

AMENDED IN SENATE APRIL 21, 2015

AMENDED IN SENATE MARCH 19, 2015

SENATE BILL

No. 233

Introduced by Senator Hertzberg
(Coauthor: Assembly Member Rendon)

February 13, 2015

An act to amend Sections ~~6603, 6604, 6610, 6611,~~ 6612, 6613, 6614, 6615, 6616, and 6618 of the Fish and Game Code, relating to ocean resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 233, as amended, Hertzberg. Marine resources and preservation.

(1) 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 approve the partial removal of offshore oil structures, if specified criteria are satisfied. The act requires an applicant, upon conditional approval for removal, 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: *act*.

The bill would require an applicant, upon conditional approval for partial removal of an offshore oil structure, to *apportion and* transmit a portion of the cost savings to the department, instead of to the specified entities and funds. The bill would require the department to apportion

those cost-savings funds received from the applicant in accordance with a prescribed ~~schedule based on the date the application was submitted to the department.~~ *schedule*. The bill would authorize the applicant to withdraw the application at any time before final approval and would require the department to return specified funds submitted to process the application that have not been expended as of the date of receipt of the notification of withdrawal.

(2) Existing law requires the Natural Resources Agency to serve as the lead agency for the environmental review under the California Environmental Quality Act (CEQA) of a proposed project to partially remove an offshore oil structure pursuant to the California Marine Resources Legacy Act. Upon certification of environmental documents pursuant to CEQA, the California Marine Resources Legacy Act requires the State Lands Commission to determine the cost savings of partial removal compared to full removal of the structure and requires the Ocean Protection Council to determine whether partial removal provides a net environmental benefit to the marine environment compared to the full removal of the structure.

This bill would instead require the ~~department~~ *commission* to serve as the lead agency for the environmental review under ~~CEQA, to determine the cost savings of partial removal compared to full removal of the structure, and to determine whether partial removal provides a net environmental benefit to the marine environment compared to the full removal of the structure.~~ *CEQA*.

The bill would require the ~~department,~~ *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 and greenhouse gas emissions into account and to consult with the State Air Resources ~~Board and the Ocean Protection Council,~~ *Board*, among other entities. *In making that determination, the bill would require the council to determine the appropriate weight to be assigned to adverse impacts to air quality and greenhouse gas emissions as compared to adverse impacts to biological resources and water quality.*

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 6603 of the Fish and Game Code is
2 amended to read:

3 ~~6603. (a) This chapter establishes a program through which~~
4 ~~an applicant may voluntarily apply to the department to carry out~~
5 ~~partial removal of the structure.~~

6 ~~(b) The program established pursuant to this chapter shall be~~
7 ~~deemed consistent with, and part of, the California Artificial Reef~~
8 ~~Program pursuant to Article 2 (commencing with Section 6420)~~
9 ~~of Chapter 5 for purposes of compliance with federal law including~~
10 ~~the National Fishing Enhancement Act of 1984.~~

11 ~~(c) The department shall serve as the primary authority for~~
12 ~~carrying out the program, including review and approval of~~
13 ~~applications to partially remove an offshore oil structure in state~~
14 ~~or federal waters and management and operation of~~
15 ~~decommissioned offshore oil structures in state or federal waters~~
16 ~~approved pursuant to this chapter.~~

17 ~~(d) Final approval of an application shall not be granted until~~
18 ~~the applicant complies with all requirements of the chapter,~~
19 ~~including the payment of all costs to the state to review and approve~~
20 ~~the proposed project as required by subdivision (b) of Section 6612~~
21 ~~and the transmittal of the required portion of cost savings to the~~
22 ~~endowment and other parties as required by Section 6618.~~

23 ~~(e) The department may obtain funds for the planning,~~
24 ~~development, maintenance, and operation of an offshore oil~~
25 ~~structure transferred to the department pursuant to this chapter and~~
26 ~~may accept gifts, subventions, grants, rebates, reimbursements,~~
27 ~~and subsidies from any lawful source.~~

28 ~~(f) The department may adopt regulations to implement this~~
29 ~~chapter.~~

30 ~~SEC. 2.~~

31 ~~SECTION 1.~~ Section 6604 of the Fish and Game Code is
32 amended to read:

33 ~~6604. (a) A proposed project to partially remove an offshore~~
34 ~~oil structure pursuant to this chapter is a project as defined in~~
35 ~~subdivision (c) of Section 21065 of the Public Resources Code~~
36 ~~and is therefore subject to the California Environmental Quality~~
37 ~~Act (Division 13 (commencing with Section 21000) of the Public~~

1 Resources Code) and shall be reviewed pursuant to the time limits
2 established in Section 21100.2 of the Public Resources Code.

