

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
 SAN FRANCISCO, CA 94105-2219
 VOICE (415) 904-5200
 FAX (415) 904-5400
 TDD (415) 597-5885



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DATE: April 13, 2016

TO: Coastal Commission and Interested Persons

FROM: John Ainsworth, Acting Executive Director
 Sarah Christie, Legislative Director

SUBJECT: LEGISLATIVE REPORT FOR April, 2016

CONTENTS: This report provides summaries and status of bills affecting the Coastal Commission and California's Coastal Program, and coastal-related legislation identified by staff.

Note: Information contained in this report is accurate as of April 6, 2016. Bills that were not included in the previous report are preceded by an *asterisk. Recent amendments are summarized in *italics*. Bill text, votes, committee analyses and current status of any bill may be viewed on the California Senate Homepage at www.senate.ca.gov. This report can also viewed on the Commission's Homepage at www.coastal.ca.gov

2016 Legislative Calendar

Jan 1	Statutes take effect
Jan 4	Legislature reconvenes
Jan 10	Budget Bill must be submitted by Governor
Jan 15	Last day for committees to hear and report 2015 bills introduced in their house
Jan 22	Last day to send bill requests to Office of Legislative Counsel
Jan 31	Last day for each house to hear and report 2015 bills introduced in their house
Feb 19	Last day for bills to be introduced
Mar 17	Spring Recess begins upon adjournment
Mar 28	Legislature reconvenes from Spring Recess
April 1	Cesar Chavez Day Observed
April 22	Last day for policy committees to hear and report fiscal bills
May 6	Last day for policy committees to hear and report non-fiscal bills out of house of origin
May 13	Last day for policy committees to meet prior to June 6
May 27	Last day for fiscal committees to hear and report bills to the Floor
May 30	Memorial Day Observed
May 31-June 3	Floor session only
June 3	Last day for each house to pass bills introduced in that house
June 15	Budget Bill must be passed by midnight
July 1	Last day for Policy committees to report bills. Summer Recess begins upon adjournment
Aug 1	Legislature reconvenes from summer recess
Aug 12	Last day for fiscal committees to meet and report bills to the Floor
Aug 19	Last day to amend bills on the Floor
Aug 31	Last day to pass bills. Interim recess begins upon adjournment
Sep 30	Last day for Governor to sign or veto bill

PRIORITY LEGISLATION**AB 300 (Alejo) Safe Water and Wildlife Protection Act of 2015**

This bill would enact the Safe Water and Wildlife Protection Act of 2015, requiring the State Coastal Conservancy to establish and coordinate the Algal Bloom Task Force. The task force would be comprised of a representative of the State Department of Public Health, the Department of Fish and Wildlife, Department of Food and Agriculture and the State Coastal Conservancy, and other relevant agencies. It would require the task force to review the risks and negative impacts of toxic blooms and microcystin pollution, consult with the EPA Secretary, and to submit a summary of its findings and recommendations to the Resources Secretary by January 1, 2017. Amendments of 05/28 add the State Water Pollution Cleanup and Abatement Account as a source of grant funds. *Amendments of 06/25 add “marine waters” to the definition of “waters of the state.”*

Introduced	02/12/15
Last Amended	08/17/15
Status	Senate Appropriations Committee, Suspense File. Held under submission.

AB 435 (Chang) Natural Resources Agency: webcast of meetings and workshops

This bill would require all boards, departments and commissions within the Environmental Protection Agency and the Natural Resources Agency to provide live webcasts of all public meetings in a manner that enables listeners to and viewers to ask questions and provide public comment by phone or electronic communication. The bill would require all agencies to archive the webcasts for later viewing by the public. Amendments of 05/28 specify that the bill does not apply to workshops or meetings held at “non-agency sites”, and specify that archived meeting videos must be made available to the public for a period of three years. *Amendments of 05/28 make the bill no longer applicable to the Coastal Commission.*

Introduced	02/19/15
Last Amended	05/28/15
Status	Senate Appropriations Committee. Held under submission.

AB 718 (Chu) Local government: powers

This bill would prohibit any local government from imposing civil or criminal penalties for the act of sleeping or resting in a lawfully parked motor vehicle. *Amendments of 7/14 clarify that the bill does not supersede various other laws.*

Introduced	02/25/15
Last Amended	07/14/15
Status	Failed passage in Senate. Reconsideration granted. Inactive File.

AB 988 (Stone) Outdoor Environmental Education and Recreation Grants Program

This bill would require the Department of Parks and Recreation to establish an Outdoor Environmental Education and Recreation Grants Program for the purpose of increasing the ability of underserved and at-risk populations to participate in outdoor recreation and educational experiences by awarding grants to public organizations, nonprofit organizations, or both. The bill would require that all moneys received for the purposes of the program be deposited into the California Youth Outdoor Education Account, which would be created by the bill and would be continuously appropriated. Any bond funds made available through the program would be awarded to programs that meet the criteria of the State Urban Parks and Healthy Communities Act. Amendments of 06/01 specify that priority will be given to grant applications that primarily serve students who are eligible for free or reduced-price meals, or pupils of limited English proficiency. *Amendments of 06/30 make technical changes, and require the department to report annually to the Budget and Fiscal Committees.*

Introduced	02/26/15
Last Amended	06/30/15
Status	Senate Appropriations Committee. Held under submission.

AB 1500 (Mainschein) California Environmental Quality Act: priority housing projects: exempt

This bill would exempt emergency shelter, transitional housing, and priority housing projects, as defined, from the requirements of CEQA.

Introduced	02/27/15
Last Amended	01/13/16
Status	Senate Transportation and Housing Committee

***AB 1871 (Waldron) Coastal resources: development: water supply projects**

This bill would limit the growth-inducing impacts the Commission may consider in its review for a coastal development project for a water supply project. The Commission's review authority would be limited to how the proposed project augments existing water supplies, how it increases regional water supply reliability to drought and climate change, and how it reduces reliance on the Sacramento-San Joaquin Delta.

Introduced	02/10/16
Last Amended	03/18/16
Status	Assembly Natural Resources Committee
Commission Position	Recommend Oppose, analysis attached

AB 2002 (Stone) Political Reform Act: California Coastal Commission

This bill would amend the definition of “administrative action” in Section 82002 of the Political Reform Act to include permit applications and other actions pending before the Coastal Commission. The bill would also amend Section 30325 of the Public Resources Code to require persons who communicate with the commission on actions described under the new definition in 82002, with certain exceptions, to comply with the requirements Political Reform Act (Chapter 6, Title 9 of the Government Code). *Amendments of 03/28 prohibit ex parte communications within 24 hours of the public hearing on the item being discussed, and require disclosure within 24 hours of any ex parte communication that takes place seven or fewer days before the hearing item.*

Introduced 02/16/16
Last Amended 03/28/16
Status Assembly Natural Resources Committee
Commission Position Recommend Support, analysis attached

AB 2041 (Harper) State and local beaches: fire rings

This is a spot bill relating to fire rings at local beaches.

Introduced 02/17/16
Status Assembly Rules Committee

AB 2042 (Harper) Water desalination facilities

This is a spot bill related to desalination facilities.

Introduced 02/17/16
Status Assembly Rules Committee

AB 2043 (Harper) Desalination

This is a spot bill related to desalination facilities.

Introduced 02/17/16
Status Assembly Rules Committee

***AB 2171 (Jones) Coastal resources: development review: appeals**

As amended 03/29, this bill would add Section 30625.5 to the Public Resources code to allow an applicant or an aggrieved person file an appeal on any appealable item directly with a superior court in lieu of filing an appeal with the Commission.

Introduced 02/18/16
Last Amended 03/29/16
Status Failed passage, Assembly Natural Resources & Judiciary Committees, reconsideration granted
Commission Position Recommend Oppose, analysis attached

***AB 2185 (Gonzalez): State Coastal Conservancy: low-cost accommodations**

This bill would require the Coastal Conservancy to develop a loan/grant program to assist private low-cost accommodations to meet their operation and maintenance needs in exchange for an easement or other legally binding instrument that protects the public benefit of the facility. The bill also requires the Conservancy, in consultation with the Commission and State Parks, to develop a list of potential low-cost accommodation projects.

Introduced 02/18/16
Last Amended 03/18/16
Status Assembly Natural Resources Committees

AB 2198 (Brough) Coastal development permits: desalination facilities

This bill would require an application for a coastal development permit for a “desalinization project” to be given priority for review and expedited permitting.

Introduced 02/18/16
Status Assembly Natural Resources Committee
Commission Position **Recommend Oppose, analysis attached**

AB 2299 (Bloom) Land use: housing: Second units

This bill would require cities and counties to develop ordinances allowing for second units in single family and multi-family zoning. Current law provides for the permissive development of such ordinances.

Introduced 02/18/16
Last Amended 03/17/16
Status Assembly Housing & Local Government Committees

***AB 2305 (Bloom) Protection of orcas: unlawful activities**

As amended 04/05, this bill would prohibit the captive holding, display, breeding, gamete collection or import, sale or transport of orca whales. The bill would allow for the rescue and rehabilitation of stranded orca. Any orcas already in captivity as of January 1, 2017 could continue to be held for educational purposes until retirement or death.

Introduced 02/18/16
Last Amended 04/05/16
Status Assembly Water, Parks & Wildlife Committees
Commission Position **Recommend Support, analysis attached**

AB 2406 (Thurmond) Housing: junior accessory dwelling units

This bill would amend Government Code Section 65852.2 to require that a local ordinance pertaining to the authorization of second units in single-family or multi-family zoning also provide for the creation of junior accessory dwelling units. The bill would also exempt those units from water or sewer hookup fees, additional parking and fire attenuation requirements.

Introduced 02/19/16
Status Assembly Rules Committee

AB 2413 (Thurmond) Sea level rise preparation

This bill would require the Natural Resources Agency to complete a study by January 1, 2019, that outlines the impacts of sea level rise on low-income communities and at-risk communities and public projects and infrastructure. The study would also include short-term and long-term recommendations.

Introduced 02/19/16
Status Assembly Rules Committee

AB 2444 (Garcia) California Water Quality, Coastal Protection and Outdoor Access Act

This bill would create the California Water Quality, Coastal Protection, and Outdoor Access Improvement Act of 2016, which would authorize the issuance of bonds in an unspecified amount to finance water quality, coastal protection and public outdoor access programs.

Introduced 02/19/16
Status Assembly Rules Committee

AB 2616 (Burke) California Coastal Commission: membership: environmental justice

This bill would increase the membership of the Commission from 12 to 15. Three additional commissioners would be appointed, one-each by the Governor, Speaker and the Senate Rules Committee, who represent and work with communities most burdened by high levels of pollution and environmental justice issues. The bill would authorize the Commission to consider Environmental Justice concerns in its actions. The bill would also reinstate the Commission's original authority to protect, encourage, and where feasible provide opportunities for low and moderate income housing.

Introduced 02/19/16
Status Assembly Rules Committee
Commission Position Recommend Support, analysis attached

AB 2628 (Levine) Political Reform Act: post-governmental employment

This bill would add Section 87496.5 to the Political Reform Act to prohibit an elected or appointed officer of a state or local public agency from maintaining employment or taking consultation fees from the board, commission or other body on which he/she served for a period of 1 year.

Introduced 02/19/16
Status Assembly Rules Committee

***AB 2648 (Jones) Coastal Commission: delegation of authority**

This bill would authorize a coastal county to petition a superior court to obtain a writ of mandate requiring the Commission's regulatory authority to be delegated to the county. The county would become the exclusive authority for the enforcement of state and federal coastal laws. The bill would also allow an aggrieved person to file an appeal of any appealable action on a coastal development permit directly to a superior court in lieu of filing an appeal with the Commission.

Introduced	02/19/16
Last Amended	03/18/16
Status	Assembly Natural Resources Committee

AB 2658 (Maienshein) California Coastal Commission: ex parte communications: meetings

This bill would extend current ex parte reporting requirements to members of the Coastal Commission staff. The bill would also require all hearings, workshops, or written proceedings to be promptly posted on the Commission's website to allow for public comment.

Introduced	02/19/16
Status	Assembly Rules Committee

SB 233 (Hertzberg) Marine resources and preservation

This bill would amend the California Marine Resources Legacy Act in the Fish and Game Code, related to artificial reef conversion of offshore oil and gas facilities. The bill designates the Department of Fish and Wildlife as the lead agency for environmental review under CEQA for an application to partially remove an offshore structure. The bill requires the Department to determine the cost savings of partial removal compared with full removal, as well as make the determination of whether partial removal provides a net environmental benefit. The bill includes consideration of greenhouse gas emissions as part of the analysis of net environmental benefit. The bill makes changes to the application process, and changes to the timing of the distribution of funds. This bill designates the State Lands Commission as the lead agency under CEQA, requires the applicant to provide sufficient funds for all agencies to perform the responsibilities proscribed by the bill, and gives the Ocean Protection Council the responsibility of determining the appropriate weight to be given to adverse impacts to the marine environment versus greenhouse gas emissions. The bill would allow the first applicant to partially remove an offshore platform to pay startup and other costs associated with processing the application as determined by the department. *Amendments of 07/16 change references from "best available science" to "credible" science, and allow the first applicant to pay the department's start-up cost.*

Introduced	02/13/15
Last Amended	07/16/15
Status	Assembly Appropriations Committee. Hearing cancelled at request of author.

