

Assembly Bill No. 2664

Passed the Assembly August 19, 2010

Chief Clerk of the Assembly

Passed the Senate August 18, 2010

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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, 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 all necessary easements, leases, permits, and other instruments required by law that authorize the construction, design, placement, maintenance, ownership, use, or possession of the structure or facility have been obtained.

This bill would establish a civil penalty or fee for a 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 the 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 exempt a telegraph or telephone corporation undertaking specified action and a franchised cable television corporation, limited to their usage of poles, conduits, cables, wires, and associated appurtenances under either their ownership or the ownership of an electrical corporation, from that penalty and fee.

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

The people of the State of California do enact as follows:

SECTION 1. Section 6224.3 is added to the Public Resources Code, to read:

6224.3. (a) A person shall not construct, place, maintain, own, use, or possess a structure or facility on land under the commission's jurisdiction unless all necessary easements, leases, permits, and other instruments required by law that authorize the construction, design, placement, maintenance, ownership, use, or possession of the structure or facility have been obtained.

(b) A person, other than a telegraph or telephone corporation acting pursuant to Section 7901 of the Public Utilities Code or a franchised cable television corporation, as defined in Section 216.4 of the Public Utilities Code, and limited to their usage of poles, conduits, cables, wires, and associated appurtenances under either their ownership or the ownership of an electrical corporation, as defined in Section 218 of the Public Utilities Code, who violates subdivision (a) shall either be liable for a penalty of not more than one thousand dollars (\$1,000) a day or assessed a monthly use and occupancy fee that is not more than 60 percent higher than the full fair market rental for each day that a violation occurs.

(c) In determining the appropriate penalty or fee described in subdivision (b), the commission shall consider all of the following factors:

(1) The physical extent of the violation on the land under the commission's jurisdiction.

(2) The degree of culpability of the violator.

(3) The degree of cooperation of the violator.

(4) The past history of the violator in taking all feasible steps or procedures necessary or appropriate to correct a violation.

(5) The violator's prior violations of statutes, rules, orders, or leases pertaining to lands under the commission's jurisdiction.

(6) The impact the violation causes on the environment to public access, the public trust, or other property interests under the commission's jurisdiction.

(7) Any matters relevant to a fair and just result.

(8) Any other factors determined by the commission to be relevant and consistent with the policy of the commission.

(d) The penalty and fee described in this section shall be imposed from the first day of the violation to the day the violation ends.

(e) If the penalty or fee described in this section is not paid within the time allowed under the final order, interest shall accrue at the rate prescribed by Section 6224. The final order may be

recorded with the county clerk in any county of this state and shall have the same force, effect, and priority as a judgment lien.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Approved _____, 2010

Governor