3 (b) ~~The department~~ *commission* shall serve as the lead agency
4 for the environmental review of any project proposed pursuant to
5 this chapter.

6 ~~SEC. 3.— Section 6610 of the Fish and Game Code is amended~~
7 ~~to read:~~

8 ~~6610. (a) An owner or operator, or other party responsible for~~
9 ~~decommissioning, of an offshore oil structure may apply to the~~
10 ~~department for approval to partially remove the structure pursuant~~
11 ~~to the requirements of this chapter.~~

12 ~~(b) The department shall design and make available to potential~~
13 ~~applicants an application process that will facilitate review of the~~
14 ~~application by the department in a timely manner, consistent with~~
15 ~~Section 6604.~~

16 ~~(c) Upon receipt of an application pursuant to this section, the~~
17 ~~department shall transmit a copy of the application to the~~
18 ~~endowment.~~

19 ~~SEC. 4.— Section 6611 of the Fish and Game Code is amended~~
20 ~~to read:~~

21 ~~6611. (a) The application for partial removal shall include, at~~
22 ~~a minimum, all of the following:~~

23 ~~(1) The applicant’s plan and schedule for partial removal of the~~
24 ~~offshore oil structure, including removal of any portion of the~~
25 ~~structure as appropriate to maintain navigational safety.~~

26 ~~(2) A determination of the estimated cost of partial removal and~~
27 ~~the estimated cost of full removal.~~

28 ~~(3) A determination of the environmental impacts and benefits~~
29 ~~to the marine environment from partial removal and full removal~~
30 ~~of the structure.~~

31 ~~(4) Identification of all permits, leases, and approvals required~~
32 ~~by any governmental agency, including a permit issued by the~~
33 ~~United States Army Corps of Engineers if required for offshore~~
34 ~~oil structures, and a lease issued by the commission if the proposed~~
35 ~~project involves state tidelands and submerged lands, and a~~
36 ~~proposed schedule for the applicant or the state to receive those~~
37 ~~permits, leases, and approvals.~~

38 ~~(b) The department may require the applicant to submit a~~
39 ~~management plan for the structure following partial removal,~~

1 including maintenance in a manner consistent with navigational
2 safety, enforcement, and monitoring.

3 (e) ~~The information submitted pursuant to subdivisions (a) and~~
4 ~~(b) shall be used by the department for advisory purposes only.~~
5 ~~Final determinations regarding the partial removal and management~~
6 ~~of the offshore oil structure, net benefit to the marine environment~~
7 ~~from partial removal, and cost savings from partial removal shall~~
8 ~~be made solely by the department, as specified in this chapter,~~
9 ~~based on its independent review and judgment.~~

10 ~~SEC. 5.~~

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

13 6612. (a) Upon receipt of an application to partially remove
14 an offshore oil structure pursuant to this chapter, the department
15 shall determine whether the application is complete and includes
16 all information needed by the department.

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

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

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

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

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

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

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

37 (G) Other activities undertaken to meet the requirements of this
38 article, including the costs of reviewing applications for
39 completeness, and reviewing, approving, and permitting the
40 proposed project, which includes the costs of determining whether

1 the project meets the requirements of all applicable laws and
2 regulations and the costs of environmental assessment and review.

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

6 (3) The funds provided pursuant to paragraph (1) shall not be
7 considered in the calculation of cost savings pursuant to Section
8 6614 or the apportionment of cost savings pursuant to Section
9 6618.

10 (c) The first person to file an application on and after January
11 1, 2011, to partially remove an offshore oil structure pursuant to
12 this chapter, shall pay, in addition to all costs identified under
13 subdivision (b), the startup costs incurred by the department *or*
14 *the commission* to implement this chapter, including the costs to
15 develop and adopt regulations pursuant to this chapter. This
16 payment of startup costs shall be reimbursed by the department as
17 provided in paragraph (3) of subdivision (c) of Section 6618.

18 (d) As soon as feasible after the applicant provides financial
19 assurances pursuant to subdivision (b), ~~the department~~ *lead agency*
20 shall begin the environmental review of the proposed project as
21 required pursuant to Section 6604.

