

CALIFORNIA COASTAL COMMISSION

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**W-35a**

DATE: April 10, 2013
TO: Coastal Commissioners and Interested Public
FROM: Charles Lester, Executive Director
 Sarah Christie, Legislative Director
SUBJECT: LEGISLATIVE REPORT FOR APRIL, 2013

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 03/27/13. 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

2013 Legislative Calendar

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|-----------|---|
| Jan 1 | Statutes take effect |
| Jan 7 | Legislature reconvenes |
| Jan 10 | Budget must be submitted by Governor |
| Jan 25 | Last day to submit bill requests to Legislative Counsel |
| Feb 22 | Last day for bill introduction |
| March 21 | Spring Recess begins |
| April 1 | Legislature reconvenes |
| May 3 | Last day for Policy Committees to hear and report 1 st House fiscal bills to the Floor |
| May 10 | Last day for Policy Committees to hear and report 1 st House non-fiscal bills to the Floor |
| May 17 | Last day for Policy Committees to meet prior to June 7 |
| May 24 | Last day for Fiscal Committees to hear and report 1 st House fiscal bills to the Floor |
| May 28-31 | Floor Session only. No committees may meet |
| May 31 | Last day to pass bills from house of origin |
| June 3 | Committee meetings may resume |
| June 15 | Budget must be passed by midnight |
| July 3 | Summer Recess begins at the end of session if Budget Bill has been enacted |
| Aug 5 | Legislature reconvenes from Summer Recess |
| Aug 16 | Last day for Policy Committees to hear and report bills to the Floor |
| Aug 30 | Last day for Fiscal Committees to meet and report bills to the Floor |
| Sept 3-13 | Floor session only. No committees may meet |
| Sept 6 | Last day to amend bills on the Floor |
| Sept 13 | 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 158 (Levine) Solid waste: single-use carryout bags

This bill would prohibit specified retail outlets from providing plastic single-use carryout bags. The bill also creates standards for the manufacture of reusable grocery bags.

Introduced 01/22/13
Last Amended 03/20/13
Status Assembly Natural Resources Committee.

AB 203 (Stone) Coastal Act: compliance first

This bill would authorize the Coastal Commission to require the resolution of an existing Coastal Act violation through the approval and conditions of a new development application.

Introduced 01/30/13
Last Amended 03/11/13
Status Assembly Natural Resources Committee
Commission Position [Recommend Support, Analysis Attached](#)

AB 248 (Gorell) Energy: power plants: Ventura County

This bill states that it is the intent of the Legislature to enact subsequent legislation that would require the Public Utilities Commission and the Independent System Operator, in consultation with specified entities including the Coastal Commission, to submit a report to the Legislature by January 1, 2014, detailing recommended legislative actions, policies and incentives necessary to accomplish specific objectives related to once-through-cooling technologies at Ventura County's two coastal power plants.

Introduced 02/07/13
Status Assembly Natural Resources Committee.

AB 521 (Hueso and Stone) Solid waste: plastic

This bill states that it is the intent of the Legislature to enact legislation that would create the Plastic Pollution Reduction Producer Responsibility Act for the purpose of reducing plastic pollution in the marine environment.

Introduced 02/20/13
Status Assembly Natural Resources Committee.

AB 691 (Muratsuchi) State lands: granted trust lands: sea level rise

This bill would require a local trustee whose gross public trust annual revenues exceed \$250,000 to prepare an assessment describing how it proposes to address sea level rise on state tidelands. The report would be submitted to the State Lands Commission by July 1, 2019.

Introduced 02/21/13
Last Amended 03/11/13
Status Assembly Natural Resources Committee.

AB 727 (Stone) Public trust lands: dredging

This bill would require a grantee of public trust tidelands to notify the State Lands Commission, in writing, if the grantee intends to undertake dredging activities, and provide specified information regarding the project. The State Lands Commission would make a determination whether or not the proposal requires a subsequent lease.

Introduced 02/21/13
Last Amended 03/21/13
Status Assembly Natural Resources Committee.

AB 754 (Muratsuchi) Income taxes: voluntary contributions: California Beach and Coastal Enhancement Account

This bill would authorize California state taxpayers to make a voluntary contribution in excess of their tax liability to the California Beach and Coastal Enhancement Account, to augment the Coastal Commission's Whale Tail Grants Program.

Introduced 02/22/13
Last Amended 03/14/13
Status Assembly Rules Committee
Commission Position [Recommend Support, analysis attached](#)

AB 881 (Chesbro) Oil spill prevention and administrative fee

This bill would increase the existing \$0.08 fee on barrels of crude oil or petroleum products landed at a marine terminal, eliminate the sunset on the existing fee of \$0.065, allow the OSPR Administrator to adjust the fee annually based on the California Consumer Price Index, and transfer a portion of fees collected to the Oiled Wildlife Care Network

Introduced 02/22/13
Status Assembly Natural Resources Committee & Water, Parks and Wildlife
Commission Position [Recommend Support, Analysis Attached](#)

AB 976 (Atkins) Coastal resources:

This bill would authorize the Commission to impose administrative penalties for violations of the Coastal Act. All funds collected under this provision would be deposited in the Coastal Act Services Fund.

Introduced 02/22/13
Last Amended 03/19/13
Status Assembly Natural Resources Committee
Commission Position [Recommend Support, Analysis Attached](#)

AB 1223 (Stone) Safe Drinking Water Act

This is a spot bill.

Introduced 02/22/13
Status Assembly Rules Committee

SB 40 (Pavley) Safe, Clean, and Reliable Drinking Water Act of 2012

This bill declares that it is the intent of the Legislature to amend the Safe, Clean, and Reliable Drinking Water Act of 2012 for the purpose of reducing and potentially refocusing the \$11,140,000,000 bond.

Introduced 12/10/12
Last Amended 01/17/13
Status Senate Natural Resources and Water Committee

SB 241 (Evans) Oil Severance Tax Law

This bill would impose a severance tax on each barrel of oil extracted from California, and allocate those revenues to the UC Regents, the California State University Trustees, the Board of Governors for the Community Colleges, and the Department of Parks and Recreation.

Introduced 02/12/13
Status Senate Governance and Finance Committee

SB 257 (Hancock) Coastal resources

This bill states that it is the intent of the Legislature to enact legislation to address coastal physical adaptations to climate change.

