

CALIFORNIA COASTAL COMMISSION

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February 19, 1999

TO: Coastal Commissioners and Interested Public

FROM: Peter M. Douglas, Executive Director
James W. Burns, Chief Deputy Director
Jeffrey Stump, Legislative Coordinator

SUBJECT: LEGISLATIVE REPORT FOR MARCH 1999

CONTENTS:

This report provides summaries and the status of bills that affect the Coastal Commission or that staff has identified as priority legislation. Copies of selected bills are attached.

Note:

This information can be accessed through the Commission's World Wide Web Homepage at <http://ceres.ca.gov/coastalcomm/index.html>

Please contact Jeff Stump, Legislative Coordinator, at (415) 904-5266 with any questions on the material contained in this report.

PRIORITY LEGISLATION

AB 18 (Keeley) Watershed, Wildlife, and Parks Improvement Bond Act of 2000

AB 18 would authorize the issuance of bonds in the amount of \$1,500,000,000 for the acquisition, development, improvement, rehabilitation, restoration, enhancement, and protection of park, recreational, cultural, historical, fish and wildlife, lake, riparian, reservoir, river, and coastal resources.

Introduced	12/07/98
Last Amend	None
Status	Introduced
Staff Involvement	None

AB 64 (Duchenev) Public Beach Restoration Act

AB 64 would establish the California Public Beach Restoration Program, to be administered by the Department of Boating and Waterways, for specified public beach enhancement, restoration, and nourishment purposes. The bill would create a Public Beach Restoration Fund to be funded by a transfer of \$20 million from the General Fund for three years.

Introduced	12/07/98
Last Amend	01/28/99
Status	Referred to Assembly Natural Resources Committee
Staff Involvement	None

SB 2 (Chesbro) Watershed, Wildlife, and Parks Improvement Bond Act of 2000

SB 2 would authorize the issuance of bonds in the amount of \$849,500,000 for the acquisition, development, improvement, rehabilitation, restoration, enhancement, and protection of park, recreational, cultural, historical, fish and wildlife, lake, riparian, reservoir, river, and coastal resources.

Introduced	12/07/98
Last Amend	02/01/99
Status	Passed Senate Education Committee; referred to Senate Appropriations
Staff Involvement	None

SB 48 (Sher) Public records: Disclosure

SB 48 would allow any person who has been denied access by a state or local government to a public record to appeal that denial to the Attorney General within 15 days of the date of denial. The bill would require the Attorney General to issue a decision on the appeal within 15 days of the date of the request. If the Attorney General finds that an agency's decision to refuse disclosure was not justified under the California Public Records Act, this bill requires the Attorney General to impose a fine on the agency of not less than \$100 for each day that access to the public record was delayed.

Introduced	12/07/98
Last Amend	None
Status	Referred to Senate Judiciary Committee
Staff Involvement	None

SB 57 (Hayden) Parks, Natural Resources, and Clean Coastal Waters Bond Act of 2000

SB 57 would authorize the issuance of bonds in the amount of \$500,000,000 for the purpose of financing a program for the acquisition, development, improvement, rehabilitation, restoration, enhancement, and protection of park, recreational, cultural, historical, fish and wildlife, lake, riparian, delta, river, and coastal resources.

Introduced	12/07/98
Last Amend	None
Status	Referred to Senate Natural Resources and Wildlife Committee
Staff Involvement	None

SB 74 (Murray, Sher) Parks, Wildlife, and Watershed Improvement Bond Act of 2000

SB 74 would authorize the issuance of bonds in the amount of \$1,084,500,000 for the purpose of financing a program for the acquisition, development, improvement, rehabilitation, restoration, enhancement, and protection of park, recreational, cultural, historical, fish and wildlife, lake, riparian, delta, river, and coastal resources.

Introduced 12/07/98
Last Amend 01/19/99
Status Referred to Senate Natural Resources and Wildlife Committee
Staff Involvement None

SB 110 (Peace) Energy Conservation, Power Facility and Site Certification, Notice of Intention

SB 110 would eliminate the provisions in the Warren-Alquist State Energy Resources Conservation and Development Act requiring the submission of a Notice of Intention to file an Application for the Certification for a power facility to the California Energy Commission. This bill would also delete those provisions requiring the California Coastal Commission and San Francisco Bay Conservation and Development Commission to analyze each notice and report to the Energy Commission.

Introduced 12/15/98
Last Amend None
Status Referred to Senate Energy, Utilities, and Communications Committee
Staff Involvement None

SB 153 (Haynes) Property Owner Rights Act of 1999

SB 153 would require public agencies to minimize the number of agency actions that may significantly impair the use of private property. Under this bill, every public agency is required to conduct a private property taking impact analysis prior to taking any agency action that may significantly impair the use of private property. Furthermore, this bill would require an exaction or mitigation measure, imposed by a public agency as a condition to a discretionary act, to have a direct relationship to the public burdens imposed by, and to be roughly proportional in nature and extent to the impact of, the proposed activity.

Introduced 01/07/99
Last Amend None
Status Referred to Senate Judiciary Committee
Staff Involvement None

SB 221 (Alpert) Oil Spill Prevention

Existing law, the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, prohibits the operation of a nontank vessel of 300 gross registered tons or greater in the marine waters of the state unless the owner or operator prepares and submits an oil spill contingency plan to the administrator for oil spill response and the plan is approved. SB 221 would exempt certain public vessels from those requirements.

Introduced 01/25/99
Last Amend None
Status Referred to Senate Committees on Environmental Quality and Judiciary
Staff Involvement None

SB 227 (Alpert) Water quality: Nonpoint Source Pollution

SB 227 would require the Coastal Commission and the State Water Resources Control Board to cooperatively develop, implement, and enforce a nonpoint source pollution protection program on a watershed basis. The Commission is separately directed to develop a model urban nonpoint pollution program, consistent with the results of the City of Monterey's Model Urban Runoff Program, for certain local coastal governments. The bill would also make legislative findings and declarations concerning nonpoint source pollution.

Introduced 01/25/99
Last Amend None
Status Referred to Senate Committees on Natural Resources and Wildlife, and Environmental Quality
Staff Involvement None

SB 241 (Alpert) California Endowment for Marine Preservation

SB 241 would establish the California Endowment for Marine Preservation, to be governed by a board of directors, in order to create a permanent source of funding for projects that will enhance the quality, use, and enjoyment of the open coastal marine resources of the state. The bill would also require each owner and operator of certain offshore oil platforms or production facilities, who receives government permits that allow the platform or facility to remain in place, to deposit an unspecified amount with the endowment.

Introduced	01/26/99
Last Amend	None
Status	Referred to Senate Committee on Natural Resources and Wildlife
Staff Involvement	None

SB 243 (McPherson) Coastal Resources: Development Fees Appropriation

SB 243 would require funds, generated by the California Coastal Commission's development permit application fees and expended by the Coastal Conservancy for the development and maintenance of coastal public access, to be continuously appropriated, instead of annually, under the state Budget Act.

Introduced	01/26/99
Last Amend	None
Status	Referred to Senate Committee on Natural Resources and Wildlife
Staff Involvement	None

SB 300 (Poochigian) Governmental liability: Permits

SB 300 would provide that a state agency is liable to a private property owner for a temporary taking of the owner's real property if the agency is responsible for a delay in the issuance of a development permit affecting the use of the real property, and the delay is the result of a final decision of the agency that is later determined by a court to be legally erroneous. The bill would also provide that a delay that occurs as a result of the normal development approval process or as a result of litigation challenging a final decision by a state agency constitutes a temporary taking under those provisions if the final decision of the state agency is later determined by a court to be legally erroneous.

This bill would also declare that it is intended to supersede the holding of the California Supreme Court in *Landgate, Inc. v. California Coastal Com.*, 17 Cal. 4th 1006, with regard to any claim arising on or after its effective date.

Introduced	02/03/99
Last Amend	None
Status	Referred to Senate Judiciary Committee
Staff Involvement	None



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Bill Info

SB 48 Public records: disclosure.

Past Sessions

BILL NUMBER: SB 48 INTRODUCED 12/07/98

Codes

INTRODUCED BY Senators Sher and Speier

Statutes

DECEMBER 7, 1998

Constitution

An act to amend Sections 6255, 6258, and 6259 of, and to add Section 6257 to, the Government Code, relating to public records.

LEGISLATIVE COUNSEL'S DIGEST

SB 48, as introduced, Sher. Public records: disclosure.

The California Public Records Act provides that except for exempt records, every state or local agency, upon request, shall make records available to any person upon payment of fees to cover costs. The act also requires each agency to determine within 10 days from the receipt of a request for records, whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and to promptly notify the person making the request of the determination and the reasons therefor.

The act also authorizes any person to institute judicial proceedings for injunctive or declarative relief or writ of mandate to enforce his or her right to inspect or receive a copy of any public record and requires that the court award court costs and reasonable attorney fees to the plaintiff if he or she prevails in the litigation.

This bill would require that the determination by a state or local agency whether the public record is disclosable be in writing and would provide that any person who is notified of a denial of a request for public records may appeal to the Attorney General pursuant to specified procedures within 15 days of the date of denial. The bill would also require the Attorney General to issue a written decision within 15 days of the date that the written request and written response of the agency is received by the Attorney General. By creating new duties for local agency officials, the bill would impose a state-mandated local program.

