

AMENDED IN ASSEMBLY JUNE 21, 2011

AMENDED IN SENATE APRIL 25, 2011

**SENATE BILL**

**No. 623**

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**Introduced by Senator Kehoe**

February 18, 2011

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~~An act to add Article 2.7 (commencing with Section 756) to Chapter 5 of Division 3 of the Harbors and Navigation Code, relating to vessels.~~  
*An act to add Chapter 8 (commencing with Section 117140) to Part 12 of Division 104 of the Health and Safety Code, relating to public health.*

LEGISLATIVE COUNSEL'S DIGEST

SB 623, as amended, Kehoe. Vessels: marine antifouling paint.

Under existing law, the Department of Boating and Waterways regulates the operation and equipment of vessels. The Director of Boating and Waterways administers the department. *Existing law regulates various substances in products, like lead, copper, and mercury, that can lead to public health issues when introduced into the environment.*

*This bill would require the Department of Pesticide Regulation, by January 1, 2014, to determine the maximum allowable leach rate for low-leach rate antifouling paints. The bill would prohibit, on and after January 1, 2015, a manufacturer, wholesaler, retailer, or distributor from selling or offering for sale in California a new recreational vessel, as defined, containing antifouling paint that contains copper. The bill also would prohibit, on and after January 1, 2019, the use or application of antifouling paint that contains copper on recreational vessels, except as provided. The bill would require the State Water Resources Control board, by January 1, 2019, and biennially thereafter, to determine whether the use of low-leach rate copper-containing*

*antifouling paints could result in the attainment of water quality objectives in marinas and harbors for dissolved copper. The bill would, on or after January 1, 2019, prohibit the use or application of antifouling paint on recreational vessels one year after a determination by the State Water Resources Control Board that the trend line of measured water quality data does not point toward attainment of the dissolved copper water quality objectives in marinas and harbors.*

*This bill would require an owner or a master of a transient vessel, as defined, to submit to the manufacturer, wholesaler, retailer, distributor, boatyard, or other vessel repair facility, and to the marina or similar mooring facility at the time of service or the onset of temporary residency a transient vessel affidavit certifying under the penalty of perjury that the vessel qualifies as a transient vessel. A person who knowingly submits a false affidavit is liable for an unspecified penalty. Because a person who submits a false affidavit has committed the crime of perjury, this bill would create a new crime, thereby imposing a state-mandated local program. The bill would require a transient vessel that no longer qualifies as a transient vessel to be hauled and to remove all antifouling paints. A person who fails to remove the antifouling paints is liable for an unspecified amount.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

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

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

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Marine antifouling paints are used on vessel hulls to prevent
- 4 the growth of aquatic organisms, such as barnacles and algae. Most
- 5 antifouling paints use copper to prevent the growth of aquatic
- 6 organisms. Copper-containing marine antifouling paints are a
- 7 source of copper releases in marinas within California estuaries
- 8 and along shorelines.

1 (b) Copper is toxic to many aquatic organisms and plants. ~~It~~  
2 ~~accumulates in water, sediments, and marine plants and animals~~  
3 ~~and can impact~~ *Its concentration in water and sediments can*  
4 *increase to the point of impacting* the food web in the marine  
5 environment by eliminating certain species. Copper is one of the  
6 metals listed in the federal Clean Water Act (33 U.S.C. Sec. 1251  
7 et seq.) that the state is required to regulate. Numerous bays and  
8 harbors throughout California have water quality impairments due  
9 to copper, as referenced by the California 2008–2010 303(d) list  
10 of impaired water bodies. As such, measures must be taken to  
11 reduce impacts on aquatic environments by reducing copper loads  
12 in these areas.

13 (c) *Best management practices relative to in-water hull cleaning*  
14 *of recreational vessels can help to minimize biocide input and*  
15 *invasive species transport in state waters.*

16 (e)

17 (d) Boating is an important part of the economic and social  
18 fabric of California. California has approximately 800,000  
19 recreational boats and more than three million people who  
20 participate in recreational boating annually. These boaters  
21 contribute \$1.2 billion to the state’s Gross State Product and have  
22 a direct impact on over 24,000 jobs with labor income of \$750  
23 million. Any policy affecting boating must ensure that boating  
24 continues to be a vigorous part of California life. Therefore, it is  
25 the intent of the Legislature that any policy relating to the  
26 application or use of paints on vessel hulls be structured in a  
27 manner that protects these values.

