

Assembly Bill No. 716

CHAPTER 311

An act to amend Sections 518, 523, 525, and 526 of the Harbors and Navigation Code, relating to vessels.

[Approved by Governor September 22, 2005. Filed with Secretary of State September 22, 2005.]

LEGISLATIVE COUNSEL'S DIGEST

AB 716, Canciamilla. Vessels: abandonment: abatement.

(1) Existing law authorizes the officer who has custody of wrecked vessel property to sell it at public auction and transmit the proceeds of the sale, after deducting salvage, storage, property tax liens, other liens, and other expenses, to the Treasurer for deposit in the General Fund, if, among other things, no claimant of the property appears within 90 days after the wrecked property was saved.

This bill, instead, would authorize the wrecked property to be sold at auction if no claimant of the property appears within 60 days after the wrecked property was saved.

(2) Existing law authorizes a peace officer, as defined, an employee or officer of the State Lands Commission designated by the State Lands Commission, or a lifeguard or marine safety officer employed by a county, city, or district while engaged in the performance of official duties, to remove, and, if necessary, store a vessel removed from a public waterway under certain, listed circumstances.

This bill, additionally, would authorize removal of a vessel when it is found or operated upon a waterway with a registration expiration date in excess of one year before the date on which it is found or operated on the waterway.

(3) Existing law makes it an infraction with a maximum \$1,500 fine for a person to abandon a vessel upon a public waterway or public or private property without the express or implied consent of the owner or person in lawful possession or control of the property, except for urgent and immediate concern for the safety of those aboard the vessel.

This bill would increase the maximum fine to \$3,000. The bill would also authorize the court to order the violator to pay the enforcing agency the actual costs incurred by the agency for the removal and disposition of the abandoned vessel.

(4) Existing law authorizes wrecked property, abandoned property, or property removed from a navigable waterway, as specified, to be sold or otherwise disposed of by the public agency that removed or caused the removal of the property, subject to certain conditions, including that the property have been appraised by disinterested persons, and have an estimated value of less than \$300.

This bill would limit the sale or disposal by a public agency of wrecked property or property removed from a navigable waterway to property that is an unseaworthy derelict or hulk, and would modify the specified condition to require the property to have an estimated value of less than \$2,000.

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

SECTION 1. Section 518 of the Harbors and Navigation Code is amended to read:

518. If, within 60 days after saving wrecked property, no claimant of the property appears, or, if within 60 days after a claim, the salvage and expenses are not paid, or a suit for the recovery of the property is not commenced, the officer who has custody of the property may sell it at public auction and transmit the proceeds of the sale, after deducting salvage, storage, property tax liens, other liens, and other expenses, to the Treasurer for deposit in the General Fund. Deduction of salvage, storage, and other expenses shall not be made, unless the amount has been determined by the superior court of the county. A copy of the order, and the evidence in its support, shall be transmitted by the judge to the Controller.

SEC. 2. Section 523 of the Harbors and Navigation Code is amended to read:

523. (a) Any peace officer, as described in Section 663, any employee or officer of the State Lands Commission designated by the State Lands Commission, or any lifeguard or marine safety officer employed by a county, city, or district while engaged in the performance of official duties, may remove, and, if necessary, store a vessel removed from a public waterway under any of the following circumstances:

(1) When the vessel 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, to public safety, or to the property of another.

(2) When the vessel is found upon a waterway and a report has previously been made that the vessel has been stolen or a complaint has been filed and a warrant thereon issued charging that the vessel has been embezzled.

(3) When the person or persons in charge of the vessel are by reason of physical injuries or illness incapacitated to an extent as to be unable to provide for its custody or removal.

(4) When an officer arrests any person operating or in control of the vessel for an alleged offense, and the officer is, by any provision of this code or other statute, required or permitted to take, and does take, the person arrested before a magistrate without unnecessary delay.

(5) When the vessel interferes with, or otherwise poses a danger to, navigation or to the public health, safety, or welfare.

(6) When the vessel poses a threat to adjacent wetlands, levies, sensitive habitat, any protected wildlife species, or water quality.

(7) When a vessel is found or operated upon a waterway with a registration expiration date in excess of one year before the date on which it is found or operated on the waterway.

(b) Costs incurred by a public entity pursuant to removal of vessels under subdivision (a) may be recovered through appropriate action in the courts of this state.

SEC. 3. Section 525 of the Harbors and Navigation Code is amended to read:

525. (a) Except for urgent and immediate concern for the safety of those aboard a vessel, no person shall abandon a vessel upon a public waterway or public or private property without the express or implied consent of the owner or person in lawful possession or control of the property.

(b) The abandonment of any vessel in a manner as provided in subdivision (a) is prima facie evidence that the last registered owner of record, not having notified the appropriate registration or documenting agency of any relinquishment of title or interest therein, is responsible for the abandonment and is thereby liable for the cost of removal and disposition of the vessel.

(c) Violation of this section is an infraction and shall be punished by a fine of not less than five hundred dollars (\$500), nor more than three thousand dollars (\$3,000). In addition, the court may order the defendant to pay to the agency that removes and disposes of the vessel the actual costs incurred by the agency for that removal and disposition.

