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W-31

March 9, 2011

TO: Coastal Commissioners and Interested Public

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

SUBJECT: LEGISLATIVE REPORT FOR March 2011

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 03/01/11. Changes in the status of some bills may have occurred between the date this report was prepared and the presentation date.[1] The Governor has 30 days from the date of passage to sign or veto enrolled bills. 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

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2011 Legislative Calendar

Jan 1	Statutes take effect
Jan 3	Legislature reconvenes
Jan 10	Budget must be submitted by Governor
Jan 21	Last day to submit bill requests to Legislative Counsel
Feb 18	Last day for bill introduction
April 14	Spring Recess begins
April 25	Legislature reconvenes
May 6	Last day for Policy Committees to hear and report 1st House fiscal bills to the Floor
May 13	Last day for Policy Committees to hear and report 1st House non-fiscal bills to the Floor
May 20	Last day for Policy Committees to meet prior to June 7
May 27	Last day for Fiscal Committees to hear and report 1st House fiscal bills to the Floor
May 31-June 3	Floor Session only. No committees may meet
June 3	Last day to pass bills from house of origin
June 6	Committee meetings may resume
June 15	Budget must be passed by midnight
June 24	Last day for a legislative measure to qualify for the November General Election ballot
July 8	Last day for Policy Committees to hear and report bills to the Floor from the second house
July 15	Summer Recess begins at the end of session if Budget Bill has been enacted
Aug 15	Legislature reconvenes
Aug 26	Last day for Fiscal Committees to meet and report bills to the Floor
Aug 29-Sept 9	Floor session only. No committees may meet
Sept 2	Last day to amend bills on the Floor
Sept 9	Last day for any bill to be passed. Interim Recess begins on adjournment of session

[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 206 (Harkey), Coastal resources: fireworks displays
This bill would provide that a fireworks display conducted by a public entity does not constitute "development" as defined by the Coastal Act.

Introduced	01/27/11
Status	Assembly Natural Resources Committee
Commission position	**Recommend Oppose—analysis attached**

AB 337 (Monning) Ocean Protection Council: sustainable seafood
This bill would require the Ocean Protection Council to develop and implement a voluntary sustainable seafood program for the state, including a marketing assistance program for seafood caught in California that follows the protocols established by the program.

Introduced	02/10/11
Status	Assembly Rules Committee

AB 376 (Fong) Shark fins
This bill would make it a crime to possess, sell, trade, offer for sale or distribute a detached shark fin in any form, other than one that has been obtained from a shark landed lawfully with a commercial or recreational license or permit.

Introduced	02/10/11
Status	Assembly Rules Committee
Commission position	**Recommend Support—analysis attached**

AB 565 (Monning) Conservation: State Coastal Conservancy
This bill would authorize the State Coastal Conservancy to award a grant to a for-profit company for dam removal or alteration if .the project were of regional or statewide significance, the Conservancy determined that no public agency or non-profit entity could achieve the same result.

Introduced	02/16/11
Status	Assembly First Reading

AB 1112 (Huffman)
This bill would raise the fee of $.05 per-barrel of oil landed at a marine terminal to $.08. The bill would require the OSPR administrator to conduct a screening mechanism and risk assessment of vessels engaged in fuel bunkering or lightering.

Introduced	01/27/11
Status	Assembly Natural Resources Committee
Commission position	**Recommend Support—analysis attached**

SB 1 (Kehoe) 22nd Agricultural Association: Del Mar Racetrack: sale of state property
This bill would divide the 22nd Ag District in San Diego County into two separate entities. The newly created Agricultural District 22a would be comprised of the Del Mar Racetrack and Fair Grounds. The bill would authorize the Department of General Services to sell the assets of District 22a to the City of Del Mar. Upon completion of the sale, Agricultural District 22a would be dissolved.

Introduced	12/06/10
Status	Senate Government Organization Committee

SB 366 (Calderon, Pavley) Regulations: agency review

This bill would require all state agencies, including the Coastal Commission, within 180 days of enactment of the bill, to review and revise/repeal all regulations that are considered duplicative, overlapping, inconsistent or out of date. All agencies, including the Commission, would have to report to the Legislature and the Governor on any actions taken to address this requirement. This bill would also create the "Streamlined Permit Review Team" consisting of the Secretary of Business, Transportation and Housing, the Secretary for Environmental Protection and the Secretary for Natural Resources. Upon request of any applicant, the SPRT would be convene all applicable permitting agencies with jurisdiction over an application, to coordinate actions on permits, eliminate delays, reduce paperwork, and ensure that agencies take action in the earliest feasible timeframe. The bill creates time limits for agencies to review and act on applications. If those timelines are not met, the projects would be deemed approved by operation of law.

Introduced 02/15/11
Status Senate Rules Committee

SB 468 (Kehoe) Department of Transportation: capacity-increasing state highway projects: coastal zone

This bill would prohibit the expansion of freeways in the coastal zone until existing, approved, but undeveloped public transportation projects that meet the same goals are completed. It would also require Caltrans to identify and mitigate the impacts of increased traffic on city and county streets that result from freeway expansion projects, and require Caltrans to identify ways to meet program goals without compromising unique coastal zone features.

Introduced 02/17/11
Status Senate Rules Committee
Commission position **Recommend Support, if amended - analysis attached**

SB 588 (Evans) Coastal Commission: enforcement

This bill would authorize the Coastal Commission to collect administrative civil penalties up to $50,000 per violation. The bill would require that any penalties collected for violation of the Coastal Account be deposited into the Coastal Act Services Fund.

Introduced 02/17/11
Status Senate Rules Committee
Commission position **Recommend Support—analysis attached**

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BILL ANALYSIS
AB 206 (Harkey)
As Introduced, January 27, 2011

SUMMARY

AB 206 would amend Section 30106 of the Public Resources Code to exempt fireworks displays conducted by public entities from the Coastal Act definition of "development."

PURPOSE OF THE BILL

The purpose of the bill is to exempt publicly sponsored fireworks displays from Coastal Commission's regulatory review process.

EXISTING LAW

Fireworks displays, whether publicly or privately sponsored, are currently considered "development" under the Coastal Act. Public Resources Code Section 30106 (a) defines development as *"…the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste…*"

In *Gualala Festivals Committee v. California Coastal Commission, 183 Cal. App. 4th 60, 68 (2010)*, the court upheld the Commission's historic position that the discharge of fireworks within the coastal zone constitutes development for purposes of the Coastal Act.

LEGISLATIVE HISTORY

This is a reintroduction of AB 1256 (Harkey), a gut-and-amend introduced in June of 2010.

