

AMENDED IN SENATE APRIL 9, 2012

**SENATE BILL**

**No. 1360**

---

---

**Introduced by Senator Simitian**

February 24, 2012

---

---

An act to amend ~~Section~~ Sections 72401, 72420, 72421, 72430, 72440, and 72441 of, and to repeal Section 72420.1 of, the Public Resources Code, relating to vessels.

LEGISLATIVE COUNSEL'S DIGEST

SB 1360, as amended, Simitian. Vessels.

*(1) Existing law, until January 1, 2014, prohibits, if the Administrator of the United States Environmental Protection Agency approves an application to prohibit the release of sewage from large passenger vessels or if the State Water Resources Control Board determines that an application is not necessary, an owner or operator of a large passenger vessel from releasing, or permitting another to, release sewage from the vessel into the marine waters of the state. Existing law requires, until January 1, 2014, the owner or operator to notify the California Emergency Management Agency immediately, but not longer than 30 minutes, after the discovery of a release of sewage from a large passenger vessel into the marine waters of the state or a marine sanctuary. Existing law requires the owner or operator to notify the agency immediately, but not longer than 30 minutes, after the discovery of a release of graywater from a large passenger vessel into the marine waters of the state. Existing law imposes on a person who violates the prohibition a civil penalty of not more than \$25,000 for each violation.*

*This bill would extend the prohibition and notification requirement indefinitely. The bill would expand the prohibition to sewage releases into a marine sanctuary. The bill would additionally require the owner*

or operator of large passenger vessel to notify the agency upon the discovery of a release of graywater into a marine sanctuary.

**Existing**

(2) Existing law prohibits an owner or operator of a large passenger vessel or oceangoing ship from releasing or permitting anyone to release specified substances from the vessel or ship into the marine waters of the state or a marine sanctuary. Existing law excludes from those requirements a large passenger vessel or oceangoing ship that operates in the marine waters of the state, as that term is defined, solely in innocent passage and discharges made for the purpose of securing the safety of the vessel or ship or saving life at sea if specified precautions are taken. The act provides that for purposes of that exclusion, a vessel is engaged in innocent passage if its operation in the marine waters of the state would constitute innocent passage under specified conventions.

For purposes of the exclusion provision, the bill would replace the reference to a “vessel” with reference to a “large passenger vessel or oceangoing ship.”

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

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

1 SECTION 1. Section 72401 of the Public Resources Code is  
2 amended to read:

3 72401. ~~(a) The Legislature finds and declares that the~~  
4 ~~protection and enhancement of both of the following:~~

5 (a) To protect and enhance the quality of the marine waters of  
6 the state requires that the release of sewage from large passenger  
7 vessels, and the release of sewage and graywater from oceangoing  
8 ships with sufficient holding tank capacity, into the marine waters  
9 of the state all of the following should be prohibited::

10 (1) The release of graywater or sewage by a large passenger  
11 vessel into the marine waters of the state or a marine sanctuary.

12 (2) The release of hazardous waste, other waste, sewage sludge,  
13 or oily bilgewater by a large passenger vessel or oceangoing ship  
14 into the marine waters of the state or a marine sanctuary.

15 (3) The release of graywater or sewage by an oceangoing ship  
16 into the marine waters of the state or a marine sanctuary.

17 ~~(b) The Legislature intends to request the Congress of the United~~  
18 ~~States to amend the Federal Water Pollution Control Act (33 U.S.C.~~

1 ~~Sec. 1251 and following) to provide California with authority~~  
2 ~~similar to that granted to the State of Alaska by Public Law~~  
3 ~~106-554, to regulate the release of sewage from large passenger~~  
4 ~~vessels and oceangoing ships in the marine waters of the state.~~

5 ~~(e) This section shall remain in effect only until January 1, 2014,~~  
6 ~~and as of that date is repealed, unless a later enacted statute, that~~  
7 ~~is enacted before January 1, 2014, deletes or extends that date.~~

8 *(b) In response to an application from the State of California*  
9 *pursuant to this division, beginning March 2012, the United States*  
10 *Environmental Protection Agency prohibited the discharge of all*  
11 *sewage from large passenger vessels and large oceangoing ships,*  
12 *and created a No-Discharge Zone along California's 1,624-mile*  
13 *coastline from Mexico to Oregon and surrounding islands, the*  
14 *largest No-Discharge Zone in the nation.*

15 *SEC. 2. Section 72420 of the Public Resources Code is*  
16 *amended to read:*

17 72420. (a) If the appropriate federal agencies approve an  
18 application made pursuant to subdivision (a) of Section 72440, or  
19 if the board determines that an application is not required, an owner  
20 or operator of a large passenger vessel or oceangoing ship ~~may~~  
21 *shall* not release, or permit anyone to release, any sewage sludge  
22 from the vessel into the marine waters of the state or a marine  
23 sanctuary.