SB 317 (De Leon) The Safe Neighborhood Parks, Rivers, and Coastal Protection Bond Act

This bill would enact the Safe Neighborhood Parks, Rivers, and Coastal Protection Bond Act of 2016, which, if adopted by the voters at the November 8, 2016, statewide general election, would authorize the issuance of bonds in an unspecified amount pursuant to the State General Obligation Bond Law to finance a safe neighborhood parks, rivers, and coastal protection program. The bill would authorize a total bond issuance amount of \$2,450,000,000. Of that amount, \$350,000,000 would be specified for coast and ocean protection, and \$370,000,000 for rivers, lakes and streams. This bill has an urgency clause. *Amendments of 05/05 up to 10% of funds allocated for each chapter may be used for project planning and monitoring, and specify that no more than 5% of funds allocated to a grant program may be used for administrative costs.*

Introduced	02/23/15
Last Amended	05/05/15
Status	Appropriations Committee, Suspense File

SB 657 (Monning) Diablo Canyon Units 1 and 2: independent peer review panel

As Amended 04/21, this bill would require the Public Utilities Commission to convene an independent review panel to review seismic studies and surveys of the Diablo Canyon Units 1 and 2, including the surrounding area and spent fuel storage areas. This bill has an urgency clause, and if chaptered, would take effect immediately. *Amendments of 6/23 make a technical, non-substantive change.*

Introduced	02/27/15
Last Amended	06/23/15
Commission Position	Support
Status	In Assembly. Held at desk.

SB 788 (McGuire) California Coastal Protection Act of 2015

This bill would repeal Section 6422 of the Coastal Sanctuary Act, which currently authorizes the State Lands Commission (SLC) to enter into a lease for the extraction of oil or gas from state-owned tide and submerged lands in a California Coastal Sanctuary if SLC determines that the oil or gas deposits are being drained by producing wells on adjacent federal lands, and the lease is in the best interest of the state. The effect of this would be to prohibit any on or offshore drilling into oil reserves known as Tranquillon Ridge offshore Santa Barbara County. This bill is a reintroduction of SB 1096 (Jackson) from the previous legislative session.

Introduced	05/04/15
Last Amended	06/02/15
Status	Assembly Appropriations Committee, Suspense File. Held under submission.

SB 900 (Jackson) Coastal Oil Well Cleanup Act

This bill would require the State Lands Commission to conduct a statewide survey to remediate “legacy” oil wells in state waters for which there is no responsible party, survey and monitor natural oil seeps in state waters, and conduct a survey of all legacy oil wells along the California coastline.

Introduced 01/21/16
Status Senate Natural Resources and Water Committee
Commission Position Recommend support, analysis attached

***SB 1190 (Jackson) California Coastal Commission: ex parte communications:**

As amended, this bill would prohibit interested parties from conducting ex parte communications with commissioners. The bill would also prohibit a commissioner from attempting to influence a staff analysis or recommendation prior to the publication of the staff report or recommendation.

Introduced 01/21/16
Last Amended 03/28/16
Status Senate Natural Resources and Water Committee

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**BILL ANALYSIS****AB 1871 (Waldron)**

Amended 03/18/16

SUMMARY

AB 1871 would add PRC Section 30603.2 to limit the Commission's consideration of the potential growth-inducing impacts of a water supply project to the following:

- (a) How the proposed project augments existing water supplies.
- (b) How the proposed project increases regional water supply reliability as a response to drought or climate change impacts.
- (c) How the proposed project achieves the state policy of reducing reliance on the Sacramento-San Joaquin Delta, as described in Section 85021 of the Water Code.

PURPOSE OF THE BILL

The purpose of the bill is to limit the Commission's analysis of the potential growth-inducing impacts of new water supply projects.

EXISTING LAW

Under PRC Section 30254, new or expanded public works facilities must be designed and limited to accommodate needs generated by development or uses permitted consistent with Coastal Act policies. Special districts cannot be formed or expanded except where the service would not induce new development inconsistent with Coastal Act policies.

Under PRC Section 30250(a), new residential, commercial, or industrial development must be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.

Local Coastal Programs (LCPs) have various policies and programs relating to growth-inducement the relationship between new growth, adequate public services, and impacts to coastal resources.

Under PRC Section 30601, where a local government does not yet have a fully certified LCP, applicants for specified categories of development must obtain a coastal development permit from the Commission even if the local government has coastal development permitting authority. Under Section 30603, where a local government does have a fully certified LCP, certain categories of development are appealable to the Commission.

PROGRAM BACKGROUND

Sections 30250(a) and 30254 are typically considered in tandem, ideally through the LCP planning process. Public services (water supply projects) should be sized to meet development demands that have been analyzed to be consistent with the all of the other policies of the Act. This is accomplished through a variety of Coastal Act policies that support urban-rural boundaries, such as those related to agricultural protection, habitat protection, scenic viewsheds, Highway One capacity, etc. All of these issues are reflected in the LUP/IP land use designations which address, among other things, density and intensity of use. It is those land use designations that determine future demand, which ultimately determines sizing of supply.

The end result is that LCP policies should not allow for, and the Commission should not approve on appeal or under original jurisdiction, the construction of public service capacities larger than that which is required to meet future demand that can be found consistent with the Coastal Act.

ANALYSIS

This bill seeks to limit the Commission's consideration of the growth-inducing impacts of a water supply project to three enumerated parameters:

- (a) How the proposed project augments existing water supplies.
- (b) How the proposed project increases regional water supply reliability as a response to drought or climate change impacts.
- (c) How the proposed project achieves the state policy of reducing reliance on the Sacramento-San Joaquin Delta.

The bill would limit the Commission to considering these three impacts where the Commission is acting on an application submitted to it pursuant to Section 30601 or an appeal filed with it pursuant to Section 30603. Because none of these impacts directly address growth-inducement, the net effect of this bill would essentially be to eliminate the Commission's ability consider or analyze the growth-inducing impacts of a water supply project for significant categories of development. This would be problematic for Coastal Act implementation.

The Legislative findings and declarations in Section 30001 set forth the essential rationale for the Coastal Act, passed by the Legislature in 1976. Those are worth repeating here:

Section 30001 Legislative findings: ecological balance

The Legislature hereby finds and declares:

- (a) That the California coastal zone is a distinct and valuable natural resource of vital and enduring interest to all the people and exists as a delicately balanced ecosystem.
- (b) That the permanent protection of the state's natural and scenic resources is a paramount concern to present and future residents of the state and nation.
- (c) That to promote the public safety, health, and welfare, and to protect public and private property, wildlife, marine fisheries, and other ocean resources, and the natural environment, it is necessary to protect the ecological balance of the coastal zone and prevent its deterioration and destruction.

(d) That existing developed uses, and future developments that are carefully planned and developed consistent with the policies of this division, are essential to the economic and social well-being of the people of this state and especially to working persons employed within the coastal zone.

Restricting the Commission's authority to consider the growth-inducing impacts of a water supply project would significantly hinder the agency's ability to implement numerous other Coastal Act policies, and undermine the fundamental intent of the Coastal Act: to protect the ecological balance of the coastal zone and prevent its deterioration and destruction.

Many certified LCPs contain various provisions related to the consideration growth-inducing impacts. For instance, some LCPs include limits on the number, location or type of new water hookups or requirements that certain studies be done before some types of development can be permitted. One good example is in the SLO County North Coast Area Plan, which requires Cambria to do an instream flow study before it can build a water supply project.

In some LCPs, like the North Monterey County segment, the Commission reduced total build-out by half after determining that there was insufficient groundwater capacity to accommodate the proposed growth. The current LCP policies are designed to sync up planned growth with public services, and approved growth with available services.

Because LCP policies are the standard of review on appeal, this bill would create ambiguities with respect to the Commission's authority when acting on an appeal of a local action on a water supply project. If the Commission were precluded from fully analyzing the growth-inducing impacts of a project, its ability to review, analyze and act on the local record, let alone request additional information, could be compromised.

For water supply projects meant to provide for a well-defined service area, the Commission usually ties the proposed amount of water to LCP or Urban Water Management Plan (UWMP) projections for growth and water supply. Larger, regional projects where the distribution isn't known or is more dispersed can be more difficult to evaluate. Additionally, a key growth-related issue for many desalination projects is not necessarily the Coastal Act or LCPs, but the new [State Water Resources Control Board \(SWRCB\) policy](#). For example, Section III.M.2.d.(1)(a) of the Board's 2015 adoption of the Ocean Plan Amendment for Desalination policy states: "A design capacity in excess of the need for desalinated water as identified in chapter III.M.2.b.(2) shall not be used by itself to declare subsurface intakes as not feasible."

The policy also requires that, when considering "need," the SWRCB must "consider whether the identified need for desalinated water is consistent with an applicable adopted urban water management plan prepared in accordance with Water Code section 10631, or if no urban water management plan is available, other water planning documents such as a county general plan or integrated regional water management plan."

For these projects, most subsurface intakes would be located in the Commission's original jurisdiction. Precluding the Commission from considering growth-inducing impacts in such a circumstance could have the effect of preventing consistency of and coordination with other controlling policies, such as LCPs or the Ocean Plan.

Finally, the bill's references to the state's policy of reducing reliance on the Delta is misplaced. The State Water Project's water shipments to Southern California are driven almost entirely by contractual agreements between the state and the Metropolitan Water District. This means that the volumes of water shipped will continue unchanged based on how much state water is available, regardless of new local water projects coming online.

SUPPORT

None on file

OPPOSITION

None on file

RECOMMENDED POSITION

Staff recommends the Commission **Oppose** AB 1871.

AMENDED IN ASSEMBLY MARCH 18, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1871

Introduced by Assembly Member Waldron

February 10, 2016

An act to ~~amend Section 12947 of the Water Code, add Section 30603.2 to the Public Resources Code, relating to desalination,~~ *coastal resources.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1871, as amended, Waldron. ~~Desalination.~~ *Coastal resources: development: water supply projects.*

Existing law, the California Coastal Act of 1976, requires any person wishing to perform or undertake any development in the coastal zone, as defined, in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, to obtain a coastal development permit from the local government or California Coastal Commission, as specified.

This bill would limit the growth-inducing impacts the commission may consider in its review of a coastal development permit for a water supply project.

Existing law, the Cobey-Porter Saline Water Conversion Law, states the policy of this state that desalination projects developed by or for public water entities be given the same opportunities for state assistance and funding as other water supply and reliability projects, and that desalination be consistent with all applicable environmental protection policies in the state. The law provides that it is the intention of the Legislature that the Department of Water Resources shall undertake to find economic and efficient methods of desalting saline water so that

desalted water may be made available to help meet the growing water requirements of the state.

~~This bill would provide that it is the intention of the Legislature that when a state agency considers an application relating to desalination that the agency, when considering alternatives, should consider the cost of those alternatives in order to ensure that project financing does not become significantly more expensive or difficult.~~

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 30603.2 is added to the Public Resources
2 Code, to read:

3 30603.2. Notwithstanding any other law, if a coastal
4 development permit for a water supply project is to be obtained
5 from the commission pursuant to Section 30601 or an action taken
6 by a local government on a coastal development permit application
7 for a water supply project is on appeal to the commission pursuant
8 to Section 30603, and if the commission is considering the
9 growth-inducing impacts of the water supply project, the
10 commission shall be limited to considering the following
11 growth-inducing impacts:

12 (a) How the proposed project augments existing water supplies.

13 (b) How the proposed project increases regional water supply
14 reliability as a response to drought or climate change impacts.

15 (c) How the proposed project achieves the state policy of
16 reducing reliance on the Sacramento-San Joaquin Delta, as
17 described in Section 85021 of the Water Code.

18 SECTION 1. ~~Section 12947 of the Water Code is amended to~~
19 read:

20 12947. (a) ~~The Legislature finds and declares that the growing~~
21 ~~water needs of the state require the development of cost-effective~~
22 ~~and efficient water supply technologies. Desalination technology~~
23 ~~is now feasible to help provide significant new water supplies from~~
24 ~~seawater, brackish water, and reclaimed water. Desalination~~
25 ~~technology can also provide an effective means of treating some~~
26 ~~types of contamination in water supplies. Desalination is consistent~~
27 ~~with both state water supply and efficiency policy goals, and joint~~

1 ~~state-federal environmental and water policy and principles~~
2 ~~promoted by the Cal-Fed Bay Delta Program.~~

3 ~~(b) It is the policy of this state that desalination projects~~
4 ~~developed by or for public water entities be given the same~~
5 ~~opportunities for state assistance and funding as other water supply~~
6 ~~and reliability projects, and that desalination be consistent with all~~
7 ~~applicable environmental protection policies in the state.~~

8 ~~(c) It is the intention of the Legislature that the department shall~~
9 ~~undertake to find economic and efficient methods of desalting~~
10 ~~saline water so that desalted water may be made available to help~~
11 ~~meet the growing water requirements of the state.~~

12 ~~(d) It is the intention of the Legislature that when a state agency~~
13 ~~considers an application relating to desalination that the agency,~~
14 ~~when considering alternatives, should consider the cost of those~~
15 ~~alternatives in order to ensure that project financing does not~~
16 ~~become significantly more expensive or difficult.~~

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**BILL ANALYSIS****AB 2002 (Stone)**

Amended 03/28/16

SUMMARY

AB 2002 would amend the definition of “administrative action” in Section 82002 of the Political Reform Act to include permit applications and other similar actions pending before the Coastal Commission. The bill would also amend Section 30324 of the Public Resources Code to require written disclosure within 24 hours of ex parte communications that occur within seven days of the Commission hearing on an action and to prohibit ex parte communications within 24 hours of the Commission hearing on an action. Finally, the bill would amend Section 30325 of the Public Resources Code to require persons who communicate with the commission on actions described under that new definition, with certain exceptions, to comply with the requirements Political Reform Act (Chapter 6, Title 9 of the Government Code).

PURPOSE OF THE BILL

This bill would apply to individuals who receive more than \$2,000 compensation in a calendar month for conducting communications with Coastal Commission members for the purpose of influencing a decision. The purpose of the bill is to require those individuals to register as lobbyists with the Secretary of State, and comply with all applicable public reporting requirements of the Political Reform Act. This would include disclosure of the person or persons that an individual or firm is representing, the issues/projects they are working on, their rate of compensation, and an accounting of their expenditures.

