

**CALIFORNIA COASTAL COMMISSION**

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**W-36**

May 09, 2012

TO: Coastal Commissioners and Interested Public

FROM: Charles Lester, Executive Director  
 Sarah Christie, Legislative Director

SUBJECT: LEGISLATIVE REPORT FOR MAY, 2012

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 04/27/12. Changes in the status of some bills may have occurred between the date this report was prepared and the presentation date.**<sup>1</sup> 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](http://www.senate.ca.gov). This report can also be accessed through the Commission's World Wide Web Homepage at [www.coastal.ca.gov](http://www.coastal.ca.gov)

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2012 Legislative Calendar

Jan 1	Statutes take effect
Jan 4	Legislature reconvenes
Jan 10	Budget must be submitted by Governor
Jan 27	Last day to submit bill requests to Legislative Counsel
Feb 24	Last day for bill introduction
March 29	Spring Recess begins
April 9	Legislature reconvenes
April 27	Last day for Policy Committees to hear and report 1 <sup>st</sup> House fiscal bills to the Floor
May 11	Last day for Policy Committees to hear and report 1 <sup>st</sup> House non-fiscal bills to the Floor
May 18	Last day for Policy Committees to meet prior to June 7
May 25	Last day for Fiscal Committees to hear and report 1 <sup>st</sup> House fiscal bills to the Floor
May 29-June 1	Floor Session only. No committees may meet
June 1	Last day to pass bills from house of origin
June 4	Committee meetings may resume
June 15	Budget must be passed by midnight
June 28	Last day for a legislative measure to qualify for the November General Election ballot
July 6	Last day for Policy Committees to hear and report bills to the Floor from the second house
July 6	Summer Recess begins at the end of session if Budget Bill has been enacted
Aug 6	Legislature reconvenes
Aug 17	Last day for Fiscal Committees to meet and report bills to the Floor
Aug 20-31	Floor session only. No committees may meet
Aug 24	Last day to amend bills on the Floor
Aug 31	Last day for any bill to be passed. Interim Recess begins on adjournment of session

<sup>1</sup> 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 482 (Williams) Ventura Port District: dredging contracts**

This bill would authorize the Port of Ventura to bypass the competitive bidding process for dredging projects, provided that it contracts with a contractor who has been selected through the Federal competitive bidding process, and is currently engaged in a project that is already underway in the County of Ventura, provided that the District makes written findings that this would result in a cost savings for the District. Amendments of 1/13/12 add an urgency clause. If signed, this statute will take effect immediately.

Introduced                    02/15/11  
Status                         Senate Transportation and Housing Committee  
Last Amended                01/13/12

**AB 752 (Brownley) Tidelands and submerged lands: sea level action plans**

This bill would require local trustees of granted public tidelands (county, city or special districts) who receive at least \$250,000 per year in gross public trust revenues to prepare sea level action plans by July 1, 2013. The bill would also encourage, but not require, all other local trustees of granted public tidelands to prepare sea level action plans. The plans must include an assessment of impacts based on a range of sea level rise potentials, including fiscal impacts public lands, as well adaptation strategies for those impacts. The sea level rise plans shall be adopted after at least one public hearing, and submitted to the State Lands Commission.

Introduced                    02/17/11  
Last Amended                05/27/11  
Status                         Senate Natural Resources and Wildlife Committee, hearing cancelled at request of author.

**AB 1336 (Fletcher) Coastal resources: local coastal plans**

This is a spot bill.

Introduced                    02/18/11  
Status                         Assembly Rules Committee. Died at desk.

**AB 1776 (Fong) Western Pacific leatherback turtle**

This bill would designate the Western Pacific leatherback turtle as the state's official marine reptile, and designate October 15 of every year as Western Pacific Leatherback Turtle Day.

Introduced                    02/17/12  
Last Amended                03/22/12  
Status                         Senate Rules  
**Commission Position    Support**

**AB 1825 (Garrick) State parks: “Save the Ocean” mosaic**

This bill would authorize the City of Encinitas to place the “Save the Ocean” mosaic, aka the “Surfing Madonna” mosaic, in Moonlight State Park, without first gaining approval from the Department of Parks and Recreation.

Introduced 02/21/12  
Last Amended 03/29/12  
Status Held in Assembly Water, parks & Wildlife Committee

**AB 2178 (Jones) Coastal resources: California Coastal Act of 1976: coastal development**

This bill would specify that the construction or erection of a flag pole in the coastal zone does not is not a “structure” for the purpose of the Coastal Act. It would prohibit the denial of a flag pole based on impacts to scenic or visual resources.

