

ASSEMBLY BILL

No. 2267

Introduced by Assembly Member Hall

February 24, 2012

An act to amend Sections 6602, 6612, 6613, 6616, and 6618 of the Fish and Game Code, relating to marine resources.

LEGISLATIVE COUNSEL'S DIGEST

AB 2267, as introduced, Hall. Marine resources and preservation.

(1) The California Marine Resources Legacy Act establishes a program, administered by the Department of Fish and Game, to allow partial removal of offshore oil structures. The act authorizes the department to conditionally approve the partial removal of offshore oil structures, if specified criteria are satisfied, including a finding that the alternative of partial removal provides a net environmental benefit and substantial cost savings compared to the alternative of full removal of these structures. The act requires the Ocean Protection Council, for purposes of determining whether partial removal provides a net environmental benefit, to establish specified criteria, to consult with the department, the California Coastal Commission, the State Lands Commission, the California Ocean Science Trust, and other responsible agencies as to those criteria, and requires certification that partial removal complies with the California Environmental Quality Act, among other things. The act requires the State Lands Commission to determine the cost savings of partial removal, and requires the applicant, upon conditional approval for conversion, 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, and specifically provides for the inclusion of certain costs in cost savings.

This bill would specifically include certain additional costs in “cost savings” calculations for purposes of these provisions.

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 into account.

(2) The act criteria that are required to be satisfied for the department to grant conditional approval of an application for partial removal of an offshore oil structure include a requirement that the department has entered into an indemnification agreement with the applicant that indemnifies the state and the department, to the extent permitted by law, against any and all liability that may result, including, but not limited to, active negligence, and including defending the state and the department against any claims against the state for any actions the state undertakes pursuant to the act.

This bill would exclude intentional misconduct and active negligence from that indemnification agreement. The bill would also provide that the provision in the agreement that requires defending the state and the department against any claims against the state for any actions the state undertakes pursuant to the act would apply except to the extent that the department fails to carry out the actions required by, or alters the structure or its use in a manner inconsistent with, a management plan under the act.

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 6602 of the Fish and Game Code is
- 2 amended to read:
- 3 6602. For purposes of this chapter, the following terms have
- 4 the following meanings:
- 5 (a) “Applicant” means the owner or operator of an offshore oil
- 6 structure in state or federal waters or another party responsible for
- 7 decommissioning an offshore oil structure in state or federal waters

1 who applies pursuant to this chapter to carry out partial removal
2 of the structure.

3 (b) "Commission" means the State Lands Commission.

4 (c) "Conservancy" means the State Coastal Conservancy.

5 (d) "Cost savings" means the difference between the estimated
6 cost to the applicant of complete removal of an oil platform as
7 required by state and federal leases and the estimated costs to the
8 applicant of partial removal of the oil platform, *including all costs*
9 *to the applicant of participation in the program* pursuant to this
10 chapter.

11 (e) "Council" means the Ocean Protection Council.

12 (f) "Endowment" means the California Endowment for Marine
13 Preservation established in Division 37 (commencing with Section
14 71500) of the Public Resources Code.

15 (g) "Exclusive economic zone (EEZ)" means the zone as
16 measured from the mean high tide line seaward to 200 nautical
17 miles, as set forth in Presidential Proclamation 5030 of March 10,
18 1983, in which the United States proclaimed jurisdiction over the
19 resources of the ocean within 200 miles of the coastline.

20 (h) "National Fishing Enhancement Act of 1984" means Title
21 II of Public Law 98-623.

22 (i) "Offshore oil structure" means platforms, piers, and artificial
23 islands located seaward of mean lower low water, used for oil and
24 gas exploration, development, production, processing, or storage.

25 (j) "Oil" means any kind of petroleum, liquid hydrocarbons,
26 natural gas, or petroleum products or any fraction or residues
27 therefrom.

28 (k) "Open coastal marine resources" means those marine
29 resources that use open coastal waters as their habitat.

30 (l) "Open coastal waters" means the area composed of the
31 submerged lands of the state that are below the mean lower low
32 water, extending seaward to the boundaries of the exclusive
33 economic zone.

34 (m) "Partial removal" means an alternative to full removal of
35 an offshore oil structure, in compliance with all requirements of
36 this chapter.

