

AMENDED IN ASSEMBLY JULY 7, 2015

AMENDED IN SENATE JUNE 2, 2015

AMENDED IN SENATE MAY 5, 2015

AMENDED IN SENATE APRIL 22, 2015

SENATE BILL

No. 637

Introduced by Senator Allen

February 27, 2015

An act to amend Section 5653 of the Fish and Game Code, and to add Section 13172.5 to the Water Code, relating to dredging.

LEGISLATIVE COUNSEL'S DIGEST

SB 637, as amended, Allen. Suction dredge mining: permits.

Existing law prohibits the use of any vacuum or suction dredge equipment by any person in any river, stream, or lake of this state without a permit issued by the Department of Fish and Wildlife. Existing law requires, before any person uses any vacuum or suction dredge equipment in any river, stream, or lake of this state, that person to submit an application for a permit for a vacuum or suction dredge to the department specifying certain information. Existing law requires the department to issue a permit, if the department determines that the use of a vacuum or suction dredge will not be deleterious to fish, upon the payment of a specified fee. Existing law designates the issuance of permits to operate vacuum or suction dredge equipment to be a project under the California Environmental Quality Act and suspends the issuance of permits and mining pursuant to a permit until the department has completed an environmental impact report for the project as ordered by the court in a specified court action. Existing law prohibits the use of any vacuum or suction dredge equipment in any river, stream, or

lake of this state until the Director of Fish and Wildlife makes a prescribed certification to the Secretary of State, including certifying that new regulations fully mitigate all identified significant environmental impacts and that a fee structure is in place that will fully cover all costs to the department related to the administration of the program.

This bill would require the department to issue a permit if the department determines that the use does not cause any significant effects to fish and wildlife and would authorize the department to adjust the specified fee to an amount sufficient to cover all reasonable costs of the department in regulating suction dredging activities. This bill would prohibit the department from issuing a permit until the permit application is deemed complete, as prescribed.

Under existing law, the State Water Resources Control Board and the California regional water quality control boards prescribe waste discharge requirements in accordance with the Federal Water Pollution Control Act and the Porter-Cologne Water Quality Control Act (state act). The state act, with certain exceptions, requires a waste discharger to file certain information with the appropriate regional board and to pay an annual fee. The state act additionally requires a person, before discharging mining waste, to submit to the regional board a report on the physical and chemical characteristics of the waste that could affect its potential to cause pollution or contamination and a report that evaluates the potential of the mining waste discharge to produce acid mine drainage, the discharge or leaching of heavy metals, or the release of other hazardous substances.

This bill ~~would authorize~~, *would*, after the director has made the prescribed certification to the Secretary of ~~State~~, *State and after prescribed public hearings and workshops*, *authorize* the state board or a regional board to adopt waste discharge requirements that address water quality impacts of specified issues, specify certain conditions or areas where the discharge of waste from a suction dredge is prohibited, or prohibit particular methods of suction dredge mining if the state board or regional board makes a certain determination.

The bill would specify that a suction dredge *is equipment used for mining operations that* contains any of specified components for purposes of permits issued by the department and for purposes of the regulatory process established by the state board or a regional board.

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. The Legislature finds and declares all of the
2 following:

3 (a) In 2009, Governor *Arnold* Schwarzenegger signed Senate
4 Bill 670 (Chapter 62 of the Statutes of 2009) which established a
5 temporary ban on suction dredge mining until after a court-ordered
6 environmental review was completed.

7 (b) The Department of Fish and Wildlife draft regulations and
8 draft environmental impact report were issued in February 2011.
9 The draft environmental impact report identified nine significant
10 and unmitigable impacts from suction dredge mining. The report
11 concluded that suction dredge mining for gold mobilizes and
12 discharges toxic levels of mercury, harming drinking water quality
13 and potentially poisoning fish and wildlife, harms fish, amphibians,
14 and songbirds by disrupting habitat, and causes substantial adverse
15 changes statewide in American Indian cultural and historical
16 resources.

17 (c) In July 2011, the Legislature enacted Assembly Bill 120
18 (Chapter 133 of the Statutes of 2011), extending the prohibition
19 on suction dredge mining until 2016, and requiring the department
20 to create a fee structure that would cover all of its administrative
21 costs relating to suction dredge mining.

