

**CALENDAR ITEM**

**96**

A Statewide

06/29/15

S Statewide

S. Pemberton

**CONSIDER SUPPORTING AB 1323 (FRAZIER) THAT WOULD FACILITATE THE REMOVAL AND DISPOSAL OF DILAPIDATED VESSELS THAT ARE UNSEAWORTHY AND INCAPABLE OF BEING MADE SEAWORTHY FROM STATE WATERWAYS, PUBLIC BEACHES, AND STATE TIDELANDS AND SUBMERGED LANDS**

**SUMMARY:**

The purpose of AB 1323 is to address abandoned derelict vessels, and parts thereof, by creating a simple process for removal of vessels that constitute marine debris from a public waterway, public beach, or on state tidelands or submerged lands. AB 1323 would define derelict abandoned vessels with no value as marine debris and authorize its removal and disposal through an abbreviated process and in a reduced timeframe. AB 1323 would also require the State Lands Commission (Commission) to develop, adopt, and make available on its website best management practices for salvage.

**BACKGROUND:**

Abandoned vessels and parts thereof are a hazard to navigation and pollute the marine environment. While responsible owners dispose of abandoned vessels lawfully, other owners dump them on state waterways where they disintegrate, polluting the marine environment and impeding navigation.

The California State Legislature has created two legal frameworks for the removal and disposal of abandoned and derelict vessels. The first provides county sheriffs with authority to address wrecked property within his or her jurisdiction. The provisions contained in Division 3, Chapter 3 of the California Harbors and Navigation Code represent the primary statutory authority for local agencies to remove and dispose of abandoned and derelict vessels. Section 522 of the Harbors and Navigation Code was originally enacted to provide authority to the Port of San Diego to remove derelict vessels but has been amended over the years, and, importantly, has served to establish the concept of statutory abandonment. Therefore, if a derelict vessel meets all the requirements of the statute, it is abandoned as a matter of law.

Harbors and Navigation Code section 523 provides authority for peace officers and other officials to remove a vessel from a public waterway for various reasons, including that the vessel constitutes an environmental threat or poses a hazard to navigation. Lack of current registration is also a basis for removal. Harbors and Navigation Code section 526 provides for the sale or disposal of the

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removed vessel and contains numerous requirements regarding notice to registered or legal owners, including publication if owners cannot be located.

The second framework resulted from the large number of vessels being abandoned on California waterways and was enacted by the State Legislature in 2011. The Commission, which has jurisdiction over all navigable waterways within the state, sponsored this legislation. While the Commission has always had authority to remove trespassers, such action required filing a lawsuit and incurring substantial costs. The provisions contained in Sections 6302.1, 6302.3 and 6302.4 of the Public Resources Code provide the Commission with statutory authority for the removal of derelict and abandoned vessels through a truncated administrative process. These statutes provide a simplified system and an administrative remedy avoiding expensive and protracted litigation. This administrative process can be accomplished within 90 to 120 days and provides for notice to the owner by mail and posting on the vessel a 30-day waiting period notice, and abandonment as a matter of law if no response is provided during that time.

The Commission's abandoned vessel abatement efforts have been successful in coordinating with federal, state, and local agencies by use of their funding and grants. Recently, Commission staff successfully used the legal authority provided under the Commission's abandoned vessel program in a cooperative effort with the California Department of Recycling and Recovery, the cities of Oakland and Alameda, the U.S. Environmental Protection Agency, and the Coast Guard to clean up the Oakland/Alameda Estuary. Fifty-seven (57) derelict and trespassing boats were removed and disposed of, as well as two very large sunken vessels which were raised and demolished. Approximately \$8 million from various grants and funds were expended to complete this substantial regional cleanup effort.

The Commission's abandoned vessel removal authority often assists local governments in their efforts to remove these vessels from local waterways. For example, the Commission's statutory authority provides that the Commission may, if requested by another public agency with jurisdiction over an area, remove vessels from navigable waters of that area even if they are not under its direct jurisdiction. The Commission may also, at the request of a local entity, take steps to declare a vessel legally abandoned, which permits the requesting entity to remove and dispose of it more expeditiously.

