

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 1065 (Eggman)
Version: March 14, 2022
Hearing Date: April 26, 2022
Fiscal: Yes
Urgency: No
AM

SUBJECT

California Abandoned and Derelict Commercial Vessel Program

DIGEST

This bill establishes the California Abandoned and Derelict Commercial Vessel Program Coordinating Council (Council) to bring government agencies together to identify, prioritize, and fund the removal of abandoned and derelict commercial vessels from the waters of the state, as provided. The bill prohibits a commercial vessel that is at-risk of becoming derelict from being secured in or on waters of the state as specified, provides for a civil penalty for each violation, and authorizes a peace officer to find that a commercial vessel is at risk of becoming derelict and to remove such a vessel. Authorizes a civil action to be brought by the Attorney General (AG) upon complaint by the Council; or by a district attorney (DA), or city attorney in the name of the people of the State of California, as provided.

EXECUTIVE SUMMARY

This bill addresses a significant statewide problem of commercial abandoned and derelict vessels (ADCVs) in California waterways. ADCVs are hazardous to the environment, navigation, and public health, and are very costly to remove. This bill establishes the Council to provide proactive and responsive solutions to the problem, as provided. The bill prohibits any commercial vessel that is at risk of becoming derelict from being in or on waters of the state, makes a violation of this prohibition subject to civil penalties, and authorizes the AG, a DA, or city attorney to bring a civil action to enforce these provisions. The bill also authorizes a peace officer to find that a commercial vessel is at risk of becoming derelict and to remove such a vessel.

The bill is sponsored by Sacramento County, and supported by many local governments, associations, and agencies, including law enforcement. There is no known opposition. The bill passed out of the Senate Natural Resources and Water Committee on a vote of 9 to 0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Authorizes a peace officer to remove a vessel from a public waterway in specified circumstances, including if the vessel:
 - a) is left unattended and is moored, docked, beached, or made fast to land in a position that obstructs the normal movement of traffic or in a condition that creates a hazard to other vessels using the waterway, public safety, or property;
 - b) interferes with, or otherwise poses a danger to, navigation, public health, safety, or welfare; or
 - c) poses a threat to adjacent wetlands, levies, sensitive habitat, any protected wildlife species, or water quality. (Harb. & Nav. Code § 523.)

- 2) Provides how wrecked or abandoned vessels are to be handled and disposed of once removed or when they come into the possession of a peace officer or other government official. (Harb. & Nav. Code § 510 et. seq.)

- 3) Provides it is unlawful to deposit in, permit to pass into, or place where it can pass into the waters of this state specified pollutants, including any factory, refuse, lime, or slag. (Fish & G. Code § 5650.)
 - a) A person who violates this provision is subject to a civil penalty of not more than \$25,000 for each violation. (*Id.* at subd. (a).)
 - b) Requires a court to take into consideration all relevant circumstances, including, but not limited to, the nature, circumstance, extent, and gravity of the violation when assessing a penalty. (*Id.* at subd. (c).)
 - c) Authorizes an action brought under this section to be brought by the Attorney General upon complaint by the department, or by the district attorney or city attorney in the name of the people of the State of California. (*Id.* at subd. (d).)
 - d) Provides it is not necessary to allege or prove at any stage of the proceeding that irreparable damage will occur if the temporary restraining order, preliminary injunction, or permanent injunction is not issued, or that the remedy at law is inadequate. (*Id.* at subd. (e).)
 - e) After the party seeking the injunction has met its burden of proof, the court is required to determine whether to issue a temporary restraining order, preliminary injunction, or permanent injunction without requiring the defendant to prove that it will suffer grave or irreparable harm. (*Id.* at subd. (f).)
 - f) The court, to the maximum extent possible, is required to tailor a temporary restraining order, preliminary injunction, or permanent injunction narrowly to address the violation in a manner that will

otherwise allow the defendant to continue business operations in a lawful manner. (*Id.* at subd. (g).)