Introduced 02/13/13
Status Senate Rules Committee

SB 387 (Wright) Coastal resources: once through cooling

This bill would require the State Water Resources Control Board to authorize once-through-cooling systems for existing power plant facilities, consistent with federal laws and regulations.

Introduced 02/20/13
Status Environmental Quality Committee

SB 461 (Leno) State tide and submerged lands: mineral extraction leases: revenues.

This bill states that it is the intent of the Legislature to establish the Coastal Trust Fund through re-allocation of revenues generated from the mineral leases on state tidelands.

Introduced 02/13/13
Status Senate Rules Committee

SB 511 (Lieu) Coastal resources: California Coastal Act of 1976: oceanfront land

This is a spot bill.

Introduced 02/21/13
Status Senate Rules Committee

SB 671 (Monning) California Coastal Act of 1976: natural shorelines

This bill states that seawalls, groins and revetments shall be designed to account for sea level rise.

Introduced 02/22/13
Status Senate Natural Resources and Water Committee

SB 700 Wolk Natural resources: parks: carryout bags

This bill would require retail establishments to charge a \$.05 fee for single-use carryout bags. A portion of the fee would be deposited into the Local Environmental Enhancement Fund (LEEF), which would be created by this bill. Funds from the LEEF would be available for expenditure by the Natural Resources Agency, upon appropriation by the Legislature, as grants to local governments for parks maintenance and litter abatement.

Introduced 02/22/13
Status Senate Rules Committee

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**BILL ANALYSIS****AB 203 (Stone)**

As Amended, March 11, 2013

SUMMARY

AB 203 would add Public Resources Code Section 30825 to the Coastal Act, prohibiting the Coastal Commission from accepting an application for a coastal development permit (CDP) for processing if the property is subject to an unresolved violation of the Coastal Act, unless the Executive Director determines that the application fully resolves the violation. The bill explicitly would not apply to de minimis violations, LCPs or public work plans, or unaffiliated operators within a port, harbor or marina.

PURPOSE OF THE BILL

The purpose of the bill is to improve the Commission's ability to resolve Coastal Act violations, improve procedural efficiencies, and streamline the coordination between permitting and enforcement.

EXISTING LAW

Under existing law, the Commission has limited authority to require applicants to resolve outstanding violations prior to, or in the context of, applying for additional development on the same property through a CDP application. Although the Commission frequently encourages the resolution of violations in the context of pending permit applications, the Coastal Act does not expressly require resolution of violations prior to the approval of permits. Permit applicants often contest the Commission's authority to address violations in the context of permit proceedings.

PROGRAM BACKGROUND

After a public hearing, the Coastal Commission can issue cease and desist, consent and restoration orders to compel Coastal Act violators to resolve violations of the Act. In addition, the Coastal Commission may initiate litigation in state court for injunctive relief to resolve Coastal Act violations. Under Public Resources Code 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.

Independent of the foregoing authority, parties can apply for CDPs for new development at sites with current Coastal Act violations, including both violations of prior permits and violations involving wholly unpermitted development on the site. When acting on such a CDP application, the Commission's authority to address violations on the site is often contested, especially if the violations are arguably unrelated to the determination of whether the proposed development, when viewed in isolation, is consistent with Coastal Act or LCP requirements. In these instances,

to avoid legal uncertainty the Commission must undertake a separate enforcement action completely independent of the CDP application to resolve the violations. This requires the Commission to engage in additional negotiations with the applicant/violator, prepare another staff report (enforcement order), and hold another hearing on the matter, rather than having the two issues addressed together. This is an inefficient use of state resources that cannot be justified in the current budget/economic climate. The approach is costly for all parties, and can delay the resolution of serious and ongoing violations for years with harmful effects on coastal resources.

In contrast, many state agencies and local governments have the authority to require applicants to resolve outstanding issues prior to or at the same time as an application for new development is considered. This approach conserves resources and creates an incentive to voluntarily resolve outstanding violations.

ANALYSIS

The Commission currently has a backlog of over 1,800 open enforcement cases statewide. Budget cuts have reduced the number of enforcement staff assigned to statewide casework, and new cases are reported faster than the Commission can resolve existing violations. The Commission needs additional tools to help resolve Coastal Act violations in the most efficient, cost-effective manner possible. Streamlining the work of permitting and enforcement staff so that existing violations can be resolved in the context of a permit application for new development would be a cost-effective and efficient use of staff resources.

Staff estimates that AB 203 would be applicable to approximately 10% of the existing enforcement caseload. This measure would provide an incentive for property owners to resolve outstanding violations in advance of a new CDP application, because they would be ineligible for any additional development until such time as the violation has been demonstrably cured. Alternatively, this measure would give the Commission clear authority to resolve outstanding violations as part of a CDP application.

If enacted, this process could facilitate resolution of violations without litigation or Cease and Desist orders. This would save time and money for both the Commission and the applicant. As an additional benefit to applicants, violations could be resolved in this manner without being subject to penalties. It is far better to attempt to resolve these issues and avoid the expensive, adversarial process.

SUPPORT

California Coastkeeper Alliance

OPPOSITION

None on file

RECOMMENDED POSITION

Staff recommends the Commission **Support** AB 203

AMENDED IN ASSEMBLY MARCH 11, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 203

Introduced by Assembly Member Stone
(Coauthor: Assembly Member Ting)

January 30, 2013

An act to add Section 30825 to the Public Resources Code, relating to coastal resources.

LEGISLATIVE COUNSEL'S DIGEST

AB 203, as amended, Stone. Coastal resources: coastal development permits: penalties.

The California Coastal Act of 1976 requires any person undertaking development in the coastal zone to obtain a coastal development permit issued by the California Coastal Commission in accordance with prescribed procedures. The act authorizes civil liability to be imposed on any person who performs or undertakes development that is in violation of the act or that is inconsistent with any previously issued coastal development permit, subject to specified maximum and minimum amounts, varying according to whether the violation is intentional and knowing.