22 (d) In 2012, the Legislature acted again on suction dredge
23 mining by enacting Senate Bill 1018 (Chapter 39 of the Statutes
24 of 2012), which eliminated the sunset provision from Assembly
25 Bill 120. Senate Bill 1018 also directed the department to consult
26 with various agencies and to provide recommendations to the
27 Legislature by April 1, 2013, regarding statutory changes or
28 authorizations necessary for the department to promulgate suction
29 dredge regulations. Those recommendations were to include ways
30 to fully mitigate all identified significant environmental impacts
31 and a fee structure to cover the department's costs of administering
32 the program.

33 (e) On April 1, 2013, the department submitted the required
34 report to the Legislature. The department considers the
35 environmental impact report on its proposed suction dredge mining
36 regulatory permit program to be the most comprehensive review
37 of suction dredge mining ever compiled in California. The report

1 identified impacts that the department said could not be mitigated
2 within its legal authorities.

3 (f) In January 2015, the San Bernardino Superior Court issued
4 a tentative ruling that state-issued suction dredge mining permits
5 could not be required on federal land. The court noted that, while
6 the state clearly has the power to issue suction dredge mining
7 permits, the state's refusal or inability to issue the permits creates
8 an obstacle to conforming with federal law.

9 (g) Given the importance of protecting the water supply for all
10 Californian's *Californians* from degradation, the need to protect
11 what is left of California native cultural sites, and the value of
12 protecting the state's wildlife, it is urgent that the Legislature act
13 immediately to clarify the laws regulating suction dredge mining
14 and other related forms of small scale motorized gold mining in
15 the state's streams and waterways.

16 SEC. 2. Section 5653 of the Fish and Game Code is amended
17 to read:

18 5653. (a) The use of a vacuum or suction dredge equipment
19 by a person in a river, stream, or lake of this state is prohibited,
20 except as authorized under a permit issued to that person by the
21 department in compliance with the regulations adopted pursuant
22 to Section 5653.9. Before a person uses a vacuum or suction dredge
23 equipment in a river, stream, or lake of this state, that person shall
24 submit an application for a permit for a vacuum or suction dredge
25 to the department, specifying the type and size of equipment to be
26 used and other information as the department may require.

27 (b) (1) The department shall not issue a permit for a vacuum
28 or suction dredge until the permit application is deemed complete.
29 A complete permit application shall include copies of all required
30 permits, including permits required under the Federal Water
31 Pollution Control Act (33 U.S.C. Sec. 1251 et seq.) and the Water
32 Code, and any other applicable permit required to fully mitigate
33 all identified significant environmental impacts pursuant to
34 regulations adopted under subdivision (b) of Section 5653.1.

35 (2) If the State Water Resources Control Board or the
36 appropriate regional water quality control board determines that
37 no water quality or water rights permit is necessary for the use of
38 a vacuum or suction dredge, a letter stating this determination
39 signed by the Executive Director of the State Water Resources
40 Control Board, the executive officer of the appropriate regional

1 water quality control board, or their designee shall be part of the
2 permit application.

3 (3) For the purpose of the Permit Streamlining Act (Chapter 4.5
4 (commencing with Section 65920) of Division 1 of Title 7 of the
5 Government Code), the department shall not deem the permit
6 application complete until the applicant submits all necessary
7 permits and any required letters to the department as part of the
8 permit application.

9 (c) Under the regulations adopted pursuant to Section 5653.9,
10 the department shall designate waters or areas wherein vacuum or
11 suction dredges may be used pursuant to a permit, waters or areas
12 closed to those dredges, the maximum size of those dredges that
13 may be used, and the time of year when those dredges may be
14 used. If the department determines, pursuant to the regulations
15 adopted pursuant to Section 5653.9, that the use of a vacuum or
16 suction dredge does not cause any significant effects to fish and
17 wildlife, it shall issue a permit to the applicant. If a person operates
18 equipment other than that authorized by the permit or conducts
19 the operation in any waters or area or at any time that is not
20 authorized by the permit, or if any person conducts the operation
21 without securing the permit, that person is guilty of a misdemeanor.