Introduced 02/23/12  
Status Assembly Natural Resources Committee, set for hearing 05/05/12  
**Commission Position Oppose**

**AB 2211 (Jones) Coastal resources: California Coastal Act of 1976: goals and legislative findings and declarations**

This bill would amend Section 30007.5 so that conflicts between Chapter 3 policies would be resolved in a manner that balances the protection of coastal resources with the economic and social benefits of a project, including regional prosperity. It would also amend Section 30001.5 to define “social and economic needs” as infrastructure and development needed to support continued population and economic growth.

Introduced 02/24/12  
Status Assembly Natural Resources Committee, set for hearing 05/05/12  
**Commission Position Oppose**

**AB 2226 (Hueso) Agency proceedings: evidence: presumption**

This bill would require all state agencies and local governments to adhere to Section 662 of the Evidence Code when determining who holds full beneficial title to property, rather than following the Administrative Procedures Act or their own specific statute and regulations.

Introduced 02/23/12  
Last Amended 03/22/11  
Status Senate Rules Committee  
**Commission Position Recommend Oppose, Analysis Attached**

**AB 2595 (Hall) Desalination**

This bill would require the Ocean Protection Council (OPC) to convene the Seawater Desalination Permit Streamlining Task Force to study the opportunities for streamlining the permitting process and impediments to that process, and submit a report with recommendations to the Legislature by December 31, 2013. The Commission is one of nine agencies on the task force. The bill would authorize up to \$250,000 in Prop 84 bond funding to support the effort.

Introduced 02/24/12  
Status Assembly Appropriations Committee  
**Commission Position Oppose**

**AB 2767 (Hall) Marine resources: decommissioned oil rigs**

This bill would revise the calculation of “cost savings” and revise the factors to be taken into account in determining “net benefit to the marine environment” for the purpose of partial oil structure removal (“rigs to reefs”) as administered by the Department of Fish and Game.

Introduced 02/23/12  
Last Amended 03/22/11  
Status Assembly Appropriations Committee

**SCR 84 (Kehoe) California Coastal Protection Week**

This Senate Concurring Resolution commemorates the 40<sup>th</sup> anniversary of the passage of Proposition 20, acknowledges the ensuing accomplishments of the California Coastal Management Program, and designates the second week of September every year as California Coastal Protection Week.

Introduced 04/16/12  
Status Senate Rules Committee  
**Commission Position Recommend Support, resolution attached**

**SB 1 (Kehoe) 22<sup>nd</sup> Agricultural Association: Del Mar Racetrack: sale of state property**

As introduced, this bill would divide the 22<sup>nd</sup> 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, at which time Agricultural District 22a would be dissolved. Amendments of 01/10/12 would delete a provision in the Food and Agriculture Code that dissolves the State Race Track Leasing Commission. The result of this amendment would be the permanent establishment of the State Race Track Leasing Commission. This is the body that leases the Del Mar Race Track from the 22<sup>nd</sup> Ag District.

Introduced 12/06/10  
Last Amended 01/04/12  
Status Assembly Desk.

**SB 568 (Lowenthal) Recycling: polystyrene food containers**

This bill would prohibit any food vendor, after January 1, 2016, from dispensing prepared food to a customer in a polystyrene foam food container. The measure would not apply to correctional facilities, school districts, or food vendors selling freshly cut meat. Amendments taken on 5/23 and 5/15 would allow a school district or local government to dispense food in a polystyrene container if the applicable governing board elects to adopt a policy or ordinance elects to implement a verifiable recycling program for polystyrene foam food containers, effective July 1, 2017.

Introduced 02/17/11  
Last Amended 07/12/11  
Status Assembly Inactive File.

**Commission Position Support**

**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 Returned to Secretary of Senate.

**Commission position Support**

**SB 973 (Vargas) Environmental quality: California environment**

This bill would exempt certain types of “limited duration” events from the California Environmental Quality Act (CEQA). Such events include recreational tournament, sporting event, youth tournament, racing or walking event, fireworks display, holiday celebration, concert, military appreciation event, block party, wedding, job fair, festival and parade, street fair, beach and neighborhood cleanup, farmers' market, art market, or other similar event lasting 48 hours or less.

Introduced 01/19/12  
Status Senate Appropriations Committee

**SB 1066 (Lieu) Coastal resources: climate change**

This bill would authorize the Coastal Conservancy to fund and undertake projects related to climate change, giving priority to projects that maximize public benefits.