The bill would prohibit the commission, with exceptions, from filing as complete, or acting upon, an application for a coastal development permit for a project on property that is subject to an existing violation case for which a violation notification letter has been sent, or a cease and desist order, restoration order, or notice of violation has been issued or recorded until the violation has been resolved. The bill would authorize the commission to resolve any unresolved dispute between the executive director and an applicant regarding the implementation

of the above provision at a noticed hearing. This bill would authorize the commission to file as complete an application for a coastal development permit for development on such a property if the violation is de minimis, as defined. This bill would prohibit the commission from taking action on the application until the de minimis violation has been resolved, as determined by the executive director. *The bill would specify that those provisions shall not apply to a new development application for a development in a harbor, port, or marina for a project that is individually owned or leased by a separate party that is unaffiliated with an open, existing violation case, as described.*

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

The people of the State of California do enact as follows:

1 SECTION 1. Section 30825 is added to the Public Resources
 2 Code, to read:
 3 30825. (a) Except as provided in subdivision (d), the
 4 commission shall not file as complete or act upon an application
 5 for a coastal development permit for a project on property that is
 6 subject to an open, existing violation case for which a violation
 7 notification letter has been sent, or a cease and desist order,
 8 restoration order, or notice of violation has been issued or recorded
 9 pursuant to Section 30809, 30810, 30811, or 30812 until the
 10 violation has been resolved, as determined by the executive director
 11 and consistent with this division.
 12 (b) Subdivision (a) does not apply if the executive director
 13 determines that the application includes a provision that would
 14 fully resolve the violation consistent with this division.
 15 (c) Any unresolved dispute between the executive director and
 16 an applicant regarding the implementation of this section may be
 17 resolved by the commission at a noticed hearing pursuant to
 18 subdivision (d) of Section 13056 of Title 14 of the California Code
 19 of Regulations.
 20 (d) (1) Notwithstanding subdivision (a), the commission may
 21 file as complete an application for a coastal development permit
 22 for development on a property described in subdivision (a) if the
 23 violation is a de minimis violation. If the commission accepts an
 24 application to which this subdivision applies, the commission may

1 not take action on the application until the violation has been fully
2 resolved, as determined by the executive director.

3 (2) For purposes of this subdivision, “de minimis violation”
4 means a violation that is so minor in nature that it may be easily
5 resolved through voluntary actions on the part of the property
6 owner.

7 (e) Subdivision (a) does not apply to an action by a local agency
8 that is associated with processing, submitting, certifying, or
9 implementing an amendment to, or original submission of, a local
10 coastal program, public works plan, or component of a local coastal
11 program or public works plan.

12 (f) *This section shall not apply to a new development application*
13 *for a development in a harbor, port, or marina for a project that*
14 *is individually owned or leased by a separate party that is*
15 *unaffiliated with an open, existing violation case, as described in*
16 *subdivision (a).*

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BILL ANALYSIS
AB 754 (Muratsuchi) Voluntary contributions:
California Beach and Coastal Enhancement Account
As Amended February 21, 2013

RECOMMENDED ACTION

Staff recommends the Commission **Support** AB 754.

SUMMARY

AB 754 would authorize California state taxpayers to make a voluntary contribution in excess of their annual tax liability to the California Beach and Coastal Enhancement Account (CBCEA), to augment the Coastal Commission's WHALE TAIL[®] Grants Program.

PURPOSE OF THE BILL

The purpose of the bill is to increase funding for the Coastal Commission's public education grant program.

EXISTING LAW

Vehicle Code Section 5067 establishes of the WHALE TAIL[®] License Plate, and designates how funds are to be distributed and expended. Upon annual appropriation of the Legislature, a portion of the funds received from Whale Tail License Plate is made available to the Coastal Commission for distribution as grants to non-profit organizations and local governments. Vehicle Code Section 5067 (b)(1) establishes the California Beach and Coastal Enhancement Account. Funds deposited into the CBCEA from the Environmental License Plate Account are made available, upon appropriation by the Legislature, to the Coastal Commission and the State Coastal Conservancy.

PROGRAM BACKGROUND

The California Coastal Commission's WHALE TAIL[®] License Plate was established as a mechanism through which the public can contribute funds to coastal and marine education programs in California. For each new plate that is sold, approximately \$13.86 is deposited in the CBCEA. Annual renewal fees deposit approximately \$19.71 per plate into the account. Additional funds are deposited in the Environmental License Plate Fund (ELPF), which funds environmental programs in other state agencies. As of December 31, 2012, a total of 210,763 license plates have been sold. WHALE TAIL[®] License Plate sales and renewal fees (plus miscellaneous other small fees) have contributed \$20.2 million to the CBCEA, and \$49.3 million to the ELPF. (The additional fees that are charged for personalized plates go to the ELPF.)

The Coastal Commission launched the WHALE TAIL[®] License Plate Grants Program in 1998 to support local marine and coastal education efforts in California. In the first WHALE TAIL[®] Grant cycle in FY1998-99, the Coastal Commission allocated \$130,000 in local assistance

funding from the CBCEA. As WHALE TAIL[®] License Plate revenues increased, the size of the grant program increased, with the Coastal Commission awarding \$798,000 in FY 2012-13. The first fourteen years of the program have provided a combined total of \$7.7 million, supporting a total of 461 projects throughout the state of California, which are estimated to have reached a total of 11.6 million people.

WHALE TAIL[®] grants support programs that teach California's children and the general public to value and take action to improve the health of the state's marine and coastal environments. Examples of projects that have received funding include: school programs emphasizing stewardship of the coast and ocean, watershed education, marine science summer camps, wetland and sand dune habitat restoration, equipment for marine science laboratories, trips to the beach for children from inland and underserved communities, educational boat trips, beach and river cleanups, ocean-related museum exhibits, water quality monitoring and education, pollution prevention programs, tide pool education, and beach wheelchair purchases.

Some grants are awarded using a non-competitive, targeted strategy identifying high priority projects that are an outgrowth of work begun under previous Commission grants or linked to existing Commission programs and the goals of the Commission's strategic plan. Others are awarded competitively, after publicizing available funds and inviting nonprofits, schools, and local government agencies to apply.

Voluntary tax contributions, or "tax check offs," are a popular way for some state agencies and public/private programs to receive additional revenues. When California taxpayers are filing their returns, they have the option to donate some portion of their tax liability to an organization or organizations of their choice. These contributions are reported by the Franchise Tax Board and collected by the State Controller for contribution is the specified fund.