The bill would also require written disclosure within 24 hours of ex parte communications that occur within seven days of the Commission’s hearing on an action. It would prohibit ex parte communications from occurring within less than 24 hours of the Commission’s hearing on that action.

FISCAL IMPACT TO COMMISSION

Minor costs associated with increased public disclosure of ex parte communications during the last seven before a hearing.

EXISTING LAW

The California Administrative Procedures Act (APA) covers approximately 63 agencies. To ensure procedural due process in public proceedings, the APA generally prohibits any communication, direct or indirect, to a presiding officer in an adjudicatory hearing, from any party, unless there is notice and an opportunity for all parties to participate in the communication (Government Code Section 11430.10). If the presiding officer receives a communication in violation of this prohibition, the officer must make full written disclosure, notify all parties, provide an opportunity for the opposing party to address the communication, and reopen the hearing at his or her discretion. Receipt of an ex parte communication can be grounds for disqualifying the presiding officer (Government Code Section 11430.60). The ex parte prohibitions of the APA apply broadly to state agencies unless expressly authorized in statute.

Public Resources Code Section 30329 specifically exempts the Coastal Commission from the prohibition on ex parte communications contained in the APA.

Under PRC Section 30324, Commissioners are required to disclose and make public all ex parte communications from an interested person by providing a complete, comprehensive written report to the executive director within seven days of the communication. Once disclosed, the report becomes part of the public record. If the communication occurs within seven days of the next Commission meeting, the disclosure must be made verbally on the record during the public hearing. Once properly disclosed, a communication ceases to be an ex parte communication. Failure to properly disclose an ex parte communication may result in a civil fine of up to \$7,500.

Under PRC Section 30319, anyone with an application pending before the Commission must notify the Commission in writing, designating the names of all individuals, who, for compensation, are authorized to communicate with staff members and commissioners on behalf of the applicant.

Government Code Section 82002 defines “administrative action as the proposal, drafting, development, consideration, amendment enactment or defeat by any state agency of any rule, regulation, or other action in any ratemaking proceeding or any quasi-legislative proceeding.” Government Code Section 82002 does not currently apply to individuals representing applicants or other interested parties in quasi-judicial matters before the Commission.

Existing provisions of the Political Reform Act require lobbyists, lobbying firms and lobbyist employers to register with the Secretary of State and file periodic reports disclosing the specific legislative or administrative actions which they are attempting to influence, and any payments made or received or expenses incurred in connection with their activities. Lobbyists are also required to complete specified ethics courses. These requirements do not generally apply to quasi-judicial proceedings.

PROGRAM BACKGROUND

Prior to 1992, the Coastal Act did not address ex parte communications. Unreported ex partes communications were taking place regularly, raising significant questions of due process. PRC Sections 30321 and 30322 were added to the Coastal Act 1992 to define which kinds of communications qualify as ex parte communications for the purposes of the Coastal Act. Section 30324 was added to require full disclosure of any such ex parte communications. This section was subsequently amended in 1993 and 2014 to add greater specificity to ex parte reporting requirements. In 1995, Section 30329 was added to the Coastal Act, specifically exempting the Commission from the ex parte communications provisions under the APA.

Under current Coastal Act disclosure requirements, Commissioners are required to disclose and make public all ex parte communications from interested persons, including applicants and their agents, by providing a complete, comprehensive written report to the executive director within seven days of the communication. (PRC Section 30324). These ex parte disclosures are retained in the project file, and also become part of the public record. Ex partes that are received by the Commission prior to the publication of the staff report are usually included as an exhibit or as part of the addendum. Ex parte communications that take place less than seven days prior to the hearing must be disclosed verbally from the dais at the hearing, and are not required to be submitted in writing.

In addition, applicants must provide the Commission, in writing, the names of all individuals who have been hired to communicate with staff and commissioners on their behalf. (PRC 30319). This document is retained in the project file, and is publicly available upon request.

In 1972, in the wake of the Watergate scandal, California became the first state to pass comprehensive political reform. Citizen activists qualified and successfully campaigned for Proposition 9, which was passed by the voters in June. Known as the Political Reform Act, the law addresses campaign finance disclosure, contribution limits, conflicts of interest for public officials and lobbying activity. The PRA is enforced by the Fair Political Practices Commission (FPPC), a 5-member, independent, bi-partisan commission.

The Legislature has approved various exemptions from the APA's provisions regarding ex parte communications for some state agencies. These exemptions have taken place over several decades on a case by case basis, and are not consistent across all agencies. A report published by the [California Research Bureau](#) in 2008 compared the ex parte communication rules for 6 state agencies; the PUC, the SWRCB, the CEC, the IWMB, the CARB and the Coastal Commission. Of the 6 agencies analyzed, all but the CEC allowed for ex partes on quasi-legislative matters (rulemaking). Conversely, all but the Coastal Commission prohibit ex parte communications for quasi-judicial matters (regulatory actions affecting specific individuals or entities). The CEC's ex parte rules go further than the APA, and prohibit all off the record communications with commissioners' personal staff and advisors.

ANALYSIS

Agent designation requirements in PRC 30319 are intended to specify who is authorized to communicate with commissioners or Commission staff on an applicant's behalf. Although 30319 letters are public documents, they become part of the project file, and are only available to the public upon request.

Similarly, ex parte communication disclosure rules are intended to ensure a complete public record at the time of the public hearing. Completed forms become part of the written file, and verbal disclosures from the dais are only available by watching the archived video of the item. Once the hearing item is complete, the permit file becomes the complete repository of disclosures regarding that item, and available to the public upon request.

But even if ex parte communication disclosures and 30319 letters were easily accessible on the Internet, that would not address the lack of reporting requirements for agents. Because agents are not required to independently disclose who their clients are, what projects they are working on, and what they are getting paid, there is no ability for the public to independently assess the effects of their activities on the public process.

Although the general perception that agents who regularly conduct ex parte communications with commissioners and appear before the Commission on behalf of applicants are effectively functioning as lobbyists, current law does not require them to register with the Secretary of State or publicly disclose their client list, expenditures, or compensation rates.

Ex parte communications received seven or fewer days prior to a Commission meeting must be disclosed verbally from the dais, but are not currently required to be reported in writing. Consequently, ex parte communications that take place a week prior to the meeting do not become part of the written record. The only record of this subset of communications is the archived video of the hearing. Amendments of 03/28/16 would require all ex parte communications to be summarized and reported in writing, in addition to current verbal disclosure requirements. Communications that take place seven or fewer days before a meeting would be reported within 24 hours of the communication. Communications within 24 hours of the meeting would be prohibited.

This will place an additional reporting requirement on commissioners and staff the week prior to the hearing. It is not clear where these late disclosures would be posted. For those items where staff is preparing late addenda, the ex parte disclosures could be included. But there is no current system in place to make late ex parte communications publicly available for those items that do not generate a late addendum. But written disclosures of late ex parte communications would be included in the written public record of the hearing.

The Commission makes decisions of considerable importance to local communities and the general public. Given the importance of maintaining public trust in the Commission's decision-making process, and the significant economic impacts associated with Commission actions, this bill would make a significant contribution towards increasing the transparency of the current process. Ex parte disclosures are the obligation of Commissioners, but there is no commensurate obligation on the part of the agents. Requiring Coastal Commission agents to register as lobbyists with the Secretary of State and disclose, on a centralized website, all of their activities, clients, fees and expenditures could enhance public transparency around agency actions, increase public confidence in the process.

SUPPORT

Audubon California, Azul, A3PCON, Black Surfers Collective, Blue Frontier Campaign, California Coastkeeper Alliance, California Coastal Protection Network, California League of Conservation Voters, California Native Plant Society, CERF, The City Project, Climate Parents, Courage Campaign, Environment California, Environment in the Public Interest, Environmental Defense Center, Environmental Justice Coalition for Water, Hispanic Access Foundation, Humboldt Baykeeper, Idare, Klamath Riverkeeper, Los Angeles Water Keeper, Los Cerritos Wetlands Land Trust, Monterey Coastkeeper, National Parks Conservation Assn., Nature Conservancy, Orange County Coastkeeper, Petaluma River Council, Preserve Rural Sonoma County, San Diego Coastkeeper, Santa Barbara Channelkeeper, San Francisco Baykeeper, Sierra Club California, Sonoma County Conservation Action, Smith River Alliance, Surfrider Foundation, Turtle Island Restoration Network, Ventura Coastkeeper.

OPPOSITION

California Association of Realtors, California Business Properties Association, California Cattleman Association, California Chamber of Commerce, California Farm Bureau, CALCIMA, CIPA.

RECOMMENDATION

If the Commission believes there is a public benefit to requiring lobbyists who appear before the Commission to register as such, then staff recommends the Commission **SUPPORT** AB 2002.

AMENDED IN ASSEMBLY MARCH 28, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2002

Introduced by Assembly Members Mark Stone, Atkins, and Levine
(Principal coauthor: ~~coauthors: Assembly Member Members Alejo~~
~~and Gordon~~)

(Principal coauthor: Senator Jackson)

(Coauthors: Assembly Members Bloom, Chiu, Gonzalez,
Jones-Sawyer, McCarty, O'Donnell, Rendon, Thurmond, Ting,
Weber, Williams, and Wood)

(Coauthors: Senators Allen, Block, *Leno*, *Monning*, Pavley, and Wolk)

February 16, 2016

An act to amend Sections 82002, 82039, and 86300 of the Government Code, and to amend ~~Section~~ *Sections 30324 and 30325* of the Public Resources Code, relating to the Political Reform Act of 1974.

LEGISLATIVE COUNSEL'S DIGEST

AB 2002, as amended, Mark Stone. Political Reform Act of 1974: California Coastal ~~Commission~~. *Commission: communications.*

Existing law establishes the California Coastal Commission in the Natural Resources Agency and designates the commission as the state coastal zone planning and management agency for all purposes. *Existing law prohibits a commission member or an interested person, as defined, from conducting an ex parte communication unless the commission member fully discloses and makes public that communication within 7 days after the communication or, if the communication occurs within 7 days of the next commission hearing, to the commission on the record of the proceeding at that hearing.*

This bill would require a commission member to fully disclose in writing 24 hours before a commission hearing any ex parte communication conducted within 7 days of the commission hearing relating to a matter that will be discussed at the hearing, and would prohibit a commission member or an interested person from conducting such an ex parte communication within 24 hours before the commission hearing.

The Political Reform Act of 1974 provides for the regulation of the lobbying industry, including defining the term “lobbyist” and regulating the conduct of lobbyists. Among its provisions, the act prohibits lobbyists from engaging in certain activities, including accepting or agreeing to accept any payment in any way contingent upon the defeat, enactment, or outcome of any proposed legislative or administrative action. Under the act, a lobbyist is, among others, an individual whose principal duties as an employee are to communicate with, among others, any agency official for the purpose of influencing legislative or administrative action. For these purposes, “administrative action” is defined as the proposal, drafting, development, consideration, amendment, enactment, or defeat by a state agency of any rule, regulation, or other action in any ratemaking or quasi-legislative proceeding and “agency official” is defined as any member, officer, employee, or consultant of any state agency who participates in any administrative action in other than a ministerial capacity.

This bill would revise the definition of “administrative action” to include, with regard to proceedings before the California Coastal Commission, ~~specified actions, plans, and orders, and any other quasi-judicial or quasi-legislative matter requiring commission action.~~ *actions relating to the review, approval, and appeal of certain permit actions and coastal plans and programs.* The bill would, however, exclude from these provisions relating to lobbyists ~~an individual who communicates with a member of the California Coastal Commission for compensation to advocate for an outcome in relation to no more than one administrative action during a calendar year and an employee of a local government agency seeking, within the scope of his or her employment, to influence quasi-judicial decisions of the commission.~~ The bill would also, for purposes of a quasi-judicial matter before the California Coastal Commission, limit the definition of “agency official” to a member of the commission.

Existing law makes a knowing and willful violation of the Political Reform Act of 1974 a misdemeanor and subjects offenders to criminal penalties.

This bill would impose a state-mandated local program by expanding those crimes.

The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act's purposes with a $\frac{2}{3}$ vote of each house and compliance with specified procedural requirements.

This bill would declare that it furthers the purposes of the act.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

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

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

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

- 1 SECTION 1. Section 82002 of the Government Code is
- 2 amended to read:
- 3 82002. (a) "Administrative action" means any of the following:
- 4 (1) The proposal, drafting, development, consideration,
- 5 amendment, enactment, or defeat by any state agency of any rule,
- 6 regulation, or other action in any ratemaking proceeding or any
- 7 quasi-legislative proceeding, which shall include any proceeding
- 8 governed by Chapter 3.5 (commencing with Section 11340) of
- 9 Part 1 of Division 3 of Title 2.
- 10 (2) With regard only to placement agents, the decision by any
- 11 state agency to enter into a contract to invest state public retirement
- 12 system assets on behalf of a state public retirement system.
- 13 (3) For purposes of proceedings before the California Coastal
- 14 Commission, the proposal, drafting, development, consideration,
- 15 amendment, enactment, or defeat of any rule, regulation, permit
- 16 action, federal consistency review, appeal, local coastal program,
- 17 port master plan, public works plan, long-range development plan,
- 18 or categorical or other exclusion from coastal development permit
- 19 requirements, cease and desist order, restoration order, or any other

~~quasi-judicial or quasi-legislative matter requiring commission action; requirements.~~

(b) “Ratemaking proceeding” means, for the purposes of a proceeding before the Public Utilities Commission, any proceeding in which it is reasonably foreseeable that a rate will be established, including, but not limited to, general rate cases, performance-based ratemaking, and other ratesetting mechanisms.