Introduced 02/13/12  
Last Amended 04/09/12  
Status Senate Appropriations Committee

**SB 1283 (Alquist) San Francisco Bay Area Sea Level Rise Planning Act**

This bill would establish the San Francisco Bay Area Sea Level Rise Planning Act, which would authorize a regional sea level rise management group, as defined, or local government agency to prepare and adopt an integrated sea level rise management plan for the San Francisco Bay area, in accordance with specified requirements. The bill would require a state agency that elects to develop an integrated sea level management plan to include specified criteria in that plan, and to prioritize funding for the plan, as prescribed.

Introduced 03/23/12  
Status Senate Natural Resources and Wildlife Committee, hearing cancelled at author's req.

**SB 1447 (Walters) Artificial reefs**

This bill would amend the Fish and Game Code to change the definition of an artificial reef to eliminate references to duplicating conditions of natural reefs and stimulating kelp growth, and include a reference to recreational scuba diving.

Introduced 02/24/12  
Status Senate Natural Resources Committee, hearing cancelled at author's request

**SB 1496 (Simitian) Energy: natural gas**

This bill would require the Energy Commission to conduct an assessment of the need for liquefied natural gas (LNG) imports to meet the state's energy demand. The bill would also require an applicant for an LNG facility to consult with the Department of Defense.

Introduced 02/24/12  
Last Amended 04/10/12  
Status Senate Appropriations Committee

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**BILL ANALYSIS****AB 2226 (Hueso) Agency proceedings: evidence: presumption**  
As Amended March 22, 2012**RECOMMENDED ACTION**

Staff recommends the Commission **Oppose AB 2226.**

**SUMMARY**

AB 2226 provides that the owner of legal title is presumed to be the owner of the full beneficial title in all proceedings before state agencies, cities and counties. The bill would require all state agencies and local governments to adhere to Section 662 of the Evidence Code when determining who holds full beneficial title to property, rather than following the Administrative Procedures Act or their own specific statute and regulations.

**PURPOSE OF THE BILL**

The stated purpose of the bill is to ensure that state and local agencies apply Section 662 of the Evidence Code to proceedings before those agencies. The practical effect would be to make it more difficult for state agencies and local governments to determine underlying ownership interests among properties.

**EXISTING LAW**

Under existing law, the Evidence Code applies only to judicial proceedings, not administrative hearings. Public agency proceedings are governed by the Administrative Procedures Act (APA) and/or specific statutes and regulations. The Coastal Commission's permit review process is generally not subject to the APA. The Commission's regulations include the following standard:

## 13065. Evidence Rules.

The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be considered if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Unduly repetitious or irrelevant evidence shall be excluded upon order by the chairperson of the commission.

Section 662 of the Evidence Code requires the court to assume that the holder of title is entitled to full beneficial title, unless "clear and convincing proof" can be provided to demonstrate otherwise. But the Evidence Code and the Code of Civil Procedure also provide participants in judicial proceedings with the tools to obtain such proof—tools such as the power of discovery, subpoena, deposition, and sworn testimony. In contrast, of the Commission's actions must be supported by substantial evidence, a reasonable but less demanding standard.

## **PROGRAM BACKGROUND**

The question of underlying property ownership is raised not infrequently in Commission development reviews, and can be an essential component of determining the approvable scale and design of projects, consistent with the Coastal Act, in any given case. The Coastal Commission is currently involved in seven cases of pending litigation involving the question of underlying property ownership

## **ANALYSIS**

This bill addresses the question of how state agencies and local governments shall determine property ownership when there is a question whether the holder of legal title is the entity who has actual possession or control of the property. Under current law, judicial proceedings are governed by the strict rules of the Evidence Code, and must presume that the holder of legal title of a property is the actual owner or holder of full beneficial title. This presumption may only be rebutted by “clear and convincing evidence”. The Evidence Code and the Code of Civil Procedure also give parties in a judicial proceeding the tools of deposition, subpoena and sworn testimony to conduct discovery, as a means of obtaining the necessary “clear and convincing proof.” State agencies and local governments generally don’t have this full range of investigatory tools outside the context of judicial proceedings.

Additionally, current law provides that quasi-adjudicatory proceedings by state and local agencies, including the Commission’s permit review process, are subject to the less strict threshold of “substantial evidence”.

AB 2226 extends a narrow provision of the Evidence Code, Section 662, to all state agencies and local governments by superseding longstanding principles of administrative law in the area of title determination, requiring state regulators and local governments to obtain “clear and convincing proof” when evaluating whether any entities other than those listed as holding title own a beneficial interest in a property.