AB 754 would require the Coastal Commission's check-off to generate a minimum of \$250,000 per year in order to remain on the State tax forms. If, in any year, the Commission's tax check-off raised less than \$250,000, it would not appear on the following year's forms. Regardless of revenues, AB 754 would sunset after five years, unless re-authorized by the Legislature.

If enacted, AB 754 would place the Coastal Commission's "tax check-off" on State tax forms when an existing check-off either reaches its statutory sunset date or fails to generate its statutory minimum amount. The 2012 tax forms include 19 tax check-off choices. Four tax check-offs added in 2010 failed to raise the minimum amount required to remain on the 2012 tax forms. More details about the tax check offs can be found at <https://www.ftb.ca.gov/individuals/vcfsr/indvolcon.shtml>.

ANALYSIS

The Coastal Commission receives annual requests for the WHALE TAIL[®] grant program far in excess of its available funding. The Commission's 2012 competitive grant cycle received applications totaling over 500% more than the Commission's available funds. Out of 113 applications submitted, there was funding available to support only 24 proposals. On average, the competitive grant cycle has been able to award only 15% of the total amount requested. Many

excellent projects must be turned down for funding, even though the staff believes they would be a good match for the grant program's goals and priorities. .

The competitiveness of the WHALE TAIL[®] Grants Program reflects the fact that it fills an important niche for which few resources are available. There are very few grant programs that fund marine and coastal education in California, especially for programs that are tailored to meet local needs and address topics of local concern. WHALE TAIL[®] grants reach geographically and culturally diverse audiences, and emphasize programs aimed at underserved populations. Additional funds are needed to more fully meet current needs. In addition, the population of California grows, the need for the programs funded by WHALE TAIL[®] grants will also increase.

The need for and benefits of environmental education are well-documented. As stated in the Coastal Act (Section 30012(a)), "an educated and informed citizenry is essential to the well-being of a participatory democracy and is necessary to protect California's finite natural resources."

It is unclear how much additional revenue might be generated for the Commission as a result of AB 754. Existing check-offs generated between \$35,317 and \$558,681 in 2012. The amount generated by the Coastal Commission's check-off could be affected by a variety of variables, including the Commission's effectiveness at marketing the program, the popularity of competing check-offs, and the general state of the economy. However, if it only generated \$250,000 per year (the minimum amount required to remain on the tax form), that could enable the Commission to award between 5-50 additional grant requests between \$5,000 and \$50,000 each. A successful marketing campaign and a strong economy could potentially net higher amounts for the program. All of the revenues generated by this program would be used to augment the Commission's existing Public Education grant program.

If successful, AB 754 could be a small but significant source of additional revenue for the Public Education Program. Due to the small size of most grants, even a modest increase in funding could support a significant number of additional requests. Given the popularity of the WHALE TAIL[®] License Plate, it is possible that public support for this additional option to support the Public Education Program could be strong from the outset.

SUPPORT

None on file

OPPOSITION

None on file

RECOMMENDED POSITION

Staff recommends the Commission **Support** AB 754

AMENDED IN ASSEMBLY MARCH 14, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 754

Introduced by Assembly Member Muratsuchi

February 21, 2013

~~An act to amend Section 23501 of the Revenue and Taxation Code, relating to taxation.~~ *An act to add and repeal Article 5.1 (commencing with Section 18745) of Chapter 3 of Part 10.2 of Division 2 of the Revenue and Taxation Code, relating to taxation.*

LEGISLATIVE COUNSEL'S DIGEST

AB 754, as amended, Muratsuchi. ~~Corporation income taxes.~~ *Income taxes: voluntary contributions: California Beach and Coastal Enhancement Account.*

The Personal Income Tax Law authorizes individuals to contribute amounts in excess of their tax liability for the support of specified funds. Existing law creates the California Beach and Coastal Enhancement Account in the California Environmental License Plate Fund.

This bill would authorize individuals to designate on their tax returns that a specified amount in excess of their tax liability be transferred to the California Beach and Coastal Enhancement Account. This bill would require that all moneys contributed to the fund pursuant to these provisions, upon appropriation by the Legislature, be allocated to the Franchise Tax Board and the Controller for reimbursement and to the California Beach and Coastal Enhancement Account for grants and programs that preserve, protect, or enhance coastal resources and promote coastal and marine educational activities for underserved communities.

This bill would provide that these voluntary contribution provisions are inoperative and repealed on the earlier of the following: inoperative on January 1 of the 5th taxable year following the taxable year the fund first appears on the tax return and repealed on December 1 of that taxable year or inoperative for taxable years beginning on or after January 1 of the calendar year in which the Franchise Tax Board estimates by September 1 that the contributions made on returns filed in that calendar year will be less than \$250,000, or an adjusted amount for subsequent taxable years, and are repealed on December 1 of that calendar year.

~~The Corporation Tax Law imposes a tax upon every corporation at a specified rate upon its net income derived from sources within this state, except as otherwise provided.~~

~~This bill would make a technical, nonsubstantive change to this provision.~~

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

The people of the State of California do enact as follows:

1 *SECTION 1. Article 5.1 (commencing with Section 18745) is*
 2 *added to Chapter 3 of Part 10.2 of Division 2 of the Revenue and*
 3 *Taxation Code, to read:*

4
 5 *Article 5.1. California Beach and Coastal Enhancement Account*
 6
 7 *18745. (a) An individual may designate on the tax return that*
 8 *a contribution in excess of tax liability, if any, be made to the*
 9 *California Beach and Coastal Enhancement Account established*
 10 *by paragraph (1) of subdivision (c) of Section 5067 of the Vehicle*
 11 *Code.*

12 *(b) A contribution shall be in full dollar amounts and may be*
 13 *made individually by each signatory on a joint return.*

14 *(c) A designation made under subdivision (a) shall be made for*
 15 *any taxable year on the original return for that taxable year, and*
 16 *once made shall be irrevocable. In the event that payments and*
 17 *credits reported on the return, together with any other credits*
 18 *associated with the individual's account do not exceed the*
 19 *individual's tax liability, if any, the return shall be treated as*
 20 *though no designation had been made. In the event that no designee*

1 *is specified, the contribution shall, after reimbursement of the*
2 *direct actual costs of the Franchise Tax Board for the collection*
3 *and administration of funds under this article, be transferred to*
4 *the General Fund.*