(c) “Quasi-legislative proceeding” means, for purposes of a proceeding before the Public Utilities Commission, any proceeding that involves consideration of the establishment of a policy that will apply generally to a group or class of persons, including, but not limited to, rulemakings and investigations that may establish rules affecting an entire industry.

SEC. 2. Section 82039 of the Government Code is amended to read:

82039. (a) “Lobbyist” means either of the following:

(1) Any individual who receives two thousand dollars (\$2,000) or more in economic consideration in a calendar month, other than reimbursement for reasonable travel expenses, or whose principal duties as an employee are, to communicate directly or through his or her agents with any elective state official, agency official, or legislative official for the purpose of influencing legislative or administrative action.

(2) A placement agent, as defined in Section 82047.3.

(b) An individual is not a lobbyist by reason of activities described in Section 86300.

(c) For the purposes of subdivision (a), a proceeding before the Public Utilities Commission constitutes “administrative action” if it meets any of the definitions set forth in subdivision (b) or (c) of Section 82002. However, a communication made for the purpose of influencing this type of Public Utilities Commission proceeding is not within subdivision (a) if the communication is made at a public hearing, public workshop, or other public forum that is part of the proceeding, or if the communication is included in the official record of the proceeding.

(d) Notwithstanding Section 82004, for purposes of a quasi-judicial matter before the California Coastal Commission, as described in paragraph (3) of subdivision (a) of Section 82002, “agency official,” as used in subdivision (a) of this section, shall only mean a member of the California Coastal Commission.

1 ~~(e) Notwithstanding subdivision (a), “lobbyist” shall not include~~
2 ~~an individual who communicates with a member of the California~~
3 ~~Coastal Commission for compensation to advocate for an outcome~~
4 ~~in relation to no more than one administrative action during a~~
5 ~~calendar year.~~

6 SEC. 3. Section 86300 of the Government Code is amended
7 to read:

8 86300. The provisions of this chapter are not applicable to any
9 of the following:

10 (a) An elected public official acting in his or her official capacity
11 or an employee of the state acting within the scope of his or her
12 employment. However, an employee of the state, other than a
13 legislative official, who attempts to influence legislative action
14 and who would be required to register as a lobbyist, except for the
15 provisions of this subdivision, shall not make gifts of more than
16 ten dollars (\$10) in a calendar month to an elected state officer or
17 legislative official.

18 (b) A newspaper or other periodical of general circulation, book
19 publisher, radio or television station, any individual who owns,
20 publishes, or is employed by any such newspaper or periodical,
21 or radio or television station, which in the ordinary course of
22 business publishes news items, editorials, or other comments, or
23 advertisements that directly or indirectly urge legislative or
24 administrative action, if that newspaper, periodical, book publisher,
25 radio or television station, or individual, engages in no further or
26 other activities in connection with urging legislative or
27 administrative action other than to appear before a committee of
28 the Legislature or before a state agency in support of or in
29 opposition to such action.

30 (c) A person when representing a bona fide church or religious
31 society solely for the purpose of protecting the public right to
32 practice the doctrines of such church.

33 (d) An employee of a local government agency seeking, within
34 the scope of his or her employment, to influence quasi-judicial
35 decisions of the California Coastal Commission.

36 SEC. 4. *Section 30324 of the Public Resources Code is*
37 *amended to read:*

38 30324. (a) (1) No commission member, nor any interested
39 person, shall conduct an ex parte communication unless the
40 commission member fully discloses and makes public the ex parte

1 communication by providing a full report of the communication
2 ~~to~~ as follows:

3 (A) *If the communication occurs more than seven days before*
4 *the next commission hearing, to the executive director within seven*
5 *days after the communication or, if communication.*

6 (B) *Except as provided in subparagraph (C), if the*
7 *communication occurs within seven days of the next commission*
8 *hearing, to the commission on the record of the proceeding at that*
9 *hearing.*

10 (C) *If the communication occurs within seven days of the next*
11 *commission hearing and relates to a matter that the commission*
12 *will discuss at the hearing, to the commission in writing at least*
13 *24 hours before that hearing.*

14 (2) *Notwithstanding paragraph (1), no commission member,*
15 *nor any interested person, shall conduct an ex parte communication*
16 *within 24 hours before a commission hearing regarding a matter*
17 *that the commission will discuss at the hearing.*

18 (b) (1) The commission shall adopt standard disclosure forms
19 for reporting ex parte communications which shall include, but
20 not be limited to, all of the following information:

21 (A) The date, time, and location of the communication.

22 (B) (i) The identity of the person or persons initiating and the
23 person or persons receiving the communication.

24 (ii) The identity of the person on whose behalf the
25 communication was made.

26 (iii) The identity of all persons present during the
27 communication.

28 (C) A complete, comprehensive description of the content of
29 the ex parte communication, including a complete set of all text
30 and graphic material that was part of the communication.

31 (2) The executive director shall place in the public record any
32 report of an ex parte communication.

33 (c) Communications shall cease to be ex parte communications
34 when fully disclosed and placed in the commission's official
35 record.

36 ~~SEC. 4.~~

37 SEC. 5. Section 30325 of the Public Resources Code is
38 amended to read:

39 30325. (a) Nothing in this article prohibits any person or any
40 interested person from testifying at a commission hearing,

1 workshop, or other official proceeding, or from submitting written
2 comments for the record on a matter before the commission.
3 Written comments shall be submitted by mail or delivered to a
4 commission office, or may be delivered to the commission at the
5 time and place of a scheduled hearing.

6 (b) Any person who communicates with the members of the
7 commission regarding an administrative action of the commission,
8 as defined in paragraph (3) of subdivision (a) of Section 82002 of
9 the Government Code, and who qualifies as a lobbyist, as defined
10 in ~~subdivisions~~ *subdivision* (a) ~~and (d)~~ of Section 82039 of the
11 Government Code, shall comply with the requirements of Chapter
12 6 (commencing with Section 86100) of Title 9 of the Government
13 Code.

14 ~~SEC. 5.~~

15 *SEC. 6.* The Legislature finds and declares that the provisions
16 of this act further the purposes of the Political Reform Act of 1974
17 within the meaning of subdivision (a) of Section 81012 of the
18 Government Code.

19 ~~SEC. 6.~~

20 *SEC. 7.* No reimbursement is required by this act pursuant to
21 Section 6 of Article XIII B of the California Constitution because
22 the only costs that may be incurred by a local agency or school
23 district will be incurred because this act creates a new crime or
24 infraction, eliminates a crime or infraction, or changes the penalty
25 for a crime or infraction, within the meaning of Section 17556 of
26 the Government Code, or changes the definition of a crime within
27 the meaning of Section 6 of Article XIII B of the California
28 Constitution.

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400

**BILL ANALYSIS****AB 2171 (Jones)**

Introduced 02/18/16

SUMMARY

AB 2171 would add Section 30625.5 to the Public Resources code to allow an applicant or an aggrieved person to appeal any appealable local action on a coastal development permit or claim for exemption directly to superior court in lieu of filing an appeal with the Commission.

PURPOSE OF THE BILL

The purpose of the bill is to provide appellants and applicants the option of bypassing the Coastal Commission's appeal process, and instead file an appeal challenging the local action directly with superior court.

EXISTING LAW

Under PRC Section 30603, after certification of its local coastal program (LCP), an action taken by a local government on a coastal development application may be appealed to the Commission only for the following types of development:

Development approved between the first public road and the sea or within 300 feet of the inland extent of any beach or of the mean high tide line, whichever is greater;

Development approved on tidelands, submerged lands, public trust lands, within 100 feet of a wetland, estuary or stream, or within 300 feet of the top of the seaward face of a coastal bluff;

Development approved in a sensitive coastal resource area;

Development approved by a coastal county that is not designated as the principally permitted use;

Any development which constitutes a major public works facility or a major energy facility.

Under PRC Section 30801 any aggrieved person, as defined, has the right to judicial review of any decision of the Commission by filing a petition for a writ of mandate within 60 days after a decision becomes final. Under PRC Section 30802, any aggrieved person has a right to judicial review of local government actions that are not appealable to the Commission.

PROGRAM BACKGROUND

Once the Commission has certified an LCP as adequate to fully carry out the provisions of the Coastal Act, the local government assumes regulatory authority for issuing coastal development permits (CDP) in that jurisdiction consistent with the standards in the certified LCP. Local governments implementing certified LCPs must notify the Commission of all final local actions taken, and indicate whether or not those actions are appealable to the Commission, within 7

calendar days of taking an action. A local action becomes final at the close of business on the 10th working day from the receipt by the Commission of the local government's action unless an appeal is filed within that time.

If a timely appeal has been submitted to the Commission, the first threshold question is whether or not the appeal raises a substantial issue (SI) under the Coastal Act. If the Commission finds the appeal raises no substantial issue (NSI), the appeal is rejected and the local action stands. If the Commission finds SI, the appeal proceeds to a de novo hearing. At the de novo hearing, the proposal is evaluated under the standards of the LCP, and the Commission may approve, deny, or approve the permit with conditions to ensure consistency with the LCP.

The average length of time to a NSI finding is approximately 70 days. The average length of time to a SI finding is approximately 100 days.

From 2000 - 2014, the average number of *appealable* local actions statewide was 950 per year. Of those appealable actions, the Commission received an average of 70 appeals per year, for an average annual appeal rate of 7.8%.

Between January, 2012, and May 2015, the Commission found that 37% of these appeals raised no substantial issue under the Coastal Act, allowing the local decision to stand. Another 19% were withdrawn following discussions between staff, appellants and applicants. Of the remaining appeals, less than 1% of permits were ultimately denied by the Commission. The remainder were approved with conditions.

ANALYSIS

The Commission's CDP appeal process is an important oversight mechanism for the protection of public access and coastal resources. Less than 10% of appealable actions statewide are appealed to the Commission. More than half of those appeals were rejected or withdrawn by appellants in the last three years. The remainder were considered by the Commission in a de novo hearing, with 99% getting approved as submitted or approved with conditions that were required to protect public access or coastal resources. While less than 1% of appeals are denied by the Commission, it is critical to retain the ability to review local decisions in certain circumstances. For instance, in 2015 the Commission denied an appeal brought by a local water district over the approval of a private irrigation well that would have tapped the district's public ground water supply.

This limited but important oversight role is also an important component of the State's federally certified Coastal Management Program (CCMP). The Commission is the state agency with the specialized legal, technical and professional expertise in Coastal Act implementation. The role of the Commission is to ensure that new development avoids or minimizes impacts to coastal resources and maximizes public access consistent with the Coastal Act. This frequently involves extensive discussions and negotiations with applicants, local governments and members of the public to resolve outstanding issues collaboratively. The role of the court is to review these regulatory actions for consistency with applicable statutes. Courts don't problem solve with applicants or interested members of the public.

The Commission's process for determining Substantial Issue ensures that unmeritorious appeals are not accepted. In fact, more than a quarter of all appeals are rejected for lack of a substantial issue. This critical winnowing process would be eliminated if appellants could appeal directly to Superior Court.

For those appeals that the Commission does accept, it takes jurisdiction over the permit and holds a de novo hearing. This means that the Commission has the ability to include new conditions, if necessary, to ensure that new development avoids or mitigates impacts to public access and coastal resources, consistent with the certified LCP. And it means that the Commission has responsibility for condition compliance and all pre-construction review.

In addition, it is common for several parties to appeal a local permit. These parties are not necessarily affiliated or even in agreement over the issues subject to the appeal or the desired outcome. Creating an alternative appeal process would create significant procedural questions if some parties file appeals with the Commission and other parties appeal directly to superior court. It is unclear what the remedy would be if the same local action were being considered simultaneously by the Commission and a superior court.

Like all Commission actions, any action the Commission takes on an appealed permit is subject to judicial review. However, relatively few appealed permits are litigated. In 2015, litigation was filed on only four appealed permit actions. In 2014, only three appealed actions went to court.

Courts are the final adjudicators of the law, but they cannot take the place of a de novo public hearing before the Commission. Side-stepping the Commission's appeal process would significantly undermine the Commission's authority, increase costs to the state, and create significant legal ambiguity.

SUPPORT

None on file

OPPOSITION

None on file

RECOMMENDED POSITION

Staff recommends the Commission **Oppose** AB 2171.

AMENDED IN ASSEMBLY MARCH 29, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2171

Introduced by Assembly Member Jones

February 18, 2016

An act to amend Section 30801 of, and to add Section 30625.5 to, the Public Resources Code, relating to coastal resources.

LEGISLATIVE COUNSEL'S DIGEST

AB 2171, as amended, Jones. Coastal resources: development review: appeals.

Existing law, the California Coastal Act of 1976, requires any person wishing to perform or undertake any development in the coastal zone, as defined, in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, to obtain a coastal development permit. The act further provides for the certification of local coastal programs by the California Coastal Commission. The act prohibits the commission, except with respect to appeals to the commission, from exercising its coastal development permit review authority, as specified, over any new development within the area to which the certified local coastal program, or any portion thereof, applies. The act specifies that any appealable action on a coastal development permit or claim of exemption for any development by a local government or port governing body may be appealed to the commission by an applicant, any aggrieved person, or any 2 members of the commission, except as provided. *Under existing law “aggrieved person” means any person who, in person or through a representative, appeared at a public hearing of the commission, local government, or port governing body in connection with the decision or action appealed*

or who, by other appropriate means prior to a hearing, informed the commission, local government, or port governing body of the nature of his or her concerns or who for good cause was unable to do either.