(d) All fines imposed and collected pursuant to this section shall be allocated as follows:

(1) (A) Eighty percent of the moneys shall be deposited in the Abandoned Watercraft Abatement Fund, which is hereby created as a special fund. Moneys in the fund shall be used exclusively, upon appropriation by the Legislature, for grants to be awarded by the department to local agencies for the abatement, removal, storage, and disposal as public nuisances of any abandoned, wrecked, or dismantled vessels, or parts thereof, or any other partially submerged objects which pose a substantial hazard to navigation, from navigable waterways or adjacent public property, or private property with the landowner's consent. These grants shall not be utilized for abatement, removal, storage, or disposal of commercial vessels.

(B) In evaluating a grant request submitted by a local agency pursuant to subparagraph (A), the department shall place great weight on the following two factors:

(i) The existence of an active local enforcement program to control and prevent the abandonment of watercraft within the local agency's jurisdiction.

(ii) The existence of a submerged navigational hazard abatement plan at the local level which provides for the control or abatement of water

hazards, including, but not limited to, abandoned watercraft, wrecked watercraft, hazardous floating debris, submerged vessels and objects, and abandoned piers and pilings.

(C) A grant awarded by the department pursuant to subparagraph (A) shall be matched by a 10-percent contribution from the local agency receiving the grant.

(2) Twenty percent shall be allocated as set forth in Section 1463.001 of the Penal Code.

SEC. 4. Section 526 of the Harbors and Navigation Code is amended to read:

526. (a) Notwithstanding any other provision of law, any wrecked property that is an unseaworthy derelict or hulk, or abandoned property as described in Section 522, or property removed from a navigable waterway pursuant to Section 523 or 524 that is an unseaworthy derelict or hulk, may be sold or otherwise disposed of by the public agency that removed or caused the removal of the property pursuant to this section, subject to the following conditions:

(1) The property has been appraised by disinterested persons, and has an estimated value of less than two thousand dollars (\$2,000).

(2) There is no discernable registration, license, hull identification number, or other identifying insignia on the property, or the Department of Motor Vehicles is unable to produce any record of the registered or legal owners or lienholders.

(3) Not less than 72 hours before the property was removed, the peace officer or authorized public employee securely attached to the property a distinctive notice stating that the property would be removed by the public agency.

(4) Within 48 hours after the removal, excluding weekends and holidays, the public agency that removed or caused the removal of the property sent notice of the removal to the registered and legal owners, if known or discovered subsequent to the removal, at their addresses of record with the Department of Motor Vehicles, and to any other person known to have an interest in the property. A notice sent by the public agency shall be sent by certified or first-class mail.

(5) If the public agency is unable to locate the registered and legal owners of the property or persons known to have an interest in the property as provided in paragraph (4), the public agency published, or caused to be published, the notice of removal for at least two weeks in succession in one or more daily newspapers circulated in the county.

(b) The notice of removal required by paragraphs (3) to (5), inclusive, of subdivision (a) shall state all of the following:

(1) The name, address, and telephone number of the public agency providing the notice.

(2) A description of the property removed.

(3) The location from which the property is to be or was removed.

(4) The location of the intended or actual place of storage.

(5) The authority and purpose for removal of the property.

(6) A statement that the property may be claimed and recovered within 15 days of the date the notice of removal was issued pursuant to paragraph (4) or (5) of subdivision (a), whichever is later, after payment of any costs incurred by the public agency related to salvage and storage of the property, and that following the expiration of the 15-day period, the property will be sold or otherwise disposed of by the public agency.

(7) A statement that the registered or legal owners or any other person known to have an interest in the property have the opportunity for a poststorage hearing before the public agency that removed, or caused the removal of, the property to determine the validity of the removal and storage if a request for a hearing is made in person or in writing to that public agency within 10 days from the date of notice; that if the registered or legal owners or any other person known to have an interest in the property disagree with the decision of the public agency, the decision may be reviewed pursuant to Section 11523 of the Government Code; and that during the time of the initial hearing, or during the time the decision is being reviewed pursuant to Section 11523 of the Government Code, the vessel in question shall not be sold or otherwise disposed of.

(c) (1) Any requested hearing shall be conducted within 48 hours of the time the request for a hearing is received by the public agency, excluding weekends and holidays. The public agency that removed the vehicle may authorize its own officers or employees to conduct the hearing but the hearing officer shall not be the same person who directed the removal and storage of the property.

(2) The failure of either the registered or legal owners or any other person known to have an interest in the property to request or attend a scheduled hearing shall not affect the validity of the hearing.

(d) The property may be claimed and recovered by its registered and legal owners, or by any other person known to have an interest in the property, within 15 days of the date the notice of removal was issued pursuant to paragraph (4) or (5) of subdivision (a), whichever is later, after payment of any costs incurred by the public agency related to salvage and storage of the property.

(e) The property may be sold or otherwise disposed of by the public agency not less than 15 days from the date the notice of removal was issued pursuant to paragraph (4) or (5) of subdivision (a), whichever is later, or the date of actual removal, whichever is later.

(f) The proceeds from the sale of the property, after deducting expenses for salvage, storage, sales costs, and any property tax liens, shall be deposited in the Abandoned Watercraft Abatement Fund for grants to local agencies, as specified in paragraph (1) of subdivision (d) of Section 525.

(g) It is the intent of the Legislature that this section shall not be construed to authorize the lien sale or destruction of any seaworthy vessel that is currently registered and operated in accordance with local, state, and federal law.