

AMENDED IN SENATE APRIL 17, 2006

SENATE BILL

No. 1846

**Introduced by Committee on Natural Resources and Water
(Senators Kuehl (chair), Aanestad, Kehoe, Lowenthal,
Machado, Margett, and Migden)**

March 7, 2006

An act to amend Sections 6309, 6313, and 6314 of the Public Resources Code, relating to public resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 1846, as amended, Committee on Natural Resources and Water. Public resources: Underwater salvage operation.

(1) Under existing law, the State Lands Commission administers the Shipwreck and Historic Maritime Resources Program, as defined, regulating salvage operations over and upon all tide and submerged lands of the state. Existing law requires a person conducting a salvage operation, as defined, on tide and submerged lands to obtain a permit from the commission, and authorizes the commission to designate persons, paid for by the permitholder, to observe all salvage operations. Existing law authorizes the commission to revoke the permit, after notice to the permitholder, if the commission finds that the permitholder failed to comply with the terms of the permit or other applicable provision of law.

This bill would, in addition, authorize the commission to issue a permit for the search, exploration, or recovery of nonhistoric vessels, aircraft, or submerged objects, and for the search, archaeological investigation, and recovery of historic vessels, aircraft, or other submerged historic resources, as defined, on tide and submerged lands. The bill would require the commission to issue a permit based

on the commission's evaluation of the project and its probable impact on the site or objective, and the impact on the state submerged lands. The bill would authorize the commission to require the permit holder to provide a reliable communication system for the observer to communicate with the commission. The bill would authorize the executive officer of the commission, after notice to the permit holder and time to correct, to issue a stop work order if the observer determines that activities conducted on the project are not within the terms of the permit. The bill requires the executive officer to hold a hearing within 3 business days of the issuance of a written notice of the stop work order.

(2) Existing law ~~requires~~ *authorizes* the commission to grant a permit for salvage operations to specified entities that demonstrate the capability to carry out salvage operations. Existing law requires a person proposing to conduct a salvage operation to provide to the commission a detailed plan for the protection and preservation of the site or objects, or materials removed from the site consistent with contemporary professional standards of archaeological data recovery.

This bill would, instead, ~~require~~ *authorize* the commission to grant a permit when the proposed activity is justified by an educational, scientific, or cultural purpose, or the need to protect the integrity of the site or the resource. ~~The bill would authorize the commission to~~ *and* grant a permit to specified entities that demonstrate the capability of properly carrying out archaeological investigations. The bill would require a person proposing such activity to submit a detailed project design that provides information, as specified.

(3) ~~Existing law provides that the commission, or the Attorney General or a district attorney, at the request of the commission, may seek civil damages for the damage, loss, or destruction of specified objects, archaeological site, or historic resource located on or in submerged lands.~~

~~This bill would provide that any damages obtained shall be divided equally between the commission and the prosecuting agency.~~

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

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

1 SECTION 1. Section 6309 of the Public Resources Code is
2 amended to read:

1 6309. (a) The commission shall administer the Shipwreck
2 and Historic Maritime Resources Program, which consists of the
3 activities of the commission pursuant to this section and Sections
4 6313 and 6314.

5 (b) The commission has exclusive jurisdiction with respect to
6 salvage operations over and upon all tide and submerged lands of
7 the state. The commission may grant the privilege of conducting
8 salvage operations upon or over those lands by the issuance of
9 permits. The commission may adopt rules and regulations in
10 connection with applications for those permits, and the
11 operations to be conducted in the salvage operation, that the
12 commission determines to be necessary to protect those lands and
13 the uses and purposes reserved to the people of the state.

14 (c) The commission may issue permits for salvage on granted
15 tide and submerged lands only after consultation with the grantee
16 and a determination by the commission that the proposed salvage
17 operation is not inconsistent with the purposes of the grant.

18 (d) A salvage permit shall be required of a person or entity to
19 conduct any salvage operation. As used in this section and
20 Section 6313, “salvage operation” means any activity, including
21 search by electronic means, or exploration or excavation using
22 tools or mechanical devices, with the objective of locating, and
23 recovering or removing vessels, aircraft, or any other cultural
24 object from the surface or subsurface of state submerged lands.

25 (e) Salvage permits shall be issued for one year, with the
26 option to renew the permit for additional one-year periods at the
27 discretion of the commission upon a showing that the
28 permitholder has diligently and lawfully pursued the permitted
29 activity and has achieved to a reasonable extent the purpose for
30 which the permit was issued.

31 (f) The commission may require that a person designated by
32 the commission and paid by the permitholder be present during
33 each phase of a salvage operation to observe and monitor
34 compliance with the terms of the permit. The permitholder shall,
35 upon the request of the commission, provide or pay for a reliable
36 communication system for the observer to maintain contact with
37 the office of the commission while on the salvage site.