24 (b) If the Administrator of the United States Environmental  
25 Protection Agency approves the application for sewage release  
26 made pursuant to subdivision (a) of Section 72440, or if the board  
27 determines that an application is not required, an owner or operator  
28 of an oceangoing ship with sufficient holding tank capacity ~~may~~  
29 *shall* not release, or permit anyone to release, any sewage from  
30 the vessel into the marine waters of the state *or a marine sanctuary.*

31 *(c) If the Administrator of the United States Environmental*  
32 *Protection Agency approves the application for sewage release*  
33 *made pursuant to subdivision (a) of Section 72440, or if the board*  
34 *determines that an application is not required, an owner or*  
35 *operator of a large passenger vessel shall not release, or permit*  
36 *anyone to release, any sewage from the vessel into the marine*  
37 *waters of the state or a marine sanctuary.*

38 *SEC. 3. Section 72420.1 of the Public Resources Code is*  
39 *repealed.*

1 ~~72420.1. (a) If the Administrator of the United States~~  
2 ~~Environmental Protection Agency approves the application for~~  
3 ~~sewage release made pursuant to subdivision (a) of Section 72440,~~  
4 ~~or if the board determines that an application is not required, an~~  
5 ~~owner or operator of a large passenger vessel may not release, or~~  
6 ~~permit anyone to release, any sewage from the vessel into the~~  
7 ~~marine waters of the state.~~

8 ~~(b) This section shall remain in effect only until January 1, 2014,~~  
9 ~~and as of that date is repealed, unless a later enacted statute, that~~  
10 ~~is enacted before January 1, 2014, deletes or extends that date.~~

11 *SEC. 4. Section 72421 of the Public Resources Code is*  
12 *amended to read:*

13 72421. (a) The owner or operator shall notify the California  
14 Emergency Management Agency immediately, but not longer than  
15 30 minutes, after discovery of any of the following:

16 (1) A large passenger vessel release of graywater into the marine  
17 waters of the state *or a marine sanctuary.*

18 (2) ~~Until January 1, 2014, a~~A large passenger vessel release of  
19 sewage into the marine waters of the state or a marine sanctuary.

20 (3) A large passenger vessel or oceangoing ship release of  
21 hazardous waste, other waste, sewage sludge, or oily bilgewater  
22 into the marine waters of the state or a marine sanctuary.

23 (4) An oceangoing ship with sufficient holding tank capacity  
24 release of sewage or graywater into the marine waters of the state  
25 or a marine sanctuary.

26 (b) The owner or operator shall include all of the following in  
27 the notification required pursuant to subdivision (a):

28 (1) Date of the release.

29 (2) Time of the release.

30 (3) Location, by latitude and longitude, of the release.

31 (4) Volume of the release.

32 (5) Source of the release.

33 (6) Remedial action taken to prevent future releases.

34 (c) The California Emergency Management Agency shall  
35 transmit the notification required by subdivision (a) to the board  
36 and the Department of Fish and Game immediately, but not longer  
37 than 30 minutes, after receiving the notification.

38 *SEC. 5. Section 72430 of the Public Resources Code is*  
39 *amended to read:*

1 72430. (a) A person who violates Section 72420 or 72420.2;  
2 ~~or until January 1, 2014, Section 72420.1~~; is subject to a civil  
3 penalty of not more than twenty-five thousand dollars (\$25,000)  
4 for each violation.

5 (b) The civil penalty imposed for each separate violation  
6 pursuant to this section is separate from, and in addition to, any  
7 other civil penalty imposed for a separate violation pursuant to  
8 this section or any other provision of law.

