

CALIFORNIA COASTAL COMMISSION

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**W-28**

May 6, 2009

TO: Coastal Commissioners and Interested Public

FROM: Peter M. Douglas, Executive Director
 Sarah Christie, Legislative Coordinator

SUBJECT: LEGISLATIVE REPORT FOR MAY 2009

CONTENTS: This report provides summaries and status of bills that affect the Coastal Commission and California's Coastal Program as well as bills that staff has identified as coastal-related legislation.

Note: Information contained in this report is accurate as of 04/28/09. Changes in the status of some bills may have occurred between the date this report was prepared and the presentation date.¹ Current status of any bill may be checked by visiting the California Senate Homepage at www.senate.ca.gov. This report can also be accessed through the Commission's World Wide Web Homepage at www.coastal.ca.gov

2009 Legislative Calendar

Jan 1	Statutes take effect
Jan 5	Legislature reconvenes
Jan 10	Budget must be submitted by Governor
Jan 30	Last day to submit bills to Legislative Counsel
Feb 27	Last day for bills to be introduced
April 2	Spring Recess begins
April 13	Legislature reconvenes
May 1	Last day for Policy Committees to hear and report 1 st House fiscal bills to the Floor
May 15	Last day for Policy Committees to hear and report 1 st House nonfiscal bills to the Floor
May 22	Last day for Policy Committees to meet prior to June 8
May 29	Last day for Fiscal Committees to hear and report 1 st House fiscal bills to the Floor
June 1-5	Floor Session only. No committees may meet
June 5	Last day to pass bills from house of origin
June 8	Committee meetings may resume
June 15	Budget must be passed by midnight
July 10	Last day for Policy Committees to hear and report bills to the Floor from the second house
July 17	Summer Recess begins at the end of session if Budget Bill has been enacted
Aug 17	Legislature reconvenes
Aug 28	Last day for Fiscal Committees to meet and report bills to the Floor
Aug 31-Sept 11	Floor session only. No committees may meet
Sept 4	Last day to amend bills on the Floor
Sept 11	Last day for any bill to be passed. Interim Recess begins on adjournment of session
Oct 11	Last day for Governor to sign or veto bills passed by the Legislature before Sept. 11

¹ Terms used in this report relating to bill status. 1) "On Suspense" means bill is held in Appropriations because of potential costs to state agency. Bills usually heard by Appropriations near Fiscal Committee Deadline in June. 2) "Held in committee" means bill was not heard in the policy committee this year. 3) "Failed passage" means a bill was heard by policy committee but failed to get a majority vote. Reconsideration can be granted by the committee.

PRIORITY LEGISLATION

AB 42 (Blakeslee) Electricity: Pacific Gas & Electric: seismic fault

This bill would require the California Energy Commission, in consultation with other specified agencies including the Coastal Commission, to determine what, if any seismic or other hazard studies are urgently needed at the Diablo Canyon Nuclear Power Facility. The bill would also require the CEC, in consultation with other state agencies including the Coastal Commission, conduct or facilitate peer review of any studies generated as a result of this bill.

Introduced 12/01/08
Last Amended 04/22/09
Status Assembly Appropriations Committee

AB 64 (Krekorian) Energy: renewable energy resources

This bill would, in relevant part to the Coastal Commission, create a new state agency, the Renewables Infrastructure Authority (RIA). The RIA would be composed of a 9-member Board, and would have exclusive authority to issue permits for renewable energy facilities greater than 5 megawatts, effectively pre-empting all local and state regulatory authority. The bill also authorizes the RIA to issue up to \$6.4 billion in bonds to finance renewable energy projects.

Introduced 12/09/08
Last Amended 04/15/09
Status Assembly Natural Resources Committee

Commission position Recommend Oppose Unless Amended, analysis attached

AB 68 (Brownlee) Solid waste: single-use carry out bags

This bill would prohibit stores from providing single-use carryout bags to customers after July 10, 2010, unless the store charges a fee of not less than \$0.25 for the bag. The fees collected would be deposited into the Bag Pollution Fund, which the bill would establish, on a quarterly basis. Funds would be expended, after appropriation by the Legislature, to implement programs that educate consumers and reduce the use of plastic bags, and to reduce and mitigate the effects of plastic bag litter.