This bill:

- 1) Establishes the California Abandoned and Derelict Commercial Vessel Program Coordinating Council (Council) to bring federal, state, and local agencies together to identify, prioritize, and fund the removal of abandoned and derelict commercial vessels from the waters of the state, as provided.
- 2) Provides a commercial vessel is at-risk of becoming derelict, if the vessel meets any of the following:
 - a) is taking on or has taken on water without an effective means to dewater;
 - b) has spaces that are designed to be enclosed but are incapable of being sealed off or remain open to the elements for extended periods of time;
 - c) has broken loose or is in danger of breaking loose from its anchor, mooring, spuds, or ground tackle, as specified;
 - d) is left aground or is otherwise abandoned for a period of over 30 days in a state that would prevent the vessel from getting underway;
 - e) is unable to maintain buoyancy;
 - f) is powered by a propulsion system and is unable to maneuver under that system;
 - g) is deteriorated and could become awash and create a pollution or navigation hazard;
 - h) poses a significant threat to public health or safety or to sensitive habitat, wildlife, or water quality, or constitutes a public nuisance;
 - i) is in a position to obstruct normal movement of traffic or in a condition to create a hazard to navigation or other vessels using a waterway; or
 - j) is marine debris, as defined.
- 3) Prohibits a commercial vessel that is at-risk of becoming derelict from occupying, anchoring, mooring, or otherwise being secured in or on waters of the state, and authorizes a peace officer to find that a commercial vessel is at risk of becoming derelict if the peace officer determines it meets one of the specified conditions.
- 4) Provides that a person who anchors, moors, or otherwise secures a commercial vessel that is at risk of becoming derelict in or on the waters of the state or allows a vessel that is at risk of becoming derelict to occupy the waters of the state may be liable for a civil penalty of not less than \$1,000 and not more than \$5,000 per day. Each day that a violation continues is a violation of this section.
 - a) Each civil penalty imposed for a separate violation pursuant to these provisions is separate and in addition to any other civil penalty imposed pursuant to these provisions or to any other civil or criminal penalty imposed pursuant to any other law.

- b) In determining the amount of a civil penalty to impose, a court is required to take into consideration all relevant circumstances, including, but not limited to, the nature, circumstance, extent, and gravity of the violation.
- 5) Authorizes a civil action to be brought by the AG upon complaint by the Council; or by a DA or city attorney in the name of the people of the State of California.
- a) Provides it is not necessary to allege or prove at any stage of the proceeding that irreparable damage will occur if the temporary restraining order (TRO), preliminary injunction, or permanent injunction is not issued, or that the remedy at law is inadequate.
 - b) Requires a court, to the maximum extent possible, to tailor a TRO, preliminary injunction, or permanent injunction narrowly to address the violation in a manner that will otherwise allow a defendant to continue business operations in a lawful manner.
 - c) Specifies how the civil penalties will be apportioned.
- 6) Authorizes a peace officer to seize or order the removal of a commercial vessel that is at risk of becoming derelict, and requires the peace officer to comply with all applicable federal, state, and local laws in doing so.

COMMENTS

1. Author's Statement

The author writes:

SB 1065 is needed to coordinate the safe and efficient removal of commercial abandoned and derelict vessels (CADV) in order to keep our waterways clear and clean. CADV removal currently involves many local, state, and federal agencies all with varying degrees of authority and responsibilities depending on the location and circumstances of the vessel in question. Creating a statewide coordinating council, consisting of these agencies, provides the best path forward for identifying appropriate agency jurisdiction, funding availability, and ultimately the removal of CADVs.

CADV removal projects are time consuming and expensive. Removal steps typically include the determination of ownership, agency identification, project funding, hazmat assessment and testing, abatement costs estimations, removal and destruction operations (diving, towing, and dismantling services), and disposal of solid waste materials. The coordinating council created by SB 1065 will be able to create a comprehensive, statewide approach for dealing with CADVs and the harms they pose to our waterways.