This bill would, notwithstanding those provisions, and to the extent permitted under federal law, authorize an applicant for a coastal development permit, ~~permit~~ or any aggrieved person, ~~as defined, person~~ to file an appeal of any appealable action on a coastal development permit or claim for exemption for any development proposed to be located in an area subject to a certified local coastal program directly to a superior court of competent jurisdiction, in lieu of filing an appeal with the commission. *The bill would also further limit the meaning of “aggrieved person” to a person who is either domiciled or owns real property in a coastal county impacted by the decision or within 1,000 feet of an impacted coastal county.*

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 30625.5 is added to the Public Resources
2 Code, to read:

3 30625.5. (a) Notwithstanding any other law, and to the extent
4 permitted under federal law, an applicant, or any aggrieved person,
5 as defined in Section 30801, may file an appeal of any appealable
6 action on a coastal development permit or claim for exemption for
7 any development proposed to be located in an area covered under
8 a certified local coastal program directly to a superior court of
9 competent jurisdiction, in lieu of filing an appeal with the
10 commission pursuant to Section 30625.

11 (b) Section 30802 shall not apply to an appeal filed pursuant to
12 this section.

13 SEC. 2. Section 30801 of the Public Resources Code is
14 amended to read:

15 30801. ~~Any~~ (a) An aggrieved person shall have a right to
16 judicial review of ~~any~~ a decision or action of the commission by
17 filing a petition for a writ of mandate in accordance with Section
18 1094.5 of the Code of Civil Procedure, within 60 days after the
19 decision or action has become final.

20 (b) (1) For purposes of this section and subdivision (c) of
21 Section 30513 and ~~Section 30625~~, Sections 30625 and 30625.5,

1 an “aggrieved person” means ~~any a person who, in~~ *who meets both*
2 *of the following requirements:*

3 (A) *The person is either domiciled or owns real property in a*
4 *coastal county, as defined in Section 30100.5, impacted by the*
5 *decision or within 1,000 feet of an impacted coastal county.*

6 (B) *The person, in person or through a representative, appeared*
7 *at a public hearing of the commission, local government, or port*
8 *governing body in connection with the decision or action appealed,*
9 ~~or who, or,~~ *by other appropriate means prior to a hearing, informed*
10 *the commission, local government, or port governing body of the*
11 *nature of his or her concerns or who for good cause was unable*
12 *to do either.* “Aggrieved

13 (2) “Aggrieved person” includes the applicant for a permit and,
14 in the case of an approval of a local coastal program, the local
15 government involved.

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400

**BILL ANALYSIS****AB 2198 (Brough)**

Introduced 02/18/16

SUMMARY

AB 2198 would require an application for a coastal development permit for a “desalinization project” to be given priority for review and expedited permitting.

PURPOSE OF THE BILL

The purpose of the bill is to expedite the regulatory review process for applications related to desalination facilities.

EXISTING LAW

Under existing law, various federal, state and local agencies play a role in the planning, permitting, construction and monitoring of public and private desalination facilities. Local jurisdictions or water districts generally determine how much water they will need for future demands and what water supply projects are needed to provide the projected amounts. Several state agencies have jurisdiction over various components of seawater desalination facilities, such as the State Lands Commission for projects proposing to use state tidelands and the State Division of Drinking Water to ensure the facility meets drinking water standards. The Coastal Commission has regulatory jurisdiction over desalination facilities in the coastal zone, either through federal consistency review or through coastal development permit review. Of all the permits needed for a seawater desalination facility, the CDP is the most comprehensive, and it generally evaluates a range of issues similar to those addressed for any large industrial coastal facility, such as land use, terrestrial and marine environmental resources, water quality, coastal hazards and growth-inducing impacts.

However, pursuant to the state Water Code’s Section 13142.5(b), the primary permitting authority over key components of seawater desalination facilities rests with the State and Regional Water Quality Boards. To implement this section of the Water Code, the Office of Administrative Law on January 28, 2016 approved an amendment to the state’s Water Quality Control Plan adopted by the State Water Resources Control Board for the Ocean Waters of California (Ocean Plan) to address effects associated with the construction and operation of seawater desalination facilities. The amendment establishes that the Board is to determine whether new or expanded seawater desalination plants are proposing to use the best available, site, design, technology, and mitigation measures feasible to minimize the intake and mortality of all forms of marine life and provides that the Board has primary authority over these aspects of a proposed facility. The amendment also establishes a formal consultation process to ensure that the Board’s review is coordinated with the review and permit processes of the Coastal Commission and other involved agencies.

PROGRAM BACKGROUND

In 2003, the Commission was one of 27 public and private stakeholder groups that participated in a task force mandated by AB 2717 (Chapter 957, Statutes of 2002). That task force, convened by

the Department of Water Resources, specifically looked at the regulatory opportunities and impediments to desal permitting, as well as whether and to what extent the state should fund the development of desalination technology. The task force issued its report, *Water Desalination – Findings and Recommendations*, on October 9, 2003

http://www.water.ca.gov/desalination/pud_pdf/Findings-Recommendations.pdf.

The final report's recommendations were not restricted to legislative actions or statutory changes. Many could be implemented by project proponents or State and local agencies without further legislative authorization or mandate. For example, it emphasized the need for regulatory agencies, stakeholders, and the interested public to coordinate in determining the need, location, and design of desalination facilities. The report provided valuable guidance to stakeholders on what considerations should be included in planning for new desal water supplies, and also acknowledged the need to conduct site-specific evaluation and recognize specific existing regulatory requirements. The recommendations drew upon the experience of many agencies and experts, and provided advice and guidance that could be used by those applicants or interested parties to help facilitate planning efforts.

In 2004, the Coastal Commission held an informational hearing on desalination. The staff report for that presentation identified key design and location elements for desal proposals that either facilitate or hinder the permit process. For example, facilities designed without an open-ocean intake would not raise the same marine resource impact issues and require the same studies as those that did propose open-ocean intakes. This report also emphasized the need for coordination among various agencies and stakeholders.

ANALYSIS

Because desalination technology can be used to treat many types of impaired water to provide a potable supply, the potential for increased use of desalination in California includes opportunities for providing water supply from seawater and brackish water desalination as well as recovering contaminated groundwater and recycling wastewater. Although most estimates indicate that seawater desalination will contribute less than 10 percent of the State's total water supply needs over the next 20 years, this could represent a significant portion of California's water supply portfolio.

To be consistent with Coastal Act and other relevant policies, desalination facilities must be thoughtfully planned and carefully reviewed by relevant decision makers. As major water supply projects, desalination facilities are subject to a variety of approvals, ranging from environmental reviews, leases for use of State tidelands, and permits needed to address potential water quality and marine life effects and to ensure that drinking water standards and public health requirements are met. When project proponents coordinate early with the Commission and other agencies to identify regulatory concerns and then use these concerns as design tools to avoid and minimize environmental impacts, the permit process is likely to be considerably shorter.

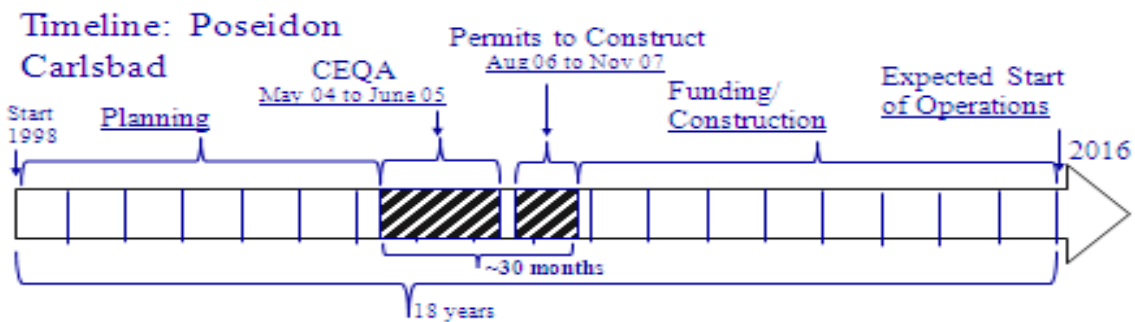
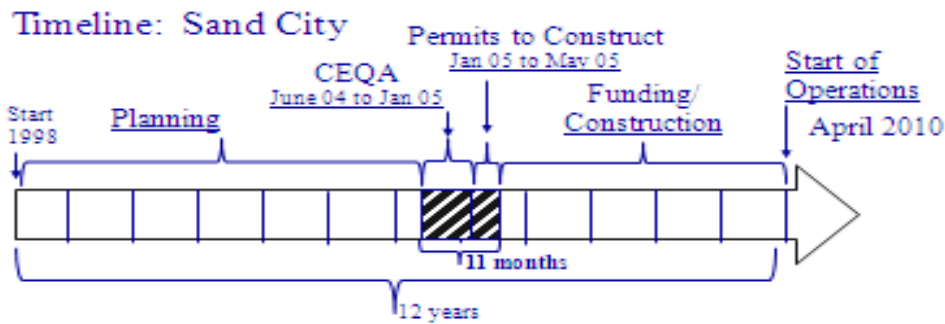
However, the bill does not address this need for coordination and does not specify what actions the Commission should take to would expedite and prioritize the review of desalination facilities. This ambiguity could result in Commission staff not being able to obtain the information needed

to conduct the required environmental review and analysis or could frustrate the intent of the recently approved Ocean Plan Amendment to coordinate the various reviews.

In practice, the amount of time required for processing proposed desalination facilities is not determined by the relative “priority” assigned to the project by the Commission. Proposed projects that generally take the longest to review are those that have not incorporated the recommendations and guidelines previously provided by the Commission and other agencies, or for which project proponents have not provided the information needed for the required level of analysis. Thus far, the commonality among projects which have taken the most time to review is that they propose the continued use of power plant open ocean intakes, even though most of those intakes are being retired for power plant use due to their highly destructive effects on marine life. Using these open ocean water intakes for desalination raises a number of Coastal Act issues, as they extend for decades marine life impacts that would otherwise end with the retirement of the power plant cooling systems. Additionally, the recently adopted Ocean Plan establishes that such open water intakes are not to be used if it is feasible to instead use any of several types of subsurface intakes. Further, in light of the Commission’s record of prompt review of most desalination projects and its prior history of attention to this specific issue, this bill is not warranted, as those proposals that follow Commission guidance to coordinate and to design proposed facilities based on regulatory requirements proceed expeditiously through the permit process. For example, the Commission’s permit review and approval of the Sand City desalination facility (on appeal), took approximately four months. This was due in large part to early coordination between the City, the Commission, and other agencies during project design and local review. Other examples over the last decade or so include the following where the Commission has expeditiously reviewed and acted on a number of desal projects, as evidenced by the following timeframes from date of application to approval:

- Long Beach Test Facility, 2 months
- Orange County Subsurface intake, 3 months
- Sand City Municipal Supply Facility, 4 months
- Santa Cruz Test Facility, 5 months
- Monterey County Test Facility, 20 months
- Long Beach Subsurface Intake, 7 months
- West Basin Test Facility, 4 months
- Santa Barbara Municipal, 3 months
- Poseidon Carlsbad Open Ocean Intake, 30 months

Finally, the Commission’s review of most projects represents only a small percentage of the overall length of the planning/permitting timeline. Planning, financing, CEQA review, local approvals and construction account for the vast majority of time. For instance, the Commission’s review and action of the Sand City facility in 2005 accounted for 4 months out of a 12 year process. The Commission’s review of Poseidon’s project in Carlsbad accounted for 30 months out of 18 years of planning, identifying water purchasers, obtaining financing, and other decision-making processes.



The most efficient pathway for any given proposal can be determined through early coordination with and among agencies. To the extent there may be similar information needs or studies required by different permit review authorities, these can be addressed through early coordination among applicants and agencies. This bill's directive to prioritize and expedite the Commission's review of project proposals will do little if anything to shorten the overall timeline for new desalination facilities in the coastal zone and may result in additional processes and costs for project proponents.

SUPPORT

None on file.

OPPOSITION

None on file.

RECOMMENDED POSITION

Staff recommends the Commission **Oppose** AB 2198.

ASSEMBLY BILL

No. 2198

Introduced by Assembly Member Brough

February 18, 2016

An act to add Section 30616 to the Public Resources Code, relating to coastal resources.

LEGISLATIVE COUNSEL'S DIGEST

AB 2198, as introduced, Brough. Coastal development permits: desalinization facilities.

The California Coastal Act of 1976 provides for the planning and regulation of development in the coastal zone, as defined, under a coastal development permit procedure, based on various coastal resources planning and management policies set forth in the act. The act requires any person wishing to perform or undertake any development in the coastal zone, as defined, to obtain a coastal development permit, except as specified, from the California Coastal Commission or from a local government.

This bill would require an application for a coastal development permit for a desalinization project, as described, to be given priority for review, and would require the issuing agency to expedite the processing of any such permit application.

Because these provisions would impose additional duties on local governmental entities, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

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

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

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

1 SECTION 1. Section 30616 is added to the Public Resources
2 Code, to read:
3 30616. (a) An application for a coastal development permit
4 for a desalinization project shall be given priority for review, and
5 the issuing agency shall expedite the processing of any such permit
6 application.
7 (b) For purposes of this section, “desalinization project” includes
8 any project or facility involving the desalinization of coastal waters
9 that is intended to increase water supply and provide public and
10 environmental benefits to the state.
11 SEC. 2. No reimbursement is required by this act pursuant to
12 Section 6 of Article XIII B of the California Constitution because
13 a local agency or school district has the authority to levy service
14 charges, fees, or assessments sufficient to pay for the program or
15 level of service mandated by this act, within the meaning of Section
16 17556 of the Government Code.

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400

**BILL ANALYSIS****AB 2305 (Bloom)**

Amended 04/05/16

SUMMARY

AB 2305 would generally prohibit the keeping, display, breeding, sale or transport of orca/killer whales. The bill would also prohibit the collection or importation of gametes for the purpose of artificial insemination. The bill provides for the continued keeping of captive orca held prior to January 1, 2017, as well as for the keeping of orca for rehabilitation or research purposes, provided that orca rescued from the wild for rehabilitation be returned to the wild whenever possible. The penalty for violating this provision would be a misdemeanor fine of up to \$100,000.

