

Date of Hearing: April 17, 2012

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

AB 2609 (Hueso) – As Amended: April 11, 2012

SUBJECT: Fish and Game Commission.

SUMMARY: Adds members of the Fish and Game Commission (FGC) to a statutorily-designated list of high-ranking public officials who are subject to the most expansive disclosure requirements under the Political Reform Act (PRA), and imposes additional substantive new requirements on the operation and organization of the FGC. Specifically, this bill:

- 1) States legislative findings and declarations regarding the expansion in the scope of the FGC's responsibilities, and states legislative intent that the Governor and Senate Rules Committee consider certain minimum qualifications in making and confirming appointments to the FGC. The criteria to consider include providing for diversity in background and geographic representation of the commission, the appointee's interest and background in wildlife and natural resources management, the appointee's experience in public policy decision making, and the appointee's experience with and knowledge of related scientific disciplines.
- 2) Requires that FGC commissioners annually elect a president and vice president by a vote of at least three commissioners (a majority of the five-member commission). Prohibits a commissioner from serving as president or vice president for more than two consecutive years. Provides that the president or vice president may be removed from the position of president or vice president at any time by a vote of three commissioners. Provides that in the event of a vacancy in the position of president or vice president, the FGC shall fill that vacancy at the next regularly scheduled meeting.
- 3) Repeals a requirement located in the Fish and Game Code that the FGC adopt a conflict of interest code. Repeals a provision of the Fish and Game Code that prohibits a former commissioner of the FGC, for a period of 12 months after leaving office, from acting as an agent or attorney for, or otherwise representing, any person before the FGC by making a formal or informal appearance before, or any oral or written communication to, the FGC.
- 4) Adds members of the FGC to a statutorily-designated list of high-ranking public officials, including members of the Public Utilities Commission (PUC), members of the Fair Political Practices Commission (FPPC), and members of the California Coastal Commission (CCC), among others, who are subject to the most expansive disclosure requirements under the PRA.
- 5) Requires the FGC to adopt a code of conduct that requires commissioners to adhere to specified principles. Requires the FGC, by July 1, 2013, to adopt rules governing the business practices and processes of the FGC.

EXISTING LAW:

- 1) Establishes the FGC as a five member commission appointed by the Governor and subject to confirmation by the Senate. Provides that members of the FGC serve six-year terms and

until their successors are appointed and qualified. Permits the Legislature to delegate to the FGC such powers relating to the protection and propagation of fish and game as the Legislature sees fit. Provides that a member of the FGC may be removed by concurrent resolution adopted by a majority of the members of each house of the Legislature.

- 2) Requires members of the FGC to elect one of the members as president and one as vice president of the commission. However, regulations adopted by the FGC require that the commissioner with the most seniority shall be president, with certain exceptions.
- 3) Lists certain high-ranking public officials (known as "87200 filers") who are subject to the most expansive disclosure requirements under the PRA. Provides that these 87200 filers include elected state officers, judges, members of the PUC, members of the FPPC, members of the CCC, members of county boards of supervisors, district attorneys, mayors, and members of city councils, among others.
- 4) Requires an 87200 filer to file periodic statements of economic interests (SEIs) disclosing his or her investments, interests in real property, and income (including gifts).
- 5) Requires an 87200 filer who has a financial interest in a governmental decision, with limited exceptions, to do all of the following immediately prior to the consideration of a matter in which the filer has a conflict of interest:
 - a) Publicly identify the financial interest that gives rise to the conflict of interest in detail sufficient to be understood by the public;
 - b) Recuse himself or herself from discussing and voting on the matter; and,
 - c) Leave the room until after the discussion, vote, and any other disposition of the matter is concluded, unless the matter is placed on the portion of the agenda reserved for uncontested matters.
- 6) Requires every state and local governmental agency to adopt and promulgate a conflict of interest code. Requires each conflict of interest code to include a specific enumeration of the positions within the agency, with the exception of 87200 filers, that involve the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest. Requires each person who holds such an enumerated position to file periodic SEIs disclosing his or her financial interests in accordance with the provisions of the conflict of interest code. Explicitly requires the FGC to adopt and approve a conflict of interest code pursuant to these provisions of the PRA.
- 7) Prohibits a public official at any level of state or local government from making, participating in the making, or in any way attempting to use his or her official position to influence a governmental decision in which the official knows or has reason to know that he or she has a financial interest, as defined.
- 8) Prohibits a member of a state administrative agency from receiving compensation to lobby the agency that he or she represented on behalf of another person for a period of one year after leaving office, as specified. Defines "state administrative agency" for these purposes to

include every state commission. Separately prohibits a former commissioner of the FGC, for a period of 12 months after leaving office, from acting as an agent or attorney for, or otherwise representing, any person before the FGC by making a formal or informal appearance before, or any oral or written communication to, the FGC.

