

AMENDED IN ASSEMBLY MARCH 22, 2018

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 3102

Introduced by Assembly Member Gray

February 16, 2018

An act to amend ~~Section 43701~~ *Sections 1602 and 1616* of the ~~Health and Safety Code~~, *Fish and Game Code*, relating to ~~vehicular air pollution~~; *fish and wildlife protection and conservation*.

LEGISLATIVE COUNSEL'S DIGEST

AB 3102, as amended, Gray. ~~Heavy-duty motor vehicles~~. *Lake or streambed alteration agreements: limitation on mitigation measures: environment.*

Existing law prohibits an entity from substantially diverting or obstructing the natural flow of, or substantially changing or using any material from the bed, channel, or bank of, any river, stream, or lake, or from depositing certain material where it may pass into any river, stream, or lake, without first notifying the Department of Fish and Wildlife of that activity, and entering into a lake or streambed alteration agreement if the department determines that the activity may substantially adversely affect an existing fish or wildlife resource. Existing law requires a final agreement to include reasonable measures necessary to protect the fish or wildlife resource.

The California Environmental Quality Act requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. The act also requires a lead agency to

prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. The act requires the lead agency to provide a responsible agency, as defined, with specified notice and opportunities to comment on a proposed project. The act requires a responsible agency, before the close of the public review period for a draft environmental impact report or mitigated negative declaration, to submit to the lead agency mitigation measures that would mitigate impacts to resources within the responsible agency's jurisdiction, as specified, or to refer the lead agency to appropriate, readily available guidelines or reference documents.

This bill, in the case of an activity for which an environmental impact report, negative declaration, or mitigated negative declaration has been certified or adopted, would limit the measures to protect a fish or wildlife resource that may be proposed or included in a lake or streambed alteration agreement to the mitigation measures, if any, contained in the certified or adopted environmental document, provided that the department, in the environmental review process preceding certification or adoption of the document, has been provided the opportunity for consultation and comment appropriate for a responsible agency pursuant to the California Environmental Quality Act. The bill would also make a nonsubstantive conforming change.

~~Existing law requires the State Air Resources Board, in consultation with the Bureau of Automotive Repair and a specified review committee, to adopt regulations requiring owners or operators of heavy-duty diesel motor vehicles to perform regular inspections of their vehicles for excessive emissions of smoke. Existing law requires the state board, in consultation with the State Energy Resources Conservation and Development Commission, to adopt regulations requiring heavy-duty diesel motor vehicles to use emission control equipment and alternative fuels.~~

~~This bill would make technical, nonsubstantive changes to those provisions:~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

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

1 **SECTION 1.** *Section 1602 of the Fish and Game Code is*
2 *amended to read:*

3 1602. (a) An entity shall not substantially divert or obstruct
4 the natural flow of, or substantially change or use any material
5 from the bed, channel, or bank of, any river, stream, or lake, or
6 deposit or dispose of debris, waste, or other material containing
7 crumbled, flaked, or ground pavement where it may pass into any
8 river, stream, or lake, unless all of the following occur:

9 (1) The department receives written notification regarding the
10 activity in the manner prescribed by the department. The
11 notification shall include, but is not limited to, all of the following:

12 (A) A detailed description of the project's location and a map.

13 (B) The name, if any, of the river, stream, or lake affected.

14 (C) A detailed project description, including, but not limited to,
15 construction plans and drawings, if applicable.

16 (D) A copy of any document prepared pursuant to Division 13
17 (commencing with Section 21000) of the Public Resources Code.

18 (E) A copy of any other applicable local, state, or federal permit
19 or agreement already issued.

20 (F) Any other information required by the department.

21 (2) The department determines the notification is complete in
22 accordance with Chapter 4.5 (commencing with Section 65920)
23 of Division 1 of Title 7 of the Government Code, irrespective of
24 whether the activity constitutes a development project for the
25 purposes of that chapter.

26 (3) The entity pays the applicable fees, pursuant to Section 1609.

27 (4) One of the following occurs:

28 (A) (i) The department informs the entity, in writing, that the
29 activity will not substantially adversely affect an existing fish or
30 wildlife resource, and that the entity may commence the activity
31 without an agreement, if the entity conducts the activity as
32 described in the notification, including any measures in the
33 notification that are intended to protect fish and wildlife resources.