Introduced 12/12/08
Last Amended 4/23/09
Status Assembly Appropriations Committee

AB 87 (Davis) Single use carryout bags: environmental effects

This bill would prohibit stores from providing single-use carryout bags to customers after July 10, 2010, unless the store charges a fee of not less than \$0.25 for the bag. The fees collected would be deposited into the Bag Pollution Fund, which the bill would establish, on a quarterly basis. Funds would be expended, after appropriation by the Legislature, to implement programs that educate consumers and reduce the use of plastic bags, and to reduce and mitigate the effects of plastic bag litter.

Introduced 01/05/09
Last Amended 03/18/09
Status Assembly Appropriations Committee

AB 226 (Ruskin) Coastal resources: enforcement

This bill would give the Coastal Commission administrative civil liability authority and deposit any resulting revenues into the Coastal Act Services Fund (CASF). This bill would also redirect existing civil penalty revenue from State Coastal Conservancy to the Commission's CASF, subject to appropriation by the Legislature.

Introduced 02/03/09
Status Assembly Appropriations Committee
Commission Position Support

AB 248 (Lowenthal) Public resources; ballast water management

This bill would require the owner or operator of a vessel that carries or is capable of carrying ballast water to maintain written or electronic records regarding the make and type of ballast water treatment system, and when and by whom it was approved.

Introduced 02/10/09
Status In Senate

AB 291 (Saldana) Coastal resources: coastal development permits

This bill would prohibit the issuance of a coastal development permit for any property for which a notice of violation has been received, unless the Executive Director of the Commission determines that an application has been filed that fully resolves the violation.

Introduced 02/13/09
Last amended 4/22/09
Status Assembly Appropriations Committee
Commission Position Support

AB 305 (Nava) Hazardous materials: penalties

This bill would make failure to report an oil spill or knowingly provide a false or misleading report about an oil spill in waters of the state a crime punishable by a \$50,000 fine, imprisonment, or both.

Introduced 02/17/09
Status Assembly Public Safety Committee

AB 650 (Hill) Local government: City of Half Moon Bay

This spot bill states that it is the intent of the Legislature to assist the city of Half Moon Bay with respect to the city's settlement agreement in the matter of Yamagiwa v. City of Half Moon Bay (N.D. Cal. 2007). Under the settlement agreement the city waived its right to appeal, and now owes the plaintiff \$18 million in exchange for purchase of the Beachwood property. This is an urgency bill.

Introduced 02/27/09
Last amended 4/02/09
Status Assembly Local Government Committee. Hearing cancelled at request of author.

AB 694 (Saldana) Tidelands and submerged lands: San Diego

This bill would clarify that all state tidelands underlying U.S. Naval installations in the City of San Diego shall revert back to the jurisdiction of the State Lands Commission after decommissioning, rather than remaining the property of the Navy.

Introduced 02/26/09
Status Assembly Local Government Committee

AB 783 (Anderson) State agencies: repeal

This bill would require that all statutorily created state agencies, boards, and state commissions that are funded by General Fund revenues, except for the Franchise Tax Board, be repealed on January 1, 2022.

Introduced 02/26/09
Status Assembly Business and Professions Committee

AB 925 (Saldana) Recycling: single use beverage container caps

This bill would prohibit the sale of single-use plastic beverage containers without a cap that is not affixed to the container, and made from recyclable materials.

Introduced 02/26/09
Status Assembly Third Reading

AB 1347 (Price) Desalination

This bill would repeal Section 12949.6 of the Water Code. This section establishes the Water Desalination Task Force, and requires the Department to report to the Legislature no later than July 1, 2004, on the potential opportunities for sea water and brackish water desalination in California. The Commission participated in the task force, but did not sign on to the final report.

Introduced 02/27/09
Status Assembly Water, Parks and Wildlife Committee

AB 1358 (Hill) Product management: disposable food containers

This bill would prohibit food vendors or state facilities from dispensing food or beverages in polystyrene or non-recyclable, disposable food or beverage containers.

