Introducing by Assembly Member Rendon

January 30, 2013

An act to amend Sections 6602, 6612, 6613, 6616, and 6618 of the Fish and Game Code, relating to marine resources.

LEGISLATIVE COUNSEL’S DIGEST

AB 207, as introduced, Rendon. Marine resources and preservation. The California Marine Resources Legacy Act establishes a program, administered by the Department of Fish and Wildlife, to allow partial removal of offshore oil structures. The act authorizes the department to conditionally approve the partial removal of offshore oil structures, if specified criteria are satisfied, including a finding that the alternative of partial removal provides a net environmental benefit and substantial cost savings compared to the alternative of full removal of these structures. The act requires the first person to file an application on and after January 1, 2011, to partially remove an offshore oil structure to pay, in addition to other specified costs, the startup costs incurred by the department or the State Lands Commission to implement the act, including the costs to develop and adopt regulations. The act requires the payment of startup costs to be reimbursed by the department, as specified. The act requires the Ocean Protection Council, for purposes of determining whether partial removal provides a net environmental benefit, to establish specified criteria, to consult with the department, the California Coastal Commission, the State Lands Commission, the California Ocean Science Trust, and other responsible agencies as to those criteria, and requires certification that partial removal complies with the California Environmental Quality Act, among other things.
The act requires the State Lands Commission to determine the cost savings of partial removal, and requires the applicant, upon conditional approval for conversion, to apportion a percentage of the cost-savings funds in accordance with a prescribed schedule to specified entities and funds. The act defines “cost savings” to mean the difference between the estimated cost to the applicant of complete removal of an oil platform, as required by state and federal leases, and the estimated costs to the applicant of partial removal of the oil platform pursuant to the act, and specifically provides for the inclusion of certain costs in cost savings.

This bill would include certain additional costs in cost savings calculations for purposes of these provisions.

The bill would specify additional costs in cost savings calculations to be used for applications submitted on or before January 1, 2022. The bill would not require the payment of startup costs to be reimbursed by the department for those applications, as specified.

The bill would require the council, in determining whether partial removal of the structure would provide a net benefit to the marine environment compared to full removal of the structure, to take certain adverse impacts to air quality into account and to consult with the State Air Resources Board, among other entities.


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

SECTION 1. Section 6602 of the Fish and Game Code is amended to read:

6602. For purposes of this chapter, the following terms have the following meanings:

(a) “Applicant” means the owner or operator of an offshore oil structure in state or federal waters or another party responsible for decommissioning an offshore oil structure in state or federal waters who applies pursuant to this chapter to carry out partial removal of the structure.

(b) “Commission” means the State Lands Commission.

(c) “Conservancy” means the State Coastal Conservancy.

(d) “Cost savings” means the difference between the estimated cost to the applicant of complete removal of an oil platform as required by state and federal leases and the estimated costs to the
applicant of partial removal of the oil platform pursuant to this chapter, including all costs to the applicant of participation in either program.

(e) “Council” means the Ocean Protection Council.

(f) “Endowment” means the California Endowment for Marine Preservation established in Division 37 (commencing with Section 71500) of the Public Resources Code.

(g) “Exclusive economic zone (EEZ)” means the zone as measured from the mean high tide line seaward to 200 nautical miles, as set forth in Presidential Proclamation 5030 of March 10, 1983, in which the United States proclaimed jurisdiction over the resources of the ocean within 200 miles of the coastline.


(i) “Offshore oil structure” means platforms, piers, and artificial islands located seaward of mean lower low water, used for oil and gas exploration, development, production, processing, or storage.

(j) “Oil” means any kind of petroleum, liquid hydrocarbons, natural gas, or petroleum products or any fraction or residues therefrom.

(k) “Open coastal marine resources” means those marine resources that use open coastal waters as their habitat.

(l) “Open coastal waters” means the area composed of the submerged lands of the state that are below the mean lower low water, extending seaward to the boundaries of the exclusive economic zone.

(m) “Partial removal” means an alternative to full removal of an offshore oil structure, in compliance with all requirements of this chapter.

(n) “State waters” means waters within the seaward boundary of the state as identified in Section 2 of Article III of the California Constitution.

SEC. 2. Section 6612 of the Fish and Game Code is amended to read:

6612. (a) Upon receipt of an application to partially remove an offshore oil structure pursuant to this chapter, the department shall determine whether the application is complete and includes all information needed by the department.

(b) (1) Upon a determination that the application is complete, the applicant shall provide surety bonds executed by an admitted
surety insurer, irrevocable letters of credit, trust funds, or other forms of financial assurances, determined by the department to be available and adequate, to ensure that the applicant will provide sufficient funds to the department, council, commission, and conservancy to carry out all required activities pursuant to this article, including all of the following:

(A) Environmental review of the proposed project pursuant to Section 6604.