BACKGROUND

Although most fireworks displays do not result in demonstrable harm to marine wildlife, in some cases fireworks displays can have significant negative impacts on coastal and near-shore species, particularly nesting sea birds. Because the Fourth of July coincides with the height of the nesting and fledging season for many migratory species, the impact of these events is magnified at that time of year. For instance, in Gualala, a small unincorporated town on the rural Mendocino coast, USFWS biologists documented 11% of nesting sea birds abandoned their nests during an unpermitted 2007 Fourth of July display—leaving the chicks and eggs to die of exposure or predation. Many of these were in a seabird rookery on a National Monument not far from shore. Impacts to nesting birds in the adjacent river estuary were also documented.

The Commission was able to halt that event by issuing a Cease and Desist Order (CDO) to the Gualala Festivals Committee, after they refused to apply for a coastal development permit for the event. A legal challenge mounted by the Pacific Legal Foundation was not successful, and both the trial court and the appellate court found that the Commission had acted properly within its authority and its mandate to protect coastal resources. The California Supreme Court denied review of the case.

In Santa Cruz and Capitola, the Commission has permitted an annual fireworks display that mitigated impacts to public access and included permit conditions related to post-event beach clean-up. Similarly, the Commission negotiated with the City of Morro Bay in 2003 under threat of litigation by environmental groups. As a result, the city relocated its fireworks display so that it would not impact peregrine falcons nesting on Morro Rock, or invite the trampling of snowy plover nests on the adjacent sand spit. Following the compromise, the Pacific Legal Foundation sued the USFWS in an unsuccessful attempt to de-list the snowy plover.

That being said, the Commission does not exert jurisdiction over every fireworks display in the coastal zone, and has permitted such events subject to their meeting Coastal Act requirements. The Commission considers these events on a case-by-case basis, and only when we receive a verifiable complaint or an inquiry from an applicant. Some events in urban areas do not cause impacts to wildlife, and thus the Commission doesn't exert permit jurisdiction. Others have been in continuous, historic operation since before the passage of the Coastal Act and are exempt from review. For instance, the Commission informed the City of San Diego that their annual Big Bay Boom, perhaps the largest coastal fireworks display of its kind, can continue to operate under the "temporary events" provisions of the Coastal Act. Similarly, fireworks displays sponsored by the 22nd Ag District, the city of La Jolla, and the nightly displays at Sea World, to name a few, have not triggered the need for coastal development permits. Instead, the Commission dealt with the Sea World display in our review of the Sea World Master Plan and Mission Bay Master Plan, where all parties agreed to monitoring and Best Management Practices (BMPs).

Impacts to water quality are currently being addressed by the San Diego Regional Water Quality Control Board, which is in the process of developing standards for a regional general permit, using data collected by Sea World's monitoring efforts, and will reportedly be finalized next year. Citizen groups are currently in litigation over some of these non-permitted events, arguing their need for coastal development permits, discharge permits and full CEQA review. The litigation has not been resolved.

ANALYSIS

AB 206 would prevent the Commission from protecting sea birds and near shore wildlife from any city, county or special district sponsoring a fireworks display in the coastal zone, regardless of impacts, and would prevent the Commission from imposing reasonable permit conditions for debris clean up, public access or monitoring. This is an obvious and unnecessary erosion of the Commission's ability to protect coastal resources. It is appropriate for the Commission to continue its case-by-case oversight of public fireworks displays, in order to safe guard the needs of sensitive wildlife and habitat when necessary.

SUPPORT/OPPOSITION

Support for AB 206:

None on file

Opposition against AB 206:

None on file

RECOMMENDED POSITION

Staff recommends the Commission **Oppose** AB 206.

BILL NUMBER: AB 206
INTRODUCED
BILL TEXT

INTRODUCED BY Assembly Member Harkey

JANUARY 27, 2011

An act to amend Section 30106 of the Public Resources Code, relating to coastal resources.

LEGISLATIVE COUNSEL'S DIGEST

AB 206, as introduced, Harkey. Coastal resources: California Coastal Act of 1976: development: fireworks displays.

The California Coastal Act of 1976 provides for the planning and regulation of development, under a coastal development permit process, within the coastal zone. Existing law defines development for these purposes.

This bill would provide that "development" does not include a fireworks display conducted by a public entity.

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 30106 of the Public Resources Code is amended to read:

30106. *(a)* "Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 *(Chapter 8* (commencing with Section 4511) *of Part 2 of Division 4)* .

(b) As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.

(c) Development does not include a fireworks display conducted by a public entity.

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BILL ANALYSIS
AB 376 (Fong) Shark fins
As Introduced February 14, 2011

RECOMMENDED ACTION
Staff recommends the Commission **Support** AB 376.

SUMMARY
AB 376 would make is a crime to buy, sell, trade, or possess detached shark fins or tails in California, except when obtained through legally permitted means, (i.e., with a legally landed shark carcass).

PURPOSE OF THE BILL
The purpose of the bill is to discourage the practice of "shark finning" by criminalizing the possession or sale of raw, frozen, dried or fresh shark fins, including shark fin soup.

EXISTING LAW
The Fish and Game code regulates the taking of sharks, including bag limits, seasons and size for recreational fishing.

Shark finning is already illegal in state waters and U.S. territorial waters. However, most shark finning occurs in international waters or in waters without regulation or enforcement. Shark fins cannot be imported into the U.S. without the associated carcass. Possession of shark fins for sale is not currently regulated or prohibited by California law.

In 2010, Hawaii became the first state to ban the possession, sale and distribution of shark fins.

BACKGROUND
Shark fin soup is an expensive delicacy in Chinese cuisine, usually served at weddings or special occasions. The cartilage used for shark fin soup, both fins and tails, can sell for as much as $400 per pound, depending on the species. Because the shark fins and tails are much more lucrative than the meat, sharks are hauled on board alive, where their dorsal fins and tails are sliced off, and then they are thrown back into the water to bleed to death or drown.

Finning is a primary contributing factor in the global decline of many shark species. Global estimates of the number of sharks taken annually are between 38-100 million. Market pressures have resulted in a dramatic increase in the number of sharks killed annually. Between 1991 and 1998, the number of sharks retained by the Hawaii-based swordfish and tuna longline fishery had increased from 2,289 to 60,857 annually, and by 1998, an estimated 98% of these sharks were killed for their fins.

Finning is now taking place on an industrial scale off the coasts of Costa Rica, Western Australia, Indonesia and Central America. While much of this activity is technically illegal, a lack of enforcement and strong market demand results in a total lack of deterrence. Some investigative reports indicate that government corruption is also facilitating this illegal activity.

Three species of sharks are now listed by CITES as in need of controls on international trade to maintain populations. Thirty nine other species of sharks and rays are listed as critically endangered, endangered or threatened by the International Union for the Conservation of Nature (IUCN). Some of these species have declined by 80%-90% over the past 20 years. Although commercial bycatch is also responsible for these declines, shark finning is dramatically accelerating the process.

