

AMENDED IN SENATE JUNE 2, 2015
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 6604, 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 the first person to file an application 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, and requires the payment of startup costs to be reimbursed by the department, as specified.* 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.

~~The~~

Before the first application to partially remove an offshore oil structure is filed, this bill would authorize a prospective applicant to pay a portion of the startup costs in an amount determined by the department to be necessary for staff and other costs in anticipation of receipt of the first application. 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 the prescribed 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 funds, including startup costs, 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 commission to serve as the lead agency for the environmental review under CEQA.

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 and greenhouse gas emissions into account and to consult with the State Air Resources 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 6604 of the Fish and Game Code is
2 amended to read:

3 6604. (a) A proposed project to partially remove an offshore
4 oil structure pursuant to this chapter is a project as defined in
5 subdivision (c) of Section 21065 of the Public Resources Code
6 and is therefore subject to the California Environmental Quality
7 Act (Division 13 (commencing with Section 21000) of the Public
8 Resources Code) and shall be reviewed pursuant to the time limits
9 established in Section 21100.2 of the Public Resources Code.

10 (b) The commission shall serve as the lead agency for the
11 environmental review of any project proposed pursuant to this
12 chapter.

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

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

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

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

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

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

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

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

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

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

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

15 (3) The funds provided pursuant to paragraph (1) shall not be
16 considered in the calculation of cost savings pursuant to Section
17 6614 or the apportionment of cost savings pursuant to Section
18 6618.

19 (c) The first person to file an application on and after January
20 1, 2011, to partially remove an offshore oil structure pursuant to
21 this chapter, shall pay, in addition to all costs identified under
22 subdivision (b), the startup costs incurred by the department or the
23 commission to implement this chapter, including the costs to
24 develop and adopt regulations pursuant to this chapter. *This Before*
25 *the first application is filed, a prospective applicant may elect to*
26 *pay, and the department may accept payment of, a portion of the*
27 *startup costs, in an amount determined by the department to be*
28 *necessary for staff and other costs in anticipation of receipt of the*
29 *first application. The payment of startup costs shall be reimbursed*
30 *by the department as provided in paragraph (3) of subdivision (c)*
31 *of Section 6618.*

32 (d) As soon as feasible after the applicant provides financial
33 assurances pursuant to subdivision (b), the lead agency shall begin
34 the environmental review of the proposed project as required
35 pursuant to Section 6604.

36 (e) The applicant may withdraw the application at any time
37 before final approval. Upon notification that the applicant has
38 withdrawn the application, the department shall return to the
39 applicant any funds provided *by the applicant* under subdivisions

1 (b) and (c) that have not been expended as of the date of receipt
2 of notification of withdrawal.

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

5 6613. (a) The council shall determine whether the partial
6 removal of an offshore oil structure pursuant to this chapter
7 provides a net benefit to the marine environment compared to the
8 full removal of the structure.

9 (b) As a necessary prerequisite to determining net environmental
10 benefit as required in subdivision (a), the council shall, upon receipt
11 of its initial application from the department pursuant to Section
12 6610, establish appropriate criteria, based on credible science, for
13 evaluating the net environmental benefit of full removal and partial
14 removal of offshore oil structures.

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

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

21 (3) In determining the criteria, the council shall consult with
22 appropriate entities, including, but not limited to, the department,
23 the commission, the State Air Resources Board, the California
24 Coastal Commission, and the California Ocean Science Trust.

25 (4) The council shall establish the criteria in time to use them
26 in making its initial determination of net environmental benefit
27 pursuant to this section.

28 (c) Upon certification of environmental documents pursuant to
29 the California Environmental Quality Act, the council shall, based
30 on the criteria developed pursuant to subdivision (b) and other
31 relevant information, determine whether partial removal of the
32 structure would provide a net benefit to the marine environment
33 compared to full removal of the structure. In making the
34 determination, the council shall, at a minimum, take into account
35 the following:

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

38 (2) Any adverse impacts to biological resources or water quality,
39 air quality or greenhouse gas emissions, or any other marine

1 environmental impacts, from the full removal of the facility that
2 would be avoided by partial removal as proposed in the application.

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

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

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

13 (d) In making the determination pursuant to subdivision (c), the
14 council shall determine the appropriate weight to be assigned to
15 adverse impacts to air quality or greenhouse gas emissions as
16 compared to adverse impacts to biological resources or water
17 quality.

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

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

25 (g) The determination made pursuant to this section and
26 submitted to the department by the council shall constitute the
27 final determination and shall not be revised except by the council.

28 (h) The council shall take all feasible steps to complete its
29 determination in a timely manner that accommodates the
30 department’s schedule for consideration of the application.

