
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: AB 1682 **Hearing Date:** June 14, 2022
Author: Boerner Horvath
Version: June 6, 2022
Urgency: No **Fiscal:** No
Consultant: AB

Subject: *Vessels: public safety activities*

HISTORY

Source: Cities of Carlsbad and San Diego

Prior Legislation: SB 1162 (Berryhill), Ch. 67, Stats. of 2014

Support: California Professional Firefighters; City of Carlsbad; City of Encinitas; City of Oceanside; City of San Diego; Oceanside Chamber of Commerce; United States Lifesaving Association

Opposition: None known

Assembly Floor Vote: 70 - 0

PURPOSE

The purpose of this bill is to exempt vessels clearly identifiable as lifeguard rescue vessels and vessels engaged in public safety activities from the speed limit imposed on machine-propelled vessels operating in specified areas.

Existing law regulates the operation of vessels and associated equipment used, to be used, or carried in vessels used on waters subject to the jurisdiction of the state. (Harbors & Navigation Code (HNC) §650.1(a).)

Existing law states that certain vessels are not regulated by the provisions of law described above, unless otherwise provided. Vessels not regulated by these provisions include:

- Foreign vessels temporarily using waters subject to state jurisdiction
- Military or public vessels of the United States, except recreational-type public vessels.
- A vessel whose owner is a state or subdivision thereof, which is used principally for governmental purposes, and which is clearly identifiable as such.
- Ship's lifeboats (HNC §650.1(b).)

Existing law provides that the use of a distinctive blue light as prescribed by the Department of Boating and Waterways is reserved for public safety vessels and may be displayed during the day or night whenever the vessel may be engaged in direct law enforcement activities, as specified, or public safety activities conducted by a fire department or fire protection district,

where identification of a public safety vessel is desirable or where necessary for safety reasons. (HNC §652.5(a).)

Existing law provides that, where not otherwise regulated by local rules and regulations, every owner, operator, or person in command of any vessel propelled by machinery is guilty of an infraction if that vessel travels at a speed in excess of five miles per hour in any portion of the following areas:

- Within 100 feet of any person who is engaged in the act of bathing. A person engaged in the sport of water skiing shall not be considered as engaged in bathing for the purposes of this provision.
- Within 200 feet of: a beach frequented by bathers; a swimming float, diving platform, or lifeline; a way or landing float to which boats are made fast of which is being used for the embarkation or discharge of passengers. (HNC §655.2(a).)

Existing law exempts vessels engaged in direct law enforcement activities that are displaying the blue lights described above from the five mile per hour speed limit in specified areas, as well as from any locally imposed speed regulation, as specified. (HNC §655.2(b).)

Existing law provides that any person operating a personal water craft equipped with a lanyard-type engine cutoff switch or a self-circling device shall comply with specified requirements, and shall operate the watercraft in a prudent and reasonable manner. (HNC §655.7(a)-(c).)

Existing law prohibits the operation of a personal watercraft at any time between the hours from sunset to sunrise, except for specified operators, (HNC §655.7(d).)

Existing law allows local governmental entities to adopt additional regulations related to boats and vessels, but specifies that such regulations must not conflict with the Harbors and Navigation Code, as specified. (HNC §660).

Existing law generally defines an infraction as a violation punishable by a maximum fine of \$250 unless otherwise indicated. (Penal Code §19.8(b).)

This bill clarifies that the definition of “state or subdivision thereof” includes cities and counties.

This bill exempts the following from the five-mile-per-hour speed limit speed limit for vessel propelled machinery in specified beach, swimming, or boat landing areas

- Vessels, including personal watercraft, clearly identifiable as lifeguard rescue vessels engaged in public safety activities.
- Public safety vessels engaged in direct law enforcement activities or public safety activities that are displaying the distinctive blue lights prescribed per the provision above.
- Personal water craft, clearly identifiable as lifeguard rescue vessels or public safety vessels, operating within the surf zone.

This bill additionally exempts the above vessels from any locally imposed speed regulation, as specified, but requires them to be operated in accordance with existing law, as specified.

This bill defines “clearly identifiable as a lifeguard rescue vessel” as meaning an authorized lifeguard water rescue vessel operated or owned by a public agency.

This bill defines “public safety activities” to include public agency sanctioned patrolling, traffic control, assisting disabled vessels, salvage operations, firefighting, providing medical assistance, search and rescue, and training.

COMMENTS

1. Need for This Bill

According to the Author:

Current law establishes a 5-mile per hour speed limit for machine-propelled vessels which are operating within 100 feet of a swimmer or within 200 feet of a beach or swimming float. However, current law also provides an exemption to the speed limit for vessels engaged in direct law enforcement activities and that are displaying traditional blue safety lights.

Lifeguards must use rescue watercrafts (jet skis, etc.) to patrol coastlines and quickly respond to lifesaving and other public safety incidents. Rescue watercraft usually idle at speeds up to 5-mph and lifeguards often must operate in excess of 5-mph when responding to a particular situation. However, a blue light cannot be affixed to rescue watercraft such as jet skis and lifeguards therefore are technically out of compliance with state law when exceeding 5-mph within 100 feet of a swimmer or 200 feet from the beach.

There are over 35 million tourists who visit San Diego County every year. With nearly 18 million annual visitors to City of San Diego and beaches and an average of 7,000 water rescues, approximately 700 (10 %) of rescues are effected by rescue watercraft each calendar year. The majority of the water rescues effected by the rescue watercraft are critical. AB 1682 will exempt vessels clearly identifiable as lifeguard rescue vessels from the 5-mph limitation.