ANALYSIS

Sharks are the apex predators of the sea, and as such, are critical to the overall health of the oceans. Terrestrial food chains that have lost their apex predators such a wolves, grizzly bears, tigers, etc., have suffered a cascading series of effects that impact entire ecosystems. The rapid decline of sharks in the marine habitat has the potential to cause changes that won't be fully understood for decades.

Finning is a cruel and wasteful practice that is impacting shark populations at an unprecedented rate. Only a small portion of the animal is kept, allowing the killing of thousands of individuals to fill the hold of a vessel—far more than a vessel could accommodate if the sharks were kept on board. Major declines in shark populations have been recorded in recent years—some species have been depleted by over 90% over the past 20–30 years, with a population decline of 70% not being unusual.

While better global enforcement of the fishery would be ideal, measures to limit demand can have a more immediate effect. Criminalizing the sale, possession and distribution of shark fins in California, including the sale and consumption of shark fin soup, would be an important step in the efforts to reduce demand. If AB 376 becomes law, California will become the second state, after Hawaii, to prohibit the sale of shark fins. While estimates of how much this will impact the number of sharks killed for their fins is not currently available, the passage of such laws is builds public awareness and creates a momentum for similar measures elsewhere.

Opponents of the bill have cited cultural traditions as a reason to continue the practice of shark finning, and the consumption of shark fin soup. However, what was once a rare delicacy for an elite few to partake of on special occasions has now become a widely available middle-class dish. The world's shark populations cannot withstand its growing popularity and accessibility. Ultimately, if sharks become extinct, those cultural traditions will die with them. It is important to note that fins from whole sharks landed legally can still be used for preparing shark fin soup in smaller, more sustainable quantities.

On both conservation and moral grounds, shark finning is a fundamentally unsustainable activity and any reasonable action that reduces or discourages the practice should be pursued.

BILL NUMBER: AB 376
INTRODUCED BILL TEXT

INTRODUCED BY Assembly Members Fong and Huffman

FEBRUARY 14, 2011

An act to add Section 2021 to the Fish and Game Code, relating to sharks.

LEGISLATIVE COUNSEL'S DIGEST

AB 376, as introduced, Fong. Shark fins.

Existing law makes it unlawful to possess any bird, mammal, fish, reptile, or amphibian, or parts thereof, taken in violation of any of the provisions of the Fish and Game Code, or of any regulation made under it.

This bill, except as specified, would make it unlawful for any person to possess, sell, offer for sale, trade, or distribute a shark fin, as defined.

The bill, by creating a new crime, would impose a state-mandated local program.

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.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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

(a) Sharks, or elasmobranchs, are critical to the health of the ocean ecosystem.

(b) Sharks are particularly susceptible to decline due to overfishing because they are slow to reach reproductive maturity and birth small litters, and cannot rebuild their populations quickly once they are overfished.

(c) Sharks occupy the top of the marine food chain. Their decline is an urgent problem that upsets the balance of species in ocean ecosystems and negatively affects other fisheries. It constitutes a serious threat to the ocean ecosystem and biodiversity.

(d) The practice of shark finning, where a shark is caught, its fins cut off, and the carcass dumped back into the water, causes tens of millions of sharks to die each year. Sharks starve to death, may be slowly eaten by other fish, or drown because most sharks need to keep moving to force water through their gills for oxygen.

(e) Data from federal and international agencies show a decline in shark populations worldwide.

(f) California is a market for shark fin and this demand helps drive the practice of shark finning. The market also drives shark declines. By impacting the demand for shark fins, California can help ensure that sharks do not become extinct as a result of shark finning.

(g) Shark fin often contains high amounts of mercury, which has been proven dangerous to consumers' health.

SEC. 2. Section 2021 is added to the Fish and Game Code, to read:

2021. (a) As used in this section "shark fin" means the raw, dried, or otherwise processed detached fin, or the raw, dried, or otherwise processed detached tail, of an elasmobranch.

(b) It shall be unlawful for any person to possess, sell, offer for sale, trade, or distribute a shark fin.

(c) This section does not apply to any person who holds a license or permit pursuant to Section 1002 and who possesses a shark fin or fins consistent with that license or permit.

(d) This section does not apply to any person who holds a license or permit issued by the department to take or land sharks for recreational or commercial purposes and who possesses a shark fin or fins consistent with that license or permit.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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BILL ANALYSIS
AB 1112 (Huffman) Oil spill prevention and administration fee
As Introduced February 18, 2011

RECOMMENDED ACTION
Staff recommends the Commission **Support** AB 1112.

SUMMARY
AB 1112 would amend the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act to require the Office of Spill Prevention and Response (OSPR) administrator to develop a screening mechanism and conduct a risk assessment of vessels engaged in bunkering and lightering operations and determine the highest risk transfers. The bill also would specify requirements regarding monitoring and inspections of oil transfer operations. This bill would also raise the fee assessed on barrels of crude oil or petroleum products landed at a marine terminal from $0.05 up to a maximum of $0.08 a barrel, , and give the OSPR Administrator the authority to adjust the fee annually in accordance with the Consumer Price Index (CPI). The bill would also increase the Certificate of Financial Responsibility fees on non-tank vessels to a maximum of $3,000. The fees would continue to be used to fund spill prevention and response activities and programs. The bill also contains requirements for the Department of Fish and Game and State Lands Commission to submit detailed report on the financial basis and programmatic effectiveness of the state's oil spill prevention, response, and preparedness program.

PURPOSE OF THE BILL
The purpose of the bill is to require greater measures to prevent and contain oil spills in the marine environment, and to increase funding for California's oil spill prevention, preparedness, and response programs.

EXISTING LAW
The Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (The Act) of 1990 (Commencing with Government Code 8670.1) gives primary authority to the OSPR Administrator to direct the prevention, preparedness, containment, and cleanup of oil spills affecting State waters, as well as the authority to require natural resource restoration and conduct studies and incorporate the findings into spill prevention, preparedness and response programs throughout California.

The Act and other existing law give the State Lands Commission (SLC) jurisdiction over oil spills at offshore drilling platforms operating on submerged lands owned by the state. In addition, the Act and other existing law give the Coastal Commission and the San Francisco Bay Conservation Commission (BCDC) additional oil spill prevention and response program responsibilities within their jurisdictions.

PROGRAM BACKGROUND

The Office of Spill Prevention and Response is a division of the Department of Fish and Game, and is the lead State agency in charge of California's oil spill prevention, preparedness, response, and natural resource restoration. The OSPR was established by the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (The Act) of 1990. The Act gives the OSPR Administrator substantial authority to direct all oil spill prevention, response and clean-up activities, natural resource damage assessment and restoration, as well as the authority to conduct studies and incorporate the findings into spill prevention and response programs throughout California.