31 SEC. 4. Section 6614 of the Fish and Game Code is amended
32 to read:

33 6614. (a) Upon certification of the appropriate environmental
34 documents, the commission shall determine, or cause to be
35 determined, the cost savings that will result from the partial
36 removal of an offshore oil structure as proposed in the application
37 compared to full removal of the structure.

38 (b) The commission shall ensure that any cost savings are
39 accurately and reasonably calculated. The commission may contract
40 or enter into a memorandum of understanding with any other

1 appropriate governmental agency or other party, including an
2 independent expert, to ensure that cost savings are accurately and
3 reasonably calculated.

4 (c) The commission shall consider any estimates of cost savings
5 made by any governmental agency, including, but not limited to,
6 the Internal Revenue Service, the Franchise Tax Board, and the
7 United States Department of the Interior. The commission shall
8 include in its determination a written explanation, which shall be
9 available to the public, of the differences, and the reasons for the
10 differences, between the commission's determination of cost
11 savings and any other estimates of cost savings the commission
12 considered.

13 (d) The applicant shall provide all necessary documentation, as
14 determined by the commission, to allow the commission to
15 calculate the amount of cost savings. Failure to provide information
16 requested by the commission in a timely manner may result in
17 rejection of the application.

18 (e) The determination made pursuant to this section and
19 submitted to the department by the commission shall constitute
20 the final determination and shall not be revised except by the
21 commission.

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

25 SEC. 5. Section 6615 of the Fish and Game Code is amended
26 to read:

27 6615. Prior to granting conditional approval of an application
28 for partial removal of an offshore oil structure, the department
29 shall do all of the following:

30 (a) Prepare a plan to manage the offshore oil structure after its
31 partial removal. The plan shall include measures to manage fishery
32 and marine life resources at and around the structure in a manner
33 that will ensure that the net benefits to the marine environment
34 identified pursuant to Section 6613 are maintained or enhanced.
35 Consistent with state and federal law, management measures may
36 include a buffer zone in which fishing or removal of marine life
37 is restricted or prohibited.

38 (b) Provide an opportunity for public comment on the
39 application and environmental document pursuant to the California
40 Environmental Quality Act.

1 (c) Hold public hearings for comment on the application and
2 environmental document pursuant to the California Environmental
3 Quality Act in the county nearest to the location of the offshore
4 oil structure that is the subject of the application.

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

7 6616. The department may grant conditional approval of an
8 application for partial removal of an offshore oil structure only if
9 all of the following criteria are satisfied:

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

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

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

19 (3) The federal Coastal Zone Management Act (16 U.S.C. Sec.
20 1451 et seq.).

21 (4) The California Coastal Management Program.

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

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

26 (7) State and federal water quality laws.

27 (8) Navigational safety laws.

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

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

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

36 (e) The department and the applicant have entered into a
37 contractual agreement whereby the applicant will provide sufficient
38 funds for overall management of the structure by the department,
39 including, but not limited to, ongoing management, operations,

1 maintenance, monitoring, and enforcement as these relate to the
2 structure.

3 (f) The department has entered into an indemnification
4 agreement with the applicant that indemnifies the state and the
5 department, to the extent permitted by law, against any and all
6 liability that may result, including, but not limited to, active
7 negligence, and including defending the state and the department
8 against any claims against the state for any actions the state
9 undertakes pursuant to this article. The agreement may be in the
10 form of an insurance policy, cash settlement, or other mechanism
11 as determined by the department. In adopting indemnification
12 requirements for the agreement, the department shall ensure that
13 the state can defend itself against any liability claims against the
14 state for any actions the state undertakes pursuant to this article
15 and pay any resulting judgments. The department shall consult
16 with and, as necessary, use the resources of the office of the
17 Attorney General in preparing and entering into the indemnification
18 agreement.

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

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

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

30 (3) The partial removal of the structure is approved by the
31 Bureau of Safety and Environmental Enforcement of the United
32 States Department of the Interior.

33 SEC. 7. Section 6618 of the Fish and Game Code is amended
34 to read:

35 6618. (a) The cost savings from the partial removal of an
36 offshore oil structure, as determined pursuant to Section 6614,
37 shall be apportioned and transmitted as described in this section.

38 (b) Upon receipt of conditional approval pursuant to Section
39 6617, the applicant shall apportion and directly transmit a portion
40 of the total amount of the cost savings to the department as follows:

1 (1) Fifty-five percent, if transmitted before January 1, _____.
2 2017.

3 (2) Sixty-five percent, if transmitted on or after January 1, _____,
4 2017, and before January 1, _____, 2023.

5 (3) Eighty percent, if transmitted on or after January 1, _____.
6 2023.

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

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

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

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

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

34 (5) One percent shall be deposited with the board of supervisors
35 of the county immediately adjacent to the location of the facility
36 prior to its decommissioning. The amount paid to the county shall
37 be managed pursuant to paragraph (1) of subdivision (d) of Section
38 6817 of the Public Resources Code.

O