37 (n) "State waters" means waters within the seaward boundary
38 of the state as identified in Section 2 of Article III of the California
39 Constitution.

1 SEC. 2. Section 6612 of the Fish and Game Code is amended
2 to read:

3 6612. (a) Upon receipt of an application to partially remove
4 an offshore oil structure pursuant to this chapter, the department
5 shall determine whether the application is complete and includes
6 all information needed by the department.

7 (b) (1) Upon a determination that the application is complete,
8 the applicant shall provide surety bonds executed by an admitted
9 surety insurer, irrevocable letters of credit, trust funds, or other
10 forms of financial assurances, determined by the department to be
11 available and adequate, to ensure that the applicant will provide
12 sufficient funds to the department, council, commission, and
13 conservancy to carry out all required activities pursuant to this
14 article, including all of the following:

15 (A) Environmental review of the proposed project pursuant to
16 Section 6604.

17 (B) A determination of net environmental benefit pursuant to
18 Section 6613.

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

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

22 (E) Implementation of the management plan and ongoing
23 maintenance of the structure after the department takes title
24 pursuant to Section 6620.

25 (F) Development of an advisory spending plan pursuant to
26 Section 6621.

27 (G) Other activities undertaken to meet the requirements of this
28 article, including the costs of reviewing applications for
29 completeness, and reviewing, approving, and permitting the
30 proposed project, which includes the costs of determining whether
31 the project meets the requirements of all applicable laws and
32 regulations and the costs of environmental assessment and review.

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

36 (3) The funds provided pursuant to paragraph (1) *of this*
37 *subdivision and subdivision (c)* shall ~~not be considered included~~
38 in the calculation of cost savings pursuant to Section 6614 ~~or~~ *and*
39 the apportionment of cost savings pursuant to Section 6618.

(c) The first person to file an application on and after January 1, 2011, to partially remove an offshore oil structure pursuant to this chapter, shall pay, in addition to all costs identified under subdivision (b), the startup costs incurred by the department or the commission to implement this chapter, including the costs to develop and adopt regulations pursuant to this chapter. *The funds paid by the first applicant pursuant to this subdivision shall be included in the calculation of the first applicant's cost savings pursuant to Section 6614.* This payment of startup costs shall be reimbursed by the department as provided in paragraph (3) of subdivision (c) of Section 6618.

(d) As soon as feasible after reaching the agreement pursuant to subdivision (b), the lead agency shall begin the environmental review of the proposed project as required pursuant to Section 6604.

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

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

(b) As a necessary prerequisite to determining net environmental benefit as required in subdivision (a), the council shall, upon receipt of its initial application from the department pursuant to Section 6610, establish appropriate criteria for evaluating the net environmental benefit of full removal and partial removal of offshore oil structures.

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

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

(3) In determining the criteria, the council shall consult with appropriate entities, including, but not limited to, the department, the commission, the California Coastal Commission, and the California Ocean Science Trust.

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

(c) Upon certification of environmental documents pursuant to the California Environmental Quality Act, the council shall, based on the criteria developed pursuant to subdivision (b) and other relevant information, determine whether partial removal of the structure would provide a net benefit to the marine environment compared to full removal of the structure. In making the determination, the council shall, at a minimum, take into account the following:

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

(2) Any adverse impacts to biological ~~resources or water resources~~, *water quality*, or *air* quality, or any other marine environmental impacts, from the full removal of the facility that would be avoided by partial removal as proposed in the application.

(3) Any adverse impacts to biological ~~resources or water resources~~, *water quality*, or *air* quality, or any other marine environmental impacts, from partial removal of the structure as proposed in the application.

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

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

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

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

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

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

SEC. 4. Section 6616 of the Fish and Game Code is amended to read:

1 6616. The department may grant conditional approval of an
2 application for partial removal of an offshore oil structure only if
3 all of the following criteria are satisfied:

4 (a) The partial removal of the offshore oil structure and the
5 planning, development, maintenance, and operation of the structure
6 would be consistent with all applicable state, federal, and
7 international laws, including, but not limited to, all of the
8 following:

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

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

13 (3) The federal Coastal Zone Management Act (16 U.S.C. Sec.
14 1451 et seq.).

15 (4) The California Coastal Management Program.

16 (5) The Marine Life Management Act (Part 1.7 (commencing
17 with Section 7050)).