As a division of the Department of Fish and Game, OSPR retains the Department's regulatory authority and public trustee responsibility to protect and manage the State's wildlife, plants, and their habitats. The Department is the only coastal state agency in the United States that has a combined regulatory, pollution response, and public trustee authority for wildlife resources. The OSPR's combined regulatory and trustee authority assures that oil spill prevention, as well as response, will safeguard wildlife and the ecosystems in which they live, and restore habitats damaged by pollution incidents.

The Oil Spill Administration Fund (OSPAF) is the sole funding source for the OSPR's numerous statewide spill prevention, preparedness and response programs. The OSPAF also funds the oil spill prevention programs of the State Lands Commission -Marine Facilities Division (SLC-MFD), The Oiled Wildlife Network, the Coastal Commission, BCDC, and several other state and local agency oil spill related programs. The OSPAF is funded by a fee imposed on each barrel of oil or petroleum product delivered to a marine terminal. The current cap on the fee is $0.05 per barrel, with a maximum fee on non-tank vessels of $2,500. The Coastal Commission, Bay Conservation Commission, and State Lands Commission all participate in oil spill prevention programs funded by the OSPAF.

ANALYSIS

Is an increase in the fees warranted?

The last fee increase from $0.04 to $0.05 occurred in 2002. Adjusted for inflation, the California Research Bureau estimates that this is now worth approximately $0.03 in 2002 dollars. During this time, the OSPR program has taken on new responsibilities and significantly expanded its oil spill prevention and preparedness programs since the last fee increase in 2002, most notably because of legislation in 2008 in response to the Cosco Busan 2007 spill (e.g. expanded drills and exercise programs, vessel inspections, and shoreline protection strategy testing). The State Lands Commission Marine Facilities Division has also taken on new responsibility with the implementation of its Marine Oil Terminal Engineering Maintenance Standards (MOTEMS) that require marine oil terminals to upgrade their facilities to comply with higher seismic safety and engineering standards. The Oiled Wildlife Network has also taken on new responsibilities and made needed improvements in its research development programs and facilities. If fee revenues to the OSPAF are not increased, it is projected that the OSPR's budget for current operation levels would be in deficit by 2012, requiring a curtailment or reduction of its statewide oil spill prevention

and preparedness programs. In addition, without a fee increase there will be a reduction in funds for the operation of the Oiled Wildlife Care Network, SLC_MFD, Coastal Commission, BCDC and other state and local agency oil spill prevention and response programs.

Is a screening mechanism and risk assessment necessary for vessels in bunkering and lightering operations?

A definition of terms is helpful to this discussion. “Bunkering” is a transfer of fuel oil from a transfer terminal or vessel to another vessel. “Lightering” is the offloading of bulk oil cargo from one tanker or barge to another tanker or barge.

Although some precautions are already taken under existing regulations, and OSPR is currently in the process of updating its regulations related to pre-booming, a comprehensive risk assessment could identify which vessels or classes of vessels could reduce their risk of accidental spills by modifying techniques, improving boom deployment and technology and specifying what weather and current conditions are contraindicated for such activities. For instance, currents in San Francisco Bay exceed 1.0 knots 67% of the time, thus booms are rarely used in the Bay. But boom technologies used in the Columbia River are regularly deployed as a preventative measure despite the fact that currents there exceed 1.0 knot. Highly advanced booms in Norway are deployed in currents from 3-5 knots.

Assembly member Huffman carried a similar bill, AB 234, in the previous session, which the Commission supported, and the Governor vetoed.

BILL NUMBER: AB 1112
INTRODUCED
BILL TEXT

INTRODUCED BY Assembly Member Huffman

FEBRUARY 18, 2011

An act to amend Sections 8670.40 and 8670.41 of, to amend and repeal Section 8670.32 of, and to add Section 8670.32.5 to, the Government Code, and to add and repeal Section 6226 of the Public Resources Code, relating to oil spills.

LEGISLATIVE COUNSEL'S DIGEST

AB 1112, as introduced, Huffman. Oil spill prevention and administration fee: State Lands Commission.

(1) The Lempert-Keene-Seastrand Oil Spill Prevention and Response Act generally requires the administrator for oil spill response, acting at the direction of the Governor, to implement activities relating to oil spill response, including drills and preparedness, and oil spill containment and cleanup, and to represent the state in any coordinated response efforts with the federal government. The act requires the administrator to periodically carry out announced and unannounced drills to test response and cleanup operations, equipment, contingency plans, and procedures.

This bill would require the administrator to develop a screening mechanism and conduct a risk assessment of vessels engaged in bunkering and lightering operations and determine the highest risk transfers. The bill also would specify requirements regarding monitoring and inspections of oil transfer operations.

(2) Existing law imposes an oil spill prevention and administration fee in an amount determined by the administrator to implement oil spill prevention activities, but not to exceed $0.05 per barrel of crude oil or petroleum products, on persons owning crude oil or petroleum products at a marine terminal. The fee is deposited into the Oil Spill Prevention and Administration Fund in the State Treasury. Upon appropriation by the Legislature, moneys in the fund are available for specified purposes.

This bill would revise that fee to an amount not to exceed $0.08 per barrel of crude oil or petroleum products. The bill would also authorize the administrator to adjust the maximum fee annually for inflation, as measured by the California Consumer Price Index.

(3) Existing law requires the administrator to charge a nontank vessel owner or operator a reasonable fee, to be collected with each application to obtain a certificate of financial responsibility, in an amount that is based upon the administrator's costs in implementing certain provisions relating to nontank vessels. Revenue from the fee is deposited into the Oil Spill Prevention and Administration Fund for appropriation by the Legislature for specified purposes.

This bill would establish that fee at $3,000 per nontank vessel for the administrator's costs in implementing those provisions relating to nontank vessels.

(4) Existing law requires the Department of Fish and Game to contract with the Department of Finance to prepare and submit to the Governor and the Legislature, on or before January 1, 2005, a detailed report on the financial basis and programmatic effectiveness of the state's oil spill prevention, response, and preparedness program.

This bill would require the Department of Fish and Game and the State Lands Commission, independently, to contract with the Department of Finance to prepare and submit that report to the Governor and the Legislature, on or before January 1, 2013, and no less than once every 4 years thereafter. This provision would be repealed on January 1, 2017.

(5) Under existing law, the State Lands Commission has jurisdiction over state lands and ungranted tidelands and submerged lands owned by the state.

This bill would require the State Lands Commission, on or before March 1, 2012, to report to the Legislature on regulatory action, pending or already taken, and statutory recommendations for the Legislature to ensure maximum safety and prevention of harm during offshore oil drilling. This provision would be repealed on January 1, 2016.

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 8670.32 is added to the Government Code, to read:

8670.32. (a) The administrator shall develop a screening mechanism and conduct a risk assessment of vessels engaged in bunkering and lightering operations and determine the highest risk transfers.