Introduced 02/27/09
Last amended 04/14/09
Status Assembly Natural Resources Committee. Hearing postponed by Committee

AB 1442 (Committee on Water, Parks and Wildlife)

This bill would, in relevant part, require the Wildlife Conservation Board to take into consideration areas of the state where public access and hunting/fishing opportunities are most needed when determining which streams and lakes are suitable for hunting and fishing. It would allow the WCB to lease areas of degraded habitat to nonprofit organizations for the purpose of habitat restoration and public access. It would authorize the taking of any game species for a prize or other inducement of reward.

Introduced 02/27/09
Last amended 04/02/09
Status Assembly Water Parks and Wildlife Committee

AJR 3 (Nava) Offshore oil drilling

This measure would request that Congress reinstate the federal offshore oil and gas leasing moratorium for the 2009 fiscal year and beyond. This measure also would memorialize the Legislature's opposition to the proposed expansion of oil and gas drilling of the Pacific Coast and any federal energy policies and legislation that would weaken California's role in energy siting decisions by those policies.

Introduced 01/23/09
Last amended 04/20/09
Status Senate First Reading

SB 4 (Oropeza) State beaches and parks: smoking

This bill would prohibit smoking of any tobacco product on a state coastal beach on in any unit of the State Parks system. The bill authorizes the Department of Parks and Recreation, or any other relevant state agency, to develop and post signs to provide notice of the smoking prohibition.

Introduced 12/01/08
Status Senate Appropriations Committee

SB 21 (Simitian) Fishing gear

This bill would require the Department of Fish and Game to make recommendations to the Fish and Game Commission regarding a sustainable funding source for the recovery of derelict fishing gear and the prevention of the loss of fishing gear. The bill would require any persons and/or vessels who lose fishing gear at sea to report the loss within 48 hours. The bill would require all fishing licenses issued by the Department to include information and telephone numbers related to the new requirement. The bill would also require the Department to establish a data base of all known and reported sites of derelict/lost fishing gear, and to establish performance targets for their removal.

Introduced 12/01/08
Last amended 03/25/09
Status Senate Appropriations Committee, Suspense File

SB 42 (Corbett) Coastal resources: seawater intake

This bill would prohibit a state agency from approving any new power plant or industrial facility that utilizes Once-Through-Cooling (OTC). The bill would also establish a per-gallon fee for sea water used for OTC in an amount to be set by the SWRCB. Fees would be deposited in the Marine Life Restoration Account, which the bill would create, within the Coastal Conservancy's Coastal Trust Fund. The bill would also require the SWRCB to establish and implement a statewide policy on the use of sea water for OTC.

Introduced 01/06/09
Last Amended 04/14/09
Status Senate Energy, Utilities and Commerce

SB 262 (Lowenthal) Coastal resources:

This bill would repeal the requirement that the Commission must meet monthly. In the event that the Commission were to cancel a monthly meeting, this bill would extend all statutory deadlines to the following month.

Introduced 02/24/09
Status Senate Natural Resource Committee

Commission Position Support

SB 459 (Wolk) Tidelands and submerged lands: removal of vessels

This bill would allow the State Lands Commission to immediately remove without notice any unattended vessel that is moored, docked, beached or stranded in such a way that it is creating a hazardous condition. This bill would provide that any vessel under the State Lands Commission's jurisdiction that is allowed to persist in an unseaworthy or dilapidated state for more than 30 days shall be declared abandoned and authorize the Commission to sell, destroy or otherwise dispose of the vessel. Amendments taken on 4/21 specify that any proceeds from the sale of abandoned property, less the commission's costs, be deposited into the General Fund.

Introduced 02/26/09
Last amended 04/21/09
Status Senate Natural Resources Committee

SB 650 (Yee) Half Moon Bay

This bill would appropriate \$10 million from Proposition 84 funds to the city of Half Moon Bay to purchase the property known as Beachwood to assist with the city's settlement agreement in the matter of Yamagiwa v. City of Half Moon Bay (N.D. Cal. 2007). Under the settlement agreement the city waived its right to appeal, and now owes the plaintiff \$18 million.

