

AMENDED IN ASSEMBLY JULY 16, 2015

AMENDED IN ASSEMBLY JULY 7, 2015

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)~~ *Coauthors: Assembly Members
Dababneh, Harper, and 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.

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 the prescribed schedule to the specified entities if certain criteria are satisfied. The bill would require the department to apportion the cost-savings funds received from *the applicant who elects to pay a portion of the startup costs before the first application is filed and who files* the first application in accordance with the prescribed schedule based on when the application was submitted rather than when the cost savings are transmitted. 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, including startup costs, submitted to process the application that have not been expended as of the date of receipt of the notification of withdrawal. The bill would require the department to promptly return the cost savings to the applicant if the partial removal of the offshore oil structure is not permitted by a court or governmental agency and the applicant is required to carry out full removal of the structure.

(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

1 conservancy to carry out all required activities pursuant to this
2 article, including all of the following:

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

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

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

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

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

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

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

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

24 (3) The funds provided pursuant to paragraph (1) shall not be
25 considered in the calculation of cost savings pursuant to Section
26 6614 or the apportionment of cost savings pursuant to Section
27 6618.

28 (c) The first person to file an application on and after January
29 1, 2011, to partially remove an offshore oil structure pursuant to
30 this chapter, shall pay, in addition to all costs identified under
31 subdivision (b), the startup costs incurred by the department or the
32 commission to implement this chapter, including the costs to
33 develop and adopt regulations pursuant to this chapter. Before the
34 first application is filed, a prospective applicant may elect to pay,
35 and the department may accept payment of, a portion of the startup
36 costs, in an amount determined by the department to be necessary
37 for staff and other costs in anticipation of receipt of the first
38 application. The payment of startup costs shall be reimbursed by
39 the department as provided in paragraph (3) of subdivision (e) of
40 Section 6618.

1 (d) As soon as feasible after the applicant provides financial
2 assurances pursuant to subdivision (b), the lead agency shall begin
3 the environmental review of the proposed project as required
4 pursuant to Section 6604.

5 (e) The applicant may withdraw the application at any time
6 before final approval. Upon notification that the applicant has
7 withdrawn the application, the department shall return to the
8 applicant any funds provided by the applicant under subdivisions
9 (b) and (c) that have not been expended as of the date of receipt
10 of notification of withdrawal.

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

13 6613. (a) The council shall determine whether the partial
14 removal of an offshore oil structure pursuant to this chapter
15 provides a net benefit to the marine environment compared to the
16 full removal of the structure.

17 (b) As a necessary prerequisite to determining net environmental
18 benefit as required in subdivision (a), the council shall, upon receipt
19 of its initial application from the department pursuant to Section
20 6610, establish appropriate criteria, based on ~~the best available~~
21 *credible* science, for evaluating the net environmental benefit of
22 full removal and partial removal of offshore oil structures.

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

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

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

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

36 (c) Upon certification of environmental documents pursuant to
37 the California Environmental Quality Act, the council shall, based
38 on the criteria developed pursuant to subdivision (b) and other
39 relevant information, determine whether partial removal of the
40 structure would provide a net benefit to the marine environment

1 compared to full removal of the structure. In making the
2 determination, the council shall, at a minimum, take into account
3 the following:

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

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

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

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

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

20 (d) In making the determination pursuant to subdivision (c), the
21 council shall determine the appropriate weight, based on ~~the best~~
22 ~~available~~ *credible* science, to be assigned to adverse impacts to air
23 quality or greenhouse gas emissions as compared to adverse
24 impacts to biological resources or water quality.

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

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

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

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

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

1 6614. (a) Upon certification of the appropriate environmental
2 documents, the commission shall determine, or cause to be
3 determined, the cost savings that will result from the partial
4 removal of an offshore oil structure as proposed in the application
5 compared to full removal of the structure.

6 (b) The commission shall ensure that any cost savings are
7 accurately and reasonably calculated. The commission may contract
8 or enter into a memorandum of understanding with any other
9 appropriate governmental agency or other party, including an
10 independent expert, to ensure that cost savings are accurately and
11 reasonably calculated.