(b) The administrator shall increase by 2 percent annually the monitoring and inspection of vessel oil transfer operations, until a minimum of 10 percent of all oil transfer operations are being routinely monitored and inspected. The monitoring and inspections shall be conducted to ensure that a vessel has the appropriate equipment in the event of an oil spill.

(c) A minimum of 50 percent of oil transfer operations subject to monitoring and inspections shall be conducted at fuel transfer operations occurring at anchorage.

SEC. 2. Section 8670.40 of the Government Code is amended to read:

8670.40. (a) The State Board of Equalization shall collect a fee in an amount determined by the administrator to be sufficient to carry out the purposes set forth in subdivision (e), and a reasonable reserve for contingencies. The annual assessment ~~may~~ *shall* not exceed ~~five~~ *eight* cents ~~($0.05)~~ *($0.08)* per barrel of crude oil or petroleum products. *The administrator may adjust the maximum fee annually for inflation, as measured by the California Consumer Price Index.*

(b) (1) The oil spill prevention and administration fee shall be imposed upon a person owning crude oil at the time that *the* crude oil is received at a marine terminal from within or outside the state, and upon a person ~~who owns~~ *owning* petroleum products at the time that those petroleum products are received at a marine terminal from outside this state.

The fee shall be collected by the marine terminal operator from the owner of the crude oil or petroleum products based on each barrel of crude oil or petroleum products so received by means of a vessel operating in, through, or across the marine waters of the state. In addition, an operator of a pipeline shall pay the oil spill prevention and administration fee for each barrel of crude oil originating from a production facility in marine waters and transported in the state by means of a pipeline operating across, under, or through the marine waters of the state. The fees shall be remitted to the board by the terminal or pipeline operator on the 25th day of the month based upon the number of barrels of crude oil or petroleum products received at a marine terminal or transported by pipeline during the preceding month. A fee shall not be imposed pursuant to this section with respect to crude oil or petroleum products if the person who would be liable for that fee, or responsible for its collection, establishes that the fee has been collected by a terminal operator registered under this chapter or paid to the board with respect to the crude oil or petroleum ~~product~~ *products* .

(2) An owner of crude oil or petroleum products is liable for the fee until it has been paid to the board, except that payment to a marine terminal operator registered under this chapter is sufficient to relieve the owner from further liability for the fee.

(3) On or before January 20, the administrator shall annually prepare a plan that projects revenues and expenses over three fiscal years, including the current year. Based on the plan, the administrator shall set the fee so that projected revenues, including ~~any~~ interest, are equivalent to expenses as reflected in the current Budget Act and in the proposed budget submitted by the Governor. In setting the fee, the administrator may allow for a surplus if the administrator finds that revenues will be exhausted during the period covered by the plan or that the surplus is necessary to cover possible contingencies. *The administrator shall notify the board of the adjusted fee rate, which shall be rounded to no more than four decimal places, to be effective the first day of the month beginning not less than 30 days from the date of the notification.*

(c) The moneys collected pursuant to subdivision (a) shall be deposited into the fund.

(d) The board shall collect the fee and adopt regulations for implementing the fee collection program.

(e) The fee described in this section shall be collected solely for all of the following purposes:

(1) To implement oil spill prevention programs through rules, regulations, leasing policies, guidelines, and inspections and to implement research into prevention and control technology.

(2) To carry out studies that may lead to improved oil spill prevention and response.

(3) To finance environmental and economic studies relating to the effects of oil spills.

(4) To reimburse the member agencies of the State Interagency Oil Spill Committee for costs arising from implementation of this chapter, Article 3.5 (commencing with Section 8574.1) of Chapter 7 of this code, and Division 7.8 (commencing with Section 8750) of the Public Resources Code.

(5) To implement, install, and maintain emergency programs, equipment, and facilities to respond to, contain, and clean up oil spills and to ensure that those operations will be carried out as intended.

(6) To respond to an imminent threat of a spill in accordance with the provisions of Section 8670.62 pertaining to threatened discharges. The cumulative amount of an expenditure for this purpose shall not exceed the amount of one hundred thousand dollars ($100,000) in a fiscal year unless the administrator receives the approval of the Director of Finance and notification is given to the Joint Legislative Budget Committee. Commencing with the 1993-94 fiscal year, and each fiscal year thereafter, it is the intent of the Legislature that the annual Budget Act contain an appropriation of one hundred thousand dollars ($100,000) from the fund for the purpose of allowing the administrator to respond to threatened oil spills.

(7) To reimburse the board for costs incurred to implement this chapter and to carry out Part 24 (commencing with Section 46001) of Division 2 of the Revenue and Taxation Code.

(8) To reimburse the costs incurred by the State Lands Commission in implementing the *former* Oil Transfer and Transportation Emission and Risk Reduction Act of 2002 (Division 7.9 (commencing with Section 8780) of the Public Resources Code).

(9) To cover costs incurred by the Oiled Wildlife Care Network established by Section 8670.37.5 for training and field collection, and search and rescue activities, pursuant to subdivision (g) of Section 8670.37.5.

(f) The moneys deposited in the fund shall not be used for responding to an oil spill.

SEC. 3. Section 8670.41 of the Government Code is amended to read:

8670.41. (a) The administrator shall charge a nontank vessel owner or operator a ~~reasonable~~ fee, to be collected with each application to obtain a certificate of financial responsibility, in ~~an~~ *the* amount ~~that is based upon~~ *of three thousand dollars ($3,000) per nontank vessel for* the administrator's costs in implementing this chapter relating to nontank vessels. ~~Before January 1, 2005, the fee shall be two thousand five hundred dollars ($2,500), or less per vessel.~~

(b) ~~The~~ *Notwithstanding subdivision (a), the* administrator may charge a reduced fee under this section for nontank vessels determined by the administrator to pose a reduced risk of pollution, including, but not limited to, vessels used for research or training and vessels that are moored permanently or rarely move.

(c) The administrator shall deposit all revenue derived from the fees imposed under this section in the Oil Spill Prevention and Administration Fund established in the State Treasury under Section 8670.38.

(d) Revenue derived from the fees imposed under this section ~~may~~ *shall* be spent for the purposes listed in subdivision (e) of Section 8670.40, and ~~may~~ *shall* not be used for responding to an oil spill.

SEC. 4. Section 8670.42 of the Government Code is amended to read:

8670.42. *(a)* The Department of Fish and Game *and the State Law Commission, independently,* shall contract with the Department of Finance for the preparation of a detailed report that shall be submitted on or before ~~January 1, 2005,~~ *January 1, 2013, and no less than once every four years thereafter,* to the Governor and the Legislature on the financial basis and programmatic effectiveness of the state's oil spill prevention, response, and preparedness program. This report shall include an analysis of all of the oil spill prevention, response, and preparedness program's major expenditures, fees and fines collected, staffing and equipment levels, spills responded to, and other relevant issues. The report shall recommend measures to improve the efficiency and effectiveness of the state's oil spill prevention, response, and preparedness program, including, but not limited to, measures to modify existing contingency plan requirements, to improve protection of sensitive shoreline sites, and to ensure adequate and equitable funding for the state's oil spill prevention, response, and preparedness program.