5 *(d) If an individual designates a contribution to more than one*
6 *account or fund listed on the tax return, and the amount available*
7 *is insufficient to satisfy the total amount designated, the*
8 *contribution shall be allocated among the designated accounts on*
9 *a pro rata basis.*

10 *(e) The Franchise Tax Board shall revise the form of the return*
11 *to include a space labeled the “California Beach and Coastal*
12 *Enhancement Account” to allow for the designation permitted*
13 *under subdivision (a). The form shall also include in the*
14 *instructions information that the contribution may be in the amount*
15 *of one dollar (\$1) or more and that the contribution shall be used*
16 *for grants and programs that preserve, protect, or enhance coastal*
17 *resources and promote coastal and marine educational activities*
18 *for underserved communities.*

19 *(f) Notwithstanding any other law, a voluntary contribution*
20 *designation for the California Beach and Coastal Enhancement*
21 *Account shall not be added on the tax return until another*
22 *voluntary contribution designation is removed or as soon as space*
23 *is available.*

24 *(g) A deduction shall be allowed under Article 6 (commencing*
25 *with Section 17201) of Chapter 3 of Part 10 for any contribution*
26 *made pursuant to subdivision (a).*

27 *18746. The Franchise Tax Board shall notify the Controller*
28 *of both the amount of money paid by individuals in excess of their*
29 *tax liability and the amount of refund money that individuals have*
30 *designated pursuant to Section 18745 to be transferred to the*
31 *California Beach and Coastal Enhancement Account. The*
32 *Controller shall transfer from the Personal Income Tax Fund to*
33 *the California Beach and Coastal Enhancement Account an amount*
34 *not in excess of the sum of the amounts designated by individuals*
35 *pursuant to Section 18745 for payment into that fund.*

36 *18747. (a) All money transferred to the California Beach and*
37 *Coastal Enhancement Account, pursuant to Section 18745, upon*
38 *appropriation by the Legislature, shall be used to support eligible*
39 *programs awarded under the selection criteria established by the*

1 *California Coastal Commission for the Whale Tail Grants*
2 *Program, and for direct program-related expenses.*

3 *(b) All money allocated pursuant to subdivision (a) may be*
4 *carried over from the year in which they were received.*

5 *18748. (a) Except as otherwise provided in subdivision (b),*
6 *this article shall remain in effect only until January 1 of the fifth*
7 *taxable year following the first appearance of the California Beach*
8 *and Coastal Enhancement Account on the personal income tax*
9 *return, and is repealed as of December 1 of that taxable year.*

10 *(b) (1) By September 1 of the second calendar year and each*
11 *subsequent calendar year that the California Beach and Coastal*
12 *Enhancement Account appears on the tax return, the Franchise*
13 *Tax Board shall do all of the following:*

14 *(A) Determine the minimum contribution amount required to*
15 *be received during the next calendar year for the fund to appear*
16 *on the tax return for the taxable year that includes that next*
17 *calendar year and provide written notification to the California*
18 *Coastal Commission of the amount determined.*

19 *(B) Determine whether the amount of contributions estimated*
20 *to be received during the calendar year will equal or exceed the*
21 *minimum contribution amount determined by the Franchise Tax*
22 *Board for the calendar year pursuant to subparagraph (A). The*
23 *Franchise Tax Board shall estimate the amount of contributions*
24 *to be received by using the actual amounts received and an*
25 *estimate of the contributions that will be received by the end of*
26 *that calendar year.*

27 *(2) If the Franchise Tax Board determines that the amount of*
28 *the contributions estimated to be received during a calendar year*
29 *will not at least equal the minimum contribution amount for the*
30 *calendar year, this article is inoperative with respect to taxable*
31 *years beginning on or after January 1 of that calendar year, and*
32 *shall be repealed on December 1 of that calendar year.*

33 *(3) For purposes of this section, the minimum contribution*
34 *amount for a calendar year means two hundred fifty thousand*
35 *dollars (\$250,000) for the second calendar year after the first*
36 *appearance of the California Beach and Coastal Enhancement*
37 *Account on the personal income tax return or the minimum*
38 *contribution amount as adjusted pursuant to subdivision (c).*

39 *(c) For each calendar year, beginning with the third calendar*
40 *year after the first appearance of the California Beach and Coastal*

1 *Enhancement Account on the personal income tax return, the*
2 *Franchise Tax Board shall adjust, on or before September 1 of*
3 *that calendar year, the minimum contribution amount specified in*
4 *subdivision (b) as follows:*

5 *(1) The minimum contribution amount for the calendar year*
6 *shall be an amount equal to the product of the minimum*
7 *contribution amount for the prior calendar year multiplied by the*
8 *inflation factor adjustment as specified in subparagraph (A) of*
9 *paragraph (2) of subdivision (h) of Section 17041, rounded off to*
10 *the nearest dollar.*

11 *(2) The inflation factor adjustment used for the calendar year*
12 *shall be based on the figures for the percentage change in the*
13 *California Consumer Price Index for all items received on or*
14 *before August 1 of the calendar year pursuant to paragraph (1)*
15 *of subdivision (h) of Section 17041.*

16 *(d) Notwithstanding the repeal of this article, any contribution*
17 *amounts designated pursuant to this article prior to its repeal shall*
18 *continue to be transferred and disbursed in accordance with this*
19 *article as in effect immediately prior to that repeal.*

20 **SECTION 1.** ~~Section 23501 of the Revenue and Taxation Code~~
21 ~~is amended to read:~~

22 ~~23501. (a) There shall be imposed upon every corporation,~~
23 ~~other than a bank, for each taxable year, a tax at the rate of 7.6~~
24 ~~percent upon its net income derived from sources within this state~~
25 ~~on or after January 1, 1937, other than income for any period for~~
26 ~~which the corporation is subject to taxation pursuant to Chapter 2~~
27 ~~(commencing with Section 23101), according to or measured by~~
28 ~~its net income.~~

29 ~~(b) For calendar or fiscal years ending after June 30, 1973, the~~
30 ~~rate of tax shall be 9 percent instead of 7.6 percent as provided by~~
31 ~~subdivision (a).~~

32 ~~(c) For calendar or fiscal years ending after December 31, 1979,~~
33 ~~the rate of tax shall be the rate specified for those years by Section~~
34 ~~23151.~~

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**BILL ANALYSIS****AB 881 (Chesbro) Oil spill prevention and administration fee**

As Introduced February 22, 2013

RECOMMENDED ACTION

Staff recommends the Commission **Support** AB 881.