This bill also requires the Attorney General to impose a fine on the agency of not less than \$100 for each day that access to the public record was delayed if the Attorney General finds that the agency's decision to refuse disclosure was not justified under the act. The bill would also require the court to award the same \$100 fine, as specified, and would authorize a complaining party to seek his or her judicial remedy under the act without first exhausting the administrative remedy provided under this bill.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

SECTION 1. Section 6255 of the Government Code is amended to read:

6255. The agency shall justify withholding any record by demonstrating *in writing* that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.

SEC. 2. Section 6257 is added to the Government Code, to read:

6257. (a) Any person may appeal to the Attorney General a state or local agency's denial of a request to inspect a public record by forwarding to the Attorney General within 15 days of the agency's denial a copy of his or her written request and a copy of the written response denying the request by the agency. The Attorney General shall review the request and denial and issue a written decision within 15 days of the receipt of the appeal stating whether the agency violated the provisions of this chapter.

(b) In unusual circumstances, the Attorney General may extend its 15-day time limit by sending written notice to the complaining party and a copy to the denying state or local agency, stating the reasons for the extension, and the day on which a decision is expected to be issued, which shall not exceed an additional 15 days. As used in this section, "unusual circumstances" means any of the following, but only to the extent reasonably necessary to the proper resolution of an appeal:

(1) The need to obtain additional documentation from the agency or a copy of the records involved.

(2) The need to conduct extensive research on issues of first impression.

(3) An unmanageable increase in the number of appeals received by the Attorney General.

(c) The burden of proof in sustaining the agency's action shall rest with the agency. The Attorney General may request additional documentation from the agency for substantiation. The Attorney General may also request a copy of the records in question but they shall not be disclosed.

(d) Upon completion of the review of an appeal pursuant to subdivision (a), the Attorney General shall immediately mail a copy of the findings of the review to the person that appealed and to the state or local agency that denied access to the record in question.

(e) If the Attorney General finds that the state or local agency's decision to refuse disclosure is not justified under Section 6254 or 6255, he or she shall order the agency to make the record public and shall fine the agency not less than one hundred dollars (\$100) for each day access to the public record was delayed, payable to the complainant.

(g) A party shall have 15 days from the date of the Attorney General's decision to appeal that decision. An appeal within the 15-day time limit shall be treated as if it were an action brought under Section 6258.

(h) If an appeal is not filed in any court of competent jurisdiction within 15 days from the day that the Attorney General's decision is issued, the decision shall become final.

(i) If a person has reason to believe that the intent of this chapter is being subverted by an agency short of denial of inspection, including, but not limited to, the imposition of excessive fees, the misdirection of the requester, or the violation of the time limits prescribed in subdivision (c) of Section 6253, the person may complain in writing to the Attorney General and the complaint shall be subject to the same appeal procedure set forth in this section for appealing the denial of a request.

(j) Notwithstanding any other provision of law, the Attorney General shall not be named as a party in any court action regarding enforcement of this chapter and shall not have any duty to defend his or her decision in any subsequent court proceedings.

SEC. 3. Section 6258 of the Government Code is amended to read:

6258. (a) Any person may institute proceedings for injunctive or declarative relief or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this chapter. The times for responsive pleadings and for hearings in these proceedings shall be set by the judge of the court with the object of securing a decision as to these matters at the earliest possible time.

(b) *A person shall not be required to exhaust the administrative remedies available in Section 6257 prior to filing an action pursuant to this section.*

SEC. 4. Section 6259 of the Government Code is amended to read:

6259. (a) Whenever it is made to appear by verified petition to the superior court of the county where the records or some part thereof are situated that certain public records are being improperly withheld from a member of the public, the court shall order the officer or person charged with withholding the records to disclose the public record or show cause why he or she should not do so. The court shall decide the case after examining the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties and any oral argument and additional evidence as the court may allow.

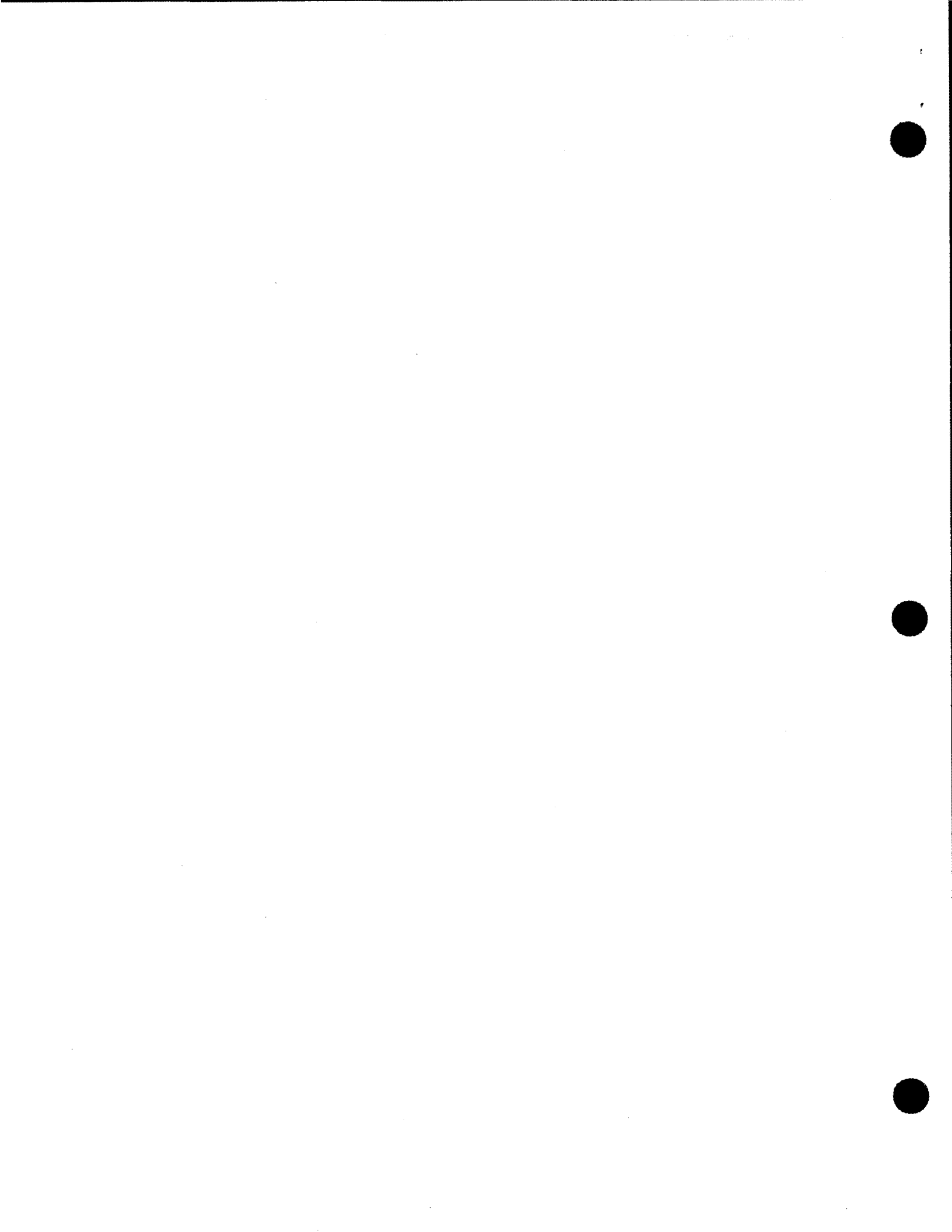
(b) If the court finds that the public official's decision to refuse disclosure is not justified under Section 6254 or 6255, he or she shall order the public official to make the record public. If the judge determines that the public official was justified in refusing to make the record public, he or she shall return the item to the public official without disclosing its content with an order supporting the decision refusing disclosure.

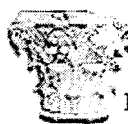
(c) ~~In an action filed on or after January 1, 1991, an~~ An order of the court, either directing disclosure by a public official or supporting the decision of the public official refusing disclosure, is not a final judgment or order within the meaning of Section 904.1 of the Code of Civil Procedure from which an appeal may be taken, but shall be immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ. Upon entry of any order pursuant to this section, a party shall, in order to obtain review of the order, file a petition within 20 days after service upon him or her of a written notice of entry of the order, or within such further time not exceeding an additional 20 days as the trial court may for good cause allow. If the notice is served by mail, the period within which to file the petition shall be increased by five days. A stay of an order or judgment shall not be granted unless the petitioning party demonstrates it will otherwise sustain irreparable damage and probable success on the merits. Any person who fails to obey the order of the court shall be cited to show cause why he or she is not in contempt of court.

(d) The court shall award court costs and reasonable attorney fees to ~~the~~ a plaintiff ~~should the plaintiff prevail~~ who prevails in litigation filed pursuant to this section. ~~The court shall also award the plaintiff an amount not less than one hundred dollars (\$100) for each day that the agency denied the right to copy or inspect the record in question.~~ The costs and fees shall be paid by the public agency of which the public official is a member or employee and shall not become a personal liability of the public official. If the court finds that the plaintiff's case is clearly frivolous, it shall award court costs and reasonable attorney fees to the public agency.

SEC. 5. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.





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Bill Info

AB 64 Public beach restoration.