Introduced 02/27/09
Last amended 03/21/09
Status Senate Rules Committee

SB 790 (Pavley) Coastal resources; project grants

This bill would make Low Impact Development (LID) projects eligible for Prop 84 bond funds, if those projects contribute to the protection of water quality or reduce storm water runoff, and authorize the State Water Resources Control Board, in consultation with the Coastal Conservancy, to award grants to public agencies and non-profit organizations.

Introduced 02/27/09
Last amended 04/22/09
Status Senate Natural Resources Committee

SB 801 (Walters) Coastal resources: City of Laguna Nigel

This bill states that it is the intent of the Legislature to revise the current coastal zone boundary to terminate at the western edge of the city. This would remove much of the incorporated area of the city of Laguna Nigel from the coastal zone. *Amendments taken on 4/13 replace the initial language with language that makes technical, non-substantive changes to the California Environmental Quality Act.*

Introduced 02/27/09
Last amended 04/13/09
Status Senate Rules
Commission Position Oppose

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**BILL ANALYSIS****AB 64 (Krekorian)**

As Amended, April 14, 2009

RECOMMENDED POSITION

Staff recommends the Commission **Oppose AB 64 Unless Amended.**

SUMMARY

AB 64 would amend the Public Utilities Act relating to renewable energy portfolio standards (RPS), to require Investor-owned utilities (IOUs) to achieve a 33% renewable target by 2020. The bill would also create the Renewable Infrastructure Authority (RIA). This bill is quite lengthy and complex, dealing largely with issues outside the Commission's purview. However, the one provision of the bill that is relevant to the Coastal Commission is the fact that the RIA's regulatory authority would supercede that of all other agencies, both state and local, for the approval of renewable energy projects greater than 5 megawatts. This would have the effect of removing the Commission's authority over renewable energy projects in the coastal zone, and obviating the policies of the Coastal Act and certified LCPs.

PURPOSE OF THE BILL

The purpose of the bill is to increase California's production of renewable energy, and provide funding for specified projects.

EXISTING LAW

Under the Public Utilities Act, California's IOUs are required to achieve a 20% renewable portfolio by 2010. These include biomass, solar thermal, photovoltaic, wind, geothermal, renewable fuel cells, small hydroelectric, digester gas, landfill gas, ocean wave, ocean thermal and tidal current. A variety of state agencies and local governments have regulatory authority over such projects, including but not limited to the Coastal Commission, BCDC, State Lands Commission, California Energy Commission, Department of Fish and Game, SWRCB, DWR, and city and county governments.

The California Environmental Quality Act (CEQA) requires that a lead agencies, as defined, with the principle responsibility for carrying out or approving a proposed project to prepare a negative declaration, mitigated negative declaration or EIR for any discretionary project, unless otherwise exempt. Pursuant to CEQA, lead agencies must certify that all environmental impacts associated with a project have been avoided or fully mitigated, unless a statement of overriding considerations has been adopted.

The Coastal Commission is the state agency charged with implementing and enforcing the Coastal Act the Commission is considered a CEQA-equivalent agency. Thus, the Commission does not prepare, or cause to be prepared, any CEQA documents associated with coastal development applications. However, the Commission does rely on environmental documents prepared by other lead agencies.

When issuing a coastal development permit pursuant to PRC 32000 et seq, the Commission must make findings that the project is consistent with the Chapter 3 policies of the Coastal Act, or the applicable policies of the certified Local Coastal Program (LCP) for projects heard on appeal.

PROGRAM BACKGROUND

The Coastal Commission is the state agency with the authority to implement and enforce the coastal resource protection policies in the Coastal Act. The Commission retains direct permitting authority for all new development in state waters, including traditional and alternative renewable energy facilities. The Commission also has regulatory authority over landward development in the coastal zone, including traditional and alternative renewable energy facilities, in areas of original jurisdiction and under certain circumstances on appeal from a local government with a certified LCP.

ANALYSIS

This analysis does not address the substantive portions of this bill related to the RPS, financing for renewable projects, bidding, contracting or any other matters outside of the Commission's purview.

In relevant part, this bill would completely pre-empt all regulatory authority for all state and regional agencies and local governments. Specifically, Section 992.5 (2) (B) and Section 993 (a) state, with respect to the RIA:

The issuance of a certificate by the authority shall be in lieu of any permit, certificate, or similar document required by any state, local, or regional agency or federal agency to the extent permitted by federal law, for use of the site and related facilities, and shall supersede any applicable statute, ordinance, or regulation of any state, local, or regional agency, or federal agency to the extent permitted by federal law.