SUMMARY

AB 881 would amend the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act to increase the fee assessed on barrels of crude oil or petroleum products landed at a marine terminal from 6.5 cents per barrel up to a maximum of 8 cents per barrel, give the Office of Spill Prevention and Response Administrator the authority to adjust the fee annually in accordance with the Consumer Price Index (CPI), and raise the certificate of financial responsibility fee assessed on non-tank vessels from \$2,500 to a maximum of \$3,500. These fees fund spill prevention and response activities and programs through the Oil Spill Prevention and Administration Fund in the State Treasury. This bill also specifies that a portion of the fees be used to fund the Oiled Wildlife Care Network's annual costs.

PURPOSE OF THE BILL

The purpose of the bill is to increase funding for California's oil spill prevention, preparedness, and response programs, and provide a permanent source of funding for the Oiled Wildlife Care Network, by raising the per-barrel fee on crude oil landed at marine terminals in California from 6.5¢ to no more than 8¢, and by raising the fee for a certificate of financial responsibility for a non-tank vessel from the current \$2,500 to a maximum of \$3,500.

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.

The current fee for a certificate of financial responsibility on a non-tank vessel cannot exceed \$2,500. The current per-barrel fee is 6.5¢. After January 1, 2015, the fee will be reduced to 5¢ per barrel.

PROGRAM BACKGROUND

The Office of Spill Prevention and Response (OSPR) is a division of the Department of Fish and Wildlife, and is the lead State agency in charge of California's oil spill prevention, preparedness, response, and natural resource restoration. This program regulates the safety of marine oil transfers, pipelines and transfer facilities, and oil production facilities.

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 Wildlife, 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 is intended to ensure that oil spill prevention and response will safeguard wildlife and ecosystems, and restore habitats damaged by oil spills and related incidents.

The Oil Spill Administration Fund (OSPAF) is the main funding source for the OSPR's numerous statewide spill prevention and preparedness programs. The OSPAFA is primarily 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 6.5¢ barrel. Funds are also generated through the certificate of financial responsibility fee assessed on non-tank vessels, with a maximum fee of \$2,500. The Coastal Commission, Bay Conservation and Development Commission, and State Lands Commission all participate in oil spill prevention programs funded by the OSPAFA. The OSPAFA also funds the Oiled Wildlife Network, and several other state and local agency oil spill-related programs. For fiscal year 2012/2013, the Coastal Commission will be getting a 10% budget reduction from the OSPR's local assistance grant program, reducing the annual program budget from \$315,000 down to \$283,500.

In 2011, AB 1112 (Huffman) imposed new responsibilities on the OSPR, and also temporarily increased fees from 5¢ to 6.5¢ per barrel. This was the first fee increase since 2002, when the fee was raised from 4¢ to 5¢ per barrel. On January 1, 2015, a sunset provision will reduce the program's funding to levels established in 2002; the 6.5¢ per barrel fee on oil will decrease to 5¢ per barrel. If current funding levels decline, the Coastal Commission's funding for participation in critical statewide spill prevention and preparedness programs may be reduced. Additionally, there are several important spill prevention mandates that are not currently being met because existing funding levels are insufficient.

ANALYSIS

An increase in the fees is warranted in order to ensure that the best achievable oil spill prevention and response measures are implemented in California. Over the last decade, the OSPR program has taken on new responsibilities and significantly expanded its oil spill prevention and preparedness programs, 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). Legislation in 2011 required additional monitoring, coordination, and inspections (AB 1112, Huffman). 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 Coastal Commission's roles in oil spill prevention, preparedness, and response is diverse and challenging. The Commission's Oil Spill Program staff play a critical role in facilitating statewide planning and coordination, and are committed to assisting federal, state, and local agencies, citizen's groups, and the petroleum industry avoid the potentially catastrophic environmental and economic effects of a large scale oil spill, and ensure that when spills do occur, environmental impacts are reduced to the greatest extent possible. The Commission's Oil Spill Program staff participates in various statewide committees and in the federal Area Contingency Planning process to ensure that development of California's oil spill prevention and response regulations and programs are consistent with the Coastal Act.

The role of the Oiled Wildlife Network has also expanded, and made needed improvements in its research development programs and facilities. The Network's funding relies partially on interest generated by the Oil Spill Trust Fund. However, most of the money in the Trust Fund has been used for loans, and is not currently generating sufficient interest. Even if the loan were repaid, the Department of Finance estimates that because interest rates are so low, this funding source is no longer adequate to support the work of the Oiled Wildlife Network. According to a December 2012 audit by the Department of Finance, the Oiled Wildlife Care Network will have no funding beginning fiscal year 2014-15. Without legislative action, the state will not have a program that can adequately care for wildlife affected by oil spills. The Coastal Commission has worked closely with the Oiled Wildlife Care Network during past oil spill incidents, helping to dispatch emergency units, coordinate and train volunteers, and provide general communication and organizational support for their efforts.

If fee revenues to the OSPAF are not increased, the OSPR's budget for current operation levels would be essentially returned to 2011 funding levels, which were projected to put the agency into a deficit. A return to these funding levels would necessitate a curtailment or reduction of OSPR's statewide oil spill prevention and preparedness programs, and likely a significant reduction in funding to participating agencies, including the Coastal Commission.

Raising the current per-barrel fee on crude oil landed at a marine terminal in California, as well as the fee for nontank vessels, will help keep the fund balance in the OSPAF at adequate levels, and support the ongoing critical work of the state's oil spill prevention and response program.

SUPPORT

San Francisco Baykeepers

OPPOSITION

None on file

RECOMMENDED POSITION

Staff recommends the Commission **Support** AB 881

ASSEMBLY BILL

No. 881

Introduced by Assembly Member Chesbro

February 22, 2013

An act to amend Sections 8670.40 and 8670.41 of, and to add Section 8670.43 to, the Government Code, relating to oil spills.

LEGISLATIVE COUNSEL'S DIGEST

AB 881, as introduced, Chesbro. Oil spill prevention and administrative fee.