(b) (1) A report to be submitted pursuant to subdivision (a) shall be submitted in compliance with Section 9795.

(2) Pursuant to Section 10231.5, this section is repealed on January 1, 2017.

SEC. 5. Section 6226 is added to the Public Resources Code, to read:

6226. (a) On or before March 1, 2012, the commission shall report to the Legislature on regulatory action, pending or already taken, and statutory recommendations for the Legislature to ensure maximum safety and prevention of harm during offshore oil drilling. The report shall include, but not be limited to, all of the following:

(1) A comprehensive set of requirements for offshore oil drilling rigs operating in state waters to have fully redundant and functioning safety systems to prevent a failure of a blowout preventer from causing a major oil spill.

(2) A complete description of a response plan to control a blowout and manage the accompanying discharge of hydrocarbons, including both of the following:

(A) The technology and timeline for regaining control of a well.

(B) The strategy, organization, and resources necessary to avoid harm to the environment and human health from hydrocarbons.

(3) Requirements for the use of the best available and safest technologies and practices, if the failure of equipment would have a significant effect on safety, health, or the environment.

(b) (1) A report to be submitted pursuant to subdivision (a) shall be submitted in compliance with Section 9795 of the Government Code.

(2) Pursuant to Section 10231.5 of the Government Code, this section is repealed on January 1, 2016.

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BILL ANALYSIS
SB 468 (Kehoe) State highway projects: coastal zone
As Introduced February 17, 2011

RECOMMENDED ACTION
Staff recommends the Commission **Support SB 468, if amended.**

SUMMARY
SB 468 would amend the Streets and Highways Code to direct the Department of Transportation, when undertaking capacity-increasing projects on the state highway system that are located, all or in part, in the coastal zone, to meet certain requirements, including: collaboration with local governments to develop traffic congestion reduction goals and identify how they can be met without compromising coastal resources; inclusion of state and local parallel road projects in the environmental analysis of the proposed project; mitigation of project impacts on local roads; and, completion of a transit investment program prior to construction of the proposed project if there is a public transportation service in the affected corridor and there is a program of service and facility investments that are part of a corridor plan.

PURPOSE OF THE BILL
The purpose of the bill is to ensure that, prior to proceeding to construction of capacity-increasing projects located, all or in part, in the coastal zone, planned public transportation projects within that corridor are fully developed.

EXISTING LAW
Under existing law, the Department of Transportation has full possession and control of the state's highway system. Projects within the Coastal Zone are subject to Coastal Act permitting requirements. SB 375 (Steinberg), Chapter 728, Statutes of 2008 implements portions of AB 32 (Pavley) the Global Warming Solutions Act. The goal of SB 375 is to locate jobs and housing in closer proximity to each other and thus reduce vehicle miles traveled within regions.

PROGRAM BACKGROUND
Although this bill would apply to any "capacity increasing" state highway project, in whole or in part, within the coastal zone, the author's primary intent is to address the 27-mile Interstate 5 (I-5) North Coast Corridor Project in San Diego County, from La Jolla to Camp Pendleton. Depending on the alternative, two HOV lanes in each direction, widening/replacement of several bridges, four direct access ramps, auxiliary lanes, retaining walls, landform alteration, and other features are being considered. The Commission provided comments to Caltrans on the Draft EIR/EIS on November 22, 2010. The comments were intended to provide Caltrans with input regarding additional information and refinements that would be required for the Commission's subsequent

reviews under the Coastal Act. Although much of the Commission's comments focused on habitat and water quality issues, the need to evaluate the project as part of a comprehensive, multi-modal, mass transit approach to reducing traffic congestion into the future was a primary concern. The Commission recommended that the DEIR/EIS be revised and recirculated to address identified insufficiencies, and that Caltrans partner with SANDAG to complete an approvable Public Works Plan that would address the full range of transportation improvements and alternatives across the multiple jurisdictions with and without certified LCPs along the corridor. To date, Caltrans has agreed to include some of the additional analysis the Commission requested and indicated a willingness to work with Federal and State resource agencies to determine how to address the various issues of shared concern. To date, no final decisions have been made regarding the requests for revision and recirculation of the Draft EIR/EIS.

The Commission's comments regarding the need to explore the various access and transportation needs within the corridor and how they can be met through *all* modes of travel are consistent with the previous positions on freeway/highway expansion projects elsewhere in the coastal zone. The Commission has encouraged or required alternative transportation planning and analysis as a pre-requisite to moving forward with the analysis/approval of the Salinas Road Interchange in Monterey County (under construction); potential expansion of Highway 156 (Monterey County); freeway expansion planning in Santa Cruz County; and potential expansion of the Calera Parkway segment of Highway One in Pacifica, among others.

ANALYSIS

SB 468 would prohibit the expansion of capacity-increasing state highway system projects in the coastal zone until a transit investment program that serves the same corridor is completed. It would also require Caltrans to identify and mitigate the impacts of increased traffic on city and county streets that result from expansion projects, and require Caltrans to identify ways to meet traffic congestion reduction goals without compromising unique coastal zone features.

Coastal Act Section 30252 supports the provision of "nonautomobile circulation" within new development, public transportation to serve new development, and public transit for high intensity uses as a means of maintaining and enhancing public access. Section 30253 (d) calls for the minimization of vehicle miles traveled and energy consumption. In addition, Section 30254 calls for maintaining Highway 1 as a scenic two-lane road in rural areas of the coastal zone. Numerous Chapter Three policies protect what the bill describes as "unique coastal zone features," such as wetlands, riparian corridors, environmentally sensitive habitat, community character, coastal agriculture, unique landforms and scenic public views.

The Commission has long understood that inadequate public transportation in densely populated urban areas is detrimental. An entirely automobile-dependent transportation system squanders energy resources and contributes to a wide range of serious adverse environmental and coastal impacts, including climate change and ocean acidification. Inadequate public transportation and the lack of multi-modal opportunities also adversely affects public access to the coast. Congested freeways and long delays are unpleasant and inconvenient and therefore serve as dis-incentives to coastal visitation. For those without access to private vehicles, lack of public transit is a major impediment to access. Requiring that transit alternatives be fully constructed before roadway expansions can proceed, or allowing for phasing with such work, is consistent with Coastal Act policies and the Commission's past actions.