PURPOSE OF THE BILL

The purpose of the bill is to provide for the gradual phase-out of captive orca breeding and display for entertainment purposes.

EXISTING LAW

The regulation of captive marine mammals involves various government agencies at different levels of government. At the federal level, the Marine Mammal Protection Act (MMPA) of 1972 protects all marine mammals and prohibits their take in United States waters and by United States citizens on the high seas, as well as the importation of marine mammals and marine mammal products into the United States. "Take" is defined in the MMPA as "to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal (1616 U.S.C. §1362(13)), while "harass" is defined by regulation as "any act of pursuit, torment, or annoyance which has the potential to either (a) injure a marine mammals in the wild, or (b) disturb a marine mammal by causing disruption of behavioral patterns, which includes, but is not limited to, migration, breathing, nursing, breeding, feeding, or sheltering." (50 C.F.R. § 216.3.)

Federal authority under the MMPA is divided between the Secretary of the Interior – acting through the U.S. Fish and Wildlife Service (USFWS) – and the Secretary of Commerce – acting through the National Oceanic and Atmospheric Administration (NOAA). Under the MMPA, the USFWS regulates otters, walruses, polar bears, manatees, and dugongs, while NOAA regulates pinnipeds and cetaceans, which includes orcas. A third agency – the Marine Mammal Commission (MMC) – reviews policies and advises the other two agencies.

In certain cases, the MMPA allows the issuance of permits for the removal of marine mammals from the wild, importation of marine mammals, or transfer of releasable rehabilitated marine mammals, for the purposes of public display. Within NOAA, the National Marine Fisheries Service (NMFS) Office of Protected Resources oversees the issuance of permits for incidental and direct takes of the marine mammals under NOAA's purview, which includes orcas. NMFS also maintains the National Inventory of Marine Mammals (NIMM), which tracks acquisitions (births, wild captures, and imports), dispositions (deaths, escapes, and releases), and transfers/transport (between owners or facilities) of marine mammals under its purview. Due to

amendments to the MMPA in 1994, once a permit has been issued by NMFS for the removal, import, or transfer of a marine mammal for public display, a permit from NMFS is not required to maintain the marine mammal in public display facilities, unless the species is listed under the Endangered Species Act (ESA). The orcas at SeaWorld San Diego are not listed as endangered.

To qualify for a public display take permit, the displaying facility must meet three criteria: (1) the facility offers an education or conservation program, (2) the facility is open to the public on a regular basis; and (3) the facility is licensed by the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA). For a domestic facility to export non-ESA listed marine mammals to a foreign facility, NMFS must verify that the receiving facility meets comparable criteria and obtain confirmation from the foreign government that such criteria are enforced.

The 1994 amendments to the MMPA transferred authority over captive animal care and maintenance to the USDA/APHIS and removed the requirement for facilities to obtain MMPA permits to hold marine mammals for public display. The USDA/APHIS has jurisdiction over animal care and maintenance for all marine mammals held for public display purposes under the Animal Welfare Act of 1966 (AWA). (7 U.S.C. § 2131 *et seq.*) This includes space, veterinary care, transport, and public interaction programs.

The AWA regulates the treatment of warm-blooded animals in research, exhibition, transport, and by dealers. While other laws, policies, and guidelines may include additional species coverage or specifications for animal care and use, the AWA is the minimum acceptable standard. The USDA/APHIS oversees the implementation of the AWA; exhibitors must be licensed under APHIS. The APHIS Animal Care program conducts unannounced inspections of facilities by either a law inspector or a trained veterinarian – depending on facility – at least once a year to ensure they are in compliance with regulations and to identify unregistered facilities, with follow-up inspections conducted when non-compliance is identified. Inspections of SeaWorld are conducted by a trained veterinarian.

At the state level, the California Department of Fish and Wildlife (CDFW) is one department within the California Natural Resources Agency responsible for the establishment and control of wildlife and fishery management programs. The CDFW has the power to regulate the taking or possession of birds, certain mammals, fish, amphibian, and reptiles for non-commercial purposes. However, the take of marine mammals is pre-empted by federal law under the MMPA. NMFS has not transferred regulatory authority regarding the take of marine mammals to California, so CDFW does not regulate the take of orcas. For the animals that are within its purview, CDFW regulates take in part through issuance of hunting and fishing licenses, establishing seasons for such taking activity, overseeing aquaculture activities, and combating poaching and illegal animal sales.

The California Coastal Commission, also part of the California Natural Resources Agency, was established in 1976 in order to regulate development and preserve, protect, and restore the coastal resources of California. The Coastal Act includes specific policies that address terrestrial and marine habitat protection, as cited above.

Under PRC Section 30230, “Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.”

PROGRAM BACKGROUND

SeaWorld San Diego began construction in 1961 and opened to the public in 1964. It is the only marine park facility in California still displaying captive orca. The company operates two other facilities in Florida and Texas, and holds a total of 24 killer whales. The San Diego facility currently holds eleven, eight of which were bred and born in captivity, and three of which were captured from the wild. There are currently 56 orcas in captivity worldwide, with 24 of them (43%) under SeaWorld’s care.

Field research as well as captive observations over the last 50 years has contributed to a growing body of evidence regarding the complex biology, intelligence and social order of these iconic marine mammals. This understanding has led to a greater appreciation of and sensitivity to the negative impacts associated with captivity. There is a developing consensus among many marine biologists and the general public that killer whales are inherently unsuited to a life in captivity.

In October of 2105, the Commission unanimously approved SeaWorld San Diego’s application to expand [its orca facility](#) (Application # 6-15-0424) subject to nine special conditions. As amended by the Commission, special condition 1 prohibited the future capture, breeding or transport of the facility’s killer whales, except as specifically provided for by federal law. This would have prevented any future breeding of orcas at the facility, or the use of any of their gametes for artificial insemination at other facilities. It would also prohibit the removal of any of the current resident orca.

Following the Commission’s action, on November 9, 2015, SeaWorld publicly announced that it did not intend to move forward with the Blue World tank expansion, and would instead modify its San Diego orca shows to feature a more naturalistic setting and behaviors in the existing tank. The following month, on December 27, 2015, SeaWorld filed a lawsuit against the Commission in Superior Court seeking to overturn the Commission’s decision. This case is still pending.

On March 13, 2016, SeaWorld and the Humane Society of the United States jointly announced that SeaWorld was completely suspending its orca breeding program, effective immediately at all three of its parks, and shifting the format of its shows to focus on ocean conservation and more natural behaviours.

ANALYSIS

AB 2305 largely mirrors the Commission’s conditions of approval, as well as SeaWorld’s new management approach. SeaWorld’s decision to phase out its orca program is laudatory. It goes beyond the parameters of the Commission’s special condition 1, and applies to all of SeaWorld’s facilities nationwide. In addition, the company is retooling its shows to reflect a more educational and environmentally-based format. The company’s current population of 24 whales

will live out the rest of their natural lives in some form of captivity, but without the current levels of reproductive stress or focus on entertainment-themed display.

Under this scenario, SeaWorld San Diego can plan for a slowly declining population of killer whales, while developing new public messaging centered on ocean conservation issues. Ending the practice of captive breeding will ensure that no more killer whales will be born into captivity in California. More importantly, it could significantly reduce global pressure to capture more wild whales for the purpose of maintaining genetic diversity, which has a direct impact on the health of wild populations. (Although SeaWorld is already a signatory to the Virgin Pledge to not take any more wild whales from the ocean, other countries that are still capturing and breeding from wild whales. Access to the offspring of these wild whales is not limited by the Virgin Pledge.) As custodians for nearly half the world's captive orca population, the affirmative decision to step away from captive breeding sends a powerful market signal.

AB 2305 would codify policies reflected in the Commission's action on SeaWorld's permit. The bill is also consistent with the intent of PRC 30230 and SeaWorld's new business model. It will finally and definitively end the practice of captive killer whale breeding and display in California, precluding any future company from establishing or re-establishing a marine park featuring captive orca.

SUPPORT

Animal Legal Defense Fund, Born Free USA, California League of Conservation Voters, Cetacean Society International, Defenders of Wildlife, Humane Society of the United States, In Defense of Animals, Marin Humane Society, North County Watch, Performing Animal Welfare Society, San Francisco SPCA, Sierra Club California, Whale and Dolphin Conservation, Wildlands Conservancy, World Animal Protection.

OPPOSITION

None on file

RECOMMENDED POSITION

Staff recommends the Commission **Support** AB 2305.

AMENDED IN ASSEMBLY APRIL 5, 2016

AMENDED IN ASSEMBLY MARCH 17, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2305

Introduced by Assembly Member Bloom
(Coauthor: Assembly Member Levine)

February 18, 2016

~~An act relating to fish. An act to add Section 4502 to the Fish and Game Code, relating to marine mammals.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2305, as amended, Bloom. ~~Native steelhead trout: study.~~
Protection of orcas: unlawful activities.

(1) Existing law makes it unlawful to take any marine mammal, as defined, except as provided under specified federal laws.

This bill would make it unlawful to hold in captivity an orca, whether wild-caught or captive-bred, for any purpose, including for display, performance, or entertainment purposes; to breed or impregnate an orca held in captivity; to export, collect, or import the semen, other gametes, or embryos of an orca held in captivity for the purpose of artificial insemination; or to export, transport, move, or sell an orca located in the state to another state or country, except as provided.

The bill would provide that a person, corporation, or institution that intentionally or negligently violates these provisions is guilty of a misdemeanor punishable by a fine not to exceed \$100,000. By creating a new crime, the bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

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

~~Existing law establishes the Department of Fish and Wildlife in the Natural Resources Agency. Under existing law, the department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species.~~

~~This bill would require the department to conduct a study of native steelhead trout, as specified, and to submit the study to the Legislature by January 1, 2018.~~

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

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

- 1 SECTION 1. Section 4502 is added to the Fish and Game Code,
- 2 to read:
- 3 4502. This section shall be known, and may be cited, as the
- 4 California Orca Protection Act.
- 5 (a) It is unlawful for any person to do any of the following:
- 6 (1) (A) Except as provided in subparagraph (B) and subdivision
- 7 (c), hold in captivity an orca, whether wild-caught or captive-bred,
- 8 for any purpose, including, but not limited to, display, performance,
- 9 or entertainment purposes.
- 10 (B) An orca located in the state on January 1, 2017, may
- 11 continue to be held in captivity and may continue to be used for
- 12 educational presentations until it is retired or until its death.
- 13 (2) Breed or impregnate any orca held in captivity in the state.
- 14 (3) Export, collect, or import the semen, other gametes, or
- 15 embryos of an orca held in captivity for the purpose of artificial
- 16 insemination.
- 17 (4) Export, transport, move, or sell an orca located in the state
- 18 to another state or country unless otherwise authorized by federal
- 19 law or if the transfer is to another facility within North America
- 20 that meets standards comparable to those provided under the
- 21 Animal Welfare Act (7 U.S.C. Sec. 2131 and following).
- 22 (b) A person, corporation, or institution that intentionally or
- 23 negligently violates subdivision (a) is guilty of a misdemeanor

1 *and, upon conviction thereof, shall be punished by a fine not to*
2 *exceed one hundred thousand dollars (\$100,000).*

3 *(c) This section does not apply to an orca that is held for*
4 *rehabilitation after a rescue or stranding or for research purposes.*
5 *However, an orca that is held for rehabilitation or research*
6 *purposes shall be returned to the wild whenever possible and, if*
7 *return to the wild is not possible, the orca shall not be used for*
8 *breeding, performance, or entertainment purposes.*

9 *(d) As used in this section, the following terms are defined as*
10 *follows:*

11 *(1) "Educational presentation" means a live, scheduled orca*
12 *display in the presence of spectators that includes natural*
13 *behaviors, enrichment, exercise activities, and a live narration*
14 *and video content that provides science-based education to the*
15 *public about orcas.*

16 *(2) "Orca" means a killer whale (Orcinus orca).*

17 *(e) The provisions of this section are severable. If any provision*
18 *of this section or its application is held invalid, that invalidity shall*
19 *not affect other provisions or applications that can be given effect*
20 *without the invalid provision or application.*

21 *SEC. 2. No reimbursement is required by this act pursuant to*
22 *Section 6 of Article XIII B of the California Constitution because*
23 *the only costs that may be incurred by a local agency or school*
24 *district will be incurred because this act creates a new crime or*
25 *infraction, eliminates a crime or infraction, or changes the penalty*
26 *for a crime or infraction, within the meaning of Section 17556 of*
27 *the Government Code, or changes the definition of a crime within*
28 *the meaning of Section 6 of Article XIII B of the California*
29 *Constitution.*

30 ~~SECTION 1. (a) The Department of Fish and Wildlife shall~~
31 ~~conduct a study of native steelhead trout. The department shall do~~
32 ~~all of the following in the study:~~

33 ~~(1) Identify which subspecies of native steelhead trout is best~~
34 ~~suited for adaptation to warming seas due to climate change.~~

35 ~~(2) Identify areas of the state where the subspecies of native~~
36 ~~steelhead trout identified in paragraph (1) is found.~~

37 ~~(3) Describe the current level of sustainability, current~~
38 ~~population condition, and population needs of the subspecies of~~
39 ~~native steelhead trout identified in paragraph (1).~~

- 1 ~~(4) Identify subspecies of native steelhead trout that are most~~
2 ~~at risk of extinction due to climate change.~~
3 ~~(b) (1) The department shall submit the study to the Legislature~~
4 ~~by January 1, 2018.~~
5 ~~(2) The study submitted pursuant to this subdivision shall be~~
6 ~~submitted in compliance with Section 9795 of the Government~~
7 ~~Code.~~

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400

**BILL ANALYSIS****AB 2616 (Burke)**

As Introduced 02/19/16

SUMMARY

AB 2616 would:

- Increase the membership of the Commission from 15 to 18. Three additional voting commissioners would be appointed, one-each by the Governor, Speaker and the Senate Rules Committee, who represent and work with communities most burdened by high levels of pollution and environmental justice issues.
- Provide that the Coastal Act does not prohibit the Commission from considering Environmental Justice concerns in its actions.
- Amend PRC Section 30213 reinstate the Commission's original authority to protect, encourage, and where feasible provide opportunities for low and moderate income housing.