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, until January 1, 2015, \$0.065 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, including to cover the costs incurred by the Oiled Wildlife Care Network for training and field collection and search and rescue activities.

This bill would increase the maximum annual assessment from \$0.065 to \$0.08 per barrel of crude oil or petroleum products and would allow the administrator to adjust the maximum fee annually based on the percentage increase in the California Consumer Price Index, as specified.

Existing law permits 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 oil spill prevention relating to nontank vessels.

This bill would require the fee not to exceed \$3,500 per nontank vessel but would give the administrator discretion to reduce the fee for nontank vessels that pose a reduced risk of pollution and would allow the administrator to adjust the maximum fee annually based on the percentage increase in the California Consumer Price Index, as specified.

This bill would transfer \$0.003 of the per barrel of crude oil or petroleum products fee collected, and \$250 of the per nontank vessel fee collected, to fund specified activities the Oiled Wildlife Care Network.

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

The people of the State of California do enact as follows:

1 SECTION 1. Section 8670.40 of the Government Code is
 2 amended to read:
 3 8670.40. (a) The State Board of Equalization shall collect a
 4 fee in an amount determined by the administrator to be sufficient
 5 to carry out the purposes set forth in subdivision (e), and a
 6 reasonable reserve for contingencies. The annual assessment shall
 7 not exceed ~~six and one-half cents (\$0.065) per barrel of crude oil~~
 8 ~~or petroleum products. Beginning January 1, 2015, the annual~~
 9 ~~assessment shall not exceed five cents (\$0.05) per barrel of crude~~
 10 ~~oil or petroleum products~~ *eight cents (\$0.08) per barrel of crude*
 11 *oil or petroleum products. The administrator may adjust the*
 12 *maximum fee annually based on the percentage increase in the*
 13 *California Consumer Price Index as determined pursuant to*
 14 *Section 2212 of the Revenue and Taxation Code.*
 15 (b) (1) The oil spill prevention and administration fee shall be
 16 imposed upon a person owning crude oil at the time that crude oil
 17 is received at a marine terminal from within or outside the state,
 18 and upon a person who owns petroleum products at the time that
 19 those petroleum products are received at a marine terminal from
 20 outside this state. The fee shall be collected by the marine terminal
 21 operator from the owner of the crude oil or petroleum products
 22 based on each barrel of crude oil or petroleum products so received
 23 by means of a vessel operating in, through, or across the marine
 24 waters of the state. In addition, an operator of a pipeline shall pay
 25 the oil spill prevention and administration fee for each barrel of
 26 crude oil originating from a production facility in marine waters

1 and transported in the state by means of a pipeline operating across,
2 under, or through the marine waters of the state. The fees shall be
3 remitted to the board by the terminal or pipeline operator on the
4 25th day of the month based upon the number of barrels of crude
5 oil or petroleum products received at a marine terminal or
6 transported by pipeline during the preceding month. A fee shall
7 not be imposed pursuant to this section with respect to crude oil
8 or petroleum products if the person who would be liable for that
9 fee, or responsible for its collection, establishes that the fee has
10 been collected by a terminal operator registered under this chapter
11 or paid to the board with respect to the crude oil or petroleum
12 product.

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

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

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

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

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

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

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

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

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

7 (5) To respond to an imminent threat of a spill in accordance
8 with the provisions of Section 8670.62 pertaining to threatened
9 discharges. The cumulative amount of an expenditure for this
10 purpose shall not exceed the amount of one hundred thousand
11 dollars (\$100,000) in a fiscal year unless the administrator receives
12 the approval of the Director of Finance and notification is given
13 to the Joint Legislative Budget Committee. Commencing with the
14 1993–94 fiscal year, and each fiscal year thereafter, it is the intent
15 of the Legislature that the annual Budget Act contain an
16 appropriation of one hundred thousand dollars (\$100,000) from
17 the fund for the purpose of allowing the administrator to respond
18 to threatened oil spills.

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

22 (7) To cover *annual* costs incurred by the Oiled Wildlife Care
23 Network established by Section 8670.37.5, *including costs* for
24 training and field collection, and search and rescue activities,
25 pursuant to subdivision (g) of Section 8670.37.5.

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

28 (g) The moneys deposited in the fund shall not be used to
29 provide a loan to any other fund.

30 (h) This section shall become operative on January 1, 2012.

31 SEC. 2. Section 8670.41 of the Government Code is amended
32 to read:

33 8670.41. (a) The administrator shall charge a nontank vessel
34 owner or operator a reasonable fee, to be collected with each
35 application to obtain a certificate of financial responsibility, in an
36 amount ~~that is based upon~~ *not to exceed three thousand five*
37 *hundred dollars (\$3,500) per nontank vessel for the administrator's*
38 *costs in implementing this chapter relating to nontank vessels.*
39 ~~Before January 1, 2005, the fee shall be two thousand five hundred~~
40 ~~dollars (\$2,500), or less per vessel~~ *The administrator may adjust*

1 *the maximum fee annually based on the percentage increase in*
2 *the California Consumer Price Index as determined pursuant to*
3 *Section 2212 of the Revenue and Taxation Code.*

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

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

13 (d) Revenue derived from the fees imposed under this section
14 may be spent for the purposes listed in subdivision (e) of Section
15 8670.40, and may not be used for responding to an oil spill.

16 SEC. 3. Section 8670.43 is added to the Government Code, to
17 read:

18 8670.43. Three mills (\$0.003) of the per barrel of crude oil or
19 petroleum products fee collected pursuant to subdivision (a) of
20 Section 8670.40 and two hundred fifty dollars (\$250) of the per
21 nontank vessel fee collected pursuant to Section 8670.41 shall be
22 transferred from the Oil Spill Prevention and Administration Fund
23 to the Oil Spill Response Trust Fund and, upon appropriation by
24 the Legislature, used for covering the annual costs of the Oiled
25 Wildlife Care Network described in paragraph (7) of subdivision
26 (e) of Section 8670.40.

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BILL ANALYSIS
AB 976 (Atkins)
Amended March 19, 2013

SUMMARY

AB 976 would amend Public Resources Code Section 30823 and add Public Resources Code 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 the effectiveness of coastal enforcement program and implement cost-saving efficiencies.

