would occur at the same time SLC posts the agenda for the meeting in question.

***This bill grants SLC discretion over the need for access easements.*** The bill would require an access easement when selling or leasing state land that provides the only convenient access to other state land, unless SLC determines that selling or leasing the lands without the easement is in the best interests of the state. According to SLC, this change seeks to address concerns that access easements, in some cases, might damage biological or cultural resources important to Native American tribes. SLC sees this as an issue of growing concern as it seeks to implement the Administration's policy, released in September 2020, regarding Native American Ancestral Lands, to prioritize tribal purchase of state lands that are in excess of state needs.

The Committee may wish to consider a technical amendment to limit the scope of this expanded authority to the sale of school lands, only, and not include the lease of state lands more broadly (**see Amendment 2**). This is consistent with SLC's intent.

***This bill seeks to remove barriers to school lands acquisitions.*** It does this by removing the 5% cap on associated costs, clarifying what is included in that term, and authorizing SLC to delegate authority to its executive officer to make down payments for potential acquisitions. According to SLC, the 5% cap on associated costs is arbitrary and undermines its competitiveness in the market because SLC must rely on sellers to cover costs that exceed the cap. Further, delegating down payment authority would allow SLC to pursue acquisitions in a more timely fashion. Staff would not need to wait until a SLC meeting to take early action on an acquisition.

Given SLC's mandate to manage the school lands to generate revenue for CalSTRS, it is not unreasonable to remove barriers that limit SLC's competitiveness in acquiring revenue generating properties for this program. Presumably, SLC's board members, including the Director of the Department of Finance and the State Controller, as heads of agencies providing oversight over the state's finances, would carefully oversee the expanded acquisition authorities. That being said, the Committee may wish to consider amending the bill to require SLC to include information on associated costs and down payments in an existing annual report to the Legislature to provide regular opportunities for Legislative review and oversight (**See Amendment 3**).

***SLC is preparing a strategy to guide acquisition decisions.*** SLC is developing a plan for investing School Land Bank Fund monies in California real estate, with the goal of acquiring new revenue-generating properties for the Fund. The investment strategy will yield a report that is expected to help staff identify, evaluate, and compare land investment options in California and the short and long-term benefits and risks associated with each type of investment option. The report will also provide a rating system of qualifying factors to assist in ranking the suitability of each land investment

that is proposed for acquisition and to compare competing properties. SLC expects to have a final report in early 2021.

## SUGGESTED AMENDMENTS

### AMENDMENT 1

**6373.** At least 10 days before the commission authorizes a ~~disposition~~ conveyance of state lands to a private party or other governmental agency, the commission shall notify, by letter, the chair of the relevant policy committees of the Legislature and each Member of the Legislature in whose district any part of the state lands is located of the proposed ~~disposition~~ conveyance, and make the information regarding the proposed ~~disposition~~ conveyance publicly available on the commission's internet website.

### AMENDMENT 2

**6210.5.** Whenever the commission sells or leases lands that provide the only convenient access to other lands owned by the state, the commission shall reserve an easement for convenient access to the other lands, unless the commission determines that selling ~~or leasing~~ the lands without the easement is in the best interests of the state.

### AMENDMENT 3

#### SEC. 7

Section 6477 of the Public Resources Code is amended to read:

**6477.** (a) The State Lands Commission shall report quarterly to the Teachers' Retirement Board and annually to the Legislature and the Governor on ~~both of~~ the following:

(1) The management of school and lieu lands.

(2) Waivers, suspensions, reductions, alterations, or amendments made by the commission pursuant to Section 6916, together with the reasons therefor.

(3) Acquisitions made pursuant to section 8705, including a summary of down payments and any other transaction costs.

(b) The commission shall file a report with the Legislature annually on all waivers, suspensions, reductions, alterations, or amendments made by the commission pursuant to this section, together with the reasons therefor.

(c) The reports required pursuant to this section shall be prepared in compliance with Section 9795 of the Government Code.

## SUPPORT

State Lands Commission (sponsor)

## OPPOSITION

None Received

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