Past Sessions

BILL NUMBER: AB 64 AMENDED 01/28/99

Codes

AMENDED IN ASSEMBLY JANUARY 28, 1999

Statutes

INTRODUCED BY Assembly Member Ducheny

Constitution

DECEMBER 7, 1998

An act to add Article 2.8 (commencing with Section 69.5) to Chapter 2 of Division 1 of the Harbors and Navigation Code, relating to coastal resources.

LEGISLATIVE COUNSEL'S DIGEST

AB 64, as amended, Ducheny. Public beach ~~enhancement~~ restoration .

Under existing law, the Department of Boating and Waterways has powers and duties pertaining to beach erosion control, beach stabilization, and beach repair and restoration.

This bill would establish the California Public Beach ~~Enhancement~~ Restoration Program, to be administered by the department, for specified public beach enhancement purposes. ~~The bill would require the department, not later than January 1, 2001, to establish the California Public Beach Enhancement Program Technical Advisory Committee, and would prescribe the membership and functions of the committee.~~

The bill would require the department to ~~initiate 2 pilot projects in separate areas of the state, and to prepare and submit to the Legislature, not later than January 1, 2002, a report that discusses detailing the nourishment activities undertaken through the program and evaluating the need for public beach enhancement projects and the potential effectiveness of the program in addressing that need.~~

The bill would create the Public Beach ~~Enhancement~~ Restoration Fund in the State Treasury. The bill would require ~~10% of specified federal funds received by the state to be deposited in the fund, \$20,000,000 to be transferred from the General Fund to the fund annually for 3 years,~~ to be available for expenditure , upon appropriation, for the purposes of the bill.

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

SECTION 1. The Legislature hereby finds and declares all of the following:

~~(a) Many of the state's beaches are seriously eroded,~~

(a) *The state's beaches provide California with an enriched quality of life, worldwide recognition, unparalleled tourist opportunities, and substantial economic benefits.*

(b) *The state's beaches are the most popular recreational destination with over 550 million visitors in 1995, 85 percent of whom do not reside in a coastal community.*

(c) *Tourism is the third largest industry in the state.*

(d) Beach-related activities provide over one billion dollars (\$1,000,000,000) in state tax revenues and employ over 500,000 people.

(e) The state's beaches are recreational and economic infrastructures that have been degraded by coastal and upland development, to the extent that intervention is essential to maintain this productive resource.

(f) The state's beaches provide a natural habitat for many species, some of which are on the threatened or endangered species list, such as the California least tern and the snowy plover.

(g) Beaches provide exceptional, low-cost recreational opportunities for people of all socioeconomic levels. State beaches account for over 72 percent of state park attendance.

(h) A dedicated state-funding source will greatly enhance the availability of federal partnerships through the National Shore Protection Program administered by the United States Army Corps of Engineers.

SEC. 2. Article 2.8 (commencing with Section 69.5) is added to Chapter 2 of Division 1 of the Harbors and Navigation Code, to read:

Article 2.8. California Public Beach Restoration Act

69.5. This chapter shall be known, and may be cited, as the California Public Beach Restoration Act.

69.6. The California Public Beach Restoration Program is hereby established, to be administered by the department for all of the following purposes:

(a) The enhancement, restoration, and nourishment of public beaches through the engineered placement of sand on the beach or in the nearshore environment.

(b) The planning, design, and construction of cost-effective beach nourishment, restoration, or nourishment works, as are determined to be necessary by the department, to preserve and maintain the beaches. The cost of planning, designing, and obtaining permits for projects shall not exceed 15 percent of the total project cost.

(c) The preparation of studies to inventory, characterize, and assess the physical and biological resources of the ocean, nearshore, shoreline, and inland areas that are determined by the department to be necessary to construct environmentally and economically sound engineered projects. The cost of the studies shall not exceed 5 percent of the annual program funding.

(d) The funding of 100 percent of the nonfederal project construction cost for enhancement, restoration, and nourishment of coastal state parks and state beaches with placement of sand on the beach or in the nearshore.

(e) The funding of 85 percent of the nonfederal project cost for enhancement, restoration, and nourishment of nonstate-owned public beaches with placement of sand on the beach or in the nearshore, with a 15 percent match from the local sponsors, provided as funds or in-kind services.

(f) The active pursuit and promotion of federal and local partnerships to share in the cost of beach nourishment projects that have significant state benefits.

69.8. The department, not later than January 1, 2002, shall prepare and submit to the Legislature a report detailing the nourishment activities undertaken through this program and evaluating the need for continued public beach enhancement projects and the potential effectiveness of the program in addressing that need.

69.9. The Public Beach Restoration Fund is hereby created in the State Treasury. The sum of twenty million dollars (\$20,000,000) shall be transferred to the fund from the General Fund by the Treasurer on July 1, 2000, July 1, 2001, and July 1, 2002. The moneys in the fund shall be

~~available for expenditure, upon appropriation, only for the purposes of this article. and beach erosion is projected to continue or worsen in the future.~~

~~(b) Upland land use and upstream flood control policies have limited the natural replenishment of sand to the beaches.~~

~~(c) The state's beaches are eroding and degrading due to the diminution of the natural supply of beach material and intervention by man.~~

~~(d) The state's beaches provide the best form of shoreline protection.~~

~~(e) The state's beaches are the most heavily used recreational area in the state and provide unparalleled recreational opportunities.~~

~~(f) The state's beaches provide a natural habitat for many species, some of which are on the threatened or endangered list, such as the least tern and the snowy plover.~~

~~(g) The state's beaches increase the quality of life for Californians by providing additional recreational areas.~~

~~(h) The state's beaches enhance and help drive the tourist economy in California, which is the third largest industry in the state.~~

~~SEC. 2. Article 2.8 (commencing with Section 69.5) is added to Chapter 2 of Division 1 of the Harbors and Navigation Code, to read:~~

~~Article 2.8. California Public Beach Enhancement Act~~

~~69.5. This chapter shall be known, and may be cited, as the California Public Beach Enhancement Act.~~

~~69.6. The California Public Beach Enhancement Program is hereby established, to be administered by the department for all of the following purposes:~~

~~(a) The enhancement, restoration, and nourishment of public beaches through the engineered placement of sand on the beach or in the nearshore environment.~~

~~(b) The stabilization of nourished beaches by the use of sand retention devices that will increase the cost effectiveness of beach nourishment operations.~~

~~(c) The planning, design, and construction of beach nourishment, restoration, or nourishment works, as are determined to be necessary by the department, to preserve and maintain the beaches. The cost of planning, designing, and obtaining permits for projects shall not exceed 15 percent of the total project cost.~~

~~(d) The preparation of studies that are determined to be necessary by the department to adequately inventory, characterize, and assess the physical and biological resources of the ocean, nearshore, shoreline, and inland processes. The cost of the studies shall not exceed 5 percent of the annual program funding.~~

~~(e) The funding of 100 percent of the construction cost for enhancement, restoration, and nourishment of coastal state parks and state beaches with placement of sand on the beach or in the nearshore.~~

~~(f) The funding of 85 percent of the project cost for enhancement, restoration, and nourishment of public beaches with placement of sand on the beach or in the nearshore, with a 15 percent match from the local sponsors, provided as funds or in-kind services.~~

~~(g) The establishment of a program intended to develop state, regional, and local partnerships to facilitate beach enhancement projects, to identify potential funding sources for those projects, and to oversee the preparation of contracts, memoranda of agreement, forms, or other legal instruments that may be necessary to establish those partnerships. In areas where sand replenishment will be used to protect bluff top homes and other private property from damage due to bluff erosion, a mechanism shall be developed to require owners of the~~

~~bluff top structures to pay their pro rata share of the replenishment costs for the sand deposited to protect their properties.~~

~~69.7. (a) The department, not later than January 1, 2001, shall establish and appoint members to the California Public Beach Enhancement Program Technical Advisory Committee, which shall provide advice and guidance to the department on the implementation of the program. The committee shall consist of members selected from interested citizens, regional and local coastal government officials, public interest groups, scholars from educational institutions, private companies, professional organizations, and representatives from the California State Association of Counties, the League of California Cities, the California Coastal Commission, the State Coastal Conservancy, the Department of Fish and Game, the Department of Parks and Recreation, the California Trade Commission, the Division of Tourism, the Shore and Beach Preservation Association, and associations representing surfriders.~~

~~(b) The advisory committee shall do all of the following:~~

~~(1) Develop criteria for evaluation options and techniques for developing littoral cell and watershed based approaches to beach enhancement, such as beach and nearshore nourishment, the construction of structures to facilitate beach nourishment, and the identification of methods of delivering riverine and estuarine sediment to the coast.~~

~~(2) Develop criteria to prioritize areas in need of nourishment, to evaluate areas of shoreline in the state, and to identify priority littoral cells.~~

~~(c) The department, in conjunction with the advisory committee, shall do all of the following:~~

~~(1) Develop outlines and timelines for all studies determined to be necessary by the department to adequately inventory, characterize, and assess the physical and biological resources of the ocean, nearshore, shoreline, and inland processes.~~

~~(2) Undertake two pilot projects for public beach enhancement, for two different areas of the California coast, as a demonstration of the effectiveness and utility of the program for long term continuation.~~

~~69.8. The department shall, not later than January 1, 2002, prepare and submit to the Legislature a report that details the status of the two pilot projects and evaluates the need for public beach enhancement projects and the potential effectiveness of the program in addressing that need.~~

~~69.9. (a) The Public Beach Enhancement Fund is hereby created in the State Treasury. An amount that is 10 percent of the money received by the state from the federal government pursuant to the Outer Continental Shelf Lands Act (43 U.S.C. Sec. 1331 and following) shall be deposited in the fund and shall be available, upon appropriation, for purposes of the California Public Beach Enhancement Program established pursuant to this article. All money deposited in the fund shall be available, upon appropriation, for expenditure by the department only for purposes of the program.~~

~~(b) The appropriation of funds pursuant to subdivision (a) shall supplement, and shall not reduce or supplant, the allocation of funds authorized by Section 35033 of the Public Resources Code to implement the Coastal Resources and Energy Assistance Act (Division 25 (commencing with Section 35000) of the Public Resources Code).~~

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SB 153 Private property rights: taking impact analysis.