34 (ii) Each region of the department shall log the notifications of
35 activities where no agreement is required. The log shall list the
36 date the notification was received by the department, a brief
37 description of the proposed activity, and the location of the activity.
38 Each item shall remain on the log for one year. Upon written

1 request by any person, a regional office shall send the log to that
2 person monthly for one year. A request made pursuant to this
3 clause may be renewed annually.

4 (B) The department determines that the activity may
5 substantially adversely affect an existing fish or wildlife resource
6 and issues a final agreement to the entity that ~~includes~~ *includes*,
7 *subject to the limitation in subdivision (b)*, reasonable measures
8 necessary to protect the resource, and the entity conducts the
9 activity in accordance with the agreement.

10 (C) A panel of arbitrators issues a final agreement to the entity
11 in accordance with subdivision (b) of Section 1603, and the entity
12 conducts the activity in accordance with the agreement.

13 (D) The department does not issue a draft agreement to the
14 entity within 60 days from the date notification is complete, and
15 the entity conducts the activity as described in the notification,
16 including any measures in the notification that are intended to
17 protect fish and wildlife resources.

18 *(b) If an environmental impact report, negative declaration, or*
19 *mitigated negative declaration is certified or adopted for an activity*
20 *described in subdivision (a) pursuant to the California*
21 *Environmental Quality Act (Division 13 (commencing with Section*
22 *21000) of the Public Resources Code), and, in the environmental*
23 *review process preceding certification or adoption of that*
24 *environmental document, the department has been provided the*
25 *opportunity for consultation and comment appropriate for a*
26 *responsible agency, as defined in Section 21069 of the Public*
27 *Resources Code, pursuant to the California Environmental Quality*
28 *Act, any authority in this chapter to propose, or to include in an*
29 *agreement, measures to protect a fish and wildlife resource shall*
30 *be limited to the proposal or inclusion of applicable mitigation*
31 *measures, if any, adopted in the environmental document.*

32 ~~(b)~~

33 (c) (1) If an activity involves the routine maintenance and
34 operation of water supply, drainage, flood control, or waste
35 treatment and disposal facilities, notice to and agreement with the
36 department shall not be required after the initial notification and
37 agreement, unless the department determines either of the
38 following:

39 (A) The work described in the agreement has substantially
40 changed.

1 (B) Conditions affecting fish and wildlife resources have
2 substantially changed, and those resources are adversely affected
3 by the activity conducted under the agreement.

4 (2) This subdivision applies only if notice to, and agreement
5 with, the department was attained ~~prior to~~ *before* January 1, 1977,
6 and the department has been provided a copy of the agreement or
7 other proof of the existence of the agreement that satisfies the
8 department, if requested.

9 ~~(e)~~

10 (d) Notwithstanding subdivision (a), the department is not
11 required to determine whether the notification is complete or
12 otherwise process the notification until the department has received
13 the applicable fees.

14 ~~(d)~~

15 (e) (1) Notwithstanding subdivision (a), an entity shall not be
16 required to obtain an agreement with the department pursuant to
17 this chapter for activities authorized by a license or renewed license
18 for cannabis cultivation issued by the Department of Food and
19 Agriculture for the term of the license or renewed license if all of
20 the following occur:

21 (A) The entity submits all of the following to the department:

22 (i) The written notification described in paragraph (1) of
23 subdivision (a).

24 (ii) A copy of the license or renewed license for cannabis
25 cultivation issued by the Department of Food and Agriculture that
26 includes the requirements specified in Section 26060.1 of the
27 Business and Professions Code.

28 (iii) The fee specified in paragraph (3) of subdivision (a).

29 (B) The department determines in its sole discretion that
30 compliance with the requirements specified in Section 26060.1 of
31 the Business and Professions Code that are included in the license
32 will adequately protect existing fish and wildlife resources that
33 may be substantially adversely affected by the cultivation without
34 the need for additional measures that the department would include
35 in a draft streambed alteration agreement in accordance with
36 Section 1603.

37 (C) The department notifies the entity in writing that the
38 exemption applies to the cultivation authorized by the license or
39 renewed license.

1 (2) The department shall notify the entity in writing whether
 2 the exemption in paragraph (1) applies to the cultivation authorized
 3 by the license or renewed license within 60 days from the date that
 4 the notification is complete and the fee has been paid.