12 (c) The commission shall consider any estimates of cost savings
13 made by any governmental agency, including, but not limited to,
14 the Internal Revenue Service, the Franchise Tax Board, and the
15 United States Department of the Interior. The commission shall
16 include in its determination a written explanation, which shall be
17 available to the public, of the differences, and the reasons for the
18 differences, between the commission's determination of cost
19 savings and any other estimates of cost savings the commission
20 considered.

21 (d) The applicant shall provide all necessary documentation, as
22 determined by the commission, to allow the commission to
23 calculate the amount of cost savings. Failure to provide information
24 requested by the commission in a timely manner may result in
25 rejection of the application.

26 (e) The determination made pursuant to this section and
27 submitted to the department by the commission shall constitute
28 the final determination and shall not be revised except by the
29 commission.

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

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

35 6615. Prior to granting conditional approval of an application
36 for partial removal of an offshore oil structure, the department
37 shall do all of the following:

38 (a) Prepare a plan to manage the offshore oil structure after its
39 partial removal. The plan shall include measures to manage fishery
40 and marine life resources at and around the structure in a manner

1 that will ensure that the net benefits to the marine environment
2 identified pursuant to Section 6613 are maintained or enhanced.
3 Consistent with state and federal law, management measures may
4 include a buffer zone in which fishing or removal of marine life
5 is restricted or prohibited.

6 (b) Provide an opportunity for public comment on the
7 application and environmental document pursuant to the California
8 Environmental Quality Act.

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

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

15 6616. The department may grant conditional approval of an
16 application for partial removal of an offshore oil structure only if
17 all of the following criteria are satisfied:

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

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

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

27 (3) The federal Coastal Zone Management Act (16 U.S.C. Sec.
28 1451 et seq.).

29 (4) The California Coastal Management Program.

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

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

34 (7) State and federal water quality laws.

35 (8) Navigational safety laws.

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

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

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

6 (e) The department and the applicant have entered into a
7 contractual agreement whereby the applicant will provide sufficient
8 funds for overall management of the structure by the department,
9 including, but not limited to, ongoing management, operations,
10 maintenance, monitoring, and enforcement as these relate to the
11 structure.

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

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

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

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

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

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

6 6618. (a) The cost savings from the partial removal of an
7 offshore oil structure, as determined pursuant to Section 6614,
8 shall be apportioned and transmitted as described in this section.

9 (b) Except as provided in subdivision (c), upon receipt of
10 conditional approval pursuant to Section 6617, the applicant shall
11 apportion and directly transmit a portion of the total amount of the
12 cost savings to the department as follows:

13 (1) Fifty-five percent, if transmitted by the applicant to the
14 department before January 1, 2017.

15 (2) Sixty-five percent, if transmitted by the applicant to the
16 department on or after January 1, 2017, and before January 1,
17 2023.

18 (3) Eighty percent, if transmitted by the applicant to the
19 department on or after January 1, 2023.

20 (c) Upon receipt of conditional approval pursuant to Section
21 6617, the applicant *who elects to pay a portion of the startup costs*
22 *pursuant to subdivision (c) of Section 6612 before the first*
23 *application is filed and who files the first application to partially*
24 *remove an offshore oil structure shall apportion and directly*
25 *transmit a portion of the total amount of the cost savings resulting*
26 *from the first application to the department as follows:*

27 (1) Fifty-five percent, if the application was submitted before
28 January 1, 2017.

29 (2) Sixty-five percent, if the application was submitted on or
30 after January 1, 2017, and before January 1, 2023.

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

33 (d) If the department's final approval pursuant to Section 6619
34 or any other federal, state, or local permit or approval required for
35 the partial removal of the offshore oil structure is permanently
36 enjoined, vacated, invalidated, rejected, or rescinded by a court or
37 governmental agency as the result of litigation challenging the
38 permit or approval, and the applicant is required to carry out full
39 removal of the structure, the department shall promptly return the
40 cost savings to the applicant.

(e) Upon final, nonappealable judicial decisions upholding the department's final approval pursuant to Section 6619 and all permits and approvals required for the partial removal of the offshore oil structure or the running of the statutes of limitations applicable to all the permits and approvals, whichever is later, the department shall directly transmit the following amounts from the total amount of the cost savings transmitted pursuant to subdivision (b) or (c) 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.

O