EXISTING LAW

Under Public Resources Code Section 30820 of the Coastal Act, a superior court can impose civil penalties of up to \$30,000 on any person or local government for violations of 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 Public Resources Code Section 30823, 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 Public Resources Code 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, State Water Resources Control Board, Regional Water Quality Control Boards, and the Integrated Waste Management Board.

PROGRAM BACKGROUND

This bill is a re-introduction of AB 226 (Ruskin) from 2009, and SB 558 (Evans) 2011. The Commission has supported both previous versions of this bill.

Currently, the CCC has the ability to issue cease and desist orders after a public hearing, which can be either as a “consent order” (settlement), or as a “restoration order.” These orders require a violator to stop violating the Coastal Act and to restore coast resources to their former state.

The Commission received “order” authority in 1980. Prior to 1980, the Coastal Commission, represented by the Attorney General, had to sue for injunctive relief in state court in order to resolve Coastal Act violations. Although litigation is expensive and time consuming for all parties, it provides the Commission the ability to seek penalties along with injunctive relief. Penalty amounts awarded through the courts are determined pursuant to Section 30820.

After 1980, the Commission’s order authority enabled the Commission to address ongoing violations more quickly and efficiently, but without the ability to seek penalties. Order authority has allowed the Commission to resolve more issues amicably through use of consent orders. In a consent order, the alleged violator agrees to the terms of the order and usually agrees to pay a settlement penalty. Because the Commission has no ability to require payment of a penalty, the defendant must agree to do so voluntarily. However, the defendant usually receives the benefit of paying a much smaller amount than that which could be imposed by a court pursuant to Public Resources Code Section 30820, and also avoids the costs and delays associated with litigation.

Consent orders are heard by the full Commission in the same formal hearing manner as contested restoration orders. The current scheme, though, establishes incentives for non-cooperation because violators who willingly cooperate with the Commission voluntarily agree to pay a penalty, whereas violators who contest the order cannot be fined.

Moreover, restoration of critical habitat and coastal resources done by mutual agreement is typically done much faster and more thoroughly than in cases where the Commission is in an adverse position with the violator, as is the case with 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 too rarely pursued for penalties in court. Therefore, a completely recalcitrant party may fare better financially than one who settles, 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. This puts parties who violate the Coastal Act in a more favorable position than those who comply with the Act, and directly undercuts the purpose of penalties under the Coastal Act, which is to deter violations.

ANALYSIS

Penalties are a critical component of all environmental statutes and are the primary means to persuade would-be violators to comply with the law. The deterrent component of any regulatory scheme is important, particularly for environmental laws. 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 its ability to protect the environment.

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 are not able to represent the Commission on every case.

For all practical purposes, there is little meaningful deterrent to violating the Coastal Act if violators can easily escape penalties. Potential violators are aware that the CCC must 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 won't be caught. If they are caught, the next gamble is that the CCC will not have the resources needed to pursue them. If they do face an order proceeding in front of the Commission, objecting to the order insures they won't pay a penalty. Even if the CCC brings a formal order against them, the next gamble is that the CCC will not have the resources needed to pursue them in Court to obtain penalties.

AB 976 would give the Coastal Commission the ability to impose administrative penalties on individuals found to be in violation of the Coastal Act, after a public hearing before the Commission. Doing so would help deter future Coastal Act violations and will help staff resolve the existing backlog of over 1,800 open enforcement cases. Penalty amounts could not exceed 75% of what would be imposed by a court, and would be calculated using the existing criteria of 30820. AB 976 mirrors administrative penalty provisions similar to the McAteer-Petris Act, the 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. The staff at BCDC report that these provisions allow them to resolve the vast majority of their cases without resorting to expensive and slow litigation.

AB 976 will create parity between cooperative and uncooperative parties who violate the Coastal Act, while giving the Commission a way 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 deterrent from violating the Coastal Act. In addition, it will create a modest new revenue source for the Commission's core program work and reduce litigation costs.

SUPPORT

None on file

OPPOSITION

California Farm Bureau

RECOMMENDED POSITION

Staff recommends the Commission **Support** AB 976

AMENDED IN ASSEMBLY MARCH 19, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 976

**Introduced by Assembly Member Atkins
(Principal coauthor: Assembly Member Stone)**

February 22, 2013

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

AB 976, as amended, Atkins. 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 ~~of an unspecified amount~~ 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~~ *an amount not to exceed 75% of the maximum civil penalty that may be imposed in the superior court, as specified.*

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 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 penalty.

(2) The act 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:

- 1 SECTION 1. Section 30821 is added to the Public Resources
- 2 Code, to read:
- 3 30821. (a) In addition to any other penalties imposed pursuant
- 4 to this division, a person, including a landowner, who is in violation
- 5 of a provision of this division is subject to an administrative civil
- 6 penalty that may be imposed by the commission in an amount ~~not~~
- 7 less than _____ dollars (\$_____) and not to exceed _____ dollars
- 8 \$_____) 75 percent of the amount of the maximum penalty
- 9 authorized pursuant to subdivision (b) of Section 30820 for each
- 10 violation.
- 11 (b) All penalties imposed pursuant to subdivision (a) shall be
- 12 imposed by majority vote of the commissioners present in a duly
- 13 noticed public hearing in compliance with the requirements of
- 14 Section 30810, 30811, or 30812.
- 15 (c) In determining the amount of civil liability, the commission
- 16 shall take into account the factors set forth in subdivision (c) of
- 17 Section 30820.
- 18 (d) A person shall not be subject to both monetary civil liability
- 19 imposed under this section and monetary civil liability imposed
- 20 by the superior court for the same act or failure to act. In the event

1 that a person who is assessed a penalty under this section fails to
2 pay the administrative penalty, otherwise fails to comply with a
3 restoration or cease and desist order issued by the commission in
4 connection with the penalty action, or challenges any of these
5 actions by the commission in a court of law, the commission may
6 maintain an action or otherwise engage in judicial proceedings to
7 enforce those requirements and the court may grant any relief as
8 provided under this chapter.

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

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

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

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

23 30823. All funds derived under this article shall be deposited
24 in the Coastal Act Services Fund, established pursuant to
25 subdivision (a) of Section 30620.1, until appropriated by the
26 Legislature, for the purpose of carrying out this division.