9 (c) In determining the amount of a civil penalty imposed  
10 pursuant to this section, the court shall take into consideration all  
11 relevant circumstances, including, but not limited to, the nature,  
12 circumstance, extent, and gravity of the violation. In making this  
13 determination, the court shall consider the degree of toxicity and  
14 volume of the release, the extent of harm caused by the violation,  
15 whether the effects of the violation may be reversed or mitigated,  
16 and with respect to the defendant, the ability to pay, the effect of  
17 a civil penalty on the ability to continue in business, all voluntary  
18 cleanup efforts undertaken, the prior history of violations, the  
19 gravity of the behavior, the economic benefit, if any, resulting  
20 from the violation, and all other matters the court determines justice  
21 may require.

22 (d) (1) A civil action brought under this section may only be  
23 brought in accordance with this subdivision. That civil action may  
24 be brought by the Attorney General upon complaint or request by  
25 the Department of Fish and Game or the appropriate California  
26 regional water quality control board, or by a district attorney or  
27 city attorney.

28 (2) Notwithstanding Section 13223 of the Water Code, a regional  
29 water quality control board may delegate to its executive officer  
30 authority to request the Attorney General for judicial enforcement  
31 under this section.

32 (3) If a district attorney or city attorney brings an action under  
33 this section, the action shall be in the name of the people of the  
34 State of California.

35 (4) An action relating to the same violation may be joined or  
36 consolidated.

37 *SEC. 6. Section 72440 of the Public Resources Code is*  
38 *amended to read:*

39 72440. (a) (1) The board shall determine whether it is  
40 necessary to apply to the federal government for the state to

1 prohibit the release of sewage or sewage sludge from large  
2 passenger vessels, sewage from oceangoing ships with sufficient  
3 holding tank capacity, and sewage sludge from oceangoing ships,  
4 into the marine waters of the state or to prohibit the release of  
5 sewage sludge from large passenger vessels and oceangoing ships  
6 into marine sanctuaries, as described in Section 72420 and  
7 subdivision (a) of Section 72420.1. If the board determines that  
8 application is necessary for either sewage or sewage sludge, or  
9 both, it shall apply to the appropriate federal agencies, as  
10 determined by the board, to authorize the state to prohibit the  
11 release of sewage or sewage sludge, or both, as necessary, from  
12 large passenger vessels, sewage from oceangoing ships with  
13 sufficient holding tank capacity, and sewage sludge from  
14 oceangoing ships, into the marine waters of the state and, if  
15 necessary, to authorize the state to prohibit the release of sewage  
16 sludge from large passenger vessels and oceangoing ships into  
17 marine sanctuaries.

18 (2) It is not the Legislature's intent to establish for the marine  
19 waters of the state a no discharge zone for sewage from all vessels,  
20 but only for a class of vessels.

21 (b) The board shall request the appropriate federal agencies, as  
22 determined by the board, to prohibit the release of sewage sludge  
23 and oily bilgewater, except under the circumstances specified in  
24 Section 72441, by large passenger vessels and oceangoing ships,  
25 in all of the waters that are in the Channel Islands National Marine  
26 Sanctuary, Cordell Bank National Marine Sanctuary, Gulf of the  
27 Farallones National Marine Sanctuary, and Monterey Bay National  
28 Marine Sanctuary, that are not in the state waters.

29 ~~(e) This section shall remain in effect only until January 1, 2014,~~  
30 ~~and as of that date is repealed, unless a later enacted statute, that~~  
31 ~~is enacted before January 1, 2014, deletes or extends that date.~~

32 **SECTION 1.**

33 *SEC. 7.* Section 72441 of the Public Resources Code is  
34 amended to read:

35 72441. (a) This division does not apply to either of the  
36 following:

37 (1) A large passenger vessel or oceangoing ship that operates  
38 in the marine waters of the state solely in innocent passage.

39 (2) Discharges made for the purpose of securing the safety of  
40 the large passenger vessel or oceangoing ship or saving life at sea,

1 if reasonable precautions are taken for the purpose of preventing  
2 or minimizing the discharge.

3 (b) For the purposes of this section, a large passenger vessel or  
4 oceangoing ship is engaged in innocent passage if its operation in  
5 the marine waters of the state would constitute innocent passage  
6 under either the Convention on the Territorial Sea and Contiguous  
7 Zone, dated April 29, 1958, or the United Nations Convention on  
8 the Law of the Sea, dated December 10, 1982.

O