22 (e) The applicant may withdraw the application at any time
23 before final approval. Upon notification that the applicant has
24 withdrawn the application, the department shall return to the
25 applicant any funds provided under subdivisions (b) and (c) that
26 have not been expended as of the date of receipt of notification of
27 withdrawal.

28 ~~SEC. 6.~~

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

31 6613. (a) ~~The department~~ *council* shall determine whether the
32 partial removal of an offshore oil structure pursuant to this chapter
33 provides a net benefit to the marine environment compared to the
34 full removal of the structure.

35 (b) As a necessary prerequisite to determining net environmental
36 benefit as required in subdivision (a), ~~the department~~ *council* shall,
37 upon receipt of its initial application *from the department* pursuant
38 to Section 6610, establish appropriate ~~criteria~~ *criteria, based on*
39 *credible science*, for evaluating the net environmental benefit of
40 full removal and partial removal of offshore oil structures.

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

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

7 (3) In determining the criteria, the ~~department~~ *council* shall
8 consult with appropriate entities, including, but not limited to, the
9 ~~council~~, *department*, the commission, the State Air Resources
10 Board, the California Coastal Commission, and the California
11 Ocean Science Trust.

12 (4) The ~~department~~ *council* shall establish the criteria in time
13 to use them in making its initial determination of net environmental
14 benefit pursuant to this section.

15 (c) Upon certification of environmental documents pursuant to
16 the California Environmental Quality Act, the ~~department~~ *council*
17 shall, based on the criteria developed pursuant to subdivision (b)
18 and other relevant information, determine whether partial removal
19 of the structure would provide a net benefit to the marine
20 environment compared to full removal of the structure. In making
21 the determination, the ~~department~~ *council* shall, at a minimum,
22 take into account the following:

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

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

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

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

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

39 (d) *In making the determination pursuant to subdivision (c), the*
40 *council shall determine the appropriate weight to be assigned to*

1 *adverse impacts to air quality or greenhouse gas emissions as*
 2 *compared to adverse impacts to biological resources or water*
 3 *quality.*

4 ~~(d)~~

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

8 ~~(e)~~

9 ~~(f) The department~~ *council* may contract or enter into a
 10 memorandum of understanding with any other appropriate
 11 governmental or nongovernmental entity to assist in its
 12 determination of net environmental benefit.

13 ~~(f)~~

14 (g) The determination made pursuant to this section *and*
 15 *submitted to the department by the council* shall constitute the final
 16 determination and shall not be revised except by the ~~department~~.
 17 *council.*

18 (h) *The council shall take all feasible steps to complete its*
 19 *determination in a timely manner that accommodates the*
 20 *department's schedule for consideration of the application.*

21 ~~SEC. 7.~~

22 *SEC. 4.* Section 6614 of the Fish and Game Code is amended
 23 to read:

24 6614. (a) Upon certification of the appropriate environmental
 25 documents, the ~~department~~ *commission* shall determine, or cause
 26 to be determined, the cost savings that will result from the partial
 27 removal of an offshore oil structure as proposed in the application
 28 compared to full removal of the structure.

29 (b) The ~~department~~ *commission* shall ensure that any cost
 30 savings are accurately and reasonably calculated. The ~~department~~
 31 *commission* may contract or enter into a memorandum of
 32 understanding with any other appropriate governmental agency or
 33 other party, including an independent expert, to ensure that cost
 34 savings are accurately and reasonably calculated.

35 (c) The ~~department~~ *commission* shall consider any estimates of
 36 cost savings made by any governmental agency, including, but not
 37 limited to, the Internal Revenue Service, the Franchise Tax Board,
 38 and the United States Department of the Interior. The ~~department~~
 39 *commission* shall include in its determination a written explanation,
 40 which shall be available to the public, of the differences, and the

1 reasons for the differences, between the ~~department's~~ *commission's*
2 determination of cost savings and any other estimates of cost
3 savings the ~~department~~ *commission* considered.

4 (d) The applicant shall provide all necessary documentation, as
5 determined by the ~~department,~~ *commission,* to allow the ~~department~~
6 *commission* to calculate the amount of cost savings. Failure to
7 provide information requested by the ~~department~~ *commission* in
8 a timely manner may result in rejection of the application.