38 (g) The commission may issue a permit for the search or
39 recovery of nonhistoric vessels, aircraft, or submerged objects,
40 and for the search, archaeological investigation, and recovery of

1 historic ~~vessel~~ *vessels*, aircraft, or other submerged historic
2 resources as defined in subdivision (b) of Section 6313. The
3 commission shall determine the appropriate type of permit to
4 issue based on its evaluation of the salvage project and the
5 project's probable impact on the site or objective, and the impact
6 on the state submerged lands. The commission shall not require a
7 permit for any recreational diving activity which does not disturb
8 the subsurface or remove objects or materials from a submerged
9 archaeological site or submerged historic resource as defined in
10 Section 6313.

11 (h) (1) Permits may be revoked by the commission, after
12 notice to the permitholder, at any time the commission finds that
13 the permitholder has failed to comply with the terms of the
14 permit or any law or regulation governing the permitted activity.

15 (2) A stop work order may be issued by the executive officer
16 of the commission at the request of the onsite observer provided
17 by subdivision (f), if the observer determines that the activities of
18 the permitholder are not within the permitted activity. A stop
19 work order shall be issued after the nonpermitted activity is
20 brought to the attention of the person in charge of the onsite
21 operation and that person fails or refuses after sufficient time and
22 opportunity to change or correct the activity. Written notice of
23 the stop work order shall be given to the person in charge of the
24 onsite activity and a hearing by the executive officer or his or her
25 designate shall be provided to the permitholder within three
26 business days.

27 (3) After the hearing the commission may seek enforcement
28 of, or the permitholder may seek relief from, the stop work order
29 in the superior court in the county in which the activity is being
30 conducted. The relief may include damages for failure to comply
31 with the stop work order. The commission may deny an
32 application for a permit when it finds that the applicant has failed
33 to provide, for a period of 60 days, information specifically
34 requested by the commission which is necessary to complete the
35 application.

36 (i) When title to the objects, including a vessel, to be
37 recovered is vested in the state, the commission shall provide for
38 fair compensation to the permitholder in terms of a percentage of
39 the reasonable cash value, or a fair share, of the objects
40 recovered. The reasonable cash value of the objects shall be

1 determined by appraisal by qualified experts selected by the
2 commission. The commission shall determine the amount
3 constituting fair compensation, taking into consideration the
4 circumstances of each case. Title to all objects recovered is
5 retained by the state until it is released by the commission.

6 (j) The commission may fix and collect reasonable fees and
7 costs for the processing and issuance of permits under this
8 section. The applicant may be required to post a bond to insure
9 the completion of the project or payment of costs, or to deposit
10 funds with the commission sufficient to cover costs and expenses
11 chargeable to the applicant by law or by an agreement for
12 reimbursement.

13 SEC. 2. Section 6313 of the Public Resources Code is
14 amended to read:

15 6313. (a) The title to all abandoned shipwrecks and all
16 archaeological sites and historic resources on or in the tide and
17 submerged lands of California is vested in the state. All
18 abandoned shipwrecks and all submerged archaeological sites
19 and submerged historic resources of the state shall be in the
20 custody and subject to the control of the commission for the
21 benefit of the people of the state of California. The commission
22 may transfer title, custody, or control to other state agencies or
23 recognized scientific or educational organizations, institutions, or
24 individuals by appropriate legal conveyance.

25 (b) As used in this section, “submerged archaeological site”
26 and “submerged historic resource,” shall be given the broadest
27 possible meaning, to include any submerged object, structure,
28 building, watercraft, aircraft, or vessel and any associated cargo,
29 armament, tackle, fixture, human remains, or remnant of those
30 objects, or a site, area, person, or place, which is historically or
31 archaeologically significant, or significant in the prehistory or
32 history or exploration, settlement, engineering, commerce,
33 militarism, recreation, or culture of California and that is partially
34 or wholly embedded in or resting on state submerged or tidal
35 lands.

36 (c) Sites with archaeological or historic significance shall be
37 determined by reference to their eligibility for inclusion in the
38 National Register of Historic Places or the California Register of
39 Historical Resources. Any submerged archaeological site or
40 submerged historic resource remaining in state waters for more

1 than 50 years shall be presumed to be archaeologically or
2 historically significant. The commission, with the assistance of
3 the State Office of Historic Preservation, shall identify, compile,
4 and maintain an inventory of shipwreck sites, or sites of
5 archaeological or historical significance and shall make the
6 listing available to the public.

7 (d) Permits for salvage operations involving submerged
8 archaeological sites or submerged historic resources ~~shall~~ *may* be
9 granted by the commission when the proposed activity is justified
10 by an educational, scientific, or cultural purpose, or the need to
11 protect the integrity of the site or the resource. The commission
12 may issue permits to individuals or organizations representing
13 museums, universities, colleges, or other recognized scientific or
14 educational institutions and individuals that demonstrate the
15 capability to properly carry out archaeological investigations.
16 The commission may deny an application for a permit to an
17 applicant who the commission determines has not demonstrated
18 the ability to properly conduct an archaeological investigation or
19 salvage activities. The commission may consider the applicant's
20 past conduct with regard to salvage operations when making this
21 determination.

22 (e) (1) Prior to the issuance of a permit under subdivision (d),
23 the applicant shall provide to the commission a detailed project
24 design that includes all of the following:

25 (A) The purpose of the project.

