

**CALENDAR ITEM
80**

A Statewide

05/24/12

S Statewide

S. Pemberton

PROPOSED LEGISLATION

INTRODUCTION:

State Lands Commission staff has been reviewing various legislative proposals introduced in the 2011-12 legislative session that involve lands under the Commission's jurisdiction. This report describes proposed state legislation, AB 2226 (Hueso), that would require all state agencies and local governments to adhere to Section 662 of the Evidence Code when determining who holds full beneficial title to property, rather than following the Administrative Procedures Act or their own specific statute and regulations, and proposes that the Commission consider adopting an oppose position on this legislation.

LEGISLATIVE PROPOSAL:

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

SUMMARY:

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

BACKGROUND AND PURPOSE:

The purpose of AB 2226 is to ensure that state and local agencies apply Section 662 of the Evidence Code to proceedings before state and local agencies. The practical effect would be to make it more difficult for state agencies and local governments to determine underlying ownership interests.

Under current law, Section 662 of the Evidence Code applies only to judicial proceedings. State agency proceedings are governed by the Administrative Procedures Act and/or specific statutes and regulations.

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Section 662 of the Evidence Code requires the court to assume that the holder of title is entitled to full beneficial title, unless clear and convincing proof can be provided to demonstrate otherwise. However, the Evidence Code and the Code of Civil Procedure also provide participants in judicial proceedings with the tools to obtain such proof, such as the power of discovery, subpoena, deposition, and sworn testimony. In contrast, state agencies and local governments generally do not have this full panoply of investigatory tools outside the context of judicial proceedings. By requiring all state agencies and local governments to adhere to Section 662 of the Evidence Code when assessing who holds full beneficial title to property, rather than following the Administrative Procedures Act or their own specific statute and regulations, this bill sets an unreasonably high bar.

ANALYSIS:

This bill addresses the question of how state agencies and local governments determine property ownership when there is a question whether the holder of legal title is the entity who has actual possession or control of the property. It extends a narrow provision of the Evidence Code to all state agencies and local governments, thus superseding longstanding principles of administrative law in the area of title determination by requiring state regulators and local governments to obtain clear and convincing proof when evaluating whether any entities other than those listed as holding title own a beneficial interest in a property.

Resolution to land title disputes is critical to the Commission's stewardship of the lands, waterways, and resources entrusted to its care. The location and extent of sovereign lands are generally defined by reference to the ordinary high and low water marks of tidal and navigable waterways. Because the boundaries of these lands are often legally based upon the last natural extent and location of the subject water body, they are not necessarily apparent from a present day site inspection. Substantial research, therefore, is often necessary to analyze the extent of the State's ownership interests.

The complexities of land ownership that influence title determinations are intricate, and it is often difficult to determine legal title. Although a deed is presumably evidence of legal title, it is not always conclusive, especially in regard to sovereign land that must be maintained and preserved for the public, which is the majority of land under the Commission's jurisdiction. For example, an individual might present a deed and assert that they hold legal title to the property in question. If there is evidence to the contrary, Commission staff will conduct extensive research and analysis to determine ownership. At the end of this process, staff's evidence may not support an applicant's title assertion, but it also may not meet the clear and

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convincing evidence threshold. This is one example of why it is not appropriate to apply Section 662 of the Evidence Code to state and local government proceedings.

Further, California acquired tide and submerged lands and navigable waterways by virtue of its sovereignty when California became a state on September 28, 1850. There are no deeds or patents conveying title to the state of these lands. Under AB 2226, if the Commission were to have a dispute with an individual over who has a recorded deed, the Commission may have to presume the individual with a deed has legal title. This is because the Commission would lack the tools to get beyond the presumption, since the standard in Section 662 of the Evidence Code requires clear and convincing evidence. It is unclear how the Commission, or any state or local agency for that matter, could reach that threshold in a non-judicial proceeding.

Another important reason why AB 2226 adversely impacts the Commission and the State is that title companies and county recording offices routinely exclude public trust easements and public rights acquired through use. The public trust easement is a dominant easement which is acquired by virtue of the state's sovereignty. The public trust easement is a very important property right owned by the state and held in trust for all the people of California. Title companies typically do not insure title against such claims and recorded deeds do not reflect this interest.

Boundary and title evidence and the ability to challenge title questions during the lease application process are of critical importance to the Commission's public trust stewardship. The Commission must be able to determine with confidence who holds property interests in specific parcels of land before taking any land management action. AB 2226 would make it demonstrably more difficult for the Commission and other state agencies to determine who actually holds title to property. It would unnecessarily bind state agencies and local governments with the restrictions of the Evidence Code, without giving them the full panoply of discovery tools available in judicial proceedings. As a result, individuals and entities requesting use of state owned land would have the potential to engage in fraud and game the system.

Finally, it is unclear why this bill is necessary and it is unclear what deficiency in current law it seeks to remedy. This is particularly concerning because a sweeping change of this magnitude to how permitting and leasing agencies make title determinations should be accompanied by reasonable rationale and justification.

OTHER PERTINENT INFORMATION:

AB 2226 is sponsored by the California Business Properties Association. It is opposed by the California Coastal Commission and a coalition of environmental organizations. The bill was approved by the State Assembly on April 26, 2012, on a 53-11 vote and is awaiting consideration in the Senate Judiciary Committee.

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RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

1. Adopt an oppose position on AB 2226 (Hueso)