

ASSEMBLY BILL

No. 2664

Introduced by Assembly Member Chesbro

February 19, 2010

An act to add Sections 6224.3, 6224.4, and 6224.5 to the Public Resources Code, relating to public lands.

LEGISLATIVE COUNSEL'S DIGEST

AB 2664, as introduced, Chesbro. Public lands: State Lands Commission: violations.

Existing law establishes the State Lands Commission in the Natural Resources Agency. Under existing law, the commission classifies state land for its different possible uses and has jurisdiction over various state lands.

This bill would prohibit a person from constructing, placing, maintaining, owning, using, or possessing a structure or facility on land under the commission's jurisdiction, unless a necessary easement, lease, permit, or other instrument required by law that authorizes the construction, design, placement, maintenance, ownership, use, or possession of the structure or facility has been obtained.

This bill would establish a civil penalty or fee for violation of that provision. A person who violates that provision would either be liable for a penalty of not more than \$1,000 a day or assessed a monthly use and occupancy fee that is not more than 60% higher than full fair market rental for each day that a violation occurs. The bill would state criteria for determining the appropriate penalty or fee.

The bill would also, among other things, establish procedures to enjoin such activity, remove a violating structure or facility, and serve notice of any violation.

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 6224.3 is added to the Public Resources
2 Code, to read:
3 6224.3. (a) A person shall not construct, place, maintain, own,
4 use, or possess a structure or facility on land under the
5 commission's jurisdiction unless a necessary easement, lease,
6 permit, or other instrument required by law that authorizes the
7 construction, design, placement, maintenance, ownership, use, or
8 possession of the structure or facility has been obtained.
9 (b) A person who violates subdivision (a) shall either be liable
10 for a penalty of not more than one thousand dollars (\$1,000) a day
11 or assessed a monthly use and occupancy fee that is not more than
12 60 percent higher than full fair market rental for each day that a
13 violation occurs.
14 (c) In determining the appropriate penalty or fee described in
15 subdivision (b), the commission shall consider all of the following
16 factors:
17 (1) The physical extent of the violation on the land under the
18 commission's jurisdiction.
19 (2) The degree of culpability of the violator.
20 (3) The degree of cooperation of the violator.
21 (4) The past history of the violator in taking all feasible steps
22 or procedures necessary or appropriate to correct a violation.
23 (5) The violator's prior violations of statutes, rules, orders, or
24 leases pertaining to lands under the commission's jurisdiction.
25 (6) The impact the violation causes on the environment to public
26 access, the public trust, or other property interests under the
27 commission's jurisdiction.
28 (7) Any matters relevant to a fair and just result.
29 (8) Any other factors determined by the commission to be
30 relevant and consistent with the policy of the commission.
31 (d) The penalty and fee described in this section shall be
32 imposed from the first day of the violation to the day the violation
33 ends.
34 (e) If the penalty or fee described in this section is not paid
35 within the time allowed under the final order, interest shall accrue

1 at the rate prescribed by Section 6224. The final order may be
2 recorded with the county clerk in any county of this state and shall
3 have the same force, effect, and priority as a judgment lien.

4 (f) The commission may enjoin a person who violates
5 subdivision (a) from continuing that violation.

6 (g) The commission may require a person who violates
7 subdivision (a) to remove the structure or facility at the person's
8 own expense. If the violator refuses to remove the structure or
9 facility, or if the violator cannot be located, the commission may,
10 at its own expense, remove the structure or facility from the land
11 under the commission's jurisdiction. The commission may pursue
12 whatever legal remedies are available to recover the removal costs
13 from the violator, including placing a lien on the assets of the
14 violator.

15 (h) The commission may elect to take ownership of the structure
16 or facility as a fixture and may exercise the state's rights as owner
17 of the structure or facility.

18 (i) For the purposes of this section, a structure or facility shall
19 include, but is not limited to, buildings, boat houses, docks, piers,
20 revetment, fill, pilings, pipelines, groins, jetties, sea walls,
21 breakwaters, and bulkheads.

22 (j) The remedies provided in this section shall be obtained by
23 the commission through administrative action or by the Attorney
24 General through civil action. If the Attorney General prevails in
25 a civil action for a violation of this section, the state shall be
26 awarded attorney's fees and costs.

27 (k) The remedies provided by this section are in addition to and
28 not in lieu of any other penalty or sanction provided by law.

29 (l) The commission may adopt regulations necessary or useful
30 to carry out this section.

31 SEC. 2. Section 6224.4 is added to the Public Resources Code,
32 to read:

33 6224.4. (a) If the commission elects to pursue any of the
34 remedies provided under Section 6224.3 through an administrative
35 action, the commission shall first provide a 30-day notice to the
36 person against whom it seeks to impose any of the remedies. The
37 notice shall include all of the following:

38 (1) The date, time, and location of the commission hearing
39 where the person may appear and be heard.

1 (2) A statement of the authority and jurisdiction under which
2 the hearing is to be held.

3 (3) A reference to the particular sections of the statutes and rules
4 involved.

5 (4) A short and plain statement of the matters asserted or
6 charged, including a description of the violation complained of
7 with reasonable certainty as to its character and location.

8 (5) A statement indicating whether and under what
9 circumstances an order by default may be entered.

10 (b) In lieu of personal service, service of notice may be made
11 by registered mail and by posting a copy of the notice on the
12 structure or facility that is in violation of subdivision (a) of Section
13 6224.3.

14 (c) If the person fails to appear at the noticed hearing, the
15 commission may make a final order.

16 (d) A hearing may be scheduled as a regular calendar item at a
17 properly noticed commission meeting.

18 SEC. 3. Section 6224.5 is added to the Public Resources Code,
19 to read:

20 6224.5. If, at the time this section is enacted, a person is in
21 violation of subdivision (a) of Section 6224.3, that person shall
22 have six months to remedy the violation or have a completed lease
23 application with all fees and costs submitted to the commission
24 without being subject to a penalty or fee. The remedy may include,
25 but is not limited to, entering into an appropriate lease with the
26 commission or adequately removing the structure or facility.