26 (B) A description of the methodology, technology, and
27 equipment to be employed.

28 (C) The project funding source.

29 (D) A timetable for the completion of the project.

30 (E) The composition, qualifications, and responsibilities of the
31 project team.

32 (F) A conservation and curation plan, if applicable.

33 (G) A plan to document all phases of the project.

34 (H) A safety plan.

35 (I) An outline and timetable for preparation and submission of
36 progress reports and a final report.

37 (J) Other information that the commission deems necessary to
38 properly evaluate the application.

39 (2) All activities permitted under subdivision (d) or required
40 by this subdivision shall be accomplished under the direct

1 supervision of a person who meets the qualifications required of
2 a professional marine archaeologist.

3 (f) The commission shall forward applications for permits for
4 archaeological investigation or excavation and recovery of
5 historic vessels, aircraft, or other submerged historic resources in
6 state waters, including the information required by subdivision
7 (e), to the State Office of Historic Preservation, and may provide
8 the applications and information to other qualified organizations
9 and individuals, as appropriate, for technical review of the
10 project design and recommendation concerning the preservation
11 and protection of the site or resource.

12 (g) The commission shall provide for the disposition of all
13 objects or other materials recovered, which may include
14 provisions for display in museums, educational institutions, and
15 other appropriate locations available to the public.

16 (h) The commission may contract with persons, firms,
17 corporations, or institutions who, for the privilege of having
18 temporary possession of recovered archaeological resources, will
19 advance to the commission the money necessary to conduct
20 salvage operations or to purchase from a permitholder, from his
21 or her fair share, archaeological resources which the commission
22 determines should remain the property of the state. A contract
23 may be made only on the condition that the commission may, at
24 any time, repay the money advanced, without interest or
25 additional charges of any kind, and recover possession of the
26 resources. During the time the resources are in the possession of
27 the entity advancing the money, the resources shall be available
28 for viewing by the general public at a nominal fee or without
29 charge.

30 (i) The commission may also contract with other state
31 agencies, qualified public or private institutions, local
32 governments, or individuals for public display of the
33 archaeological resources recovered. The commission shall
34 require assurances that appropriate security, qualified personnel,
35 insurance, and facilities for preservation, restoration, and display
36 of the resources loaned are provided under the contract.

37 SEC. 3. Section 6314 of the Public Resources Code is
38 amended to read:

39 6314. (a) A person who removes, without authorization from
40 the commission, or a person who destroys or damages an

1 archaeological site or any historic resource, that is located on or
2 in the submerged lands of, and which is the property of, the state,
3 is guilty of a misdemeanor and is punishable by imprisonment in
4 the county jail not to exceed six months or a fine not to exceed
5 five thousand dollars (\$5,000), or by both.

6 (b) The commission, or, at its request, the Attorney General or
7 a district attorney in whose jurisdiction the violation occurred,
8 may seek civil damages for the ~~intentional or negligent~~ damage,
9 loss, or destruction of abandoned shipwrecks, their gear or cargo,
10 or any archaeological site or historic resource located on or in
11 submerged lands of the state. A vessel used ~~by a person who~~
12 ~~damages, destroys, or causes to damage, destroy, or cause~~ the
13 loss of, any such shipwreck or archaeological site or historic
14 resource, ~~whether intentionally or negligently~~ is subject to a
15 proceeding in rem by the state for the costs and damages
16 resulting from that damage, destruction, or loss. Enforcement
17 may include, where appropriate, a restraining order or injunctive
18 relief to restrain and enjoin violations or threatened violations of
19 Section 6309, Section 6313, or this section and for the return of
20 items taken in violation of these sections.

21 (c) An artifact, object, or material which has been removed
22 from a state submerged archaeological site or submerged historic
23 resource, as specified in subdivision (a), and which is found in
24 any watercraft occupied by persons who do not hold a permit as
25 required by Section 6309 or Section 6313 or other reasonable
26 evidence of legal possession is prima facia evidence of violation
27 of that section and the artifact, object, or material may be
28 confiscated by any state, federal, or local law enforcement
29 officer. Artifacts, objects, or materials confiscated under this
30 section shall be returned to the person claiming ownership, upon
31 proof of ownership or legal right to possession, within 30 days of
32 their confiscation, unless a prosecuting attorney determines that
33 they are required as evidence in the prosecution of a criminal
34 violation.

35 (d) In a case in which a district attorney, at the request of the
36 commission, or with its concurrence, enforces subdivision (a),
37 the commission shall, notwithstanding Section 1463 of the Penal
38 Code, be entitled to an equal division of the fine imposed.
39 ~~Damages obtained by the prosecution of subdivision (b) shall be~~

1 ~~divided equally between the commission and the prosecuting~~
2 ~~agency.~~

3 (e) All state and local law enforcement agencies and officers
4 are directed to assist in enforcing this section, and are requested
5 to work with and seek the cooperation of federal law
6 enforcement agencies, including deputizing federal officers when
7 appropriate.

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