

AMENDED IN SENATE AUGUST 17, 2009

AMENDED IN SENATE JUNE 18, 2009

AMENDED IN ASSEMBLY MAY 4, 2009

AMENDED IN ASSEMBLY APRIL 16, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 804

Introduced by Assembly Member Hall

February 26, 2009

An act to amend Section 2301 of the Fish and Game Code, relating to invasive aquatic species.

LEGISLATIVE COUNSEL'S DIGEST

AB 804, as amended, Hall. Invasive aquatic species: mussels.

Existing law, until January 1, 2012, generally prohibits a person from possessing, importing, shipping, or transporting in the state, or from placing, planting, or causing to be placed or planted in any water within the state, dreissenid mussels, and authorizes the Director of Fish and Game or his or her designee to engage in various enforcement activities. Existing law exempts a public or private agency that operates a water supply system from those enforcement activities, if the operator of the facilities has prepared and implemented a prescribed plan to control or eradicate dreissenid mussels.

Existing law provides that a person who violates or resists, delays, obstructs, or interferes with the implementation of these provisions is subject to a penalty, in an amount not to exceed \$1,000, that is imposed administratively by the department.

This bill would provide that an operator of water delivery and storage facilities, who has prepared, initiated, and is in compliance with a plan to control and eradicate dreissenid mussels in accordance with the above existing provisions of law, would not be subject to any civil or criminal liability for the introduction of dreissenid mussel species as a result of operations of those facilities. The bill would provide that neither the director's enforcement activities, nor the prohibition on a person possessing, importing, shipping, or transporting dreissenid mussels in the state would apply to an operator who has prepared, initiated, and is in compliance with a plan to control and eradicate dreissenid mussels, unless the department had required the operator to update its plan and the operator failed to do so.

Vote: majority. Appropriation: no. Fiscal committee: no.
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) Quagga mussels, related to zebra mussels in the genus
- 4 Dreissena, are native to the Black and Caspian Seas of Eastern
- 5 Europe.
- 6 (b) Both zebra and quagga mussels appeared in the Great Lakes
- 7 of the United States in the late 1980s, apparently brought to this
- 8 country in the ballast water of transoceanic ships.
- 9 (c) Quagga mussels can reproduce quickly. Up to forty thousand
- 10 (40,000) quagga mussels can colonize within one square meter.
- 11 The mussels damage water supply infrastructure by clogging pipes
- 12 and pumping equipment. In addition, the mussels outcompete other
- 13 species for food and with their large numbers can overwhelm native
- 14 ecosystems.
- 15 (d) While California mandates that water system operators
- 16 manage their reservoirs and delivery systems to prevent and control
- 17 mussel infestations, complete eradication of quagga mussels in
- 18 any infested large water body is unlikely. Eradication efforts in
- 19 the American Midwest have failed.
- 20 (e) Given that eradication from large water bodies is physically
- 21 impossible and that water delivery systems are essential to maintain
- 22 public health and safety, the Legislature finds that implementation
- 23 of the available measures to control mussel infestations and prevent

1 the spread of the mussels to new water bodies is the most that can
2 reasonably be required of water supply agencies.

3 (f) Compliance with current legal requirements for mussel
4 monitoring and management plans in water supply systems are
5 sufficient to protect agencies from unlimited liability for dealing
6 with the consequences of this invasive species.

7 SEC. 2. Section 2301 of the Fish and Game Code is amended
8 to read:

9 2301. (a) (1) Except as authorized by the department, a person
10 shall not possess, import, ship, or transport in the state, or place,
11 plant, or cause to be placed or planted in any water within the state,
12 dreissenid mussels.

13 (2) The director or his or her designee may do all of the
14 following:

15 (A) Conduct inspections of conveyances, which include vehicles,
16 boats and other watercraft, containers, and trailers, that may carry
17 or contain adult or larval dreissenid mussels. Included as part of
18 this authority to conduct inspections is the authority to temporarily
19 stop conveyances that may carry or contain adult or larval
20 dreissenid mussels on any roadway or waterway in order to conduct
21 inspections.

22 (B) Order that areas in a conveyance that contain water be
23 drained, dried, or decontaminated pursuant to procedures approved
24 by the department.

25 (C) Impound or quarantine conveyances in locations designated
26 by the department for up to five days or the period of time
27 necessary to ensure that dreissenid mussels can no longer live on
28 or in the conveyance.

29 (D) (i) Conduct inspections of waters of the state and facilities
30 located within waters of the state that may contain dreissenid
31 mussels. If dreissenid mussels are detected or may be present, the
32 director or his or her designee may order the affected waters or
33 facilities closed to conveyances or otherwise restrict access to the
34 affected waters or facilities, and shall order that conveyances
35 removed from, or introduced to, the affected waters or facilities
36 be inspected, quarantined, or disinfected in a manner and for a
37 duration necessary to detect and prevent the spread of dreissenid
38 mussels within the state.