### **ANALYSIS:**

The existing process for derelict vessel removal is complicated, lengthy and expensive. AB 1323 is intended to make it easier for public agencies to remove and dispose of dilapidated vessels that are unseaworthy and incapable of being made seaworthy from state waterways, public beaches, and state tidelands or

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submerged lands. The bill would provide state and local governmental entities with the authority to remove abandoned vessels or parts thereof that constitute marine debris from their jurisdiction. It would define "marine debris" as a vessel or part of a vessel that is unseaworthy and not reasonably fit or capable of being made fit to be used as a means of transportation by water. This definition is the basis for determining what was, but is no longer, a vessel and can now be considered marine debris. Additional conditions for removal and disposal include: 1) the marine debris has no value or a value that does not exceed the cost of removal and disposal; 2) notification is attached to the marine debris and sent to the owner, if known, stating that it will be removed if not claimed or removed within 10 days; and, 3) the marine debris remains in place for 10 days from the date of the notification.

The bill would authorize a state or local governmental entity to remove and dispose of the marine debris with a simplified procedure that reduces the time and cost of removal and yet preserves the due process required by law. Specifically, a governmental entity, made aware of the existence of the marine debris, would determine if it meets the statutory definition and criteria for removal. If it meets the definition of marine debris, the governmental entity would further determine if it is a public nuisance or a danger to navigation, health, safety, or the environment. If the marine debris poses such a nuisance or danger it can be removed immediately. If not, it is posted with a 10-day notice of removal. If an owner can be identified from available markings, the owner is mailed a notice of removal and advised that the marine debris may be reclaimed within 10 days upon payment of the governmental entity's costs. Once the 10-day period has passed without a claim from the owner the governmental entity may dispose of the debris in any manner it wishes.

To improve the removal and disposal process, the legislation would require the Commission to develop and adopt, in collaboration with relevant state and local agencies, best management practices for salvage. These best management practices are required to be adopted by the Commission at a public meeting and published on its website.

**STAFF RECOMMENDATION:**

Commission staff recommends that the Commission support 1323 (Frazier) because it seeks to lessen pollution and debris on waterways under its jurisdiction. It also seeks to reduce navigational hazards from abandoned vessels and parts thereof. The existing process for derelict vessel removal is complicated, lengthy and expensive. AB 1323 seeks to streamline the removal process of derelict vessels on state waterways, public beaches, and state tidelands and submerged lands.

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**EXHIBIT:**

- A. Copy of AB 1323 (Frazier)

**RECOMMENDED ACTION:**

It is recommended that the Commission:

1. Support AB 1323 (Frazier), that would define derelict abandoned vessels as marine debris and would authorize its removal and disposal by an abbreviated process and in a reduced timeframe.

AMENDED IN SENATE JUNE 10, 2015

AMENDED IN ASSEMBLY MAY 5, 2015

AMENDED IN ASSEMBLY APRIL 6, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1323**

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**Introduced by Assembly Member Frazier**

February 27, 2015

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An act to add ~~Section 524.5 to~~ *Article 3 (commencing with Section 550) to Chapter 3 of Division 3 of the Harbors and Navigation Code, relating to marine debris.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1323, as amended, Frazier. Marine debris: removal and disposal.

Existing law authorizes a public agency that removes or causes the removal of wrecked property that is an unseaworthy derelict or hulk, specified abandoned property, or other specified property from a navigable waterway to sell or otherwise dispose of the property if, among other things, within 48 hours after the removal, the public agency has sent notice of the removal to the registered and legal owners and persons known to have an interest in the property and has provided the opportunity for a poststorage hearing. Existing law requires the public agency, if it is unable to locate those persons, to publish, or cause to be published, the notice of removal for at least 2 weeks in succession in one or more daily newspapers circulated in the county. Within 15 days of the date of notice of removal, 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.

This bill would authorize a public ~~entity~~ *agency* to remove and dispose of after 10 days marine debris, defined as a vessel, as defined, or part of a vessel that is unseaworthy and not reasonably fit or capable of being made fit to be used as a means of transportation by water, if that marine debris is floating, sunk, partially sunk, or beached in or on a public waterway, public beach, or on state tidelands or submerged lands, and if the marine debris has no or little value, as provided, and the public ~~entity~~ *agency* provides notice, as specified. The bill would exempt from this provision marine debris that constitutes a public nuisance or a danger to navigation, health, safety, or the environment, and would authorize such marine debris to be removed and disposed of immediately, unless the marine debris is whole and the owner of the marine debris is identifiable, in which case the bill would require it to be maintained or stored for 10 days. The bill would authorize a public ~~entity~~ *agency* to recover costs incurred for removal and disposal of marine debris from the owner or other specified persons. The bill would require the State Lands Commission, on or before January 1, 2017, to adopt best management practices ~~and requirements~~ for salvage of marine debris, as specified.