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

COMMENTS:

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

The Fish and Game Commission was formed in 1870 to preserve and regulate fish in California waters. In the last 142 years, the Commission's jurisdiction has greatly expanded to include the conservation and regulation of fish and wildlife resources. Commissioners carry over 200 powers and duties, including filling quasi-judicial roles associated with the revocation or suspension of licenses and permits for violations of sports and commercial laws and regulations. As the Commission's powers have grown, it is necessary to change its practices and processes to align them with these enhanced powers.

The Fish and Game Commission's members must be held to a higher ethical standard, commensurate with their scope of work, duties and responsibilities. AB 2609 will require Commissioners to fully disclose their assets and interests under section 87200 of the Political Reform Act of 1974, similar to other state boards and commissions. This bill will also require the Commissioners to adopt a code of conduct using the principles listed as minimum guidelines. This will ensure that they discharge their duties faithfully and ethically and act in the public's best interest at all times.

AB 2609 will also encourage the Governor and Senate to select Commissioners with experience in and knowledge of wildlife and natural resources management programs, public policy and decision making, among others. It is imperative that Commissioners possess the minimum qualifications to properly and professionally handle the matters of the Commission.

This bill will require the adoption of business practices and processes so that the Commission is consistent in its daily and formal activities.

Finally, AB 2609 establishes a new process by which a president and vice president are elected and removed to truly reflect the will of the majority. A president and vice president may be elected and removed with the concurrent vote of at least three Commissioners. This change is also consistent with how a president and vice president are elected in other state boards and commissions, including the Coastal Commission and the Milton Marks Commission on California State Government Organization and Economy.

- 2) "87200 Filers" vs. "87300 Filers": As noted above, existing law designates certain high-ranking public officials who are subject to the most expansive disclosure requirements under the PRA. These officials are commonly referred to as "87200 filers" after the section of state law (Section 87200 of the Government Code) in which the officials subject to those requirements are designated.

However, 87200 filers are not the only public officials that are subject to the PRA's disclosure and conflict of interest rules. Every public official who holds a position that is enumerated in his or her agency's conflict of interest code as a position that involves the making or participation in the making of decisions which may foreseeably have a material effect on the financial interests of that official is required to file periodic SEIs disclosing his or her financial interests. These filers are sometimes referred to as "87300 filers" after the section of state law (Section 87300 of the Government Code) that requires governmental agencies to adopt conflict of interest codes. Additionally, existing state law prohibits any public official, whether that official is an 87200 filer, an 87300 filer, or neither an 87200 nor an 87300 filer, from making or participating in the making of any governmental decision in which he or she has a financial interest.

This bill proposes to add members of the FGC to the statutorily-established list of 87200 filers. Currently, members of the FGC are enumerated in the FGC's conflict of interest code, and thus are 87300 filers. This change would have two primary effects on the members of the FGC.

First, members of the FGC would be subject to somewhat broader disclosure when they file their SEIs; currently board members must disclose only those interests that fall within one of the disclosure categories listed in the FGC's conflict of interest code, but as 87200 filers, board members would be required to disclose all investments, interests in real property, and income, with certain limited exceptions.

Second, adding members of the FGC to the list of 87200 filers would mean that if a member of the FGC had a conflict of interest in a matter before the commission, that member would have to publicly identify the financial interest and leave the room until after the discussion of that matter had finished. It should be noted, however, that members of the FGC are already prohibited under existing law from participating in the making of any governmental decision in which they have a financial interest, and that this bill would not change that prohibition.

- 3) Conflict of Interest Code: One provision of this bill repeals subdivision (a) of Section 106 of the Fish and Game Code, which requires the FGC to adopt and approve a conflict of interest code pursuant to the provisions of the PRA. The repeal of this provision has no practical effect, since all state and local agencies, including the FGC, are required to have a conflict of interest code pursuant to Section 87300 of the Government Code. For the purposes of this requirement, the FGC is considered an "agency" by the FPPC. In fact, the current conflict of interest code for the FGC was adopted by the FGC and approved by the FPPC in 2005, a year before Section 106 of the Fish and Game Code was enacted into law. As a result, even if this bill is signed into law, the FGC will continue to be required to have a conflict of interest code as is the case with all other state and local government agencies, notwithstanding the repeal of subdivision (a) of Section 106 of the Fish and Game Code. In fact, the only substantive change that this bill will have with respect to the conflict of interest code for the FGC is that

the code will no longer be required to include members of the FGC in the list of identified positions of individuals who are required to file SEIs pursuant to the code, since those members will become 87200 filers under this bill.

