

First Supplement to Memorandum 2015-27

2015 Legislative Program (Status Report)

AB 1527 (COMMITTEE ON WATER, PARKS, AND WILDLIFE)

Assembly Bill 1527 (Committee on Water, Parks, and Wildlife) was introduced earlier this year to implement the Commission's recommendation¹ on *Fish and Game Law: Technical Revisions and Minor Substantive Improvements (Part 1)*.² The bill has been passed by both houses and enrolled, but has not yet been sent to the Governor.

Request for Comment Revision

Shortly before AB 1527 was enrolled, the Department of Fish and Wildlife (hereafter, "Department") noted an amendment in the bill that it thought might create an ambiguity relating to an aspect of Fish and Game Commission regulatory procedure. As the bill was by that point too far along in the legislative process to be amended, the Department instead requested that the Law Revision Commission address the possible ambiguity by adding clarifying language to the Comment to the code section that would be amended.

The staff does not see a problem adding the Comment language that the Department requests.

Because it was important that the requested language be seen by the Governor's office before the bill was signed into law, the added language was provisionally approved by the Chair and added to a pre-print version of the recommendation sent to the Governor, subject to the full Commission's ratification or disapproval at its upcoming August meeting.

1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. 45 Cal. L. Revision Comm'n Reports 1 (2015).

Substantive Background

As an executive agency, the Fish and Game Commission is generally subject to the regulatory portion of the California Administrative Procedure Act (hereafter, "APA")³ when adopting regulations.⁴ However, when adopting regulations pursuant to one particular article of the Fish and Game Code (hereafter, "Article 1"),⁵ the Fish and Game Commission is exempted from the provision of the APA that specifies the effective date of regulations.⁶

Thus, while the APA provides that agency regulations normally become effective on a specified calendar day following the filing of the regulation with the Secretary of State, Section 215 (which is in Article 1) allows the Fish and Game Commission to specify a different effective date in an Article 1 regulation:

215. Every regulation of the commission made pursuant to this article shall be filed with the Secretary of State, and shall become effective at the time specified therein, but not sooner than the date of the filing.

Concern of the Department

The amendment in AB 1527 giving rise to the Department's request is an amendment to Section 300 of the Fish and Game Code. That amendment corrected an erroneous cross-reference in the section (a revision that is not at issue), and made other stylistic changes:

Fish & Game Code § 300 (amended). Filing of regulations

SEC. ____. Section 300 of the Fish and Game Code is amended to read:

300. ~~Any A regulation issued under any subsequent provisions of adopted pursuant to this code shall be filed with the Secretary of State, as required by Chapter 4 Chapter 3.5 (commencing with Section 11370 11340), of Part 1, of Division 3, of Title 2, of the Government Code.~~

Comment. Section 300 is amended to correct an erroneous cross-reference, and to make nonsubstantive stylistic changes.

The Department's concern relates to the deletion of the reference to regulations "issued under any subsequent provisions of this code," a reference

3. Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

4. Gov't Code § 11343.

5. Article 1 (commencing with Section 200) of Chapter 2 of Division 1 of the Fish and Game Code.

6. See Fish & Game Code § 215, Gov't Code § 11343.4(b)(4).

that both the staff and the Department believes refers to all provisions of the Fish and Game Code appearing in the code *after* Section 300.

The Commission viewed this reference as a historical artifact, and recommended that it be deleted as surplusage because it adds no present meaning to the provision. The only provisions in the Fish and Game Code that presently authorize the issuance of a regulation and do *not* follow Section 300 in the code are in Article 1. And as indicated above, Section 215 provides that regulations issued under Article 1 must also be filed with the Secretary of State.

Nevertheless, the Department believes the amendment to Section 300 might be read as having a broader reach. The Department suggests the revision could be understood as directing that Fish and Game Code regulations issued pursuant to Article 1 must now not only be *filed* with the Secretary of State (as required by the identified chapter of the APA), but that such regulations are now governed by all *other* provisions in that APA chapter. Therefore, the Department feels the amendment could be seen as arguably superseding the part of Section 215 that allows the Fish and Game Commission to set their own effective date for Article 1 regulations.

That was certainly not the result intended by the Commission in recommending the amendment to Section 300, and the staff does not believe that the amendment should be read in that manner. Still, as indicated, the staff sees no harm in expressly clarifying in the Comment to Section 300 that the amendment was not intended to have that effect.

The staff therefore has recommended to the Chair, and now recommends to the Commission, that a second sentence be added to the Comment corresponding to Section 300, as follows:

Comment. Section 300 is amended to correct an erroneous cross-reference, and to make nonsubstantive stylistic changes. This amendment is not intended to have any effect on the application of Fish and Game Code Section 215 or Government Code Section 11343.4.

Does the Commission assent to that language being added to the published recommendation in this matter?

Respectfully submitted,

Steve Cohen
Staff Counsel