SENATE COMMITTEE ON APPROPRIATIONS
Senator Anthony Portantino, Chair
2021 - 2022 Regular Session

AB 1390 (Boerner Horvath) - State lands: school and lieu lands

Version: June 30, 2021
Urgency: No
Hearing Date: July 15, 2021

Policy Vote: N.R. & W. 9 - 0
Mandate: No
Consultant: Ashley Ames

Bill Summary: This bill would make various changes to statute related to the selling and leasing of specified lands by the State Land Commission (SLC), including allowing SLC to sell or lease school lands without maintaining an access easement if it is in the best interests of the state and removing barriers to land acquisition.

Fiscal Impact:
- Unknown but potentially significant cost pressure (School Land Bank Fund [SLBF]) for land acquisitions that otherwise would not occur. Any costs would likely be offset by lease revenue and other investment income.

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 would make several changes to and remove obsolete provisions of statute related to SLC's management of school lands. Specifically, this bill would:

1. Repeal the requirement that SLC prepare a master plan for all school and lieu lands under its jurisdiction.

2. Repeal 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. Require 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. Repeal 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. Require 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. Eliminate the 5 percent cap on costs and expenses associated with acquisitions under the School Land Bank Act.

7. Provide 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. Authorize 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.

This bill would remove barriers to land acquisitions by removing the 5 percent 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 percent 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.

Staff Comments: According to SLC, removing the barriers to acquisition makes it more likely that the Commission can invest the revenue in the SLBF to generate additional revenue for the State Teachers' Retirement System (CalSTRS), which is their statutory mandate. Increasing SLC's competitiveness in acquisitions would result in cost pressure on the SLBF by increasing the likelihood of fund expenditures. Revenue generated by the purchased properties would at least partially offset these costs, and would be deposited in the State Teacher's Retirement Fund (STRF). Given SLC's mandate to manage the school lands to generate revenue for CalSTRS, it makes sense to remove identified barriers and facilitate reasonable SLBF spending.

In the past, SLC has had difficulty investing SLBF monies under the existing framework and fulfilling its mandate. The SLBF fund balance mounted in the years since its establishment because SLC did not expend any monies to acquire new land holdings.

In both 2001 and 2006, the Legislative Analyst's Office (LAO) recommended that the SLBF balance be transferred to the State Teacher's Retirement Fund. In this way, the LAO noted, the ultimate beneficiary of school lands proceeds—CalSTRS—could invest those funds directly for the benefit of teachers. The LAO noted that CalSTRS has a significant portfolio and the staff expertise and organizational structure for identifying investment opportunities and managing the investments more efficiently than SLC. The LAO also noted that, under this recommendation, SLC would continue to manage existing school lands, and lease revenues from those lands would continue to be deposited in STRF.

No acquisitions have been made since the LAO issued its recommendations. Currently, SLC is developing a plan for investing SLBF monies in California real estate, with the goal of acquiring new revenue-generating properties. 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 2021.

Recently, the SLBF fund balance has been utilized for other priorities. The 2020-21 budget included a loan of $32 million from the SLBF to the General Fund among a total of $781 million in one-time loans from special funds administered by the California Natural Resources Agency and California Environmental Protection Agency departments. Budget language requires that these loans be repaid with interest, as well as that each loan be repaid if the originating fund needs the money. The 2020-21 budget also provided a $17.3 million one-time loan from SLBF (rather than from the General Fund as initially proposed by the Governor) to continue implementation of the California Early Earthquake Warning System, which is a system intended to provide the general public, businesses, and other entities with advance warning of earthquakes. The SLBF fund balance (which does not include the loans) is currently about $17 million.

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