

Date of Hearing: March 30, 2016

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Shirley Weber, Chair

AB 2002 (Mark Stone, et al.) – As Amended March 28, 2016

**SUBJECT:** Political Reform Act of 1974: California Coastal Commission: communications.

**SUMMARY:** Provides that communicating with the California Coastal Commission (Commission) in order to influence specified actions can result in a person being considered a “lobbyist” under the Political Reform Act (PRA). Prohibits an ex parte communication with a member of the Commission regarding a matter during the 24 hours before that matter will be discussed at a Commission hearing. Specifically, **this bill:**

- 1) Provides that communications with members of the Commission regarding specified business before the Commission can result in a person being considered a lobbyist under the PRA, pursuant to the following:
  - a) Provides that the proposal, drafting, development, consideration, amendment, enactment, or defeat of any rule, regulation, permit action, federal consistency review, appeal, local coastal program, port master plan, public works plan, long-range development plan, or categorical or other exclusion from coastal development permit requirements, with respect to proceedings before the Commission, is considered to be an “administrative action,” for the purposes of the PRA, thereby making attempts to influence these actions subject to the lobbying rules found in the PRA.
  - b) Provides, for the purposes of a quasi-judicial matter before the Commission, that the term “agency official” only means a member of the Commission, thereby generally excluding communications with staff or consultants of the Commission regarding quasi-judicial matters from the types of communications that may result in a person being classified as a lobbyist under this bill.
  - c) Exempts from the definition of “lobbyist,” for the purposes of this bill, an employee of a local government agency seeking, within the scope of his or her employment, to influence quasi-judicial decisions of the Commission.
- 2) Requires a member of the Commission to disclose any ex parte communication in writing at least 24 hours before a hearing if the communication occurs within seven days of the next hearing and relates to a matter that the Commission will discuss at the hearing. Prohibits a member of the Commission or an interested person in a Commission action from conducting an ex parte communication within 24 hours before a hearing regarding a matter that the Commission will discuss at that hearing.
- 3) Makes corresponding and technical changes.

**EXISTING LAW:**

- 1) Creates the Fair Political Practices Commission (FPPC), and makes it responsible for the impartial, effective administration and implementation of the PRA.
- 2) Defines a "lobbyist," for the purposes of the PRA, as an individual who receives \$2,000 or more in a calendar month, or whose principal duties as an employee are, to communicate with an elective state official, agency official, or legislative official for the purpose of influencing legislative or administrative action. This definition does not apply to any elected public official acting in his or her official capacity, or any state employee acting within the scope of his or her employment.
- 3) Defines "administrative action," for the purposes of the PRA, as either of the following:
  - a) 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 a quasi-legislative proceeding, as specified; or,
  - b) With regard only to placement agents, as defined, the decision by any state agency to enter into a contract to invest state public retirement system assets on behalf of a state public retirement system.
- 4) Defines "agency official," for the purposes of the PRA, as any member, officer, employee or consultant of any state agency who as part of his official responsibilities participates in any administrative action in other than a purely clerical, secretarial or ministerial capacity.
- 5) Requires an individual who is considered a lobbyist, as defined, to register as a lobbyist and to comply with various ethics and reporting rules.
- 6) Requires lobbyists to complete a biennial orientation course on the relevant ethical issues and laws relating to lobbying.
- 7) Requires lobbying firms and lobbyist employers to register with the Secretary of State (SOS) and to file periodic disclosure reports that contain information about the firms' and employers' lobbying interests and agencies lobbied.
- 8) Permits any person to testify at a Commission hearing, workshop, or other official proceeding, or submit written comments for the record on a matter before the Commission.
- 9) Requires any person who applies to the Commission for approval of a development permit to provide the Commission with the names and addresses of all persons who, for compensation, will be communicating with the Commission or its staff on the applicant's behalf or on behalf of the applicant's business partners. Requires that disclosure to be provided to the Commission prior to any such communication.
- 10) Requires a member of the Commission to disclose and make public any ex parte communication by providing a full report of the communication to the executive director

within seven days of the communication or, if the communication occurs within seven days of the next Commission hearing, to the Commission on the record of the proceeding at that hearing.

- a) Defines an "ex parte communication," for the purposes of communications related to actions of the Commission, as any oral or written communication between a member of the Commission and an interested person about a matter within the Commission's jurisdiction, which does not occur in a public hearing, workshop, or other official proceeding or that is not on the record at such a proceeding.
- b) Defines an "interested person" as (a) any applicant, applicant's agent or representative, or participant in a Commission proceeding, (b) any person with a financial interest in a matter before the Commission, or his/her agent or employee, or (c) a representative acting on behalf of any civic, environmental, neighborhood, business, labor, trade, or similar organization who intends to influence the decision of a Commissioner.
- c) Defines a "matter within the commission's jurisdiction" as any permit action, federal consistency review, appeal, local coastal program, port master plan, public works plan, or any other quasi-judicial matter requiring Commission action, for which an application has been submitted to the Commission.