28 (d)

29 (e) Due to the inherent conflict between the need for an  
30 antifouling paint that effectively controls the growth of aquatic  
31 organisms on vessel hulls and the federal requirements under the  
32 federal Clean Water Act to protect aquatic environments from  
33 pollution, it is the intent of the Legislature to promote the use of  
34 nonbiocide ~~alternative~~ paints in order to balance the needs of these  
35 conflicting interests.

36 ~~SEC. 2. Article 2.7 (commencing with Section 756) is added~~  
37 ~~to Chapter 5 of Division 3 of the Harbors and Navigation Code,~~  
38 ~~to read:~~

1 Article 2.7. ~~Marine Antifouling Paint~~

2  
3 756. ~~For purposes of this article, the following definitions shall~~  
4 ~~apply:~~

5 (a) ~~“Alternative paint” means paint that does not contain any~~  
6 ~~biocide compounds. Alternative paint acts to protect the integrity~~  
7 ~~of a vessel’s hull by creating a hard barrier or by creating a slick~~  
8 ~~finish to aid in foul-release properties.~~

9 (b) ~~“Antifouling paint” means paint for a vessel’s hull containing~~  
10 ~~compounds to prohibit the attachment and growth of aquatic life.~~

11 (c) (1) ~~“Recreational vessel” means a vessel that is either of~~  
12 ~~the following:~~

13 (A) ~~Manufactured or used primarily for pleasure.~~

14 (B) ~~Leased, rented, or chartered to a person for the pleasure of~~  
15 ~~that person.~~

16 (2) ~~“Recreational vessel” does not include a vessel that is subject~~  
17 ~~to United States Coast Guard inspection and that is engaged in~~  
18 ~~commercial use or carries paying passengers.~~

19 757. ~~On and after January 1, 2015, a manufacturer, wholesaler,~~  
20 ~~retailer, or distributor shall not sell or offer for sale in California,~~  
21 ~~any new recreational vessel containing antifouling paint that~~  
22 ~~contains copper.~~

23 758. (a) ~~Except as provided in subdivision (b), on and after~~  
24 ~~January 1, 2019, it shall be unlawful to use on or apply to a~~  
25 ~~recreational vessel antifouling paint containing copper.~~

26 (b) ~~If the director finds that there are no effective, available,~~  
27 ~~and affordable alternative paints available by January 1, 2019,~~  
28 ~~taking into account durability, lifespan, and cleaning, the~~  
29 ~~prohibition on the use or application of antifouling paint containing~~  
30 ~~copper on a recreational vessel shall instead be operative on and~~  
31 ~~after January 1, 2020 and the director shall publish this finding~~  
32 ~~and notice of the delayed operation of the prohibition on the~~  
33 ~~department’s Internet Web site.~~

34 *SEC. 2. Chapter 8 (commencing with Section 117140) is added*  
35 *to Part 12 of Division 104 of the Health and Safety Code, to read:*

36  
37 *CHAPTER 8. MARINE FOULING PAINT*

38  
39 *117140. For the purposes of this chapter, the following*  
40 *definitions shall apply:*

1 (a) “Antifouling paint” means paint for a vessel’s hull that is  
2 a type of pesticide containing registered active ingredients,  
3 biocides, or zinc compounds to prohibit the attachment and growth  
4 of aquatic life.

5 (b) “Low-leach rate copper antifouling paint” means a  
6 copper-containing antifouling paint that has a maximum leach  
7 rate to be established by January 1, 2014, by the Department of  
8 Pesticide Regulation.

9 (c) (1) “Recreational vessel” means a vessel that is either of  
10 the following:

11 (A) Manufactured or used primarily for pleasure.

12 (B) Leased, rented, or chartered to a person for the pleasure of  
13 that person.

14 (2) “Recreational vessel” does not include either of the  
15 following:

16 (A) A vessel that is subject to United States Coast Guard  
17 inspection and that is engaged in commercial use or carries paying  
18 passengers.

19 (B) A transient vessel.

20 (d) “Transient vessel” means a vessel, recreational or otherwise,  
21 that is not or will not be located in the territorial waters of this  
22 state in excess of six months in any rolling 12-month period, except  
23 if the vessel is undergoing repair, retrofit, or modification by a  
24 manufacturer, wholesaler, retailer, distributor, boatyard, or other  
25 vessel repair facility and under the exclusive control of those  
26 entities.