(B) A determination of net environmental benefit pursuant to Section 6613.

(C) A determination of cost savings pursuant to Section 6614.

(D) Preparation of a management plan for the structure pursuant to Section 6615.

(E) Implementation of the management plan and ongoing maintenance of the structure after the department takes title pursuant to Section 6620.

(F) Development of an advisory spending plan pursuant to Section 6621.

(G) Other activities undertaken to meet the requirements of this article, including the costs of reviewing applications for completeness, and reviewing, approving, and permitting the proposed project, which includes the costs of determining whether the project meets the requirements of all applicable laws and regulations and the costs of environmental assessment and review.

(2) The department shall consult with the council, commission, and conservancy in determining appropriate funding for activities to be carried out by those agencies.

(3) The funds provided pursuant to paragraph (1) shall not be considered in the calculation of cost savings pursuant to Section 6614 or the apportionment of cost savings pursuant to Section 6618.

(c) The first person to file an application on and after January 1, 2011, to partially remove an offshore oil structure pursuant to this chapter, shall pay, in addition to all costs identified under subdivision (b), the startup costs incurred by the department or the commission to implement this chapter, including the costs to develop and adopt regulations pursuant to this chapter. This payment of startup costs shall be reimbursed by the department as provided in paragraph (3) of subdivision (c) of Section 6618.
(d) As soon as feasible after reaching the agreement pursuant to subdivision (b), the lead agency shall begin the environmental review of the proposed project as required pursuant to Section 6604.

(e) For applications submitted on or before January 1, 2022, the provisions of subdivisions (a) through (d) shall apply, except as follows:

1. The funds provided pursuant to paragraph (1) of subdivision (b) and subdivision (c) shall be included in the calculation of cost savings pursuant to Section 6614 and the apportionment of cost savings pursuant to Section 6618.

2. The funds paid by the first person to file an application, as specified in subdivision (c), shall be included in the calculation of the first applicant’s cost savings pursuant to Section 6614.

Notwithstanding paragraph (3) of subdivision (c) of Section 6618, the payment of startup costs shall not be reimbursed by the department.

SEC. 3. Section 6613 of the Fish and Game Code is amended to read:

6613. (a) The council shall determine whether the partial removal of an offshore oil structure pursuant to this chapter provides a net benefit to the marine environment compared to the full removal of the structure.

(b) As a necessary prerequisite to determining net environmental benefit as required in subdivision (a), the council shall, upon receipt of its initial application from the department pursuant to Section 6610, establish appropriate criteria for evaluating the net environmental benefit of full removal and partial removal of offshore oil structures.

1. The criteria shall include, but are not limited to, the depth of the partially removed structure in relation to its value as habitat and the location of the structure, including its proximity to other reefs, both natural and artificial.

2. The criteria shall not include any consideration of the funds to be generated by the partial removal of the structure.

3. In determining the criteria, the council shall consult with appropriate entities, including, but not limited to, the department, the commission, the State Air Resources Board, the California Coastal Commission, and the California Ocean Science Trust.
The council shall establish the criteria in time to use them in making its initial determination of net environmental benefit pursuant to this section.

(c) Upon certification of environmental documents pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), the council shall, based on the criteria developed pursuant to subdivision (b) and other relevant information, determine whether partial removal of the structure would provide a net benefit to the marine environment compared to full removal of the structure. In making the determination, the council shall, at a minimum, take into account the following:

(1) The contribution of the proposed structure to protection and productivity of fish and other marine life.

(2) Any adverse impacts to biological resources or resources, water quality, or air quality, or any other marine environmental impacts, from the full removal of the facility that would be avoided by partial removal as proposed in the application.

(3) Any adverse impacts to biological resources or resources, water quality, or air quality, or any other marine environmental impacts, from partial removal of the structure as proposed in the application.

(4) Any benefits to the marine environment that would result from the full removal of the structure or from partial removal as proposed in the application.

(5) Any identified management requirements and restrictions of the partially removed structure, including, but not limited to, restrictions on fishing or other activities at the site.

(d) Benefits resulting from the contribution of cost savings to the endowment shall not be considered in the determination of net environmental benefit.

(e) The council may contract or enter into a memorandum of understanding with any other appropriate governmental or nongovernmental entity to assist in its determination of net environmental benefit.

(f) The determination made pursuant to this section and submitted to the department by the council shall constitute the final determination and shall not be revised except by the council.
(g) The council shall take all feasible steps to complete its determination in a timely manner that accommodates the department’s schedule for consideration of the application.