39 (ii) For the purpose of implementing clause (i), the director or
40 his or her designee shall order the closure or quarantine of, or

1 restrict access to, these waters, areas, or facilities in a manner and
2 duration necessary to detect and prevent the spread of dreissenid
3 mussels within the state. No closure, quarantine, or restriction shall
4 be authorized by the director or his or her designee without the
5 concurrence of the Secretary of the Resources Agency. If a closure
6 lasts longer than seven days, the department shall update the
7 operator of the affected facility every 10 days on efforts to address
8 the dreissenid infestation. The department shall provide these
9 updates in writing and also post these updates on the department's
10 Internet Web site in an easily accessible manner.

11 (iii) The department shall develop procedures to ensure proper
12 notification of affected local and federal agencies, and, as
13 appropriate, the Department of Boating and Waterways, the
14 Department of Water Resources, the Department of Parks and
15 Recreation, and the State Lands Commission in the event of a
16 decision to close, quarantine, or restrict a facility pursuant to this
17 paragraph. These procedures shall include the reasons for the
18 closure, quarantine, or restriction, and methods for providing
19 updated information to those affected. These procedures shall also
20 include protocols for the posting of the notifications on the
21 department's Internet Web site required by clause (ii).

22 (iv) When deciding the scope, duration, level, and type of
23 restrictions, and specific location of a closure or quarantine, the
24 director shall consult with the agency, entity, owner, or operator
25 with jurisdiction, control, or management responsibility over the
26 marina, boat launch facility, or other facility, in order to focus the
27 closure or quarantine to specific areas and facilities so as to avoid
28 or minimize disruption of economic or recreational activity in the
29 vicinity.

30 (b) (1) Upon a determination by the director that it would further
31 the purposes of this section, other state agencies, including, but
32 not limited to, the Department of Parks and Recreation, the
33 Department of Water Resources, the Department of Food and
34 Agriculture, and the State Lands Commission, may exercise the
35 authority granted to the department in subdivision (a).

36 (2) A determination made pursuant to paragraph (1) shall be in
37 writing and shall remain in effect until withdrawn, in writing, by
38 the director.

1 (c) (1) Except as provided in paragraph (2), Division 13
2 (commencing with Section 21000) of the Public Resources Code
3 does not apply to the implementation of this section.

4 (2) An action undertaken pursuant to subparagraph (B) of
5 paragraph (2) of subdivision (a) involving the use of chemicals
6 other than salt or hot water to decontaminate a conveyance or a
7 facility is subject to Division 13 (commencing with Section 21000)
8 of the Public Resources Code.

9 (d) (1) A public or private agency that operates a water supply
10 system shall cooperate with the department to implement measures
11 to avoid infestation by dreissenid mussels and to control or
12 eradicate any infestation that may occur in a water supply system.
13 If dreissenid mussels are detected, the operator of the water supply
14 system, in cooperation with the department, shall prepare and
15 implement a plan to control or eradicate dreissenid mussels within
16 the system. The approved plan shall contain the following
17 minimum elements:

18 (A) Methods for delineation of infestation, including both adult
19 mussels and veligers.

20 (B) Methods for control or eradication of adult mussels and
21 decontamination of water containing larval mussels.

22 (C) A systematic monitoring program to determine any changes
23 in conditions.

24 (D) The requirement that the operator of the water supply system
25 *permit inspections by the department as well as* cooperate with
26 the department to update or revise control or eradication measures
27 in the approved plan to address scientific advances in the methods
28 of controlling or eradicating mussels and veligers.

29 (2) If the operator of water delivery and storage facilities for
30 public water supply purposes has prepared, initiated, and is in
31 compliance with all the elements of an approved plan to control
32 or eradicate dreissenid mussels in accordance with paragraph (1),
33 the requirements of subdivision (a) do not apply to the operation
34 of those water delivery and storage facilities, and the operator is
35 not subject to any civil or criminal liability for the introduction of
36 dreissenid mussel species as a result of those operations. The
37 department may require the operator of a facility to update its plan,
38 and if the plan is not updated or revised as described in
39 subparagraph (D) of paragraph (1), subdivision (a) shall apply to
40 the operation of the water delivery and storage facilities covered

1 by the plan until the operator updates or revises the plan and
2 initiates and complies with all of the elements of the updated or
3 revised plan.

4 (e) Any entity that discovers dreissenid mussels within this state
5 shall immediately report the discovery to the department.

6 (f) (1) In addition to any other penalty provided by law, any
7 person who violates this section, any verbal or written order or
8 regulation adopted pursuant to this section, or who resists, delays,
9 obstructs, or interferes with the implementation of this section, is
10 subject to a penalty, in an amount not to exceed one thousand
11 dollars (\$1,000), that is imposed administratively by the
12 department.

13 (2) A penalty shall not be imposed pursuant to paragraph (1)
14 unless the department has adopted regulations specifying the
15 amount of the penalty and the procedure for imposing and
16 appealing the penalty.

17 (g) The department may adopt regulations to carry out this
18 section.

19 (h) This section shall remain in effect only until January 1, 2012,
20 and as of that date is repealed, unless a later enacted statute, that
21 is enacted before January 1, 2012, deletes or extends that date.