BILL NUMBER: SB 153 INTRODUCED 01/07/99

INTRODUCED BY Senator Haynes

JANUARY 7, 1999

An act to add Chapter 9.5 (commencing with Section 66040) to Division 1 of Title 7 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

SB 153, as introduced, Haynes. Private property rights: taking impact analysis.

(1) Existing law generally prescribes the manner in which governmental agencies regulate the use of private property.

This bill would enact the Property Owner Rights Act of 1999, which would require public agencies to minimize the number of agency actions that may significantly impair the use of private property. The bill would require every public agency to conduct a private property taking impact analysis, as prescribed, prior to taking any agency action that may significantly impair the use of private property, except as specified. The bill would impose a state-mandated local program by imposing new duties on local agencies.

(2) Existing law prohibits a fee or exaction imposed by a local agency as a condition of approval of a proposed development or development project to defray the cost of public facilities related to the development project, from exceeding the estimated reasonable cost of providing the service or facility for which the fee or exaction is imposed.

This bill would require any other exaction or mitigation obligation imposed by a public agency as a condition for performance of a discretionary act to have a direct relationship to the public burdens imposed by, and to be roughly proportional in nature and extent to the impact of, the proposed activity, and would impose related requirements.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates which do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that no reimbursement shall be made from the State Mandates Claims Fund for costs mandated by the state pursuant to this act, but would recognize that local agencies and school districts may pursue any available remedies to seek reimbursement for those costs.

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

SECTION 1. Chapter 9.5 (commencing with Section 66040) is added to Division 1 of Title 7 of

the Government Code, to read:

CHAPTER 9.5. PROPERTY OWNER RIGHTS ACT OF 1999

66040. This chapter shall be known and may be cited as the Property Owner Rights Act of 1999.

66040.5. The Legislature finds and declares all of the following:

- (a) The private ownership of property is essential to a free society and is an integral part of the American tradition of liberty and limited government.
- (b) The framers of the United States Constitution, in order to protect private property and liberty, devised a framework of government designed to diffuse power and limit government.
- (c) The protection of private property from taking by the government without just compensation is an integral protection for private citizens incorporated into the United States Constitution by the Fifth Amendment and made applicable to the states by the Fourteenth Amendment.
- (d) The state and local governments should consider the impact of agency actions, including regulations, on the ownership and use of private property.
- (e) There is a need both to restrain state and local governments in their overzealous regulation of the private sector and to protect private property, which is a fundamental right of the American people.
- (f) The incremental, fact-specific approach that courts now are required to employ in the absence of adequate statutory language to vindicate property rights under the Fifth Amendment to the United States Constitution has been ineffective and costly and there is a need for the Legislature to clarify the mitigation and exaction burdens that may lawfully be imposed by government agencies, in accordance with the Fifth Amendment to the United States Constitution.

66041. As used in this chapter, the following terms have the following meaning:

- (a) "Agency action" means any action, inaction, or decision taken by a public agency and includes an action, inaction, or decision taken by, or pursuant to, either of the following:
 - (1) A statute, rule, regulation, order, guideline, or policy.
 - (2) The issuance, denial, or suspension of any permit, license, or authorization.
- (b) "Owner" means the person with title, possession, or other property rights in property affected by any taking of private property.
- (c) "Public agency" includes any state agency, county, city, city and county, district, redevelopment agency, joint powers agency, or other political subdivision of the state.
- (d) "Taking of private property" means any action whereby private property is taken in such a way as to require compensation under the Fifth Amendment to the United States Constitution.

66042. Every public agency shall minimize the number of agency actions that may significantly impair the use of private property.

66043. Prior to taking any agency action that may significantly impair the use of private property, every public agency shall conduct a private property taking impact analysis. This requirement does not apply to any of the following:

- (a) Property held in trust by the state.
- (b) A law enforcement action, including seizure of property for forfeiture as a result of an unlawful act or as evidence in a criminal proceeding.

(c) Any case in which there is an immediate threat to health or safety that constitutes an emergency requiring immediate response or the issuance of a regulation under subdivision (b) of Section 11346.1, if the taking impact analysis is completed within 30 days after the emergency action is carried out or the regulation is published.

66044. The private property taking impact analysis shall be a written document that includes all of the following:

(a) The specific purpose of the agency action.

(b) An assessment of the likelihood that a taking of private property will occur under the agency action.

(c) An evaluation of whether the agency action is likely to require compensation to private property owners.

(d) Alternatives to the agency action that would achieve the intended purposes of the agency action and reduce the negative economic impact on the owners of the property.

(e) An estimate of the potential liability of the public agency if that agency is required to compensate a private property owner for the agency action.

66045. The private property taking impact analysis shall be available to the public, and, to the greatest extent practicable, shall be transmitted to each owner or any other person with a property right or other interest in the affected property.

66046. For the purpose of any agency action or administrative or judicial action or proceeding, there shall be a rebuttable presumption that the costs, values, and estimates in any private property taking impact analysis are outdated and inaccurate if both of the following are true:

(a) The analysis was completed five years or more before the date of the action or proceeding.

(b) The costs, values, or estimates have not been modified within the five-year period preceding the date of the action or proceeding.

66047. The provisions of this chapter relating to the preparation of a taking impact analysis shall not extend any time limit for the processing of applications under the Permit Streamlining Act (Chapter 4.5 (commencing with Section 65920)), the Subdivision Map Act (Division 2 (commencing with Section 66410)), or the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

66048. Regulations governing the implementation of this chapter by public agencies shall be drafted within six months after this section becomes effective, by the state agency or department designated by the Governor.

66049. Each state agency may request the assistance of the legal staff of the Department of General Services in carrying out its duties under this chapter.

66050. (a) Every public agency shall comply with the judicial decisions of the United States Supreme Court concerning the "takings clause" of the Fifth Amendment to the United States Constitution when imposing any mitigation obligation or exaction on any property owner as a condition for that agency's performance of a discretionary act, such as granting a use or development permit.

(b) For purposes of subdivision (a), any mitigation obligation or exaction shall have a direct relationship to the public burdens imposed by the proposed activity, and shall be roughly proportional in nature and extent to the impact of the proposed activity.

(c) Any alternative measures that are made available to comply with a mitigation obligation or exaction shall maintain the applicant's objectives to the greatest extent possible and shall be capable of successful implementation.

(d) This section does **not** apply to **any** fee or exaction that is subject to Chapter 5 (commencing with Section 66000).

66051. If an agency **action** results **in** the taking of private property, the owner of the property may obtain appropriate **relief** in a **civil action** against the agency that has caused the taking to occur.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs because a local agency or school district has the authority to levy service charges, **fees**, or assessments sufficient to pay for the program or level of service mandated by this act, **within the meaning** of Section 17556 of the Government Code.

Moreover, no reimbursement shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for any other costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

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SB 227 Water quality: nonpoint source pollution.

BILL NUMBER: SB 227 INTRODUCED 01/25/99

INTRODUCED BY Senator Alpert

JANUARY 25, 1999

An act to add Chapter 10 (commencing with Section 66406) to Division 1 of Title 7 of the Government Code, to add Sections 21083.10 and 30412.1 to the Public Resources Code, and to add Chapter 5.4 (commencing with Section 13369) to Division 7 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 227, as introduced, Alpert. Water quality: nonpoint source pollution.

The Porter-Cologne Water Quality Act governs the coordination and control of water quality in the state, and includes provisions relating to nonpoint source pollution. The California Coastal Act of 1976 imposes certain restrictions on development in the coastal zone of the state. The California Coastal Commission, pursuant to the coastal act, has specified duties with regard to the federally approved California Coastal Management Program.

This bill would require the commission, within 6 months of the date of completion, and consistent with the results, of the City of Monterey's Model Urban Runoff Program, contract with the State Water Resources Control Board, to prepare a model urban nonpoint source pollution protection program and to make the program available to certain local coastal governments, as prescribed. The bill would require the commission and the state board to work cooperatively together to develop, implement, and enforce a coastal nonpoint source pollution control program with specified components. The bill would require the program to develop and implement management measures for nonpoint source pollution that protect and improve the quality of coastal waters, as prescribed. The bill would require the state board and the commission to prepare and submit to the Legislature, and make available to the public, a biennial nonpoint pollution control management report.

The bill would also require the commission, on or before December 31, 2000, to recommend to the Office of Planning and Research certain revisions to specified guidelines relating to watershed, water quality, and nonpoint source pollution impacts of projects, as specified. The bill would require the office to review those recommendations and, as soon as possible, prepare and develop guidelines for the implementation of those guideline revision recommendations and submit those proposed implementation guidelines to the Secretary of the Resources Agency. The bill would authorize the secretary to certify and adopt those proposed implementation guidelines pursuant to specified existing law.