- 4) Revolving Door Restrictions: One provision of this bill repeals subdivision (b) of Section 106 of the Fish and Game Code, which prohibits a FGC commissioner from lobbying the FGC on behalf of another person for a period of 12 months after leaving office. Notwithstanding the fact that this bill repeals that provision, a similar provision in the PRA nonetheless will continue to restrict the post-governmental activities of individuals who previously served on the FGC. Unlike the restrictions that this bill proposes to repeal, however, the post-governmental restrictions that are contained in the PRA include exceptions for individuals who are appearing before their former agencies on behalf of other public agencies, under specified circumstances. These exceptions appear to work well with other public agencies, so it seems appropriate to make those exceptions applicable to the FGC.
- 5) Election of FGC President & Possible Amendment: Although an existing provision of state statute requires the members of the FGC to elect a president and a vice president, the FGC has adopted a regulation that provides for the president and vice president to be selected based on seniority. This regulation appears to be inconsistent with the statute, because the regulation seeks to prescribe the results of the "election" for president and vice president regardless of how individual commissioners actually vote. To the extent that this regulation is inconsistent with the statute, it is invalid.

In fact, this apparent conflict was highlighted during the selection of the current FGC president in February of this year. Pursuant to the regulation that was previously adopted, the FGC was required to select a new president at the February meeting. During the discussion of that agenda item, commissioners raised questions about whether the FGC regulation that provides for the president and vice president to be determined based on seniority was consistent with the requirement that an election be conducted to choose those officers. Ultimately, the current president was elected with the votes of just two commissioners, while two others abstained and one was absent. After initially determining that the motion to elect the president had failed for the lack of a majority of the quorum of the commission, the commission subsequently reversed that determination and instead decided that a vote of 2-0 was sufficient to install the new president.

This bill seeks to provide greater specificity to guide the process for the selection of a president and a vice president of the FGC. Specifically, this bill explicitly requires the president and vice president to be elected by at least three of the five members of the FGC. Additionally, this bill provides that the president or vice president similarly may be removed from the position of president or vice president by a vote of three members, and establishes a procedure for a vacancy to be filled in the position of president or vice president. Finally, this bill would prohibit a person from serving as president or vice president for more than two consecutive years, a restriction that is identical to one that is already contained in regulations adopted by the FGC.

To the extent that the author and the committee wish to end the practice of the FGC designating the president and vice president based on seniority, however, further amendments to the statute may be warranted. Although the regulation providing for the

president and vice president to be determined based on seniority appears to be inconsistent with the statute that requires an election for these positions, the FGC nonetheless adopted that regulation, apparently under the belief that such a policy was authorized by the statute. In order to provide greater clarity to the FGC that it cannot, by regulation, annul a statute that requires the president and vice president of the FGC to be elected, the author and the committee may wish to consider an amendment to make it clear that, except for the limit on a person serving no more than two consecutive terms as president or vice president, the FGC may not adopt a regulation or policy that restricts which commissioners are eligible to be elected as president or vice president.

- 6) Arguments in Support: In support of this bill, the Ocean Conservancy writes:

The Fish and Game Commission plays a critical role in the formulation of important policies affecting our coastal and ocean resources such as fisheries and wildlife. The magnitude of these responsibilities requires that commissioners be held to the highest standards.

We are pleased that AB 2609 recognizes the importance of commissioners and seeks to ensure that they are strong representatives and ambassadors of California's natural resources stewardship values. We also believe this bill is consistent with the trajectory of the current Fish and Wildlife Strategic Vision process being undertaken by a broad array of stakeholders and resource management thought-leaders, including Ocean Conservancy.

This bill will require the Fish and Game Commission to adopt a code of conduct, guiding commissioners to adhere to prescribed principles, and adopt rules related to the business practices and processes of the commission. It would also prohibit a president or vice president from serving more than 2 consecutive years.

AB 2609 would clarify the Legislature's intent that only commissioners of the highest levels of knowledge and expertise should be appointed to the Fish and Game Commission.

- 7) Double-Referral: On April 10, 2012, this bill was approved by the Assembly Water, Parks & Wildlife Committee on an 8-4 vote.
- 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.

REGISTERED SUPPORT / OPPOSITION:

Support

Endangered Habitats League
Humane Society of the United States
Ocean Conservancy

Opposition

None on file.

Analysis Prepared by: Ethan Jones / E. & R. / (916) 319-2094