9 (e) The determination made pursuant to this section *and*
10 *submitted to the department by the commission* shall constitute the
11 final determination and shall not be revised except by the
12 ~~department.~~ *commission.*

13 (f) *The commission shall take all feasible steps to complete its*
14 *determination in a timely manner that accommodates the*
15 *department's schedule for consideration of the application.*

16 ~~SEC. 8.~~

17 *SEC. 5.* Section 6615 of the Fish and Game Code is amended
18 to read:

19 6615. Prior to granting conditional approval of an application
20 for partial removal of an offshore oil structure, the department
21 shall do all of the following:

22 (a) Prepare a plan to manage the offshore oil structure after its
23 partial removal. The plan shall include measures to manage fishery
24 and marine life resources at and around the structure in a manner
25 that will ensure that the net benefits to the marine environment
26 identified pursuant to Section 6613 are maintained or enhanced.
27 Consistent with state and federal law, management measures may
28 include a buffer zone in which fishing or removal of marine life
29 is restricted or prohibited.

30 (b) Provide an opportunity for public comment on the
31 *application and* environmental document pursuant to the California
32 Environmental Quality Act.

33 (c) Hold ~~a public hearing~~ *hearings* for comment on the
34 *application and* environmental document pursuant to the California
35 Environmental Quality Act in the county nearest to the location
36 of the offshore oil structure that is the subject of the application.

37 ~~SEC. 9.~~

38 *SEC. 6.* Section 6616 of the Fish and Game Code is amended
39 to read:

1 6616. The department may grant conditional approval of an
2 application for partial removal of an offshore oil structure only if
3 all of the following criteria are satisfied:

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

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

11 (2) The federal National Fishing Enhancement Act of 1984 (33
12 U.S.C. Sec. 2101 et seq.).

13 (3) The federal Coastal Zone Management Act (16 U.S.C. Sec.
14 1451 et seq.).

15 (4) The California Coastal Management Program.

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

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

20 (7) State and federal water quality laws.

21 (8) Navigational safety laws.

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

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

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

30 (e) The department and the applicant have entered into a
31 contractual agreement whereby the applicant will provide sufficient
32 funds for overall management of the structure by the department,
33 including, but not limited to, ongoing management, operations,
34 maintenance, monitoring, and enforcement as these relate to the
35 structure.

36 (f) The department has entered into an indemnification
37 agreement with the applicant that indemnifies the state and the
38 department, to the extent permitted by law, against any and all
39 liability that may result, including, but not limited to, active
40 negligence, and including defending the state and the department

1 against any claims against the state for any actions the state
 2 undertakes pursuant to this article. The agreement may be in the
 3 form of an insurance policy, cash settlement, or other mechanism
 4 as determined by the department. In adopting indemnification
 5 requirements for the agreement, the department shall ensure that
 6 the state can defend itself against any liability claims against the
 7 state for any actions the state undertakes pursuant to this article
 8 and pay any resulting judgments. The department shall consult
 9 with and, as necessary, use the resources of the office of the
 10 Attorney General in preparing and entering into the indemnification
 11 agreement.

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

18 (1) The department and the owner or operator of the structure
 19 reach an agreement providing for the department to take title to
 20 the platform or facility as provided in Section 6620.

21 (2) The department acquires the permit issued by the United
 22 States Army Corps of Engineers.

23 (3) The partial removal of the structure is approved by the
 24 Bureau of Safety and Environmental Enforcement of the United
 25 States Department of the Interior.

26 ~~SEC. 10.~~

27 *SEC. 7.* Section 6618 of the Fish and Game Code is amended
 28 to read:

29 6618. (a) The cost savings from the partial removal of an
 30 offshore oil structure, as determined pursuant to Section 6614,
 31 shall be apportioned and transmitted as described in this section.

32 (b) Upon receipt of conditional approval pursuant to Section
 33 6617, the applicant shall apportion and directly transmit a portion
 34 of the total amount of the cost savings to the department as follows:

35 (1) Fifty-five percent, if ~~the application was submitted~~
 36 *transmitted* before January 1, ~~2023~~. ____.

37 (2) Sixty-five percent, if ~~the application was submitted~~
 38 *transmitted* on or after January 1, ~~2023~~, ____, and before January
 39 1, ~~2028~~. ____.

1 (3) Eighty percent, if the application was submitted *transmitted*
2 on or after January 1, 2028: ____.

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

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

10 (2) Ten percent shall be deposited into the General Fund.

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

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

30 (5) One percent shall be deposited with the board of supervisors
31 of the county immediately adjacent to the location of the facility
32 prior to its decommissioning. The amount paid to the county shall
33 be managed pursuant to paragraph (1) of subdivision (d) of Section
34 6817 of the Public Resources Code.

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