2. Background – *Haytasingh v. City of San Diego*

The issue at the core of this bill was recently the subject of litigation. In *Michael Ramesh Haytasingh v. City of San Diego and City lifeguard Ashley Marino* (2021) 66 Cal.App 5th 429, plaintiff Haytasingh alleged that Marino, while on duty, negligently operated her City-owned jet ski, causing him to dive off his surfboard and injure his neck. The City disputed these allegations. Under existing law, it is an infraction for any vessel, except those engaged in direct law enforcement activities, to travel at speeds in excess of 5mph.¹ According to Marino, she was approximately 20 to 30 feet offshore in water about two feet deep, and was traveling at a speed of 10 to 15 miles per hour.² The case went to trial and a jury ultimately rendered a verdict in

¹ HNC §655.2

² *Haytasingh v. City of San Diego et. al* (2021) 66 Cal.App 5th 429, at 438.

favor of the City, and Haytasingh appealed. A central issue before the Court of Appeal was whether the 5mph speed limit imposed by Harbors and Navigation Code (HNC) § 655.2 applied to the City's jet ski, operated by lifeguard Marino.

The Court of Appeal held that the trial court erred in determining that the speed limit imposed by HNC § 655.2 does not apply to the City's lifeguards, and in instructing the jury that all employees of governmental agencies acting within their official capacities are exempt from a San Diego City ordinance establishing a 5pmh speed limit for water vessels that are within 1,000 feet of a beach.³ In reaching its conclusion, the court acknowledged that the statutes at issue “do not clearly indicate what the Legislature intended with respect to the regulation of various types of publicly owned or operated vessels. Rather, the interplay between [various exemptions to those statutes] and the speed limit provision in §655.2, in particular, appears to create a puzzle for which there is no single satisfactory answer.”⁴ Further, according to the ruling:

In adopting HNC §655.2, the Legislature clearly did not intend to permit *all* government employees to operate vessels at any rate of speed while within 100 feet of bathers or 200 feet of a beach. Rather, the Legislature expressly indicated its intention to permit only those government employees who are actively engaged in “direct law enforcement activities” and who are displaying the requisite blue light indicating that they are engaged in such activities to operate their vessels at a rate of speed exceeding the five-mile-per-hour limit when they are within 100 feet of a bather or 200 feet of a beach (or other identified area).⁵

Given the ambiguity as to the relationship between HNC §655.2 (imposing a 5mph speed limit) and HNC §650.1(b) (exempting specified vessels from that speed limit and other provisions in the HNC), the court invited the Legislature to clarify.⁶

After the Court of Appeal ruling, the City petitioned the California Supreme Court, which denied review, sending the case back to the trial court for a new trial. However, four Supreme Court justices joined in a statement, authored by Justice Groban, echoing the appellate court's invitation to the Legislature to clarify the statutes.⁷ Groban writes:

It will be of little comfort to the next swimmer or surfer in peril to learn that the most effective means of saving him or her is unavailable due to a latent ambiguity in the Harbors and Navigation Code. I urge the Legislature to address this ambiguity forthwith.⁸

3. Effect of This Bill

This bill accepts the Court of Appeals and Supreme Court's invitation to resolve the ambiguity in Sections 650.1 and 655.2 of the Harbors and Navigation Code. Specifically, existing law prohibits any vessel from traveling more than 5mph within 100 feet of people who are bathing in public waters and within 200 feet of a swimming beach, a

³ *Id.* at 436-437 ; San Diego Municipal Code §63.20.15.

⁴ *Id.* at 463.

⁵ *Id.* at 466.

⁶ *Id.* at 464.

⁷ *Hyatasingh v. City of San Diego* S270451. California Supreme Court (Minute Order). Decided 10 November 2021.

⁸ *Id.*

swimming float or platform, or a landing float used for the embarkation or discharge of maritime passengers. This provision is primarily intended to prevent boaters from causing injury to swimmers. This bill creates three new narrowly tailored exemptions to that speed restriction, namely, for 1) clearly identifiable lifeguard safety vessels engaged in public safety activities, 2) public safety vessels engaged in law enforcement or public safety activities that are displaying required blue lights, and 3) personal water craft, clearly identifiable as lifeguard or public safety vessels, operating in the surf zone. By exempting these vessels, this bill appears to clarify the statutory ambiguity at issue in *Haytasingh*.

However, one outstanding issue remains as it relates to the bill's definition "public safety activities," which includes, among other activities, "public agency sanctioned patrolling." It is unclear whether lifeguard vessels should be exempt from the 5mph speed limit when merely patrolling, as opposed to engaging in search and rescue, traffic control, providing medical assistance, and other specified activities. By way of comparison, law enforcement vehicles do not generally exceed roadway speed limits when engaged in patrol. Therefore, the Author may wish to consider amending the bill to remove this activity from the list of activities deemed "public safety activities" for the purposes of exemption from the speed limit at issue.

4. Argument in Support

According to the United States Lifesaving Association:

Motorized rescue vessels have been an essential tool for drowning prevention by California lifeguards for decades. Without them, lifeguards would be much less effective, meaning that preventable injury and loss of life are foreseeable results.

The United States Lifesaving Association promulgates nationwide standards for the use of personal rescue watercraft which include the need to operate at speeds over 5 mph within 100 feet of bathers and within 200 feet of beaches frequented by bathers.

A recent court ruling identified legal constraints on the use of motorized rescue boats by California lifeguards and encouraged the Legislature to take action to remedy them. Your legislation would fully address this shortcoming of law.

-- END --