27 (e) “Transient vessel affidavit” means the affidavit tendered by  
28 a vessel owner or the vessel master that certifies in writing under  
29 penalty of perjury to the manufacturer, wholesaler, retailer,  
30 distributor, boatyard, or other vessel repair facility, that the vessel  
31 will not be located in the territorial waters of this state in excess  
32 of six months in any rolling 12-month period, except if the vessel  
33 is undergoing repair, retrofit, or modification by a manufacturer,  
34 wholesaler, retailer, distributor, boatyard, or other vessel repair  
35 facility and under the exclusive control of those entities.

36 117141. A vessel owner or vessel master of a transient vessel  
37 shall submit a transient vessel affidavit to the manufacturer,  
38 wholesaler, retailer, distributor, boatyard, or other vessel repair  
39 facility and to the marina or similar mooring facility at the time  
40 of service or the onset of temporary residency.

1 117142. (a) *If a transient vessel ceases to be a transient vessel,*  
2 *then within 90 days thereafter, the vessel shall be hauled and all*  
3 *antifouling paint shall be removed.*

4 (b) *A vessel owner that submits, or whose vessel master submits,*  
5 *a transient vessel affidavit knowing it to be false shall be liable*  
6 *for a penalty of (\$\_\_\_\_\_).*

7 (c) *A vessel owner that fails to remove antifouling paint within*  
8 *90 days after the vessel ceases to be a transient vessel shall be*  
9 *liable for a penalty of (\$\_\_\_\_\_), in addition to the requirement to*  
10 *remove the antifouling paint.*

11 117143. *By January 1, 2014, the Department of Pesticide*  
12 *Regulation shall determine the maximum allowable leach rate for*  
13 *low-leach rate copper antifouling paints.*

14 117144. *On and after January 1, 2015, a manufacturer,*  
15 *wholesaler, retailer, or distributor is prohibited from selling or*  
16 *offering for sale in California, a new recreational vessel upon*  
17 *which has been applied copper-containing antifouling paint that*  
18 *does not meet the definition of low-leach rate copper antifouling*  
19 *paint.*

20 117145. *On and after January 1, 2015, it shall be unlawful to*  
21 *apply to a recreational vessel antifouling paint containing copper*  
22 *that does not meet the definition of low-leach rate copper*  
23 *antifouling paint.*

24 117146. (a) *By January 1, 2019, and biennially thereafter,*  
25 *the State Water Resources Control Board shall determine, through*  
26 *the assessment of appropriate water quality data and modeling*  
27 *techniques, whether the use of low-leach rate copper-containing*  
28 *antifouling paints can result in the attainment of water quality*  
29 *objectives in California marinas and harbors. Modeling shall*  
30 *demonstrate that the trend line of the measured water quality data*  
31 *points toward attainment of the dissolved copper water quality*  
32 *objectives and that the water quality objectives will be met within*  
33 *five years from the date of the assessment.*

34 (b) *On or after January 1, 2019, if the State Water Resources*  
35 *Control Board does not demonstrate that the trend line of the*  
36 *measured water quality data points toward attainment of the*  
37 *dissolved copper water quality objectives in California marinas*  
38 *and harbors, then the use or application of antifouling paint on*  
39 *recreational vessels shall be prohibited one year after the*  
40 *determination.*

1 117147. No later than January 1, 2013, the Department of  
2 Boating and Waterways shall convene an advisory committee to  
3 review existing signage programs and other relevant sources of  
4 information to develop a model signage program that lists prudent  
5 guidelines for in-water hull cleaning of vessels. The advisory  
6 committee shall include representatives from associations related  
7 to California harbors and marinas, water quality, and recreational  
8 boaters with input from the State Water Resources Control Board  
9 and the Department of Pesticide Regulation. Signs may be used  
10 at the discretion of marina operators and will encourage the use  
11 of proper hull cleaning methods and warn about the dangers of  
12 contaminating the water with leaching from antifouling paint.

13 SEC. 3. No reimbursement is required by this act pursuant to  
14 Section 6 of Article XIII B of the California Constitution because  
15 the only costs that may be incurred by a local agency or school  
16 district will be incurred because this act creates a new crime or  
17 infraction, eliminates a crime or infraction, or changes the penalty  
18 for a crime or infraction, within the meaning of Section 17556 of  
19 the Government Code, or changes the definition of a crime within  
20 the meaning of Section 6 of Article XIII B of the California  
21 Constitution.