PURPOSE OF THE BILL

The purpose of the bill is to prioritize environmental justice issues in the coastal zone by establishing three new appointments to the Commission with experience in the environmental justice issues; give the Commission the authority to consider environmental justice concerns in its decisions; and reinstate the Commission's previous authority under Chapter 3 to protect, encourage and where feasible provide affordable housing.

EXISTING LAW

The Coastal Act currently provides for the appointment of 12 voting and 3 ex-officio commissioners. Each appointing authority (the Governor, the Senate Rules Committee and the Speaker of the Assembly) currently appoints four voting commissioners, two of whom must be locally elected officials from specific geographic regions, and two of whom must be members of the public at large. The Governor's appointees serve at will, the Legislative appointees serve 4-year terms.

Other than the 6 elected officials, the Coastal Act does not proscribe and any specific qualifications for Coastal Commission appointments. PRC Section 30310 applies generally to all appointments:

In making appointments pursuant to this division, the Governor, the Senate Rules Committee, and the Speaker of the Assembly shall make good faith efforts to assure that their appointments, as a whole, reflect, to the greatest extent feasible, the economic, social and geographic diversity of the state as a whole.

Government Code Section 65040 designates the Office of Planning and Research (OPR) as the coordinating agency in state government for environmental justice programs, and is charged with drafting general plan guidelines, sharing information with federal agencies and the private sector, and other related responsibilities. Government Code Section 65040.12 (e) states:

For the purposes of this section, "environmental justice" means the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.

Public Resources Code Section 30011 prohibits the Commission from enforcing the affordable housing requirements of the Mello Act (Gov. Code § 65590) and Section 30500.1 specifies that the Commission cannot require a Local Coastal Program to include affordable housing policies.

PROGRAM BACKGROUND

From the date of its enactment in 1976 until 1981, the California Coastal Act included broad policy language requiring the provision of affordable housing in the coastal zone for persons of low and moderate income. As originally enacted, Section 30213 of the Coastal Act provided:

“Lower cost visitor and recreational facilities and housing opportunities for persons of low and moderate income shall be protected, encouraged, and, where feasible, provided.”

Under that authority, the Commission required, as conditions to coastal development permits issued for numerous Orange County residential subdivisions, that 25% to 35% of the permitted units be maintained as affordable housing with re-sale controls to ensure their continued affordability for persons of low to moderate income. This resulted in approximately 5,000 affordable units of affordable housing being created over a period of 5 years statewide.

The Commission’s inclusionary housing policies were controversial at the time, and several bills were introduced between 1977-1980 to repeal the Commission’s authority; all of which were opposed by the Commission. In 1981, Senator Mello (D-Monterey) introduced SB 626. Despite Commission opposition, the Legislature repealed the Commission’s statutory authority to protect and provide affordable housing in the coastal zone. SB 626 (Ch. 1007 Statutes of 1981) amended PRC Section 30213 as follows:

“Lower cost visitor and recreational facilities ~~and housing opportunities for persons of low and moderate income~~ shall be protected, encouraged, and, where feasible, provided.”

And added Section 30500.1 which states:

“No local coastal program shall be required to include housing policies and programs.”

And Section 30607.2 (a) which states:

“Conditions requiring housing for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, which were incorporated into a coastal development permit issued prior to January 1, 1982, may, at the request of the permittee, be amended or modified by the

commission or by a local government having the authority to issue coastal development permits. In approving such amendments or modifications, only those conditions and requirements authorized by Section 65590 of the Government Code may be imposed on the permittee.”

This allowed developers of several previously approved projects to successfully petition the Commission for the removal of earlier permit conditions requiring the provision of affordable units.

SB 626 also added Section 65590 to the Government Code, authorizing the demolition or conversion of existing affordable housing units in the coastal zone, so long as replacement units were constructed within the same city or county, within 3 miles of the coastal zone.

In 2003, Senator Ducheny (D-San Diego) introduced SB 619 (Chapter 793, Statutes of 2003), addressing a variety of affordable housing-related issues across a number of statutes. Specific to the Coastal Act, SB 619 added PRC Sections 30604 (f) and (g) directing the Commission to “encourage housing opportunities for persons of low and moderate income” and preclude the Commission from reducing density bonuses below what is otherwise allowable in the Government Code, unless specific findings are made regarding Chapter 3 policies:

(f) The commission shall encourage housing opportunities for persons of low and moderate income. In reviewing residential development applications for low- and moderate-income housing, as defined in paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code, the issuing agency or the commission, on appeal, may not require measures that reduce residential densities below the density sought by an applicant if the density sought is within the permitted density or range of density established by local zoning plus the additional density permitted under Section 65915 of the Government Code, unless the issuing agency or the commission on appeal makes a finding, based on substantial evidence in the record, that the density sought by the applicant cannot feasibly be accommodated on the site in a manner that is in conformity with Chapter 3 (commencing with Section 30200) or the certified local coastal program.

(g) The Legislature finds and declares that it is important for the commission to encourage the protection of existing and the provision of new affordable housing opportunities for persons of low and moderate income in the coastal zone.

SB 619 limited the Commission’s ability to reduce residential densities of affordable housing projects, but did not restore the Commission’s authority to protect existing affordable housing or encourage or provide new affordable housing. The Legislative findings in Section 30604(g) in Chapter 7 do not provide the same authority as enforceable policies of Chapter 3. This was made clear when the Commission staff initially interpreted 30604 (f) and (g) as a requirement to “encourage” new affordable housing in ways that included but were not limited to the specific references to density bonuses. The bill’s author intervened, and clarified through two letters to the Commission that she intended her legislation to be narrowly interpreted, and not used as a justification for any additional actions on the part of the Commission to increase additional affordable housing beyond what might be proposed by applicants.

ANALYSIS

Several Coastal Act sections address issues that are broadly understood to benefit underserved communities, and guard against some of the harms generally associated with environmental justice concerns. For instance, Coastal Act policies protecting public access, lower cost visitor-serving facilities, water quality and ground water supply have enabled the Commission to deny or condition projects in ways that maximize public access for everyone, preserve existing or provide for new lower-cost overnight accommodations, and ensure that water supplies will not polluted or depleted as a result of new development. In addition, the Commission's Public Education program continues to provide numerous grants that support coastal education, marine research projects and beach field trips for underserved and inland communities. And the Commission's Sea Level Rise Policy Guidance document, adopted in 2015, contains a section that addresses the disproportionate impact of sea level rise on underserved communities.

However, Chapter 3 of the Coastal Act lacks specific, enforceable policy language that addresses or acknowledges environmental justice as a specific focus of concern. In addition, local coastal programs are not required to include affordable housing policies. Because Chapter 3 and certified LCPs are the Commission's legal standard of review, it is therefore possible for a proposed project to be found consistent with Coastal Act or LCP policies, while still raising environmental justice issues for affected communities related to land use, economic development, noise, public nuisances and other disproportionate impacts on underserved communities.

Proposed new Section 30006.6, would incorporate Government Code Section 65040.12 by reference and would clarify that the Coastal Act does not prohibit the Commission from considering environmental justice factors, in addition to Chapter 3 policies, when considering new development.

The drafters of the Coastal Act understood that gentrification and loss of affordable housing in the coastal zone would be an unfortunate and unintended consequence of coastal protection. The original language of 30213 was intended to mitigate those impacts. To implement that policy, the Commission adopted three sets of interpretive guidelines between 1977-1981, and approved approximately 5,000 affordable units during that time. The guidelines featured a combination of approaches, including inclusionary deed restricted units, land dedications, and in-lieu fees.

Land development patterns during that time included numerous large subdivisions of vacant land, which afforded the opportunity for hundreds of new, inclusionary units to be built within large-scale market rate subdivisions in Southern California. Today's land use patterns afford fewer such opportunities. Should this bill become law, the Commission could consider regulations or interpretive guidelines that would clarify how the agency would implement the policy in the context of current land use trends.

Adding three new appointees to the Commission with a background in environmental justice will likely heighten awareness and increase dialogue about environmental justice and affordable housing issues.

Although Commission appointments have not traditionally been made according to interest area, California's demographics are changing, and economic/environmental justice issues are becoming a higher priority. Emphasis on social and environmental justice issues will likely result from the Chapter 3 amendments included in this bill, in addition to the focused interest of the three new appointments.

However, adding three new commissioners will also change the historic balance between locally elected and public member appointments, which was a structure initially agreed upon with local government in 1976. Creating specialized appointments may also lead to similar requests from other interest groups. It will also increase operational costs to the Commission, by approximately \$45,000 per year. That said, it is the prerogative of the Legislature to determine the Commission's appointment structure, and budget accordingly. Should this bill become law, it will be important to ensure that all Commissioners understand their obligation to fairly and impartially implement all Chapter 3 policies, as a matter of due process.

SUPPORT

None on file.

OPPOSITION

None on file.

RECOMMENDED POSITION

Staff recommends the Commission **Support** AB 2616.

ASSEMBLY BILL

No. 2616

**Introduced by Assembly Member Burke
(Coauthor: Assembly Member Mark Stone)**

February 19, 2016

An act to amend Sections 30213 and 30301 of, and to add Section 30006.6 to, the Public Resources Code, relating to coastal resources.

LEGISLATIVE COUNSEL'S DIGEST

AB 2616, as introduced, Burke. California Coastal Commission: membership: environmental justice.

Existing law, the California Coastal Act of 1976, establishes the California Coastal Commission and prescribes the membership and functions and duties of the commission. Existing law provides that the commission consists of 15 members.

This bill would increase the membership of the commission to 18 and would require 3 additional members to be appointed, one each by the Governor, the Senate Committee on Rules, and the Speaker of the Assembly, who represent and work directly with communities in the state that are most burdened by, and vulnerable to, high levels of pollution and issue of environmental justice, as defined.

Existing law requires maximum access and recreational opportunities to be provided to the public in the state's coastal areas and, in that regard, requires lower cost visitor and recreational facilities to be protected, encouraged, and, where feasible, provided.

This bill would additionally require housing opportunities for persons of low and moderate income to be protected, encouraged, and, where feasible, provided in coastal areas. The bill would also specify that the act does not preclude or otherwise restrict the consideration of

environmental justice or the equitable distribution of environmental benefits in communities throughout the state.

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 30006.6 is added to the Public Resources
2 Code, to read:

3 30006.6. This division shall not preclude or otherwise restrict
4 the consideration of environmental justice, as defined in
5 subdivision (e) of Section 65040.12 of the Government Code, or
6 the equitable distribution of environmental benefits in communities
7 throughout the state.

8 SEC. 2. Section 30213 of the Public Resources Code is
9 amended to read:

10 30213. Lower cost visitor and recreational facilities *and*
11 *housing opportunities for persons of low and moderate income*
12 shall be protected, encouraged, and, where feasible, provided.
13 Developments providing public recreational opportunities are
14 preferred.

15 The commission shall ~~not: (1) require~~ *not do either of the*
16 *following:*

17 (a) *Require* that overnight room rentals be fixed at an amount
18 certain for any privately owned and operated hotel, motel, or other
19 similar visitor-serving facility located on either public or private
20 ~~lands; or (2) establish lands.~~

21 (b) *Establish or* approve any method for the identification of
22 low or moderate income persons for the purpose of determining
23 eligibility for overnight room rentals in any ~~such~~ *of those* facilities.

24 SEC. 3. Section 30301 of the Public Resources Code is
25 amended to read:

26 30301. The commission shall consist of the following ~~15~~ *18*
27 members:

28 (a) The Secretary of the *Natural* Resources Agency.

29 (b) The Secretary of Transportation.

30 (c) The Chairperson of the State Lands Commission.

31 (d) Six representatives of the public from the state at large. The
32 Governor, the Senate Committee on Rules, and the Speaker of the
33 Assembly shall each appoint two of these members.

(e) Six representatives selected from six coastal regions. The Governor shall select one member from the north coast region and one member from the south central coast region. The Speaker of the Assembly shall select one member from the central coast region and one member from the San Diego coast region. The Senate Committee on Rules shall select one member from the north central coast region and one member from the south coast region. For purposes of this division, these regions are defined as follows:

(1) The north coast region consists of the Counties of Del Norte, Humboldt, and Mendocino.

(2) The north central coast region consists of the Counties of Sonoma and Marin and the City and County of San Francisco.

(3) The central coast region consists of the Counties of San Mateo, Santa Cruz, and Monterey.

(4) The south central coast region consists of the Counties of San Luis Obispo, Santa Barbara, and Ventura.

(5) The south coast region consists of the Counties of Los Angeles and Orange.

(6) The San Diego coast region consists of the County of San Diego.

(f) Three representatives of, and who work directly with, communities in the state that are most burdened by, and vulnerable to, high levels of pollution and issues of environmental justice, as defined in subdivision (e) of Section 65040.12 of the Government Code, including, but not limited to, communities with diverse racial and ethnic populations and communities with low-income populations. The Governor, the Senate Committee on Rules, and the Speaker of the Assembly shall each appoint one of these members.