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

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

1 ~~SECTION 1. Section 524.5 is added to the Harbors and~~  
 2 ~~Navigation Code, to read:~~  
 3 ~~524.5. (a)~~  
 4 *SECTION 1. Article 3 (commencing with Section 550) is added*  
 5 *to Chapter 3 of Division 3 of the Harbors and Navigation Code,*  
 6 *to read:*

7  
 8 *Article 3. Marine Debris*  
 9

10 550. For purposes of this ~~section~~, *article*, the following terms  
 11 have the following meanings:  
 12 (1)  
 13 (a) A “vessel” includes every description of watercraft or other  
 14 artificial contrivance used, or capable of being used, as a means  
 15 of transportation by water.  
 16 (2)

1 (b) "Marine debris" is a vessel or part of a vessel, including a  
2 derelict, wreck, ~~hulk~~ *hulk*, or part of any ship or other watercraft  
3 or dilapidated vessel, that is unseaworthy and not reasonably fit  
4 or capable of being made fit to be used as a means of transportation  
5 by water.

6 ~~(b)~~

7 551. (a) (1) Notwithstanding any other law, marine debris  
8 that is floating, sunk, partially sunk, or beached in or on a public  
9 waterway, public beach, or on state tidelands or submerged lands  
10 may be removed and destroyed, or otherwise disposed of, by any  
11 state, county, city, or other public-~~entity~~ *agency* having jurisdiction  
12 over its location or having authority to remove marine debris or  
13 solid waste, subject to the following conditions:

14 (A) The object meets the definition of marine debris in  
15 subdivision-~~(a)~~ (b) of *Section 550* and has no value or a value that  
16 does not exceed the cost of removal and disposal.

17 (B) If there is no discernible registration, hull identification  
18 number, or other identification insignia, a peace officer or  
19 authorized public employee securely attaches to the marine debris  
20 a notice stating that the marine debris shall be removed by the  
21 public agency if not claimed or removed within 10 days.

22 (C) If there is discernible registration, hull identification number,  
23 or other identification insignia, a notice is attached to the marine  
24 debris as described in subparagraph (B), and sent to the owner of  
25 the marine debris, if known, at the owner's address of record with  
26 the Department of Motor Vehicles, by certified or ~~first-class~~  
27 *first-class* mail.

28 (D) The marine debris remains in place for 10 days from the  
29 date of attaching the notice to the marine debris or from the date  
30 the notice letter was sent, whichever is later, before being removed.

31 (2) (A) The notice attached to the marine debris shall state the  
32 name, address, and telephone number of the public-~~entity~~ *agency*  
33 providing the notice.

34 (B) A notice sent to the owner shall contain the information  
35 specified in subparagraph (A), and further state that the marine  
36 debris will be removed and disposed of within 10 days if not  
37 claimed, and that the marine debris may be claimed and recovered  
38 upon the payment of the public-~~entity's~~ *agency's* costs.

39 ~~(e)~~

1 (b) Notwithstanding subdivision ~~(b)~~, (a), marine debris that  
 2 constitutes a public nuisance or a danger to navigation, health,  
 3 safety, or the environment may be removed and disposed of  
 4 immediately, unless the marine debris is whole or not demolished  
 5 during removal, in which case it shall be maintained or stored for  
 6 10 days to permit notification of the owner. If the owner of the  
 7 marine debris is not identifiable, the marine debris may be  
 8 immediately destroyed or otherwise disposed of.

9 ~~(d)~~

10 (c) Costs incurred by a public ~~entity~~ agency for removal and  
 11 disposal of marine debris may be recovered from an owner or any  
 12 person or entity who placed the marine debris in or on or caused  
 13 the marine debris to be in or on the public waterway, public beach,  
 14 or state tidelands or submerged lands through any appropriate legal  
 15 action in the courts of this state or by administrative action.

16 ~~(e)~~

17 552. On or before January 1, 2017, the State Lands Commission  
 18 shall adopt, at a public meeting and after consultation with  
 19 interested state and local agencies, best management practices ~~and~~  
 20 requirements for salvage of marine debris. These best management  
 21 practice standards ~~practices~~ shall be published by the ~~commission~~  
 22 State Lands Commission on its Internet Web site. The State Lands  
 23 Commission may amend the best management ~~practice standards~~  
 24 practices from time to time by the same process, as the State Lands  
 25 Commission deems necessary.