The effect of this policy will be to eliminate the Commission's regulatory review and coastal development permit authority for renewable energy facilities greater than 5 megawatts. It would also eliminate the need for any streambed alteration permit, discharge permit, local conditional use permit, building permit, as well as any other applicable permit from a local, regional or state agency, arguably including any lease from the State Lands Commission. In addition, it would supersede any LCP or General Plan policies or ordinances that could apply to a specified facility, such as allowable uses for specific land use zoning designations, specific mitigation standards, mandatory setbacks, height limits, water conservation measures, etc.

Instead, all state and local review would be replaced with an extremely compressed process within the newly created RIA. The RIA would conduct "all applicable public and community involvement processes" and issue a decision within 180 days of the application being deemed complete. The RIA would issue a set of findings relating to suitability of the project with respect to its impacts on the environment, public health, land use, etc., mitigation measures, and any other factors the authority considers relevant.

It is not clear what is meant by “all applicable public and community involvement processes.” It is difficult to imagine that a statewide authority would conduct presentations to advisory councils, planning commissions, councils and boards, as may be currently required by local regulations, or hold hearings in the same manner as local governments.

The authority would be designated as the lead agency for purposes of CEQA. However, it is impractical if not impossible to complete, circulate and certify an EIR within 180 days of an application being deemed complete.

Section 992.5 E (6) (c) states that “The authority shall comply with all applicable air quality laws and all environmental regulations.” But by also superseding all other regulatory functions, this means the RIA will be responsible for implementing the Coastal Act, Fish and Game Code, McAteer Petris Act, Porter Cologne Act, etc., as well as LCP and local General Plan policies. Clearly, no single agency can hope to have the capacity to implement such a diverse range of statutes with anything approaching the expertise of the agencies charged with implementing their respective statutes.

The most obvious and direct impact to the Coastal Commission would be to remove all authority over wave, tidal or ocean current energy facilities. It would also remove authority for projects employing any of the other specified technologies proposed in the coastal zone. Likely applications also include wind, geothermal and biomass. The Commission has already seen a number of ocean-based energy proposals in their conceptual stages. While ocean-based energy generation holds great potential, it is clear from staff’s review of proposed projects so far that the technologies vary widely, and that some have the potential to create significant impacts to coastal resources. It is also clear that these technologies are complex and require extensive case-by-case analysis and modification to achieve consistency with Coastal Act policies. Even if the RIA could provide a co-equal analysis with respect to the Coastal Act, the highly truncated timeline proposed by this bill would preclude such analysis.

While it is clearly the author’s laudable intention to speed the rate at which California transitions to clean, renewable energy, this bill will do so at the expense of the environment generally, and coastal resources in particular. Renewable projects can raise significant issues with respect to water use, endangered species habitat conversion, direct wildlife mortality, particularly for birds and bats, and other land use conflicts, in and out of the coastal zone. The need to reduce greenhouse gas emissions and address global climate change is urgent. But doing so in a manner that removes all local control in addition to eliminating independent state agency oversight is both unwise and unnecessary. Anecdotal evidence to date indicates that well-designed projects which avoid significant environmental impacts, such as commercial-scale rooftop and parking lot solar installations, receive necessary approvals within a reasonable timeframe. In some cases, they are designed, installed and operational in less time than it takes to prepare a draft EIR. However, controversial projects which are located in inappropriate areas such as park lands, endangered species habitat or highly scenic and unique areas of the state are very appropriately encountering regulatory delays. This bill would eliminate those delays, and in so doing has the high likelihood of putting sensitive environments at risk, and creating potentially devastating impacts to sensitive habitats and local communities.