2. Bill seeks to address the issue of ADCVs in two ways

a. Establishes the California Abandoned and Derelict Commercial Vessel Program

According to the author and sponsor, there is no centralized process to remove ADCVs from California waterways, which makes removal a very complex and drawn-out process as it can require the involvement of federal, state, and local governments. The bill seeks to remedy this problem by establishing the California Abandoned and Derelict Commercial Vessel Program within the Natural Resources Agency, which will be administered by the Council. The program is intended to bring federal, state, and local agencies together to identify, prioritize, and, upon appropriation or funding, removal of abandoned and derelict commercial vessels.

The Senate Committee on Natural Resources and Water analyzed the bill for its ability to address the issue of ADCVs and their impact on this state's environment and waterways and stated:

This bill would create a comprehensive program to address ADCVs with a coordinating council to oversee the program and coordinate action. The bill includes proactive (prevent new ADCVs) and reactive (address existing ADCVs) components to address the problem from all sides. Regarding the former, it grants authority to peace officers to declare vessels that meet specified conditions at-risk of becoming derelict to enable jurisdictions to take action before the vessel becomes more complicated and expensive to address. The bill also directs the coordinating council to research and evaluate the efficacy of prevention measures and make recommendations to the Legislature to implement viable measures.¹

That Committee also noted the bill's provisions are modeled after programs in Washington and Florida. Specifically, Florida gave law enforcement the authority to declare a vessel at-risk of becoming abandoned or derelict, which has allowed the state to get ahead of the problem before these vessels become more costly and difficult to remove.²

b. Authorizes peace officers to remove commercial vessels at-risk of becoming derelict, prohibits those vessels from being in or on the waterways of this state subject to civil penalties for any violation, and authorizes a civil action to be brought to enforce these provisions

Additionally the bill provides that a person who anchors, moors, or otherwise secures a commercial vessel that is at risk of becoming derelict in or on the waters of the state or allows a vessel that is at risk of becoming derelict to occupy the waters of the state may

¹ Sen. Com. on Nat. Res. & Wat. Analysis of Sen. Bill No. 1065 (2021-2022 Reg. Sess.) as amended Mar. 13, 2022 at pg. 7.

² *Ibid.*

be liable for a civil penalty of not less than \$1,000 and not more than \$5,000 per day. Under the bill, a commercial vessel is at-risk of becoming derelict if it meets various conditions, such as being left aground or is otherwise abandoned for a period of over 30 days in a state that would prevent the vessel from getting underway or poses a significant threat to public health or safety or to sensitive habitat, wildlife, or water quality, or constitutes a public nuisance. The bill authorizes a peace officer to find that a commercial vessel is at risk of becoming derelict if the peace officer determines it meets one of the specified conditions, and authorizes a peace officer to seize or order the removal of a commercial vessel that is at risk of becoming derelict.

The bill models many of its provisions on Section 5605.1 of the Fish and Game Code, which authorizes a civil action to address pollutants passing into the water of this state. Some of these provisions include that it is not necessary to allege or prove at any stage of a proceeding seeking an injunction or TRO that irreparable damage will occur if the TRO, preliminary injunction, or permanent injunction is not issued, or that the remedy at law is inadequate. Additionally, the bill requires a court, to the maximum extent possible, to tailor a TRO, preliminary injunction, or permanent injunction narrowly to address the violation in a manner that will otherwise allow a defendant to continue business operations in a lawful manner.

The bill currently does not specify what peace officers are required to do with a commercial vessel they remove or seize except for the general requirement that they comply with all applicable federal, state, and local laws. There are existing provisions of law that deal with this issue in regards to wrecked vessels that are removed or seized. (*See Harb. & Nav. Code § 510 et. seq.*) In order to ensure that a person whose property is removed or seized has the ability to claim it, the author may wish to provide that a removal or seizure of a commercial vessel must comply with these provisions.

In addition, the language related to authorizing the Attorney General to bring a cause of action says that the AG shall bring a cause of action upon complaint by the Council. This may interfere with the AG's plenary power under the California Constitution to enforce the laws of this state. As such, the author may want to make it clear that the AG may bring a cause of action upon complaint of the Council and that nothing in the bill limits the authority of the Office of the Attorney General to bring a suit to enforce state law in an independent capacity.