Determining parcel ownership is critical when it comes to land use planning and permitting, because parcel ownership is a fundamental determinant for development proposals and liability. Occasionally, applicants will attempt to maximize development potential and avoid liability by creating corporate entities that hold separate title to individual parcels, even though persons not listed as holding title may own beneficial interests in those properties. In these situations, assuming that the holder of title to a property is entitled to full beneficial title can be a crude and superficial method of establishing underlying ownership patterns. Although there are often entirely appropriate business reasons for the formation of such corporate entities, they can also be effective devices for concealing who has financial stakes in a development venture and for creating entities that appear to be entirely separate when they are in fact closely intertwined.

AB 2226 would bind state agencies and local governments with the strictures of the Evidence code, without giving them the full range of discovery tools available in judicial proceedings. This would allow applicants to potentially game the system, by preventing state agencies from ascertaining who actually owns a parcel of land. It would make it demonstrably more difficult for state agencies to pierce the corporate veil or otherwise determine the actual business realities behind mere record title to land ownership, as a function of responsibly carrying out their statutory mandates. By requiring all state agencies and local governments to adhere to Section 662 of the Evidence Code when assessing who holds full beneficial title to property, rather than following the Administrative Procedures Act or their own specific statute and regulations, AB 2226 sets an unreasonably high bar.



On the ground, AB 2226 could lead to more fragmented, inappropriate development and have a chilling effect on the Commission's ability to further the goal of locating new development in areas of adequate existing services and in a manner protective of coastal resources as required by the Coastal Act. Alternatively, if the Commission has to meet the standard of "clear and convincing proof" for rebutting the presumption of full beneficial title, without the tools of discovery to obtain such proof, it is not unreasonable to anticipate additional, significant delays in processing certain permit applications, and/or a diversion of staff time in the pursuit of information not readily forthcoming from the applicant. We can foresee that this bill may have far reaching impacts on numerous other state agencies and local governments, in a variety of ways that are beyond the scope of this analysis, but may involve disputes over boundary determinations, lease agreements and polluted property.

Staff recommends the Commission **Oppose AB 2226.**

**BILL NUMBER: AB 2226 -AMENDED  
BILL TEXT**

**AMENDED IN ASSEMBLY MARCH 22, 2012**

**INTRODUCED BY Assembly Member Hueso**

**FEBRUARY 24, 2012**

An act to add Sections 11440.70 and 50035 to the Government Code, relating to government proceedings.

**LEGISLATIVE COUNSEL'S DIGEST**

AB 2226, as amended, Hueso. Agency proceedings: evidence: presumption.

The Administrative Procedure Act governs the conduct of formal and informal proceedings before state agencies, as defined. Existing law specifies that in proceedings and hearings before a court, a presumption exists that the owner of the legal title to property is presumed to be the owner of the full beneficial title.

This bill would require a state agency, as defined, and a city, county, or city and county to apply that presumption in proceedings before that state agency, city, county, or city and county.

Vote: majority. Appropriation: no. Fiscal committee: no.

State-mandated local program: no.

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

SECTION 1. (a) California's real estate economy is an essential part of the state's economy.

(b) Stable and predictable title is an essential element of a functioning real estate economy.

(c) The presumption of ownership of property specified in Section 662 of the Evidence Code is intended to provide certainty of title by creating a presumption that the owner of property is the owner of the full beneficial title, which may be rebutted only by clear and convincing evidence.

(d) The need to provide for certainty of title extends not only to court proceedings, but also to proceedings before state and local agencies.

(e) The purposes of this act is to ensure that state and local agencies apply Section 662 of the Evidence Code to proceedings before those agencies.

SEC. 2. Section 11440.70 is added to the Government Code, to read:

11440.70. In any ~~proceedings~~ *proceeding before an agency* pursuant to this chapter ~~or~~, Chapter 5 (commencing with Section 11500), *or any other statute or regulation*, if the title to, or ownership of, property is in question, Section 662 of the Evidence Code shall control the determination of ownership. *Notwithstanding Section 11415.10 or 11415.20, or any other law, this section shall apply to all state agencies, even if the state agency is otherwise exempt from this chapter or if the governing procedure of the agency is determined by a different statute or regulation.*

SEC. 3. Section 50035 is added to the Government Code, to read:

50035. In any proceeding before a city, county, or city and county, if the title to, or ownership of, property is in question, Section 662 of the Evidence Code shall control the determination of ownership.