UPDATE

Amendments taken in Assembly Natural Resources Committee on 4/29/09 were not available in print by the date of this analysis (5/5/09). However, the author conceptually agreed to remove all reference to the RIA, and instead create the Energy Planning and Infrastructure Coordination (EPIC) Committee, comprised of the same membership as the RIA, with various responsibilities. The amendments would also give the CEC jurisdiction for siting renewable generation facilities over 5MW, with appropriate exceptions for projects already under other state or federal jurisdictions, such as wave energy projects under FERC/Coastal Commission jurisdiction. At this time it is not clear what is meant by "Appropriate exceptions" for projects under the Commission's jurisdiction. This could range from retaining the Commission's jurisdiction over all projects within the Coastal Zone, to only applying to those projects under the Commission's direct jurisdiction (i.e. offshore facilities, or proposals in white holed or uncertified areas), to the current "consultation" procedure between the CEC and the Commission.

Even if the intent of the bill is to preserve the Commission's existing authority, ambiguity regarding the role of projects that would only come to the Commission on appeal from a local government approval should be clarified. If it is the intent of the bill only to apply to those projects under the Commission's direct jurisdiction, than the Commission would likely lose the authority to review on appeal any renewable generation facility over 5MW that is proposed in an area under the jurisdiction of a certified LCP. If it is the intent of the bill to mirror the existing process set forth in Section 30413 with respect to the siting of any thermal powerplant or transmission line, that would limit the Commission's jurisdiction to issuance of a report to the Energy Commission regarding the project's impact on coastal resources, existing or planned coastal-dependent uses, and conformity with LCP policies, if applicable.

It should be noted that the Commission's past experience with this process has been so unsatisfactory that the Commission no longer provides analysis and comments to the Energy Commission on such proposals. It is not anticipated that extending this current "review" process to apply to renewable energy facilities over 5 MW in the Coastal Zone would yield any different results than those of that past, which is to say that the Commission's comments would likely be disregarded.

Under any of the three interpretations above, the Commission's jurisdiction could be seriously reduced or eliminated. Although the bill is currently being amended, staff recommends the Commission oppose the bill unless amended to preserve the Commission's current authority, as well as that of local governments in the coastal zone.

SUPPORT/OPPOSITION

Support for AB 64:

American Lung Association of California
Breathe California (if amended)
California Biomass Energy Alliance (if amended)
California Hydropower Reform Coalition
California League of Conservation Voters
Clean Power Campaign (if amended)
Coalition for Clean Air
Large-Scale Solar Association
Natural Resources Defense Council (if amended)
Physicians for Social Responsibility - SF Bay Area
Sierra Club California (if amended)
Southern California Public Power Authority (if amended)
The Solar Alliance
Union of Concerned Scientists (if amended)
Vote Solar

Opposition to AB 64:

Alliance for Retail Energy Markets
California Chamber of Commerce
California Farm Bureau Federation
California Manufacturers & Technology Association
Public Utilities Commission (unless amended)
Sempra Energy (unless amended)
Solid Waste Association of North America (unless amended)
Trinity Public Utility District (unless amended)
TURN (unless amended)
Western State Petroleum Association (unless amended)

RECOMMENDED POSITION

Staff recommends the Commission **Oppose AB 64 Unless Amended.**

BILL NUMBER: AB 64 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY APRIL 15, 2009
AMENDED IN ASSEMBLY MARCH 24, 2009
AMENDED IN ASSEMBLY MARCH 18, 2009

INTRODUCED BY Assembly Members Krekorian and Bass
DECEMBER 9, 2008

An act to amend Sections 25500, 25740, 25740.5, 25741, and 25742 of, and to repeal Chapter 4.3 (commencing with Section 25330) of Division 15 of, the Public Resources Code, and to amend Section 454.5 of, to amend and repeal Section 387 of, to add Section 399.23 to, to add Chapter 4.5 (commencing with Section 950) to Part 1 of Division 1 of, and to repeal Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of, the Public Utilities Code, relating to energy, and making an appropriation therefor...

992.5 (2)(B) The issuance of a certificate by the authority shall be in lieu of any permit, certificate, or similar document required by any state, local, or regional agency or federal agency to the extent permitted by federal law, for use of the site and related facilities, and shall supersede any applicable statute, ordinance, or regulation of any state, local, or regional agency, or federal agency to the extent permitted by federal law.

.....

(C) The authority shall determine within 30 days of the application to construct a generation facility within a designated renewable energy designation zone whether the application is complete.....

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