For purposes of ease of reading and clarity, the author may wish to place the provisions that authorize a peace officer to remove or seize a vehicle in its own subdivision instead of in a subparagraph in the provisions relating to civil actions, as the seizure or removal authority is intended to be able to occur separately from or concomitantly with the civil action. The author also may wish to move the factors that make a commercial vessel at-risk of being derelict into the same subdivision that prohibits commercial vessel at-risk of being derelict from being on the waterways of this state.

Lastly, the provisions in this bill related to a court issuing a TRO, preliminary injunction, or permanent injunction are mirrored from Section 5605.1 of the Fish and Game Code, which addresses pollutants passing into the waters of this state. The author may wish to review these provisions and consider whether mirroring them exactly makes sense in the context of commercial vehicles at-risk of becoming derelict. To the extent these factors would not be involved in the situation of a commercial vessel at-risk of becoming derelict or may not be factors that need to take precedence over other more relevant factors when issuing a judgment, the author may wish to remove them or consider changing them.

3. Proposed Amendments³

To address the issues raised above, the author may wish to make the following amendments.

Amend Section 528 of the Harbors and Navigation Code, to read:

528. (a) For purposes of this section, the following terms have the following meanings:

(1) "Commercial vessel" has the meaning set forth in subdivision (d) of Section 6112 of the Public Resources Code.

(2) "*Peace officer*" means a peace officer as described in Section 830.1 of the Penal Code or Section 851 of the Fish and Game Code.

~~(2)~~ (3) "Waters of the state" means any surface water, including saline waters, marine waters, and freshwaters, within the boundaries of the state, but does not include groundwater.

(b) Except as provided in subdivision ~~(e)~~, (f), a commercial vessel that is derelict or at risk of becoming derelict, ~~as described in subdivision (e)~~, derelict shall not occupy, or anchor, moor, or otherwise be secured in or on, the waters of the state. *A commercial vessel is at risk of becoming derelict when any of the following conditions exist:*

(1) *The commercial vessel is taking on or has taken on water without an effective means to dewater.*

(2) *Spaces on the commercial vessel that are designed to be enclosed are incapable of being sealed off or remain open to the elements for extended periods of time.*

³ The amendments may also include the addition technical, nonsubstantive changes recommended by the Office of Legislative Counsel.

(3) *The commercial vessel has broken loose or is in danger of breaking loose from its anchor, mooring, spuds, or ground tackle, including blocks, chains, pulleys, cables, and anchor rodes.*

(4) *The commercial vessel is left aground or is otherwise abandoned for a period of over 30 days in a state that would prevent the vessel from getting underway.*

(5) *The commercial vessel is unable to maintain buoyancy.*

(6) *The commercial vessel is powered by a propulsion system and is unable to maneuver under that system.*

(7) *The commercial vessel is deteriorated and could become awash and create a pollution or navigational hazard.*

(8) *The commercial vessel poses a significant threat to public health or safety or to sensitive habitat, wildlife, or water quality, or constitutes a public nuisance.*

(9) *The commercial vessel is in a position to obstruct normal movement of traffic or in a condition to create a hazard to navigation or other vessels using a waterway.*

(10) *The commercial vessel is marine debris, as defined in Section 550.*

(c) ~~A peace officer, as described in Section 830.1 of the Penal Code or Section 851 of the Fish and Game Code, officer~~ may find that a commercial vessel is "at risk of becoming derelict" if the peace officer determines that any of the ~~following conditions exist; described in subdivision (b) exist.~~

~~(1) The commercial vessel is taking on or has taken on water without an effective means to dewater.~~

~~(2) Spaces on the commercial vessel that are designed to be enclosed are incapable of being sealed off or remain open to the elements for extended periods of time.~~

~~(3) The commercial vessel has broken loose or is in danger of breaking loose from its anchor, mooring, spuds, or ground tackle, including blocks, chains, pulleys, cables, and anchor rodes.~~

~~(4) The commercial vessel is left aground or is otherwise abandoned for a period of over 30 days in a state that would prevent the vessel from getting underway.~~