11) Prohibits a member of the Commission who has knowingly had an ex parte communication that has not been reported, as required, from voting on the matter or influencing the Commission in any way. Provides that knowing violations of the disclosure or recusal requirements can result in fines of up to \$7,500, and a court order for the Commission to revoke its action and rehear the matter.

**FISCAL EFFECT:** Unknown. State-mandated local program; contains a crimes and infractions disclaimer.

**COMMENTS:**

1) **Purpose of the Bill:** According to the author:

AB 2002 will amend the California Coastal Act and the [PRA] to require that those lobbying the Commission must register with the [FPPC] as a lobbyist; they must...disclose activities they are pursuing on behalf of a client.

The decisions made by the Commission can have broad and lasting impacts on coastal conservation and coastal access. The Commission works with cities and counties in the coastal zone to approve land use policy that reflects the values put forth by the voters in 1972. Due to the gravity of these decisions, transparency of the process...is critical.

2) **Coastal Commission Background & Lobbying Regulation:** The Commission is an independent, quasi-judicial state agency generally charged with the management and regulation of California's coastal resources. The Commission is empowered to act as a

policy-maker and a regulator with regard to coastal resources, and is heavily lobbied by the many interests affected by its policies and decisions.

The Commission has 12 voting members and three ex officio (non-voting) members. Of the voting members, six are "public members," and six are local elected officials who come from specific coastal districts. The Governor, the Senate Rules Committee, and the Speaker of the Assembly each appoints four Commissioners—two public members and two elected officials. The Secretaries of the Resources Agency and the California State Transportation Agency, and the Chair of the State Lands Commission, are the three ex officio members of the Commission.

The Commission, in partnership with coastal cities and counties, plans and regulates the use of land and water in the coastal zone. Development activities, which are broadly defined by the Coastal Act to include, among others, construction of buildings, divisions of land, and activities that change the intensity of use of land or public access to coastal waters, generally require a coastal permit from either the Commission or the local government.

Under existing law, individuals and entities that make or receive specified levels of payments for the purpose of influencing legislative or administrative actions may be required to comply with the state's lobbying rules, including requirements to register with the SOS and to file periodic reports. The term "legislative action," for these purposes, is limited to matters before the Legislature and the action of the Governor in approving or vetoing bills. The term "administrative action" is defined primarily to include rule- and rate-making, the adoption of regulations, and quasi-legislative proceedings. Most of the Commission's proceedings are quasi-judicial. Because quasi-judicial proceedings are not legislative or administrative actions, payments for the purpose of influencing quasi-judicial proceedings do not currently trigger the lobbying rules found in the PRA.

Most boards and commissions that conduct quasi-judicial hearings prohibit members from having ex parte communications with interested parties. This ban does not apply to members of the Commission. Instead, members of the Commission are required to publicly disclose any ex parte communication.

- 3) **Transparency of Coastal Commission Proceedings:** The author and supporters of this bill argue that it will help ensure greater transparency of the actions of the Commission, and thereby will help ensure the integrity of the Commission's decisions. While it is true that existing law does not require individuals who receive compensation for attempting to influence Commission decisions to register as lobbyists and to comply with the lobbying rules found in the PRA, state law nonetheless includes provisions that are designed to ensure transparency of the Commission's decisions. As noted above, state law requires ex parte communications between members of the Commission and interested parties to be publicly disclosed, and includes significant penalties for violations of the ex parte rules. Additionally, state law prohibits an interested person, as defined, from making gifts aggregating more than \$10 in a calendar month to a member or staff of the Commission. Requiring certain people to register as lobbyists if they receive compensation to communicate with members of the Commission may provide some additional information about who those individuals' clients are and how much they are being paid to influence Commission decisions. Much of the

information that would be required to be disclosed on lobbyist disclosure reports, however, may already be disclosed under existing law.

- 4) **Arguments in Support:** In a letter submitted on behalf of itself and 40 other organizations in support of the prior version of this bill (which did not contain the provisions related to ex parte communications), the California Coastal Protection Network writes:

Many of the projects that come before the Commission are valued in the range of tens of millions of dollar[s], with one current project estimated at over one billion dollars, and yet disclosure of the dollars spent lobbying Commissioners for their approval is unreported....

Numerous other state agencies are subject to lobbying and public disclosure rules, and we believe that it is in the best interest of all Californians to have those paid to lobby the [Commission] to provide the same level of transparency.

The [Commission] plays a critically important role in protecting and enhancing equal access to the coast for all, stewarding our coastal resources and ensuring that new development upholds these core tenets of the Coastal Act. Our coast is our democratic commons, thus it is imperative that those paid to lobby the [Commission] are subject to the same lobbying reporting and public disclosure laws to ensure integrity, transparency and accountability in all its actions.