5 (3) If an entity receives an exemption pursuant to this
 6 subdivision and fails to comply with any of the requirements
 7 described in Section 26060.1 of the Business and Professions Code
 8 that are included in the license, the failure shall constitute a
 9 violation under this section, and the department shall notify the
 10 Department of Food and Agriculture of any enforcement action
 11 taken.

12 (e)

13 (f) It is unlawful for any entity to violate this chapter.

14 *SEC. 2. Section 1616 of the Fish and Game Code is amended*
 15 *to read:*

16 1616. Any agreement or any memorandum of understanding
 17 executed by the department pursuant to this chapter ~~prior to~~ *before*
 18 January 1, 2004, shall be subject to, and shall be governed by, the
 19 provisions of this chapter that were in existence ~~prior to~~ *before*
 20 that date. This section does not apply to paragraph (2) of
 21 subdivision ~~(b)~~ (c) of Section 1602, requiring an entity to provide
 22 a copy or other satisfactory evidence of an agreement attained
 23 ~~prior to~~ *before* January 1, 1977, upon the request of the department.

24 ~~SECTION 1. Section 43701 of the Health and Safety Code is~~
 25 ~~amended to read:~~

26 ~~43701. (a) (1) The state board, in consultation with the bureau~~
 27 ~~and the review committee established pursuant to subdivision (a)~~
 28 ~~of Section 44021, and after a public hearing, shall adopt regulations~~
 29 ~~that require that owners or operators of heavy-duty diesel motor~~
 30 ~~vehicles perform regular inspections of their vehicles for excessive~~
 31 ~~emissions of smoke. The inspection procedure, the frequency of~~
 32 ~~inspections, the emission standards for smoke, and the actions the~~
 33 ~~vehicle owner or operator is required to take to remedy excessive~~
 34 ~~smoke emissions shall be specified by the state board. Those~~
 35 ~~standards shall be developed in consultation with interested parties.~~
 36 ~~The smoke standards adopted under this subdivision shall not be~~
 37 ~~more stringent than those adopted under Chapter 5 (commencing~~
 38 ~~with Section 44000).~~

39 ~~(2) (A) On or before December 31 of each year, a fleet shall~~
 40 ~~comply with the regulations and standards for that calendar year.~~

1 (B) For purposes of this paragraph, “fleet” means any group of
2 two or more heavy-duty diesel-fueled vehicles that are owned or
3 operated by the same person.

4 (b) ~~The state board, in consultation with the State Energy
5 Resources Conservation and Development Commission, and after
6 a public hearing, shall adopt regulations that require that
7 heavy-duty diesel motor vehicles subject to subdivision (a) utilize
8 emission control equipment and alternative fuels. The state board
9 shall consider, but not be limited to, the use of cleaner burning
10 diesel fuel, or other methods that will reduce gaseous and smoke
11 emissions to the greatest extent feasible, taking into consideration
12 the cost of compliance. The regulations shall provide that any
13 significant modification of the engine necessary to meet these
14 requirements shall be made during a regularly scheduled major
15 maintenance or overhaul of the vehicle’s engine. If the state board
16 requires the use of alternative fuels, it shall do so only to the extent
17 those fuels are available.~~

18 (c) ~~The state board shall adopt emissions standards and
19 procedures for the qualification of any equipment used to meet the
20 requirements of subdivision (b), and only qualified equipment
21 shall be used.~~

22 (d) ~~To the extent permissible under federal law, the owner or
23 operator of any commercial motor truck, as defined in Section 410
24 of the Vehicle Code, with a gross vehicle weight rating (GVWR)
25 greater than 10,000 pounds that enters the state for the purposes
26 of operating in the state shall maintain, and provide upon demand
27 to enforcement authorities, evidence demonstrating that its engine
28 met the federal emission standards applicable to commercial
29 heavy-duty engines for that engine’s model-year at the time it was
30 manufactured, pursuant to the protocol and regulations developed
31 and implemented pursuant to subdivision (c).~~

32 (e) ~~The state board, in consultation with the Department of the
33 California Highway Patrol, shall develop, adopt, and implement
34 regulations establishing an inspection protocol for determining
35 whether the engine of a truck subject to the requirements of
36 subdivision (d) met the federal emission standard applicable to
37 heavy-duty engines for that engine’s model-year at the time it was
38 manufactured.~~

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