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400

**BILL ANALYSIS****SB 900 (Jackson)**

Amended 03/09/16

SUMMARY

SB 900 would require the State Lands Commission (SLC), subject to funding, to institute a coastal hazard remediation program. The program would require the SLC to conduct a statewide survey of existing "legacy" oil wells (improperly abandoned oil wells) in state waters for which there is no responsible party; remove and remediate coastal hazards related to those wells and related infrastructure; survey and monitor natural oil seeps in state waters and identify possible mitigation measures; and report to the Legislature on the effectiveness of these activities. The bill also allows the SLC to work with the Division of Oil, Gas and Geothermal Resources (DOGGR) to properly abandon legacy wells that are hazardous to public health and safety, and the environment.

PURPOSE OF THE BILL

The purpose of the bill is to provide adequate funding and legislative direction to the State Lands Commission for the purpose of fully addressing improperly abandoned oil wells and associated infrastructure in the coastal zone, for which there is no responsible party, that may be leaking oil, contaminating coastal land and waters, and creating public hazards.

EXISTING LAW

The SLC has the authority to remove coastal hazards on state tidelands along the California coast. These include, but are not limited to, remnants of structures, piers, oil wells and pilings, and deteriorated electric cables, abandoned pipes, etc.

The Division of Oil, Gas and Geothermal Resources is responsible for regulating the abandonment of oil and gas production facilities.

The Coastal Commission has jurisdiction over development in state waters related to oil and gas production.

PROGRAM BACKGROUND

Oil drilling activity on California tidelands dates back to the late 1800s and early 1900s before the process was regulated by the state or federal government. The Summerland Oil Field in Santa Barbara County was the site of the world's first offshore oil drilling in the 1890s. Consequently, there was little to no regulatory oversight of well abandonment and capping activities when oil production became economically unprofitable. The level of demolition or removal, if any, varied from structure to structure. Operators abandoning wells would typically plug the well with dirt, rocks, pipes or other available material. As a result, many of these will still leak, allowing fresh oil to continually foul ocean waters and public beaches.

In the mid-1980s, a SLC survey identified more than 400 oil and gas related infrastructure hazards along the coast in Los Angeles, Santa Barbara and Ventura Counties. While some

hazards were traced to responsible parties, most were not. Hazards for which no responsible party can be identified become the state's responsibility by default. Since that survey, funding to remove these hazards has come from a variety of sources, including federal grants, litigation settlement agreements, and legislative appropriations. But an estimated 200 so-called "legacy wells" remain, the majority of which are located along the Summerland and Ellwood beaches in Santa Barbara County. Without a consistent funding source, SLC's ability to systematically monitor, remove and remediate these hazards is limited. Additionally, various coastal protective structures, such as seawalls and groins, have deteriorated over the years due to a lack of proper maintenance. These are now public safety hazards for which there is no identifiable responsible party.

The SLC has both the authority and the expertise to remove and remediate coastal hazards along the California coast.

ANALYSIS

Improperly abandoned wells that leak oil and other toxic materials into the coastal and marine environment are harming coastal resources, impeding public access, and creating public health and safety hazards. Reliable funding is needed in order for the SLC to update its statewide inventory and then remove or remediate the hazards.

The SLC has both the responsibility and the expertise to address this issue. Their hazard abatement activities date back to the 1950s, and include properly capping old oil wells to current standards and removing numerous well heads, well casings, and pilings. The SLC has successfully removed oil pier remnant hazards in the Santa Barbara Channel, leaking abandoned wells at Summerland Beach, hazardous groin remnants adjacent to the Las Tunas State Beach, pilings from exposed pier remnants at Mussel Shoals in Ventura County, and near-shore hazards and orphaned well heads from 24 sites in the Santa Barbara Channel. But approximately 200 known wells remain, and an unknown number of natural seeps.

SB 900 allocates \$2 million from mineral extraction leases on tide and submerged lands for this purpose, subject to appropriation in the 2017-18 Budget Act. The revenue would be deposited into the existing Kapiloff Land Bank Fund. The bill would allow for subsequent appropriations in the amount of \$2 subject to appropriation in the annual budget process.

Reducing oil contamination of coastal waters and beaches supports Coastal Act policies related to public access, productivity of ocean waters, marine biodiversity, and coastal water quality. Documenting, capping and remediating orphan wells that continue to pollute the marine and coastal environment is a state responsibility. Monitoring and learning more about natural seeps will contribute to a greater understanding of how this phenomenon is affecting coastal resources. There is a direct nexus between state revenues derived from oil and gas leases on state tidelands, and the cost of removing coastal hazards, remediating orphan oil wells and monitoring natural seeps.

SUPPORT

State Controller Betty Yee (sponsor), State Lands Commission, Environmental Defense Center, Get Oil Out, Heal the Ocean, Santa Barbara Channel Keeper, Santa Barbara County, Sierra Club California

OPPOSITION

None on file

RECOMMENDED POSITION

Staff recommends the Commission **Support** SB 900.

AMENDED IN SENATE MARCH 9, 2016

SENATE BILL

No. 900

Introduced by Senator Jackson

(Principal coauthor: Assembly Member Williams)

January 21, 2016

An act to amend Section 6217 of, and to add Section 6212 to, the Public Resources Code, relating to state lands.

LEGISLATIVE COUNSEL'S DIGEST

SB 900, as amended, Jackson. State lands: coastal hazard removal and remediation program.

(1) Existing law establishes the State Lands Commission in the Natural Resources Agency and prescribes the functions and duties of the commission. Under existing law, the commission has jurisdiction over various state lands, including coastal lands.

This bill ~~would require~~, *would*, upon appropriation of moneys by the Legislature, *require* the commission ~~to to, within 2 years~~, administer a coastal hazard removal and remediation program, as specified. The bill would authorize the commission to seek and accept on behalf of the state any gift, bequest, devise, or donation whenever the gift and the terms and conditions thereof will aid in actions undertaken to administer that program. The bill would authorize the commission to seek to abandon, in cooperation with the Division of Oil, Gas, and Geothermal Resources, legacy oil and gas ~~wells~~ *wells, as defined*, that present a hazard to the public health and safety and the environment. The bill would require the commission to annually report to the Legislature the activities and accomplishments of the program.

(2) Existing law, with specified exceptions, generally requires the State Lands Commission, on and after July 1, 2006, to deposit all

revenue, money, and remittances, derived from mineral extraction leases on state tide and submerged lands, including tideland oil revenue, into the General Fund, to be available upon appropriation by the Legislature for specified purposes. Existing law establishes the Land Bank Fund, a continuously appropriated fund, from which the commission may expend moneys for management and improvement of real property held by the commission, as trustee, to provide open space, habitat for plants and animals, and public access.

This bill would require that, for the 2017–18 fiscal year, out of those funds deposited into the General Fund by the commission, the sum of \$2,000,000 be transferred to the Land Bank Fund and be available, upon appropriation in the annual Budget Act, for the purpose of implementing the coastal hazard *removal* and remediation program. The bill would require that, commencing with the 2018–19 fiscal year and each fiscal year thereafter, an amount sufficient to bring the unencumbered balance of the Land Bank Fund available for the purpose of implementing the program to \$2,000,000 be transferred to that fund and be available, upon an appropriation in the annual Budget Act, for the purpose of implementing the program.

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. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Scattered along the California coastline are the remnants of
- 4 many old, ~~manmade~~ *human-made* structures including abandoned
- 5 oil and gas wells, groins, jetties, piers, pilings, and seawalls.
- 6 (b) These remnants, ~~which are~~ often covered and uncovered by
- 7 tides, are the legacy of the rapid commercial development along
- 8 the coastline that began just before the turn of the 20th century.
- 9 (c) Most legacy *oil and gas* wells were abandoned in the early
- 10 1900s when there was little or no oversight of the abandonment
- 11 activities, ~~so the level of demolition~~ and removal, if any, varied
- 12 from well to well. Some legacy *oil and gas* wells, therefore, may
- 13 seep oil into the surf zone impacting swimmers, surfers, and other
- 14 recreational users, and causing environmental degradation.
- 15 (d) The State Lands Commission has primary jurisdiction over
- 16 sovereign lands *along the California coastline* that are held in trust

for statewide public purposes, including, commerce, navigation, fishing, recreation, and open space and habitat preservation.

(e) The State Lands Commission has long recognized the serious and ongoing perennial health concerns and safety hazards posed by that coastal hazards and legacy wells: oil and gas wells pose.

(f) There is a critical need for adequate funding to conduct an in-depth inventory of coastal hazards, including legacy oil and gas wells and related infrastructure, along the California coastline. An assessment of the entitlement of lands and the engineering requirements and related funding needs for removal of coastal hazards is necessary to begin considering how to remove coastal hazards and remediate legacy wells: coastline in order to begin determining how to remove coastal hazards and to identify and remediate leaking legacy oil and gas wells.

(g) ~~Provided—~~With adequate funding, the State Lands Commission can inventory coastal hazards, legacy oil and gas wells and other oil and gas related hazards along the California coastline, including determining specific GPS locations, assessing entitlement requirements, preparing preliminary engineering requirements and removal cost estimates for each hazard, and removing and remediating hazards that are a significant risk to public health and safety and the environment. Adequate funding will also enable the State Lands Commission to survey and monitor oil seepage in state waters under its jurisdiction and on tidelands, and to request studies to determine oil seepage locations, rates, environmental impacts, and mitigation measures.

SEC. 2. Section 6212 is added to the Public Resources Code, to read:

6212. (a) Upon appropriation of moneys by the Legislature for the purposes of this section, the commission ~~shall~~ *shall, within two years*, administer a coastal hazard removal and remediation program to do all of the following:

~~(1) Remove coastal hazards from lands under its jurisdiction.~~

~~(2)~~

(1) Conduct an in-depth inventory of the legacy oil and gas wells and other coastal hazards along the California coastline.

~~(3)~~

(2) Survey and monitor oil seepage in state waters and tidelands under its jurisdiction and request studies to determine *and address*

1 oil seepage locations, rates, environmental impacts, and possible
2 mitigation measures.

3 (3) *Begin removal of coastal hazards from lands under its*
4 *jurisdiction.*

5 (b) Notwithstanding Section 11005 of the Government Code
6 and any other law requiring approval by a state officer of gifts,
7 bequests, devises, or donations, the commission may seek and
8 accept on behalf of the state any gift, bequest, devise, or donation
9 whenever the gift and the terms and conditions thereof will aid in
10 actions undertaken pursuant to subdivision (a).

11 (c) In cooperation with the Division of Oil, Gas, and Geothermal
12 Resources, the commission may seek to abandon legacy oil and
13 gas wells that present a hazard to the public health and safety and
14 the environment.

15 (d) The commission shall annually report to the Legislature the
16 activities and accomplishments of the program. The commission
17 may include this information in the annual report it submits
18 pursuant to Section 8618.

19 (e) For purposes of this section the following definitions apply:

20 (1) "Coastal hazards," include, but are not limited to, ~~manmade~~
21 *legacy oil and gas wells and human-made* structures, including
22 piers, jetties, groins, seawalls, and facilities associated with past
23 oil extraction *and other commercial* operations, that pose a hazard
24 to the public health and safety. Coastal hazards may include wood
25 or steel piles or piling, sheet metal pilings, H piles and H beams,
26 well casings, well caissons, railroad irons, cables, angle bars, pipes,
27 pipelines, rip rap, and wood beams and structures.

28 (2) "Legacy oil and gas wells" are ~~oil and gas wells that were~~
29 ~~drilled in the surf zone or just offshore before the enactment of the~~
30 ~~State Tidelands Act of 1921.~~ *wells drilled near shore, before*
31 *current abandonment standards, where there is little or no*
32 *information on the well's abandonment procedure and there is no*
33 *viable company with the responsibility to reabandon the well*
34 *should it start leaking or pose a threat to the environment or the*
35 *public health and safety.*

36 SEC. 3. Section 6217 of the Public Resources Code is amended
37 to read:

38 6217. With the exception of revenue derived from state school
39 lands and from sources described in Sections 6217.6, 6301.5,
40 6301.6, 6855, and Sections 8551 to 8558, inclusive, and Section

1 6404 (insofar as the proceeds are from property that has been
2 distributed or escheated to the state in connection with unclaimed
3 estates of deceased persons), the commission shall deposit all
4 revenue, money, and remittances received by the commission
5 under this division, and under Chapter 138 of the Statutes of 1964,
6 First Extraordinary Session, in the General Fund. Out of those
7 funds deposited in the General Fund, sufficient moneys shall be
8 made available each fiscal year for the following purposes:

9 (a) Payment of refunds, authorized by the commission, out of
10 appropriations made for that purpose.

11 (b) Payment of expenditures of the commission as provided in
12 the annual Budget Act.

13 (c) Payments to cities and counties of the amounts specified in
14 Section 6817 for the purposes specified in that section, out of
15 appropriations made for that purpose.

16 (d) Payments to cities and counties of the amounts agreed to
17 pursuant to Section 6875, out of appropriations made for that
18 purpose.

19 (e) (1) For the 2017–18 fiscal year, the sum of two million
20 dollars (\$2,000,000) shall be transferred to the Land Bank Fund
21 and, notwithstanding Section 8610, shall be available, upon
22 appropriation in the annual Budget Act, for the purpose of
23 implementing the commission’s coastal hazard *removal* and
24 remediation program provided in Section 6212.

25 (2) Commencing with the 2018–19 fiscal year, and each fiscal
26 year thereafter, an amount sufficient to bring the unencumbered
27 balance of the Land Bank Fund available for the purpose of
28 implementing the commission’s coastal hazard *removal* and
29 remediation program provided in Section 6212 to two million
30 *dollars* (\$2,000,000) shall be transferred to the Land Bank Fund
31 and, notwithstanding Section 8610, shall be available, upon
32 appropriation in the annual Budget Act, for the purpose of
33 implementing the commission’s coastal hazard *removal* and
34 remediation program provided in Section 6212.