~~(5) The commercial vessel is unable to maintain buoyancy.~~

~~(6) The commercial vessel is powered by a propulsion system and is unable to maneuver under that system.~~

~~(7) The commercial vessel is deteriorated and could become awash and create a pollution or navigational hazard.~~

~~(8) The commercial vessel poses a significant threat to public health or safety or to sensitive habitat, wildlife, or water quality, or constitutes a public nuisance.~~

~~(9) The commercial vessel is in a position to obstruct normal movement of traffic or in a condition to create a hazard to navigation or other vessels using a waterway.~~

~~(10) The commercial vessel is marine debris, as defined in Section 550.~~

(d) (1) A peace officer may seize or order the removal of a commercial vessel that is at risk of becoming derelict after providing notice pursuant to the provisions of Section 526.

(2) In seizing or ordering the removal of a commercial vessel pursuant to this subdivision, a peace officer shall comply with all applicable federal, state, and local laws.

(3) All provisions in this article relating to the storage, custody, possession, sale, claims, and disbursement of wrecked property after removal or seizure shall also apply to a commercial vessel that is at risk of becoming derelict that is removed or seized pursuant to the subdivision.

~~(d) (e) (1) (A)~~ A person who anchors, moors, or otherwise secures a commercial vessel that is at risk of becoming derelict in or on the waters of the state, or allows a *commercial* vessel that is at risk of becoming derelict to occupy the waters of the state, may be liable for a civil penalty of not less than one thousand dollars (\$1,000) and not more than five thousand dollars (\$5,000) per ~~day~~ violation. Each day that a violation continues shall be a separate violation of this section.

~~(B)~~ (2) Each civil penalty imposed for a separate violation pursuant to this section shall be separate and in addition to any other civil penalty imposed pursuant to this section or to any other civil or criminal penalty imposed pursuant to any other law.

~~(C)~~ (3) A civil action brought under this section ~~shall~~ *may* be brought by the Attorney General upon complaint by the California Abandoned and Derelict Commercial Vessel Program Coordinating Council established pursuant to subdivision (b) of Section 6112 of the Public Resources Code, or by a district attorney or city attorney in the name of the people of the State of California, and any actions relating to the same violation may be joined or consolidated.

(4) *Nothing in this section shall limit the authority of the Office of the Attorney General to bring a suit to enforce state law in an independent capacity.*

~~(D)~~ (5) In determining the amount of a civil penalty imposed pursuant to this section, a court shall take into consideration all relevant circumstances, including, but not limited to, the nature, circumstance, extent, and gravity of the violation. In making this determination, a court shall consider ~~the degree of toxicity and volume of the release,~~ the extent of harm caused by the violation, whether the effects of the violation may be reversed or mitigated, and, with respect to a defendant, the ability to pay, the effect of a civil penalty on the ability to continue in business, all voluntary cleanup efforts undertaken, the prior history of violations, the gravity of the behavior, the economic benefit, if any, resulting from the violation, and all other matters the court determines justice may require.

~~(E)(i)~~ (6)(A) In a civil action brought pursuant to this section in which a temporary restraining order, preliminary injunction, or permanent injunction is sought, it is not necessary to allege or prove at any stage of the proceeding that irreparable damage will occur if the temporary restraining order, preliminary injunction, or permanent injunction is not issued, or that the remedy at law is inadequate.

~~(ii)~~ (B) After a party seeking the injunction has met its burden of proof, a court shall determine whether to issue a temporary restraining order, preliminary injunction, or permanent injunction without requiring a defendant to prove that the defendant will suffer grave or irreparable harm. A court shall make the determination whether to issue a temporary restraining order, preliminary injunction, or permanent injunction by taking into consideration, among other things, the nature, circumstance, extent, and gravity of the violation, ~~the quantity and characteristics of any substance or material involved,~~ the extent of environmental harm caused by the violation, *and* measures taken by the defendant to remedy the violation, ~~the relative likelihood that any material or substance involved may pass into waters of the state, and the harm likely to be caused to the defendant.~~ *violation.*

~~(iii)~~ (C) A court, to the maximum extent possible, shall tailor a temporary restraining order, preliminary injunction, or permanent injunction narrowly to address the violation in a manner that will otherwise allow a defendant to continue business operations in a lawful manner.