While the Commission certainly supports the commitment to a comprehensive multi-modal transportation system that is sensitive to coastal resources, the Commission may want suggest amendments to the author's office that would link the bill more directly to SB 375. In addition, as drafted, the bill includes several terms that would benefit from additional clarification. Lastly, the current version of the bill addresses any "capacity-increasing state highway" proposal located "all or in part" within the coastal zone; some clarification on the scope of the bill's application would be helpful. Therefore, at this point, staff is proposing to work with the author's office on amendments to strengthen and refine the bill prior to moving to full support position.

BILL NUMBER: SB 468
INTRODUCED
BILL TEXT

INTRODUCED BY Senator Kehoe

FEBRUARY 17, 2011

An act to add Section 103 to the Streets and Highways Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

SB 468, as introduced, Kehoe. Department of Transportation: capacity-increasing state highway projects: coastal zone.

Existing law provides that the Department of Transportation has full possession and control of the state highway system. Existing law imposes various requirements for the development and implementation of transportation projects.

This bill would impose additional requirements on the department with respect to proposed capacity-increasing state highway projects in the coastal zone. The bill would also make legislative findings and declarations.

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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

(a) The California coastal zone is an unique natural resource, the protection of which is recognized as a shared responsibility of the state, local governments, and regional entities. State, local, and regional agencies desiring to make investments in transportation infrastructure within the coastal zone have an affirmative obligation to ensure that investments do not compromise or diminish existing natural resources, including the coastal zone flora and fauna, water quality, and unique views.

(b) The coastal zone is also a unique economic resource with both its natural and built environment being a destination for individuals, families, and groups to enjoy the diversity of recreational opportunities.

(c) Transportation investments to be made in the coastal zone should not erode the very qualities that make it an attractive setting in which to live, work, and recreate.

SEC. 2. Section 103 is added to the Streets and Highways Code, to read:

103. For proposed capacity-increasing projects on the state highway system that are located, all or in part, in the coastal zone, as defined by Section 30103 of the Public Resources Code, the department shall comply with all of the following requirements:

(a) Collaborate with local agencies through which the proposed project traverses and the countywide or regional transportation planning agency to develop traffic congestion reduction goals. After identifying the goals, identify how the proposed project will achieve the goals without compromising the unique features of the coastal zone.

(b) Other proposed state highway projects or proposed local street and road projects that are parallel to the proposed project shall be included in the environmental analysis for the proposed project.

(c) If there is a public transportation service in the corridor affected by the proposed project, including a commuter rail service, for which there is a program of service and facility investments as part of a corridor plan, the proposed project shall not proceed to construction until the transit investment program is complete.

(d) If the proposed project will generate additional traffic on city and county streets and roads within the coastal zone, a program of improvements to mitigate the effects of additional traffic on the local facilities shall be identified, the cost of the necessary improvements shall be determined, and funding shall be made available to fund the improvements. The proposed project shall not proceed to construction until this mitigation program is implemented.

(e) To the extent that there are multiple proposed projects in a corridor that are part of a program of projects, construction shall be implemented sequentially, with construction on a subsequent project beginning only after the previous project has been completed. This requirement does not apply to the initial project in the program of projects.

(f) Environmental consequences of each proposed project sequentially constructed pursuant to subdivision (e) shall be monitored to ensure that the benefits from mitigation, as described in the project's environmental documents, are being achieved. If the environmental benefits can only be achieved with the completion of a sequence of projects, the proportion of the benefits attributable to a specific project shall be identified.

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BILL ANALYSIS
SB 588 (Evans)
As Introduced, February 17, 2011

RECOMMENDED POSITION
Staff recommends the Commission **Support** SB 588.

SUMMARY
SB 588 would amend PRC Section 30823 and add PRC Section 30821 of the Coastal Act to give the Coastal Commission the discretionary authority to impose administrative civil penalties for Coastal Act violations. The bill would direct that any penalties collected under this new authority, as well as penalties currently imposed by the courts, shall be deposited into the Coastal Act Services Fund.

PURPOSE OF THE BILL
The purpose of the bill is to improve coastal enforcement activities and implement cost-saving efficiencies.

EXISTING LAW
Under PRC Section 30820 of the Coastal Act, a superior court can impose civil penalties of up to $30,000 on any person or local government who violates the provisions of the Coastal Act, certified Local Coastal Program or a coastal development permit. Additional penalties of not less than $1,000 per day, but not more than $15,000 per day, may be imposed for violations that are determined to be intentional and knowing.

Under PRC Section 30822, any funds derived from penalties awarded by a court are deposited into the Coastal Conservancy's Violation Remediation Account and subject to appropriation by the Legislature.

Under PRC Section 30620.1, funds deposited into the Coastal Act Services Fund are subject to appropriation by the Legislature to carry out the provisions of the Coastal Act.

Numerous other state and local agencies currently have the authority to impose administrative civil penalties for violations of applicable code sections, including but not limited to BCDC, State Lands Commission, California Energy Commission, State Department of Health Services, California Air Resources Board, Regional Air Pollution control Districts, Oil Spill Response Administrator, Department of Fish and Game, State Water Resources Control Board, Regional Water Quality Control Boards, and the Integrated Waste Management Board.

PROGRAM BACKGROUND

Currently, the CCC has the ability to issue restoration and cease and desist orders (essentially, to require a violator to stop violating the act and to restore the coast to its former state) after a public hearing, but does not have the ability to impose penalties on violators.

The Commission got its "order" authority in 1980. Prior to 1980, to stop any violations, the Coastal Commission had to sue in state court to get injunctive relief. Although litigation is cumbersome, expensive for all parties and time consuming, this gave the Commission the ability to ask for penalties at the same time that it asked for injunctive relief. Penalties requested through the courts were determined per Section 30820.

Once the Commission obtained order authority, it had more power to stop ongoing violations and to do so more quickly and with expending far fewer state resources than needed for litigation. Order authority has also allowed the Commission to resolve issues amicably through use of consent orders. In a consent order, the defendant agrees to the order and usually agrees to pay a penalty. The defendant has to voluntarily agree to the penalty, because the Commission has no ability to require that a penalty be paid, but the defendant usually receives the benefit of paying a much smaller penalty than those which could be imposed by a court pursuant to PRC Section 30820 and avoiding the costs and delays associated with litigation. Consent orders are heard by the full Commission in the same "formal" hearing manner as "contested" restoration and cease and desist orders (and therefore receive public review and input), but rarely generate much debate, if any. The irony is that violators who willingly cooperate with the Commission voluntarily agree to pay a penalty, but violators who contest the order are not fined. This creates a perverse incentive for non-cooperation.

Moreover, restoration of critical habitat and coastal resources done by agreement is typically done much faster and more thoroughly than in cases where the Commission is in an adverse position with the violator, such as litigation. Therefore, there are a number of reasons why consent resolutions are preferable both in terms of coastal resources and costs to the state.