The bill would make legislative findings and declarations concerning nonpoint source pollution.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) Nonpoint source pollution impairs more water bodies nationwide than any other pollution source, and is a major threat to the health of California's coastal waters.

- (b) The impacts of nonpoint source pollution in coastal areas include beach closings and advisories, reduced tourism revenues, closed or harvest-limited shellfish beds, declining fisheries, and threats to the drinking water of coastal communities.
- (c) Industries that depend on a healthy coast and ocean contribute at least seventeen billion three hundred million dollars (\$17,300,000,000) to the state's economy, including ten billion dollars (\$10,000,000,000) from tourism alone, and provide 370,000 jobs.
- (d) Past water quality protection and enhancement efforts have focused primarily on the control of point source discharges. While improvements have been made in the reduction of water pollution from point source discharges, more work is needed to address nonpoint sources of pollution.
- (e) Unlike direct discharges, nonpoint source pollution is highly variable and diffuse, and is thus generally not amenable to the traditional regulatory approach used to address point source pollution.
- (f) Sediment and water quality problems result from individual and cumulative impacts of multiple water and land use activities that occur within watersheds.
- (g) With 80 percent of the state's population living within 30 miles of the coast, the problems caused by urban nonpoint source pollution, including pollution created by new and existing developments, road repair and construction, and misuse of industrial and residential chemicals, are becoming acute in California's coastal environments.
- (h) Nonpoint source pollution caused by the more than 1,000,000 residential onsite sewage disposal systems statewide, as well as the numerous systems used for commercial, industrial, and institutional facilities, presents a serious threat to water quality and public health through leaching of bacteria, viruses, heavy metals, and organic chemicals into the waters of the state.
- (i) Nonpoint source pollution from recreational boats and marinas directly contaminates the state's waters with bacteria and viruses from sewage, fuel oil spills, toxics from boat cleaning and maintenance, and solid waste.
- (j) Nonpoint source pollution from agricultural and forestry activities contributes sediment and pollutant loads to the state's surface water and groundwater.
- (k) Voluntary land use and resource management that is supported by educational and technical assistance programs and that is backed with enforcement regulatory authorities is considered to be one of the most effective approaches to ensure the widespread implementation of measures to control nonpoint source pollution.
- (l) To date, state efforts to control the increasing threats to the health of coastal waters posed by nonpoint source pollution have been limited primarily to the exploration of possible control measures, with relatively little actual implementation or enforcement of new measures.
- (m) It is in the best interest of the State of California to pursue policies and actions at the state and local government levels that are coordinated, well-planned, efficient and timely, and that will, to the maximum extent feasible, substantially reduce or prevent the degradation of coastal water quality from nonpoint sources of pollution.
- (n) Under Section 6217 of the federal Coastal Zone Act Reauthorization Amendments of 1990 (16 U.S.C. Sec. 1455b), California, acting through its water quality control and coastal zone management agencies, is required to develop, implement, and enforce a coastal nonpoint source pollution control program containing measures to prevent and reduce nonpoint source pollution into the state's coastal waters.
- (o) The development and implementation of a coastal nonpoint source pollution control program provides an opportunity for California to coordinate and improve its existing nonpoint source and coastal zone management programs, while simultaneously maximizing limited resources, minimizing disagreement and conflict between the agencies, and avoiding program duplication

among the spectrum of agencies in California that address land use activities that generate nonpoint source pollution.

(p) The federal agencies that are responsible for overseeing the state's compliance with federal law regarding coastal nonpoint source pollution control have determined that the state must significantly improve its efforts to control nonpoint source pollution to comply with federal law and to effectively control nonpoint source pollution.

(q) To preserve the health of the state's coastal waters for current and future generations, a heightened level of attention should be given to nonpoint source pollution statewide. It is imperative that state agencies charged with protecting the coast and the quality of the state's waters play a leadership role in ensuring that effective measures to control nonpoint source pollution are implemented and enforced through a comprehensive nonpoint source pollution control program.

(r) The State Water Resources Control Board and the regional water quality control boards have primary responsibility for the coordination and control of water quality. The California Coastal Commission has primary responsibility for continued state coastal planning and management.

(s) The State Water Resources Control Board and the California Coastal Commission have existing authority to develop and submit for final federal approval a comprehensive and enforceable nonpoint source pollution water quality program.

SEC. 2. Chapter 10 (commencing with Section 66406) is added to Division 1 of Title 7 of the Government Code, to read:

CHAPTER 10. NONPOINT SOURCE POLLUTION

66406. (a) Within six months of the date of completion, and consistent with the results, of the City of Monterey's Model Urban Runoff Program contract with the State Water Resources Control Board, the California Coastal Commission shall prepare a model urban nonpoint source pollution protection program, and shall make this program available to local coastal governments that are not covered by the national pollutant discharge elimination system (NPDES) storm water permit program under Section 402(p) of the Clean Water Act (33 U.S.C. Sec. 1342(p)), as well as to local coastal governments that request copies of the program.

(b) The program shall include, but not be limited to, all of the following:

(1) A framework for prioritizing urban management measures to address nonpoint source pollution problems.

(2) Municipal planning tools and procedures such as model ordinances and model checklists prepared under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(3) Model public education and technical training programs.

(c) The program shall be prepared in consultation with the State Water Resources Control Board, in recognition of that agency's primary responsibility for water quality control in the state.

SEC. 2.5. Section 21083.10 is added to the Public Resources Code, to read:

21083.10. (a) To require an assessment of a project's contribution to nonpoint source pollution, on or before December 31, 2000, the California Coastal Commission shall recommend to the Office of Planning and Research revisions to the guidelines developed pursuant to Section 21083 to amend the environmental information and environmental checklist forms to include consideration of watershed, water quality, and nonpoint source pollution impacts of projects, including specific consideration as to whether the project conforms to the applicable water quality control plans prepared pursuant to Section 13170 or 13240 of the Water Code. The California Coastal Commission shall make those recommendations in writing and shall include substantial supporting evidence for those recommendations.

(b) The Office of Planning and Research shall review the recommendations made pursuant to subdivision (a) and, as soon as possible, prepare and develop guidelines for the implementation of those guideline revision recommendations and submit those proposed implementation guidelines to the Secretary of the Resources Agency. The Secretary of the Resources Agency may certify and adopt the proposed implementation guidelines pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 3. Section 30412.1 is added to the Public Resources Code, to read:

30412.1. (a) The commission and the State Water Resources Control Board shall, as required by Section 6217 of the federal Coastal Zone Act Reauthorization Amendments of 1990 (16 U.S.C. Sec. 1455b), work cooperatively together to develop, implement, and enforce a coastal nonpoint source pollution control program that complies with state and federal laws, regulations, guidance documents, the three-tiered structure established in the state nonpoint source management plan, and any written agreement entered into by all of the following:

- (1) The United States Environmental Protection Agency.
- (2) The National Oceanic and Atmospheric Agency.
- (3) The commission.
- (4) The State Water Resources Control Board.

(b) This shall be a comprehensive program that coordinates federal, state, and local programs as necessary to effectively address nonpoint source pollution on a watershed basis and a statewide basis, as appropriate. The program shall contain identified and enforceable policies and mechanisms, set schedules, identified goals, and milestones for assessing progress in reaching identified goals. The components of the program shall include, but not be limited to, all of the following:

- (1) The identification of land use categories that impact coastal waters.
- (2) A description of the management measures that will be applied to prevent or control nonpoint sources of pollution generated by the land use categories identified pursuant to paragraph (1). In selecting these measures, the commission and the State Water Resources Control Board shall review and include in the program appropriate technical advisory committee recommendations developed pursuant to the state board's nonpoint source pollution management review conducted in January 1995.
- (3) A detailed procedure for the implementation and enforcement of the program that is consistent with the following structure:
 - (A) Voluntary implementation of best management practices.
 - (B) Regulatory-based incentives for best management practices.
 - (C) The adoption and enforcement of waste discharge requirements that, in practice, will require the implementation of best management practices.
- (4) A continuing process to identify and designate critical coastal areas, determined on a watershed and subwatershed basis, where the application of additional management measures will be necessary to attain and maintain water quality standards and protect designated beneficial uses.
- (5) A detailed description of how coordination will be improved in order to carry out the program among the federal, state, and local agencies responsible for land use programs and permitting, water quality permitting and enforcement, habitat protection, and public health and safety.
- (6) The provision of technical assistance, grants, and other assistance, to the extent funding is available for these purposes, to local governments, affected landowners, and the public for

implementing approved management measures for all sources of nonpoint source pollution. Assistance may include the development, adoption, or implementation of watershed management plans, ordinances, other regulations, and individual management measures; monitoring; training; financial incentives; technical guidance; demonstration projects; and modeling to predict and assess the effectiveness of the management measures.

(7) Measures for assessing the progress of the program with regard to the implementation of management measures selected pursuant to this section and the reduction of nonpoint source pollution.

(8) A strategy to monitor the effects of the implementation and enforcement of the management measures on the coastal environment.

(c) For the purpose of this section, "management measures" means economically achievable measures for the control of the addition of pollutants from existing and new categories of nonpoint sources of pollution, that reflect the greatest degree of pollutant reduction achievable through the application of the best achievable nonpoint source pollution control practices, technologies, processes, siting criteria, operating methods, or other alternatives.