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**BILL NUMBER: SCR 84****INTRODUCED  
BILL TEXT**

**INTRODUCED BY Senator Kehoe  
(Coauthors: Senators Evans, Leno, Lieu, Lowenthal, Pavley, Steinberg, and Wolk)**

**APRIL 16, 2012**

**Relative to California Coastal Protection Week.**

**LEGISLATIVE COUNSEL'S DIGEST**

SCR 84, as introduced, Kehoe. California Coastal Protection Week.

This measure would urge all Californians to observe the week of September 8-15, 2012, as California Coastal Protection Week, and would designate that week, and the 2nd week of September every year thereafter as California Coastal Protection Week.

Fiscal committee: no.

WHEREAS, The enduring beauty of the California coastline is an irreplaceable and continuing source of inspiration, transformation, and spiritual renewal that has always been, and continues to be, a magnet for people of all ages, means, and creeds; and

WHEREAS, On November 7, 1972, the voters of California passed Proposition 20, which enacted the California Coastal Zone Conservation Act, by a majority vote of 55.1 percent; and

WHEREAS, Proposition 20 created the California Coastal Commission as part of the state's first coastal management program for the protection of significant coastal resources and public access; and

WHEREAS, The "Save Our Coast" campaign to pass Proposition 20 was successful despite being outspent by the opponents by a margin of greater than 4:1; and

WHEREAS, The "Save Our Coast" campaign was a true grassroots effort organized by the Coastal Alliance, which grew to a coalition of more than 700 environmental, business, and labor groups led by Janet Adams, united by a common goal of saving the California coast for the benefit of future generations; and

WHEREAS, Proposition 20 provided the framework for creating the Coastal Plan, one of the most ambitious experiments in participatory land use planning ever attempted. More than 6,000 California citizens attended 259 public hearings over the course of three years, providing thousands of hours of public testimony that were condensed into the 161 recommendations to the Legislature embodied in the California Coastal Plan; and

WHEREAS, The Legislature heeded many of those recommendations in the plan, and complied with the voters' mandate to enact a permanent state coastal protection law within four years by passing Senate Bill 1277 of the 1975-76 Regular Session, (Chapter 1330 of the Statutes of 1976), which enacted the California Coastal Act of 1976 (Division 20 (commencing with Section 30000)); and

WHEREAS, California's coastal management program, which is implemented and administered by state agencies including the California Coastal Commission, the San Francisco Bay Conservation and Development Commission, and the State Coastal Conservancy, was described as the nation's "flagship" coastal program when it received federal approval in 1977, giving the state critical authority over federal projects such as offshore oil drilling and military activities; and

WHEREAS, Since the passage of Proposition 20, the state has created 2,000 new public accessways, designated over 500 miles of the Coastal Trail, and protected thousands of acres of beaches, wetlands, woodlands, and dunes from inappropriate development; and

WHEREAS, Since the passage of Proposition 20 the state has prevented any new offshore oil drilling in federal waters and minimized the risk of a catastrophic marine oil spill; and

WHEREAS, Since the passage of Proposition 20 the state has encouraged, supported, and approved adequate amounts of important public infrastructure and energy facilities, and appropriately sited and designed commercial, residential, and visitor-serving development within the coastal zone, as evidenced by the state's \$14 billion-dollar coastal economy; and

WHEREAS, California's clean and healthy coastal beaches, bays, bluffs, forests, fens, wetlands, estuaries, and dunes, and the trails, rivers, roads, and communities that connect them, draw over 100 million visitors annually; and

WHEREAS, California residents continue to express their ongoing support for coastal protection through numerous volunteer activities including Coastal Cleanup Day, the largest all-volunteer annual activity in the state; and

WHEREAS, This year, 2012, marks the 40th anniversary of the passage of Proposition 20 and the beginning of statewide coastal protection in California as we have come to know it; now, therefore, be it

Resolved, by the Senate of the State of California, the Assembly thereof concurring, that the Legislature urges all Californians to observe the week of September 8-15, 2012, as California Coastal Protection Week; and be it further

Resolved, That the Legislature designates the week of September 8-15, 2012, and the second week of September every year hereafter as California Coastal Protection Week; and be it further

Resolved, That the Legislature encourages California public schools to include coastal protection in their outdoor education curriculum whenever possible during the month of September; and be it further

Resolved, That the Legislature calls upon all Californians to observe California Coastal Protection Week by recognizing the passion, dedication, and commitment to the cause of coastal protection exhibited by ordinary citizens involved in the campaign to pass Proposition 20; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the author for appropriate distribution.