~~(F)~~ (7) All civil penalties collected pursuant to this section shall be apportioned in the following manner:

~~(i)~~ (A) Seventy-five percent shall be deposited into the Abandoned and Derelict Commercial Vessel Program Trust Fund established pursuant to subdivision (b) of Section 6113 of the Public Resources Code.

~~(ii)~~ (B) Twenty-five percent shall be distributed to the Attorney General, district attorney, or city attorney prosecuting the action.

~~(G)~~ ~~(i)~~ (8)(A) The costs of removing or destroying a commercial vessel that is at risk of becoming derelict shall be borne by the owner or operator of the vessel or the occupant or person in possession of the vessel at the time of the violation. These costs shall be ordered by a court upon a finding of civil liability pursuant to this section.

~~(ii)~~ (B) The costs of removal or destruction collected pursuant to ~~clause (i) subparagraph (A)~~ shall be deposited into the Abandoned and Derelict Commercial Vessel Program Trust Fund established pursuant to subdivision (b) of Section 6113 of the Public Resources Code.

~~(2) A peace officer may seize or order the removal of a commercial vessel that is at risk of becoming derelict, as described in subdivision (c). In seizing or ordering the removal of a commercial vessel pursuant to this paragraph, a peace officer shall comply with all applicable federal, state, and local laws.~~

~~(e)~~ (f) This section does not apply to a commercial vessel that is moored to a private dock with the consent of an owner of a licensed commercial vessel repair facility or yard for the purpose of being repaired.

4. Statements in Support

The County of Sacramento, sponsor of the bill, writes:

[...] Unlike recreational vessels, such as ski, fishing and house boats, a statewide program does not exist to fund the removal and destruction of commercial abandoned and derelict vessels. [...] The limitations and disjointed federal, state and local authorities and responsibilities coupled with no ongoing funding is a significant impediment to addressing this problem. SB 1065 addresses this issue by creating a program and Coordinating Council of federal, state and local agencies that will identify, prioritize and fund the actual removal of CADVs from California's waterways. [...]

The California State Sheriffs' Association writes:

[...] Despite the growing problem of abandoned and derelict vessels on our state's waterways, there is no specific and adequate statewide program to fund the removal and destruction of these vessels. State and local agencies are forced to rely on cooperation by vessel owners, lengthy legal processes, and limited federal actions to address this problem.

Without a program and ongoing funding, abandoned and derelict vessels will continue to cause environmental harm and damage to California's water quality, habitat, and ecosystems.

For these reasons, CSSA is please to support SB 1065.

SUPPORT

County of Sacramento (sponsor)
California District Attorneys Association
California State Sheriffs' Association
Californians Against Waste
City of Long Beach
City of Sacramento
County of Contra Costa
Delta Counties Coalition
Marin Audubon Society
Port of West Sacramento
Redwood Shore Diving, Inc.
Regional Water Authority
Sacramento County District Attorney's Office
Urban Counties of California

OPPOSITION

None known.

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 2441 (Frazier, Ch. 540, Stats. 2018) required the State Lands Commission to develop a plan to remove abandoned commercial vessels in the Delta, and, upon receipt of funding, implement the plan.

AB 2092 (Frazier, 2016) would have expanded the allowable uses of the Abandoned Watercraft Abatement Fund to include the abatement, removal, storage, or removal of commercial vessels. The bill died in the Assembly Appropriations Committee.

AB 1323 (Frazier, Ch. 645, Stats. 2015) authorizes a public agency to remove and dispose of marine debris after 10 days if specified conditions are met.

SB 595 (Wolk, Ch. 595, Stats. 2011) authorized the State Lands Commission to take immediate action, without notice, to remove unattended vessels that obstruct traffic or create a hazard to other vessels or property.

PRIOR VOTES:

Senate Natural Resources and Water Committee (Ayes 9, Noes 0)