(d) The commission and the State Water Resources Control Board shall take all necessary and appropriate actions to ensure effective and efficient cooperation and coordination of program activities. This may include sharing technical resources and staff expertise and other support resources relating to the development and implementation of a comprehensive coastal nonpoint source pollution control program.

(e) In addition to funding provided through the annual Budget Act for necessary staffing and technical support, both the State Water Resource Control Board and the commission are encouraged to seek supplemental funding from public or private sources for program development and implementation. These funds may be used to provide technical assistance, grants, and other assistance to local governments, other public entities, nonprofit organizations, private sector businesses such as agriculture, and property owners to help defray the costs, if any, of implementation of management practices and the installation of capital improvements designed to reduce or prevent the degradation of water quality from nonpoint source pollution.

(f) (1) For the purpose of this subdivision, "federal requirements" means the requirements of Section 6217 of the federal Coastal Zone Act Reauthorization Amendments of 1990 (16 U.S.C. Sec. 1455b).

(2) The State Water Resources Control Board and the commission shall prepare and submit to the Legislature, and make available to the public, a biennial nonpoint pollution control management report. The report shall do all of the following:

(A) Summarize information provided to the federal Environmental Protection Agency in the required annual and semi-annual nonpoint pollution progress reports of the state board.

(B) Describe major instances and potential sources of nonpoint source pollution in those watersheds identified for targeting of resources under the State Water Resources Control Board's Watershed Management Initiative, and the State Water Resources Control Board's strategies for addressing nonpoint pollution in those watersheds.

(C) Provide an update on the accomplishments of the state nonpoint source pollution control program pursuant to federal requirements during the review period.

(D) Describe ongoing nonpoint pollution control activities pursuant to federal requirements, compare completed and ongoing nonpoint pollution control activities and accomplishments with the goals, schedules and milestones set forth in the state nonpoint source pollution program pursuant to federal requirements, and assess the state's progress in controlling nonpoint pollution based on that comparison.

(E) Describe the short-term and long-term funding necessary for the State Water Resources Control Board and the commission to meet state and federal nonpoint pollution control

requirements, including, to the extent feasible, capital outlay and infrastructure needs. The report shall not limit estimates of funding needs pursuant to this section solely to projected demands from local agencies or projected available funding.

(g) The commission and the State Water Resources Control Board shall provide the public with opportunities for participation in all aspects of the program, including the use of public notices and opportunities for comment, nomination procedures, public hearings, technical and financial assistance, public education, and other means for providing opportunities for public participation.

SEC. 4. Chapter 5.4 (commencing with Section 13369) is added to Division 7 of the Water Code, to read:

CHAPTER 5.4. COASTAL NONPOINT SOURCE POLLUTION

13369. (a) The state board and the California Coastal Commission shall, as required by Section 6217 of the federal Coastal Zone Act Reauthorization Amendments of 1990 (16 U.S.C. Sec. 1455b), work cooperatively together to develop, implement, and enforce a coastal nonpoint source pollution control program that complies with existing state and federal laws, regulations, guidance documents, the three-tiered structure established in the state nonpoint source management plan, and any written agreement entered into by all of the following:

- (1) The United States Environmental Protection Agency.
- (2) The National Oceanic and Atmospheric Agency.
- (3) The California Coastal Commission.
- (4) The state board.

(b) This shall be a comprehensive program that coordinates federal, state, and local programs as necessary to effectively address nonpoint source pollution on a watershed basis and a statewide basis, as appropriate. The program shall contain identified and enforceable policies and mechanisms, set schedules, identified goals, and milestones for assessing progress in reaching identified goals. The components of the program shall include, but not be limited to, all of the following:

- (1) The identification of land use categories that impact coastal waters.
- (2) A description of the management measures that will be applied to prevent or control nonpoint sources of pollution generated by the land use categories identified pursuant to paragraph (1). In selecting these measures, the California Coastal Commission and the state board shall review and include in the program appropriate technical advisory committee recommendations developed pursuant to the state board's nonpoint source pollution management review conducted in January 1995.
- (3) A detailed procedure for the implementation and enforcement of the program that is consistent with the following structure:
 - (A) Voluntary implementation of best management practices.
 - (B) Regulatory-based incentives for best management practices, including, but not limited to, either of the following:
 - (i) Waiver of waste discharge requirements if best management practices are implemented.
 - (ii) Management agency agreements with agencies that have enforcement authority.
 - (C) The adoption and enforcement of waste discharge requirements that, in practice, will require the implementation of best management practices.
- (4) A continuing process to identify and designate critical coastal areas, determined on a

watershed basis, where the **application of additional** management measures will be necessary to attain and maintain water quality standards and protect designated beneficial uses.

(5) A detailed description of **how coordination will** be improved in order to carry out the program among the federal, state, and local agencies responsible for land use programs and permitting, water quality permitting and **enforcement, habitat** protection, and public health and safety.

(6) The provision of **technical assistance, grants,** and other assistance, to the extent funding is available for these purposes, to local governments, affected landowners, and the public for implementing **approved management measures** for all sources of nonpoint source pollution. Assistance may include the development, adoption, or implementation of watershed management plans, ordinances, other regulations, and individual management measures; monitoring; training; financial incentives; **technical guidance;** demonstration projects; and modeling to predict and assess the effectiveness of the management measures.

(7) Measures for assessing the progress of the program with regard to the implementation of management measures selected pursuant to this section and the reduction of nonpoint source pollution.

(8) A strategy to monitor the effects of the implementation and enforcement of the management measures on the coastal environment.

(c) For the purpose of this section, "management measures" means economically achievable measures for the control of the addition of pollutants from existing and new categories of nonpoint sources of pollution, that reflect the greatest degree of pollutant reduction achievable through the application of the best achievable nonpoint source pollution control practices, technologies, processes, siting criteria, operating methods, or other alternatives.

(d) The state board and the California Coastal Commission shall take all necessary and appropriate actions to ensure **effective and efficient** cooperation and coordination of program activities. This may include sharing technical resources and staff expertise and other support resources relating to the development and implementation of a comprehensive coastal nonpoint source pollution control program.

(e) In addition to funding provided through the annual Budget Act for necessary staffing and technical support, both the state board and the California Coastal Commission are encouraged to seek supplemental funding from public or private sources for program development and implementation. **These funds may** be used to provide technical assistance, grants, and other assistance to local governments, other public entities, nonprofit organizations, private sector businesses such as agriculture, and property owners to help defray the costs, if any, of implementation of management practices and the installation of capital improvements designed to reduce or prevent the degradation of water quality from nonpoint source pollution.

(f) (1) For the purpose of this subdivision, "federal requirements" means the requirements of Section 6217 of the federal Coastal Zone Act Reauthorization Amendments of 1990 (16 U.S.C. Sec. 1455b).

(2) The state board and the California Coastal Commission shall prepare and submit to the Legislature, and make available to the public, a biennial nonpoint pollution control management report. The report shall do all of the following:

(A) Summarize information provided to the federal Environmental Protection Agency in the required annual and semi-annual nonpoint pollution progress reports of the state board.

(B) Describe major instances and potential sources of nonpoint source pollution in those watersheds identified for targeting of resources under the state board's Watershed Management Initiative, and the state board's strategies for addressing nonpoint pollution in those watersheds.

(C) Provide an update on the accomplishments of the state nonpoint source pollution control program pursuant to federal requirements during the review period.

(D) Describe ongoing nonpoint pollution control activities pursuant to federal requirements, compare completed and ongoing nonpoint pollution control activities and accomplishments with the goals, schedules and milestones set forth in the state nonpoint source pollution program pursuant to federal requirements, and assess the state's progress in controlling nonpoint pollution based on that comparison.

(E) Describe the short-term and long-term funding necessary for the state board and the California Coastal Commission to meet state and federal nonpoint pollution control requirements, including, to the extent feasible, capital outlay and infrastructure needs. The report shall not limit estimates of funding needs pursuant to this section solely to projected demands from local agencies or projected available funding.

(g) The state board and the California Coastal Commission shall provide the public with opportunities for participation in all aspects of the program, including the use of public notices and opportunities for comment, nomination procedures, public hearings, technical and financial assistance, public education, and other means for providing opportunities for public participation.

SEC. 5. Nothing in this act shall be construed to expand the regulatory, enforcement, or jurisdictional authority of either the State Water Resources Control Board or the California Coastal Commission.

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SB 241 California Endowment for Marine Preservation.

BILL NUMBER: SB 241 INTRODUCED 01/26/99

INTRODUCED BY Senator Alpert

JANUARY 26, 1999

An act to add Division 20.6 (commencing with Section 30960) to the Public Resources Code, relating to marine preservation, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 241, as introduced, Alpert. California Endowment for Marine Preservation.

Existing law declares that the Pacific Ocean and its rich marine living resources are of great environmental, economic, aesthetic, recreational, educational, scientific, nutritional, social, and historic importance to the people of California.

This bill would establish the California Endowment for Marine Preservation in order to create a permanent source of funding for projects that will enhance the quality, use, and enjoyment of the open coastal marine resources of the state. The endowment would be governed by a board of directors, with membership and duties prescribed by the bill.