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

20 (7) State and federal water quality laws.

21 (8) Navigational safety laws.

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

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

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

30 (e) The department and the applicant have entered into a
31 contractual agreement whereby the applicant will provide sufficient
32 funds for overall management of the structure by the department,
33 including, but not limited to, ongoing management, operations,
34 maintenance, monitoring, and enforcement as these relate to the
35 structure.

36 (f) The department has entered into an indemnification
37 agreement with the applicant that indemnifies the state and the
38 department, to the extent permitted by law, against any and all
39 liability that may result, ~~including, but not limited to, excluding~~
40 *intentional misconduct and active negligence*, and including

1 defending the state and the department against any claims against
2 the state for any actions the state undertakes pursuant to this article,
3 *except to the extent that the department fails to carry out the*
4 *actions required by, or alters the structure or its use in a manner*
5 *inconsistent with, the management plan prepared pursuant to*
6 *Section 6615.* The agreement may be in the form of an insurance
7 policy, cash settlement, or other mechanism as determined by the
8 department. In adopting indemnification requirements for the
9 agreement, the department shall ensure that the state can defend
10 itself against any liability claims against the state for any actions
11 the state undertakes pursuant to this article and pay any resulting
12 judgments. The department shall consult with and, as necessary,
13 use the resources of the office of the Attorney General in preparing
14 and entering into the indemnification agreement. *The cost to the*
15 *applicant of providing indemnification by agreement, insurance*
16 *policy, cash settlement, or other mechanism shall be included in*
17 *the calculation of cost savings pursuant to Section 6614.*

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

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

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

29 (3) The partial removal of the structure is approved by the
30 Bureau of Ocean Energy Management, Regulation and
31 Enforcement of the United States Department of the Interior.

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

34 6618. (a) The cost savings from the partial removal of an
35 offshore oil structure, as determined pursuant to Section 6614,
36 shall be apportioned and transmitted as described in this section.

37 (b) Upon receipt of conditional approval pursuant to Section
38 6617, ~~the owner or operator of the structure~~ *applicant* shall
39 apportion and directly transmit a portion of the total amount of the
40 cost savings to the entities in subdivision (c) as follows:

1 (1) Fifty-five percent, if ~~transmitted~~ *the application was*
2 *submitted* before January 1, 2017.

3 (2) Sixty-five percent, if ~~transmitted~~ *the application was*
4 *submitted* on or after January 1, 2017, and before January 1, 2023.

5 (3) Eighty percent, if ~~transmitted~~ *the application was submitted*
6 *on or after January 1, 2023.*

7 (c) Of the total amount of the cost savings to be transmitted
8 pursuant to subdivision (b), the applicant shall directly transmit
9 the following amounts to the following entities:

10 (1) Eighty-five percent shall be deposited into the California
11 Endowment for Marine Preservation established pursuant to
12 Division 37 (commencing with Section 71500) of the Public
13 Resources Code.

14 (2) Ten percent shall be deposited into the General Fund.

15 (3) Two percent shall be deposited into the Fish and Game
16 Preservation Fund for expenditure, upon appropriation by the
17 Legislature, by the department to pay any costs imposed by this
18 chapter that are not otherwise provided for pursuant to subdivision
19 (b) of Section 6612 and subdivision (e) of Section 6616. Any
20 moneys remaining in the Fish and Game Preservation Fund, after
21 providing for these costs, shall be used, upon appropriation by the
22 Legislature, first to reimburse the payment of the startup costs
23 described in subdivision (c) of Section 6612, and thereafter to
24 conserve, protect, restore, and enhance the coastal and marine
25 resources of the state consistent with the mission of the department.

26 (4) Two percent shall be deposited into the Coastal Act Services
27 Fund, established pursuant to Section 30620.1 of the Public
28 Resources Code, and shall be allocated to support state agency
29 work involving research, planning, and regulatory review
30 associated with the application and enforcement of coastal
31 management policies in state and federal waters pursuant to state
32 and federal quasi-judicial authority over offshore oil and gas
33 development.

34 (5) One percent shall be deposited with the board of supervisors
35 of the county immediately adjacent to the location of the facility
36 prior to its decommissioning. The amount paid to the county shall
37 be managed pursuant to paragraph (1) of subdivision (d) of Section
38 6817 of the Public Resources Code.

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