

COUNTY OF SANTA BARBARA

LEGISLATIVE ANALYSIS FORM

BILL NUMBER: AB2226	AUTHOR: Hueso
INTRO/AMEND DATE: amended March 22 2012	AUTHOR'S POLITICAL PARTY: R
BILL STATUS: Active	

1) BILL SUBJECT:

Government Proceedings

2) FROM DEPARTMENT:**3) IS THIS ITEM SPECIFICALLY REFERENCED IN THE LEGISLATIVE PLATFORM?**

Yes

4) WHICH POLICY-RELATED MATTER IS OF CONCERN WITH THIS BILL?

Local Control of Land Use

5) HOW WOULD THIS BILL IMPACT THE COUNTY? (Current practices, responsibility, authority, pros/cons, affected programs and/or services, etc.)

This bill would limit the County's ability to use all processes (administrative and judicial) available to determine ownership and full and beneficial title to a property.

6) IMPACT ON COUNTY PROGRAM: Major Minor None**SANTA BARBARA COUNTY IMPACT:** Major Minor None**STATEWIDE IMPACT:** Major Minor None*Explanation of Impacts:*

Limits state and local government ability to use all process available to determine full and beneficial title to a property. Determining ownership is critical to land use and planning as ownership is the determinant for development proposals and liability. Strictly applying the evidence code would make it difficult to determine who actually owns a parcel of land rather than solely record of title and if there is an ability to carry out statutory mandates which may be required by a local government or state agency.

7) WOULD THIS BILL IMPACT:

a. Efficient service delivery and operations?

 YES NO

b. Fiscal stability?

 YES NO

c. Inter-agency cooperation?

 YES NO

d. Local control?

 YES NO

e. Protection of safety net services?

 YES NO

f. Community sustainability/economic stability?

 YES NO*Additional Comments:*

This bill would require all state agencies and local governments to adhere to Section 662 of the Evidence Code when determining who holds full and beneficial title to property rather than utilizing the Administrative Procedures Act or their own specific statutes or regulations. The practical effect would be that it may be more difficult for local governments and state agencies

to determine underlying ownership and interest among parties. The bill would bind local governments and state agencies, like the Coastal Commission, to the structure of the evidence code and not allow for the full range of tools currently employed in other proceedings such as depositions, subpoenas, and testimony to obtain "clear and convincing proof". "Clear and convincing proof" may be used to refute the presumption that the holder of legal title of a property is the actual owner or holder of full and beneficial title.

8) FISCAL IMPACT ON THE COUNTY:

- | | | |
|---|---|--|
| <input type="checkbox"/> Revenue Increase | <input type="checkbox"/> Revenue Decrease | <input type="checkbox"/> Unfunded Mandate |
| <input type="checkbox"/> Cost Increase | <input type="checkbox"/> Cost Decrease | <input checked="" type="checkbox"/> Undetermined |
| <input type="checkbox"/> None | | |

Additional Comments:

9) OTHER AGENCIES THAT SHOULD REVIEW THIS BILL:

Please list other agencies below:

10) CSAC POSITION ON BILL:

- | | | |
|--|---------------------------------|---|
| <input type="checkbox"/> Support | <input type="checkbox"/> Oppose | <input type="checkbox"/> Support if Amended |
| <input type="checkbox"/> Oppose unless Amended | <input type="checkbox"/> Watch | <input checked="" type="checkbox"/> No position taken |

11) OTHER LOCAL OR STATEWIDE ORGANIZATIONS THAT HAVE TAKEN A POSITION ON THIS BILL:

(Indicate support or opposition for each)

California Coastal Commission-Opposed

12) PROPOSED AMENDMENTS: (Attach separate sheet)**13) RECOMMENDATION:**

- | | | |
|--|--|---|
| <input type="checkbox"/> Active Support* | <input type="checkbox"/> Passive Support | <input type="checkbox"/> Support if Amended* |
| <input checked="" type="checkbox"/> Active Opposition* | <input type="checkbox"/> Passive Opposition | <input type="checkbox"/> Oppose unless Amended* |
| <input type="checkbox"/> Watch | <input type="checkbox"/> Concerns (Why? Explain in #6) | <input type="checkbox"/> No Position (Why?) |
| <input type="checkbox"/> No Change since Last Position | | |

* Indicates that the department believes that the Board of Supervisors should take a formal position on this bill

Additional Comments:

14) LEGISLATIVE ANALYSIS FORM PREPARED BY: Terri Nisich

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15) APPROVED BY: Terri Nisich, Assistant CEO

Signature

Date: May 31, 2012



AMENDED IN ASSEMBLY MARCH 22, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2226

Introduced by Assembly Member Hueso

February 24, 2012

An act to add Sections 11440.70 and 50035 to the Government Code, relating to government proceedings.

LEGISLATIVE COUNSEL'S DIGEST

AB 2226, as amended, Hueso. Agency proceedings: evidence: presumption.

The Administrative Procedure Act governs the conduct of formal and informal proceedings before state agencies, as defined. Existing law specifies that in proceedings and hearings before a court, a presumption exists that the owner of the legal title to property is presumed to be the owner of the full beneficial title.

This bill would require a state agency, as defined, and a city, county, or city and county to apply that presumption in proceedings before that state agency, city, county, or city and county.

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

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

- 1 SECTION 1. (a) California's real estate economy is an
- 2 essential part of the state's economy.
- 3 (b) Stable and predictable title is an essential element of a
- 4 functioning real estate economy.

1 (c) The presumption of ownership of property specified in
2 Section 662 of the Evidence Code is intended to provide certainty
3 of title by creating a presumption that the owner of property is the
4 owner of the full beneficial title, which may be rebutted only by
5 clear and convincing evidence.

6 (d) The need to provide for certainty of title extends not only
7 to court proceedings, but also to proceedings before state and local
8 agencies.

9 (e) The purposes of this act is to ensure that state and local
10 agencies apply Section 662 of the Evidence Code to proceedings
11 before those agencies.

12 SEC. 2. Section 11440.70 is added to the Government Code,
13 to read:

14 11440.70. In any ~~proceedings~~ *proceeding before an agency*
15 *pursuant to this chapter or, Chapter 5 (commencing with Section*
16 *11500), or any other statute or regulation, if the title to, or*
17 *ownership of, property is in question, Section 662 of the Evidence*
18 *Code shall control the determination of ownership. Notwithstanding*
19 *Section 11415.10 or 11415.20, or any other law, this section shall*
20 *apply to all state agencies, even if the state agency is otherwise*
21 *exempt from this chapter or if the governing procedure of the*
22 *agency is determined by a different statute or regulation.*

23 SEC. 3. Section 50035 is added to the Government Code, to
24 read:

25 50035. In any proceeding before a city, county, or city and
26 county, if the title to, or ownership of, property is in question,
27 Section 662 of the Evidence Code shall control the determination
28 of ownership.