The bill would require the endowment to coordinate its activities with the Department of Fish and Game, the California Coastal Commission, the Bay Conservation and Development Commission, the State Lands Commission, and appropriate federal agencies.

The bill would specify that no employee of the endowment is an employee of the State of California or subject to specified provisions of existing law governing employer-employee relations.

The bill would require each owner and operator of certain offshore oil platforms or production facilities who receives government permits that allow the platform or facility to remain in place, to deposit an unspecified amount with the endowment. The assessment on these owners and operators would constitute a tax and would result in a change in state taxes for the purpose of increasing state revenues within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of 2/3 of the membership of each house of the Legislature.

The bill would require the endowment to submit a report to the Legislature concerning, among other things, the operations, activities, and financial condition of the endowment.

The bill would appropriate an unspecified sum from the General Fund to the endowment as a loan for the purposes of incorporating and commencing operations, as specified.

Vote: 2/3. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

SECTION 1. Division 20.6 (commencing with Section 30960) is added to the Public Resources Code, to read:

DIVISION 20.6. CALIFORNIA ENDOWMENT FOR MARINE PRESERVATION

CHAPTER 1. FINDINGS AND DECLARATIONS

30960. The Legislature hereby finds and declares all of the following:

- (a) The Pacific Ocean and its rich marine living resources are of great environmental, economic, aesthetic, recreational, educational, scientific, social, and historic importance to the people of California.
- (b) Sustainable sport and commercial fishing is a vital, growing part of California's dynamic culture that generates more than \$5.7 billion annually in economic benefits for the state, including its coastal communities and local economies. Recreational fishing has accounted for more than 88 percent of the total income of, value added to, and employment generated by, the fishing industry in the state.
- (c) Programs to enhance the marine fishery resources of the state are needed to prevent overfishing, facilitate long-term protection of fish habitats, and foster sustainable growth in tourism industries attracted by California's unique natural environment.
- (d) Any offshore oil platforms that are nearing possible retirement should be removed as quickly as possible to improve the aesthetic character of the areas of the California coast that have been impacted by offshore oil activities.
- (e) A program that would remove the visible structure of an oil platform while allowing part of the subsea portion to be abandoned in place will facilitate and hasten the removal of platforms and will benefit the state by improving the aesthetics of the California coast.

CHAPTER 2. DEFINITIONS

30965. Unless the context requires otherwise, the following definitions govern the construction of this division:

- (a) "Board" means the Board of Directors of the California Endowment for Marine Preservation.
- (b) "Endowment" means the California Endowment for Marine Preservation.
- (c) "Open coastal marine resources" means those marine resources that use open coastal waters as their habitat.
- (d) "Open coastal waters" means the area composed of the submerged lands of the state and the lands of the Outer Continental Shelf.
- (e) "Outer Continental Shelf" means those lands designated as Outer Continental Shelf lands pursuant to the federal Outer Continental Shelf Lands Act (43 U.S.C.A. Sec. 1331 et seq.).
- (f) "State waters" means waters within the seaward boundary of the state as defined in Section 1312 of Title 43 of the United States Code.

CHAPTER 3. ESTABLISHMENT

30970. The California Endowment for Marine Preservation is hereby established. The endowment is subject to this division and to the Nonprofit Public Benefit Corporation Law (Pt. 2 (commencing with Sec. 5110), Div. 2, Title 1, Corp. C.). If there is a conflict between this division and the Nonprofit Public Benefit Corporation Law, this division shall prevail.

30971. Nothing in this division shall be construed to do any of the following:

- (a) Relieve the prior owner or operator of an oil facility from any continuing liability under (1) any state statute or regulation regarding liability for the spilling of oil or (2) the federal Oil Pollution Act of 1990 (33 U.S.C.A. Sec. 2701 et seq.), if the liability is associated with seepage or release of oil from an oil facility that was decommissioned pursuant to an order of, or any action taken by,

and in accordance with, any applicable rule or regulation of, the United States Department of the Interior's Minerals Management Service or the State Lands Commission.

- (b) Alter any existing law that establishes liability for damages, including, but not limited to, damages from components of decommissioned oil facilities.
- (c) Establish any liability on the part of the state.
- (d) Require any agency with jurisdiction to approve the abandonment of an oil platform in place.
- (e) Promote, encourage, or facilitate offshore oil exploration, development, and production within California's open coastal waters.

CHAPTER 4. BOARD OF DIRECTORS

30975. The endowment is governed by the Board of Directors of the California Endowment for Marine Preservation.

30976. The board consists of nine members appointed as follows:

- (a) The Speaker of the Assembly shall appoint one member who shall be an expert in marine science from the University of California, the California State University, or other accredited university.
- (b) The Speaker of the Assembly shall appoint one member who shall be from a nonprofit public interest organization with an emphasis on the enhancement of open coastal marine resources and habitat.
- (c) The Senate Committee on Rules shall appoint one member who shall be an expert in marine fisheries from the University of California, the California State University, or other accredited university.
- (d) The Senate Committee on Rules shall appoint one member who shall be from a nonprofit public interest organization with an emphasis on the enhancement of open coastal marine resources and habitat.
- (e) The Governor shall appoint five members as follows:
 - (1) The Secretary of the Resources Agency, or his or her designee, who shall also serve as chairperson.
 - (2) A representative of the public.
 - (3) A person who has served as a local government elected official, or who has worked for a local government, with jurisdiction over, or directly adjacent to, open coastal waters.
 - (4) A representative of the sports fishing industry.
 - (5) A representative of marine conservation organizations representing the interests of recreational fishing.

30977. The term of office of each member of the board is six years. However, the term of office for the first board member appointed pursuant to subdivision (a) of, and paragraphs (1) and (2) of subdivision (e) of, Section 30976 is two years. The term of office for the first board members appointed pursuant to subdivision (c) of, and paragraphs (4) and (5) of subdivision (e) of, Section 30976 is four years.

30978. Any vacancy on the board shall be filled by the appointing power by appointment for the unexpired term.

30979. (a) The board shall conduct its initial meeting as soon as possible after January 1, 2000.

(b) The board shall meet as often as required, but at least twice per year.

(c) Members of the board shall attend at least 50 percent of all duly convened meetings of the board in a calendar year. A member who fails to attend at least 50 percent of all duly convened meetings of the board in a calendar year forfeits membership on the board. The vacancy shall be filled pursuant to Section 30978.

(d) Members of the board shall receive no salary but shall be paid one hundred dollars (\$100) per day for each meeting and shall be reimbursed for all necessary travel expenses.

CHAPTER 5. POWERS AND DUTIES

30980. The members of the board first appointed shall serve as incorporators of the endowment and shall take whatever actions are necessary to establish the endowment pursuant to the Nonprofit Public Benefit Corporation Law (Pt. 2 (commencing with Sec. 5110), Div. 2, Title 1, Corp. C.).

30981. (a) The purpose of the endowment is to create a permanent source of funding for projects that will enhance the quality, use, and enjoyment of the open coastal marine resources of the state. To achieve this objective, the endowment may do any or all of the following:

(1) Support research into open coastal marine fisheries, sport fishing, marine habitat, or other related research.

(2) Support projects in open coastal waters that enhance the state's sport fishing industry, including sport diving or other sustainable activities.

(3) Support projects in open coastal waters to enhance the habitat for open coastal marine life.

(4) Support programs in open coastal waters that lead to enforcement of laws regulating the take of open coastal marine species, the protection of habitat, and the protection and monitoring of open coastal marine species and habitat with an emphasis on innovative approaches.

(5) Support other activities in open coastal waters that substantially carry out the purpose of the endowment.

(b) The endowment may fund projects within each of the categories described in subdivision (a). The endowment shall attempt to achieve a geographic balance throughout the state's coastal areas in allocating funding.

(c) The board may also do all of the following:

(1) Obtain grants from, and contract with, individuals and with private, local, state, and federal agencies, organizations, and institutions.

(2) Contract with, or make grants to, conservation organizations, institutions of higher education, and local, state, and federal agencies.

(3) Loan funds to private, local, state, and federal agencies, organizations, and institutions.

(d) The endowment shall create a business plan for a five-year period. The endowment shall update the plan annually.

(e) On or before February 1 each year, the endowment shall submit a report to the Assembly Committee on Water, Parks, and Wildlife and the Senate Committee on Natural Resources for the preceding fiscal year. The report shall include all of the following:

(1) The updated business plan created pursuant to subdivision (d).

(2) A comprehensive and detailed report of the endowment's operations, activities, financial

condition, and accomplishments under this section.

(3) A listing of each recipient of a grant from the endowment and the purposes and amount of that grant.

(4) A listing of any loan that the endowment has received and the plan for repaying the loan.

(5) A report of each independent audit required pursuant to subdivision (d) of Section 30985.

30981.5. Members of the board and appropriate staff shall be available to testify before appropriate committees of the Legislature.

30982. The endowment shall not contribute to, or otherwise support, any political party or candidate for elective public office.

30983. The endowment may hire employees and may obtain legal counsel. No employee of the endowment is an employee of the State of California. No employee of the endowment is subject to Chapter 10.3 (commencing with Section 3512) of, or Chapter 10.5 (commencing with Section 3525) of, Division 4 of Title 1 of the Government Code. Employees of the endowment have the right to representation consistent with the National Labor Relations Act (29 U.S.C.A. Sec. 151 et. seq.).

