

Senate Bill No. 595

Passed the Senate August 30, 2011

Secretary of the Senate

Passed the Assembly August 22, 2011

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2011, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 523 of the Harbors and Navigation Code, and to amend Section 6302.1 of, and to add Sections 6302.3 and 6302.4 to, the Public Resources Code, relating to tidelands and submerged lands.

LEGISLATIVE COUNSEL'S DIGEST

SB 595, Wolk. Tidelands and submerged lands: removal of vessels.

Existing law authorizes any peace officer, as described, any employee or officer of the State Lands Commission designated by the commission, or any 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, as defined, removed from a public waterway under specified circumstances.

This bill would eliminate the authority of any employee or officer of the State Lands Commission designated by the commission, while engaged in the performance of official duties, to remove and, if necessary, store a vessel removed from a public waterway.

Existing law authorizes the commission to remove from areas under its jurisdiction any vessel, boat, raft, or other similar watercraft that is left unattended and is moored, docked, or beached as to obstruct traffic or to create a hazard to other vessels or property, that poses critical and immediate danger to navigation or the public health, safety, or welfare, or that hinders navigation or creates a public nuisance.

This bill would revise those provisions to authorize the commission to remove a vessel, as defined, in those and similar conditions immediately and without notice. The bill would authorize the commission to remove and dispose of, from areas under its jurisdiction, a vessel that has been placed on state lands without its permission if, prior to removal, the commission gives a 30-day notice to remove the vessel, as prescribed, and uses reasonable means to identify and locate the owner and any lienholder.

Existing law authorizes the commission, through appropriate action in the courts, to remove or destroy a vessel, boat, watercraft, or other similar obstruction that hinders navigation or otherwise creates a public nuisance in areas under the commission's jurisdiction.

This bill would, instead, provide that a vessel that remains unclaimed, as defined, for a period longer than 30 days after notice of removal is abandoned property. The bill would establish procedures for the commission to sell, destroy, or otherwise dispose of this property. The bill would require that any proceeds from the sale of this property, less the commission's costs, be deposited into the General Fund. The bill would further authorize the commission, at its discretion, to remove an abandoned or derelict vessel on a navigable waterway that is not under its jurisdiction, if requested to do so by another public entity that has regulatory authority over the area where the vessel is located.

This bill would exempt the above-described actions of the commission related to the removal, disposal, and destruction of a vessel or other similar obstructions that hinder navigation or otherwise create a public nuisance from the State Contract Act.

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

SECTION 1. Section 523 of the Harbors and Navigation Code is amended to read:

523. (a) Any peace officer, as described in Section 663, 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. 2. Section 6302.1 of the Public Resources Code is amended to read:

6302.1. (a) (1) The commission may take immediate action, without notice, to remove from areas under its jurisdiction a vessel that is left unattended and is moored, docked, beached, or made fast to land in a position as to obstruct the normal movement of traffic or in a condition as to create a hazard to navigation, other vessels using a waterway, or the property of another.

(2) The commission may take immediate action, without notice, to remove from areas under its jurisdiction a vessel that poses a significant threat to the public health, safety, or welfare or to sensitive habitat, wildlife, or water quality, or that constitutes a public nuisance.

(3) A vessel removed under this section that remains unclaimed for 30 days after notice of removal is abandoned property.

(4) After removal of the vessel pursuant to paragraph (1) or (2), the commission shall mail a notice to the owner, if known, and any known lienholder, that informs the owner and lienholder that if the vessel remains unclaimed for 30 days, it will be deemed abandoned property, and the commission may dispose of it pursuant to Section 6302.3.

(b) (1) The commission may remove from areas under its jurisdiction a vessel that has been placed on state lands without its permission. Prior to removal of the vessel, the commission shall do both of the following:

(A) Give a 30-day notice to remove the vessel by attaching it to the vessel in a clearly visible place.

(B) Use reasonable means to identify and locate the owner and any lienholder. If the owner is located, the commission shall mail notice to the owner to remove the property by a date certain at least 15 days from the date of the notice.

(2) If a vessel remains unclaimed after the expiration of the 30 days' notice period and the 15 days' owner notice, if applicable, in accordance with paragraph (1), it is abandoned property and the commission may direct the disposition of the property pursuant to Section 6302.3. The commission may also either remove the vessel or allow it to remain in place until the commission takes action to dispose of the property.

(c) Upon request of the owner and after payment of the costs of removal and storage, the commission shall return to the owner a vessel removed under this section.

(d) The commission, at its discretion, may remove and dispose of an abandoned or derelict vessel on a navigable waterway in the state that is not under the jurisdiction of the commission pursuant to this section, if requested to do so by another public entity that has regulatory authority over the area where the vessel is located.

(e) The commission may recover all costs incurred in removal actions undertaken pursuant to this section, including administrative costs and the costs of compliance with the requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000)), through an appropriate action in the courts of this state or by use of any available administrative remedy.

(f) For purposes of this section the following definitions apply:

(1) "Appropriate action" means any cause of action available at law or in equity.

(2) "Commission" includes the staff or agents of the commission or other federal, state, or local agencies operating in concert with or under the direction of the commission.

(3) "Unclaimed" means that an owner or a lienholder of the vessel has not contacted the commission in response to a notice made pursuant to this section, if notice is required, and has not

made adequate arrangements to take or remove the vessel to an authorized location.

(4) “Vessel” includes any of the following:

(A) A vessel, boat, raft, or similar watercraft.

(B) A buoy, anchor, mooring, or other ground tackle used to secure a vessel, boat, raft, or similar watercraft.

(C) A hulk, derelict, wreck, or parts of a ship, vessel, or other watercraft.

SEC. 3. Section 6302.3 is added to the Public Resources Code, to read:

6302.3. (a) The commission, at a properly noticed commission hearing, may take title to an abandoned vessel subject to disposal pursuant to Section 6302.1 for the sole purpose of abatement, without satisfying any lien on the property, and may cause the property to be sold, destroyed, or otherwise disposed of in any manner it determines is expedient or convenient. Those abandoned vessels shall not be considered surplus state property for the purposes of removal, disposal, or destruction. Title to property transferred by the commission by sale or otherwise to third parties shall be clear of any lien or encumbrance.

(b) Notice of that meeting shall be given to a known owner and known lienholder, and the known owner, lienholder, or other interested party shall be given the right to appear and be heard prior to disposition of the property.

(c) A hearing on the disposition of property held pursuant to this section shall be an informal hearing pursuant to Section 11445.20 of the Government Code, unless designated as a formal hearing by the commission.

(d) Any action with regard to the disposition of the property as directed by the commission, with the exception of returning the property to the owner, shall be delayed for 30 days after the date of the commission’s determination, to allow the owner to pursue any other cause of action in law or equity.

(e) The commission’s cost of disposing of abandoned property, including staff time and legal and attorney’s fees, may be recovered by appropriate action in any court in which an action may be properly brought or by use of any available administrative remedy. If the property is sold, the commission may recover its costs from any proceeds of the sale and any additional funds received shall be deposited into the General Fund.

SEC. 4. Section 6302.4 is added to the Public Resources Code, to read:

6302.4. (a) At the request of the commission, an employee or agent of the commission or a peace officer of the federal or state government or a city, county, or other political subdivision of the state shall have the authority to board a vessel for the purposes of carrying out Section 6302.1 or 6302.3.

(b) An action of the commission with regard to any property acquired or disposed of pursuant to Section 6302.1 or 6302.3 is exempt from the State Contract Act (Chapter 1 (commencing with Section 10100) of Part 2 of Division 2 of the Public Contract Code).

Approved _____, 2011

Governor