However, despite this clear advantage, it is often difficult to create the incentive to settle. Parties who agree to settle pay penalties, and those who do not settle are rarely pursued for penalties because this requires litigation. A completely recalcitrant party may often be in a better position than a settling party, if they refuse to comply and take their chances that the state will not pursue them for penalties. For these parties, by and large, unless they challenge the administrative order in court and the state files a cross complaint for penalties and pursues it vigorously, they escape all penalties under the Coastal Act. <u>This directly undercuts the purpose of penalties under the Coastal Act—to deter violations and put parties who comply with the Coastal Act in a more favorable position than those who violate the Act.</u>

ANALYSIS

Penalties are a critical component of all environmental statutes and are the main means used to persuade would-be violators to comply with the law. The deterrent component of any regulatory scheme is important, and particularly for environmental laws where restoration of violations often is difficult or impossible, and cannot make the resource whole, a credible threat of penalties to prevent violations in the first place can greatly increase the ability of an environmental agency to obtain voluntary compliance, and greatly increase the amount of protection of the environment. This proposal would give the Coastal Commission the ability to impose administrative penalties on people found to be violating the Coastal Act, after a public hearing before the Commission.

At present, the CCC must go to court if it wishes to impose penalties. This is a very slow, expensive and resource-intensive means to impose penalties, and is therefore done infrequently.

Moreover, the CCC cannot represent itself in court; instead, the AG acts on the CCC's behalf. The AGs have limited resources, and so are unable to bring many cases.

So, for all practical purposes, there is no deterrent to violating the Coastal Act--the Coastal Act violators can easily escape penalties. Potential violators are aware that the CCC needs to go to court to obtain any penalties and can rarely do this; they don't have to pay any fines for their actions or even compensate the state for the costs of investigating the situation and bringing the matter to a hearing to compel the restoration work.

Moreover, absent the ability to use penalties to deter violations, there is very little disincentive for someone to just violate the Coastal Act and gamble that they will not be caught and even if they are caught, that the CCC will not be able to spend the great resources needed to pursue them for penalties.

This proposal would adopt the administrative penalty provisions contained similar to the McAteer-Petris Act, a similar coastal management law administered by the Bay Conservation and Development Commission. The administrative penalty provisions in that law have been in place and used for a number of years with great success. BCDC reports that these provisions allow them to resolve the vast majority of their cases without resorting to expensive and slow litigation.

This proposal will also give the Commission a means to encourage parties to agree to consent orders for both restoration and penalty resolution, reduce litigation costs generally and result in faster and more protective restoration projects.

Such administrative enforcement authority will allow the state to address more violations more efficiently, reduce litigation costs, and, more importantly, protect the coast and its critical resources by creating a deterrence and discouraging people from violating the Coastal Act. In addition, it will create a modest new revenue source for the Commission's core program work and reduce costs of litigation.

BILL NUMBER: SB 588
INTRODUCED
BILL TEXT

INTRODUCED BY Senator Evans

FEBRUARY 17, 2011

An act to amend Section 30823 of, and to add Section 30821 to, the Public Resources Code, relating to coastal resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 588, as introduced, Evans. Coastal resources: California Coastal Act of 1976: enforcement: penalties.

(1) The California Coastal Act of 1976 requires a person undertaking development in the coastal zone to obtain a coastal development permit in accordance with prescribed procedures. Existing law authorizes the superior court to impose civil liability on a person who performs or undertakes development that is in violation of the act or that is inconsistent with a previously issued coastal development permit, and on a person who violates the act in any other manner.

This bill would provide that a person who violates the act is subject to an administrative civil penalty that may be imposed by the California Coastal Commission by a majority vote of the commissioners, upon consideration of various factors, in a public hearing, and in an amount no less than $5,000 and no more than $50,000 for each violation.

This bill would provide that a person, as defined, shall not be subject to both monetary civil liability imposed by the commission and monetary civil liability imposed by the superior court for the same act or failure to act. In the event that a person who is assessed a penalty by the commission fails to pay the penalty, fails to comply with a restoration or cease and desist order, or challenges any of these actions in a court of law, the commission may maintain an action or otherwise engage in judicial proceedings to enforce those requirements and the court may grant any relief, as specified.

This bill would also allow the commission to record a lien on the property of a violator in the amount of the penalty assessed by the commission if the violator fails to pay the fine.

(2) The act also requires that all funds derived from the payment of a penalty are to be deposited into the Violation Remediation Account of the State Coastal Conservancy Fund, until appropriated by the Legislature, for purposes of carrying out the act.

This bill would instead require that all funds derived from the payment of a penalty be deposited into the Coastal Act Services Fund, until appropriated by the Legislature, for the purposes of carrying out the act.

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 30821 is added to the Public Resources Code, to read:

30821. (a) In addition to any other penalties imposed pursuant to this division, a person, including a landowner, who is in violation of a provision of this division is subject to an administrative civil penalty that may be imposed by the commission in an amount not less than five thousand dollars ($5,000) and not to exceed fifty thousand dollars ($50,000) for each violation.

(b) All penalties imposed pursuant to subdivision (a) shall be imposed by majority vote of the commissioners present in a duly noticed public hearing in compliance with the requirements of Section 30810, 30811, or 30812.

(c) In determining the amount of civil liability, the commission shall take into account the factors set forth in subdivision (c) of Section 30820.

(d) A person shall not be subject to both monetary civil liability imposed under this section and monetary civil liability imposed by the superior court for the same act or failure to act. In the event that a person who is assessed a penalty under this section fails to pay the administrative penalty, otherwise fails to comply with a restoration or cease and desist order issued by the commission in connection with the penalty action, or challenges any of these actions by the commission in a court of law, the commission may maintain an action or otherwise engage in judicial proceedings to enforce those requirements and the court may grant any relief as provided under this chapter.

(e) If a person fails to pay a penalty imposed by the commission pursuant to this section, the commission may record a lien on the property in the amount of the penalty assessed by the commission. This lien shall have the force, effect, and priority of a judgment lien.

(f) In enacting this section, it is not the intent of the Legislature that unintentional, minor violations that only cause de minimis harm should lead to civil penalties, if the violator has acted expeditiously to correct the violation consistent with this act.

(g) "Person," for the purpose of this section, does not include a local government, a special district, or an agency thereof when acting in a legislative or adjudicative capacity.

SEC. 2. Section 30823 of the Public Resources Code is amended to read:

30823. ~~Any~~ *All* funds derived under this article shall be ~~expended for carrying out~~ *deposited in* the ~~provisions~~ *Coastal Act Services Fund, established pursuant to subdivision (a)* of ~~this division, when~~ *Section 30620.1, until* appropriated by the ~~Legislature. Funds so derived shall be deposited in~~ *Legislature, for* the ~~Violation Remediation Account~~ *purpose* of ~~the Coastal Conservancy Fund until appropriated.~~ *carrying out this division.*