30984. The endowment shall coordinate its activities with the Department of Fish and Game, the California Coastal Commission, the Bay Conservation and Development Commission, the State Lands Commission, and appropriate federal agencies, including the National Marine Fisheries Service and the United States Department of the Interior's Minerals Management Service. Nothing in this division limits the authority and responsibility of any of these agencies.

CHAPTER 6. FINANCIAL TRANSACTIONS AND AUDITS

30985. (a) The endowment may receive charitable contributions or any sources of income that may be lawfully received, including loans from the state.

(b) The endowment shall administer any funds it receives in accordance with this division.

(c) The endowment shall invest and manage any funds it receives in accordance with the Nonprofit Public Benefit Corporation Law (Pt. 2 (commencing with Sec. 5110), Div. 2, Title 1, Corp. C.).

(d) The accounts of the endowment shall be audited annually in accordance with generally accepted auditing standards by independent certified public accountants.

(e) The financial transactions of the endowment for any fiscal year may be audited by the Bureau of State Audits. A report of each audit completed pursuant to this subdivision shall be made to the Legislature and the Governor.

(f) Each recipient of assistance by grant or contract pursuant to this division shall keep records reasonably necessary to disclose fully the amount of the assistance, the disposition of the assistance, the total cost of the project or undertaking in connection with which the assistance is given or used, the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and other records that will facilitate an effective audit. Each recipient of a fixed price contract awarded pursuant to competitive bidding procedures is exempt from the requirements of this subdivision.

(g) The endowment, or its authorized representative, and the Bureau of State Audits shall have access to any records necessary for the purpose of auditing and examining all funds received or expended by the recipients of assistance.

30986. (a) If the owner and operator of a decommissioned offshore oil platform or production facility within state waters or Outer Continental Shelf waters adjacent to state waters receives all applicable government permits to allow the offshore oil platform or production facility to remain

in place, _____ percent of the cost savings to the owner or operator from leaving the facility in place, rather than removing the facility, shall be deposited with the endowment. The endowment may take any action necessary to recover the cost savings from the owner or operator.

(b) The endowment shall ensure that any estimate of the cost savings calculated pursuant to subdivision (a) is reasonably accurate.

SEC. 2. The sum of _____ dollars (\$ _____) is hereby appropriated from the General Fund to the California Endowment for Marine Preservation established pursuant to Division 20.6 (commencing with Section 30960) of the Public Resources Code as a loan to the endowment for the purposes of incorporating and commencing operation until the endowment has sufficient income to repay the debt. The loan shall be repaid with interest calculated at the rate earned by the Pooled Money Investment Fund on January 1, 2000.

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Bill Info

SB 243 Coastal resources: development fees appropriation

Past Sessions

BILL NUMBER: SB 243 INTRODUCED 01/26/99

Codes

INTRODUCED BY Senator McPherson

Statutes

JANUARY 26, 1999

Constitution

An act to amend Section 30620 of the Public Resources Code, relating to coastal resources, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 243, as introduced, McPherson. Coastal resources: development fees appropriation.

The existing California Coastal Act of 1976 authorizes the California Coastal Commission to require a reasonable filing fee and the reimbursement of expenses for the processing by the commission of any application for a coastal development permit, as specified. The act requires that coastal development permit fees collected by the commission be deposited in the Coastal Access Account in the State Coastal Conservancy Fund, and that moneys in the account be available, upon appropriation by the Legislature in the annual Budget Act, to the State Coastal Conservancy for grants to public agencies and private nonprofit entities or organizations for the development, maintenance, and operation of new or existing facilities that provide public access to the shoreline of the sea, as defined in the act.

This bill would, instead, require that moneys in the account derived from the filing fees described above be continuously appropriated without regard to fiscal year to, and expended by, the conservancy for those grants to public agencies and private nonprofit entities or organizations, thereby making an appropriation.

Vote: 2/3. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

SECTION 1. Section 30620 of the Public Resources Code is amended to read:

30620. (a) By January 30, 1977, the commission shall, consistent with this chapter, prepare interim procedures for the submission, review, and appeal of coastal development permit applications and of claims of exemption. These procedures shall include, but are not limited to, the following:

(1) Application and appeal forms.

(2) Reasonable provisions for notification to the commission and other interested persons of any action taken by a local government pursuant to this chapter, in sufficient detail to ensure that a preliminary review of that action for conformity with this chapter can be made.

(3) Interpretive guidelines designed to assist local governments, the commission, and persons subject to this chapter in determining how the policies of this division shall be applied in the coastal zone prior to the certification of local coastal programs. However, the guidelines shall not supersede, enlarge, or diminish the powers or authority of the commission or any other public agency.

(b) Not later than May 1, 1977, the commission shall, after public hearing, adopt permanent

procedures that include the components specified in subdivision (a) and shall transmit a copy of those procedures to each local government within the coastal zone and make them readily available to the public. The commission may thereafter, from time to time, and, except in cases of emergency, after public hearing, modify or adopt additional procedures or guidelines that the commission determines to be necessary to better carry out this division.

(c) (1) The commission may require a reasonable filing fee and the reimbursement of expenses for the processing by the commission of any application for a coastal development permit under this division and, except for local coastal program submittals, for any other filing, including, but not limited to, a request for revocation, categorical exclusion, or boundary adjustment, submitted for review by the commission.

(2) Any coastal development permit fees collected by the commission under paragraph (1) shall be deposited in the Coastal Access Account, which is hereby created in the State Coastal Conservancy Fund. ~~The General Fund pursuant to Section 30610.3. Notwithstanding Section 13340 of the Government Code, the money in the account shall be available, upon appropriation by the Legislature in the annual Budget Act, to, is continuously appropriated without regard to fiscal years to, and shall be expended by,~~ the State Coastal Conservancy for grants to public agencies and private nonprofit entities or organizations for the development, maintenance, and operation of new or existing facilities that provide public access to the shoreline of the sea, as defined in Section 30115. Any grant funds that are not expended for those purposes shall revert to the account. Nothing in this paragraph authorizes an increase in fees or creates any new authority on the part of the commission.

(d) With respect to any appeal of an action taken by a local government pursuant to Section 30602 or 30603, the executive director shall, within five working days of receipt of an appeal from any person other than members of the commission or any public agency, determine whether the appeal is patently frivolous. If the executive director determines that an appeal is patently frivolous, the appeal shall not be filed unless a filing fee in the amount of three hundred dollars (\$300) is deposited with the commission within five working days of the receipt of the executive director's determination. If the commission subsequently finds that the appeal raises a substantial issue, the filing fee shall be refunded.

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Bill Info

SB 300 Governmental liability: permits.

Past Sessions

BILL NUMBER: SB 300 INTRODUCED 02/03/99

Codes

INTRODUCED BY Senator Poochigian

Statutes

FEBRUARY 3, 1999

Constitution

An act to amend Section 818.4 of the Government Code, relating to state government.

LEGISLATIVE COUNSEL'S DIGEST

SB 300, as introduced, Poochigian. Governmental liability: permits.

Existing law provides that a public entity is not liable for an injury caused by the issuance, denial, suspension, or revocation of, or by the failure or refusal to issue, deny, suspend, or revoke, any permit, license, certificate, approval, order, or similar authorization if the public entity or an employee of the public entity is authorized by enactment to determine whether or not the authorization should be issued, denied, suspended, or revoked.

This bill would provide that a state agency is liable to a private property owner for a temporary taking of the owner's real property if the state agency is responsible for a delay in the issuance of a development permit affecting the use of the real property, and the delay is the result of a final decision, as defined, of the state agency that is later determined by a court to be legally erroneous. The bill would also provide that a delay that occurs as a result of the normal development approval process or as a result of litigation challenging a final decision by a state agency constitutes a temporary taking under those provisions if the final decision of the state agency is later determined by a court to be legally erroneous.

This bill would also declare that it is intended to supersede the holding of the California Supreme Court in *Landgate, Inc. v. California Coastal Com.*, 17 Cal. 4th 1006, with regard to any claim arising on or after its effective date.

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

SECTION 1. Section 818.4 of the Government Code is amended to read:

818.4. A—(a) *Except as provided in subdivision (b), a public entity is not liable for an injury caused by the issuance, denial, suspension, or revocation of, or by the failure or refusal to issue, deny, suspend, or revoke, any permit, license, certificate, approval, order, or similar authorization where if the public entity or an employee of the public entity is authorized by enactment to determine whether or not such authorization should be issued, denied, suspended, or revoked.*

(b) (1) A state agency is liable to a private property owner for a temporary taking of the owner's real property if both of the following conditions occur:

(A) The state agency is responsible for a delay in the issuance of a development permit affecting the use of the real property.

(B) The delay is the result of a final decision of the state agency that is later determined by a court to be legally erroneous.

(2) For purposes of this subdivision, "final decision" means a decision rendered by a state agency depriving a real property owner of all economically beneficial or productive use of the property that requires legal action by the property owner to appeal the decision.

(3) A delay that occurs as a result of the normal development approval process or as a result of litigation challenging a final decision by a state agency constitutes a temporary taking under this subdivision if the final decision of the state agency is later determined by a court to be legally erroneous.

SEC. 2. The amendment made to Section 818.4 of the Government Code by this act supersedes the holding of the California Supreme Court in *Landgate, Inc. v. California Coastal Com.*, 17 Cal. 4th 1006, with regard to any claim arising on or after the effective date of this act.

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