SEC. 4. Section 6616 of the Fish and Game Code is amended to read:

6616. The department may grant conditional approval of an application for partial removal of an offshore oil structure only if all of the following criteria are satisfied:

(a) The partial removal of the offshore oil structure and the planning, development, maintenance, and operation of the structure would be consistent with all applicable state, federal, and international laws, including, but not limited to, all of the following:

(1) The federal Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. Sec. 1801 et seq.).


(3) The federal Coastal Zone Management Act of 1972 (16 U.S.C. Sec. 1451 et seq.).

(4) The California Coastal Management Program.

(5) The Marine Life Management Act (Part 1.7 (commencing with Section 7050)).

(6) The Marine Life Protection Act (Chapter 10.5 (commencing with Section 2850) of Division 3).

(7) State and federal water quality laws.

(8) Navigational safety laws.

(b) The partial removal of the offshore oil structure provides a net benefit to the marine environment compared to full removal of the structure, as determined pursuant to Section 6613.

(c) The cost savings that would result from the conversion of the offshore oil platform or production facility have been determined pursuant to Section 6614.

(d) The applicant has provided sufficient funds consistent with subdivision (b) of Section 6612.

(e) The department and the applicant have entered into a contractual agreement whereby the applicant will provide sufficient funds for overall management of the structure by the department, including, but not limited to, ongoing management, operations, maintenance, monitoring, and enforcement as these relate to the structure.
(f) The department has entered into an indemnification agreement with the applicant that indemnifies the state and the department, to the extent permitted by law, against any and all liability that may result, including, but not limited to, active negligence, and including defending the state and the department against any claims against the state for any actions the state undertakes pursuant to this article. The agreement may be in the form of an insurance policy, cash settlement, or other mechanism as determined by the department. In adopting indemnification requirements for the agreement, the department shall ensure that the state can defend itself against any liability claims against the state for any actions the state undertakes pursuant to this article and pay any resulting judgments. The department shall consult with and, as necessary, use the resources of the office of the Attorney General in preparing and entering into the indemnification agreement. The cost to the applicant of providing indemnification by agreement, insurance policy, cash settlement, or other mechanism shall be included in the calculation of cost savings pursuant to Section 6614 only for applications submitted on or before January 1, 2022.

(g) The applicant has applied for and received all required permits, leases, and approvals issued by any governmental agency, including, but not limited to, a lease issued by the commission if the proposed project involves state tidelands and submerged lands. For structures located in federal waters, all of the following requirements shall be met:

1. The department and the owner or operator of the structure reach an agreement providing for the department to take title to the platform or facility as provided in Section 6620.
2. The department acquires the permit issued by the United States Army Corps of Engineers.

SEC. 5. Section 6618 of the Fish and Game Code is amended to read:

6618. (a) The cost savings from the partial removal of an offshore oil structure, as determined pursuant to Section 6614, shall be apportioned and transmitted as described in this section.
(b) Upon receipt of conditional approval pursuant to Section 6617, the owner or operator of the structure applicant shall apportion and directly transmit a portion of the total amount of the cost savings to the entities in subdivision (c) as follows:

1. Fifty-five percent, if the application was submitted before January 1, 2023.

2. Sixty-five percent, if the application was submitted on or after January 1, 2023, and before January 1, 2028.

3. Eighty percent, if the application was submitted on or after January 1, 2023.

(c) Of the total amount of the cost savings to be transmitted pursuant to subdivision (b), the applicant shall directly transmit the following amounts to the following entities:

1. Eighty-five percent shall be deposited into the California Endowment for Marine Preservation established pursuant to Division 37 (commencing with Section 71500) of the Public Resources Code.

2. Ten percent shall be deposited into the General Fund.

3. Two percent shall be deposited into the Fish and Game Preservation Fund for expenditure, upon appropriation by the Legislature, by the department to pay any costs imposed by this chapter that are not otherwise provided for pursuant to subdivision (b) of Section 6612 and subdivision (e) of Section 6616. Any moneys remaining in the Fish and Game Preservation Fund, after providing for these costs, shall be used, upon appropriation by the Legislature, first to reimburse the payment of the startup costs described in subdivision (c) of Section 6612, and thereafter to conserve, protect, restore, and enhance the coastal and marine resources of the state consistent with the mission of the department.

4. Two percent shall be deposited into the Coastal Act Services Fund, established pursuant to Section 30620.1 of the Public Resources Code, and shall be allocated to support state agency work involving research, planning, and regulatory review associated with the application and enforcement of coastal management policies in state and federal waters pursuant to state and federal quasi-judicial authority over offshore oil and gas development.

5. One percent shall be deposited with the board of supervisors of the county immediately adjacent to the location of the facility.
prior to its decommissioning. The amount paid to the county shall
be managed pursuant to paragraph (1) of subdivision (d) of Section
6817 of the Public Resources Code.