- 5) **Arguments in Opposition:** In a letter submitted on behalf of itself and four other organizations in opposition to the prior version of this bill (which did not contain the provisions related to ex parte communications), the California Chamber of Commerce writes:

Prior to the early 1990s the law was silent on ex parte communications at the Coastal Commission. The Coastal Act was then amended to explicitly allow commissioners to engage in ex parte communications as long as they disclose it and give written materials provided to them to commission staff. Commissioners are free to speak with anyone on any side of an issue and they often do. Additionally, applicants are required to provide written disclosures to the Commission of anyone who receives compensation to communicate with commissioners or staff. The disclosure process has been working well for a number of years. There is no reason to add cumbersome new reporting requirements for applicants, their employees, and their consultants to disclosures they currently provide....

The public should be encouraged to communicate directly with public agency representatives, provided this communication is properly disclosed. There is no reason to change the current practice. To limit the free exchange of information by imposing burdensome and costly requirements...serves no public purpose and can limit mutually acceptable outcomes.

Additionally, the American Planning Association, California Chapter (APA California) has an "oppose unless amended" position on the prior version of this bill (which did not contain

the provisions related to ex parte communications). APA California is seeking an amendment to exempt planning consultants and design professionals who are hired by local agencies from the requirement to register as lobbyists.

- 6) **Related Legislation:** AB 2658 (Maienschein), which is pending in the Assembly Natural Resources Committee, would make provisions of law that require reporting of ex parte communications between Commission members and interested parties applicable to ex parte communications between Commission staff and interested parties.
- 7) **Previous Legislation:** The provisions of this bill that would make certain communications with the Commission subject to the PRA's rules governing lobbying are similar to provisions from SB 929 (Kehoe) of 2005. SB 929 failed passage on the Senate Floor, and was never heard in the Assembly.
- 8) **Political Reform Act of 1974:** California voters passed an initiative, Proposition 9, in 1974 that created the FPPC and codified significant restrictions and prohibitions on candidates, officeholders and lobbyists. That initiative is commonly known as the PRA. Amendments to the PRA that are not submitted to the voters, such as those contained in this bill, must further the purposes of the initiative and require a two-thirds vote of both houses of the Legislature.
- 9) **Double-Referral:** This bill has been double-referred to the Assembly Natural Resources Committee.

## REGISTERED SUPPORT / OPPOSITION:

### Support

Asian Pacific Policy & Planning Council (prior version)  
 Audubon California (prior version)  
 Azul (prior version)  
 Black Surfers Collective (prior version)  
 Blue Frontier (prior version)  
 California Coastal Protection Network (prior version)  
 California Coastkeeper Alliance (prior version)  
 California League of Conservation Voters (prior version)  
 California Native Plant Society (prior version)  
 California Watershed Network (prior version)  
 CALPIRG (prior version)  
 The City Project (prior version)  
 Climate Parents (prior version)  
 Coastal Environmental Rights Foundation (prior version)  
 Courage Campaign (prior version)  
 Environment California (prior version)  
 Environmental Defense Center (prior version)  
 Environmental Justice Coalition for Water (prior version)  
 Friends of Harbors, Beaches, and Parks (prior version)  
 Hispanic Access Foundation (prior version)  
 Humboldt Baykeeper (prior version)

IDARE Sustainable Leadership (prior version)  
Inland Empire Waterkeeper (prior version)  
Klamath Riverkeeper (prior version)  
Los Angeles Waterkeeper (prior version)  
Los Cerritos Wetlands Land Trust (prior version)  
Monterey Coastkeeper & Otter Project (prior version)  
National Parks Conservation Association (prior version)  
The Nature Conservancy (prior version)  
Orange County Coastkeeper (prior version)  
Petaluma River Council (prior version)  
Preserve Rural Sonoma County (prior version)  
Russian Riverkeeper (prior version)  
San Diego Coastkeeper (prior version)  
San Francisco Baykeeper (prior version)  
San Luis Obispo Channelkeeper (prior version)  
Santa Barbara Channelkeeper (prior version)  
Sierra Club California (prior version)  
Smith River Alliance (prior version)  
Sonoma County Conservation Action (prior version)  
Surfrider Foundation (prior version)  
Turtle Island Restoration Network (prior version)  
Ventura Coastkeeper (prior version)  
WILDCOAST (prior version)  
Wishtoyo Chumash Foundation (prior version)  
One individual (prior version)

**Opposition**

American Planning Association, California Chapter (unless amended; prior version)  
California Apartment Association (prior version)  
California Association of Realtors (prior version)  
California Business Properties Association (prior version)  
California Chamber of Commerce (prior version)  
California Independent Petroleum Association (prior version)

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