22 (d) (1) Except as provided in paragraph (2), the department
23 shall issue a permit upon the payment, in the case of a resident, of
24 a base fee of twenty-five dollars (\$25), as adjusted under Section
25 713, when an onsite investigation of the project size is not deemed
26 necessary by the department, and a base fee of one hundred thirty
27 dollars (\$130), as adjusted under Section 713, when the department
28 deems that an onsite investigation is necessary. Except as provided
29 in paragraph (2), in the case of a nonresident, the base fee shall be
30 one hundred dollars (\$100), as adjusted under Section 713, when
31 an onsite investigation is not deemed necessary, and a base fee of
32 two hundred twenty dollars (\$220), as adjusted under Section 713,
33 when an onsite investigation is deemed necessary.

34 (2) The department may adjust the base fees for a permit
35 described in this subdivision to an amount sufficient to cover all
36 reasonable costs of the department in regulating suction dredging
37 activities.

38 (e) It is unlawful to possess a vacuum or suction dredge in areas,
39 or in or within 100 yards of waters, that are closed to the use of
40 vacuum or suction dredges.

1 (f) For purposes of this section and Section 5653.1, a suction
2 dredge *is equipment used for mining operations that* contains any
3 of the following:

4 (1) A hose that vacuums sediment from *the bed or bank of a*
5 river, stream, or lake.

6 (2) A motorized pump.

7 (3) A motorized sluice box.

8 (4) *Related small-scale mechanized mining equipment.*

9 SEC. 3. Section 13172.5 is added to the Water Code, to read:

10 13172.5. (a) After the Director of Fish and Wildlife has
11 certified to the Secretary of State that all of the events described
12 in subdivision (b) of Section 5653.1 of the Fish and Game Code
13 have occurred, *and after conducting appropriate workshops and*
14 *hearings pursuant to subdivision (b)*, the state board or a regional
15 board may take one or more of the following actions:

16 (1) Adopt waste discharge requirements that, at a minimum,
17 address the water quality impacts of each of the following:

18 (A) Mercury loading to downstream reaches of surface water
19 bodies affected by suction dredge mining.

20 (B) Methylmercury formation in water bodies.

21 (C) Bioaccumulation of mercury in aquatic organisms.

22 (D) Resuspension of metals.

23 (2) Specify certain conditions or areas where the discharge of
24 waste from suction dredge mining is prohibited, consistent with
25 Section 13243.

26 (3) Prohibit any particular methods of suction dredge mining
27 that the state board or a regional board determines generally cause
28 or contribute to an exceedance of applicable water quality
29 objectives or unreasonably impact beneficial uses.

30 (b) (1) *Before determining what action to take pursuant to*
31 *subdivision (a), the state board or regional board shall solicit*
32 *stakeholder input by conducting at least one public workshop. If*
33 *the state board is soliciting stakeholder input, the state board shall*
34 *conduct the public workshops in areas of the state where, in 2009,*
35 *a substantial number of residents held a suction dredge mining*
36 *permit issued by the Department of Fish and Wildlife. To promote*
37 *participation in the public workshops, the state board or regional*
38 *board shall proactively reach out to mining groups, environmental*
39 *organizations, and California Native American tribes, as defined*
40 *in Section 21073 of the Public Resources Code.*

1 (2) *Before taking a proposed action pursuant to subdivision (a),*
2 *the state board shall conduct at least two public hearings, and the*
3 *regional board at least one public hearing, regarding that proposed*
4 *action.*

5 (3) *To avoid duplication of efforts between the state board and*
6 *a regional board of a public workshop or public hearing that*
7 *covers the same regional area, the state board and a regional*
8 *board may work in collaboration to share information obtained*
9 *through the public workshop or public hearing.*

10 ~~(b)~~

11 (c) *For purposes of this section, a suction dredge is equipment*
12 *used for mining operations that contains any of the following:*

13 (1) *A hose that vacuums sediment from the bed or bank of a*
14 *river, stream, or lake.*

15 (2) *A motorized pump.*

16 (3) *A motorized sluice box.*

17 (4) *Related small-scale mechanized mining equipment.*