

AMENDED IN ASSEMBLY JUNE 4, 2012

AMENDED IN SENATE APRIL 18, 2012

AMENDED IN SENATE APRIL 9, 2012

SENATE BILL

No. 1360

Introduced by Senator Simitian

February 24, 2012

An act to amend Sections 72401, 72410, 72420, 72420.2, 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 *a* of large passenger vessel to notify the agency upon the discovery of a release of graywater into a marine sanctuary.

(2) Existing law prohibits the owner or operator of a large passenger vessel or an oceangoing ship with sufficient holding tank capacity from releasing, or permitting anyone to release, from the vessel, graywater into the marine waters of the state.

The bill would additionally prohibit the owner or operator of a large passenger vessel or an oceangoing ship with sufficient holding tank capacity from releasing, or permitting anyone to release, from the vessel, graywater into a marine sanctuary.

(3) 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.” *The bill would also define the term “marine waters of the state” to mean waters within the area bounded by the mean high tide line to the 3-mile state waters limit, from the Oregon border to the Mexican border, for purposes of provisions relating to the operation of a large passenger vessel or an oceangoing ship with sufficient holding tank capacity.*

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 72401 of the Public Resources Code is
- 2 amended to read:
- 3 72401. The Legislature finds and declares both of the following:

1 (a) To protect and enhance the quality of the marine waters of
2 the state all of the following should be prohibited:

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

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

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

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

17 *SEC. 2. Section 72410 of the Public Resources Code is*
18 *amended to read:*

19 72410. (a) Unless the context otherwise requires, the
20 definitions set forth in this section govern this division.

21 (b) “Board” means the State Water Resources Control Board.

22 (c) “Commission” means the State Lands Commission.

23 (d) “Graywater” means drainage from dishwasher, shower,
24 laundry, bath, and washbasin drains, but does not include drainage
25 from toilets, urinals, hospitals, or cargo spaces.

26 (e) “Hazardous waste” has the meaning set forth in Section
27 25117 of the Health and Safety Code, but does not include sewage.

28 (f) “Large passenger vessel” or “vessel” means a vessel of 300
29 gross registered tons or greater that is engaged in the carrying of
30 passengers for hire, excluding all of the following vessels:

31 (1) Vessels without berths or overnight accommodations for
32 passengers.

33 (2) Noncommercial vessels, warships, vessels operated by
34 nonprofit entities as determined by the Internal Revenue Service,
35 and vessels operated by the state, the United States, or a foreign
36 government.

37 (3) Oceangoing ships, as defined in subdivision (j).

38 (g) “Marine waters of the state” means ~~“coastal waters”~~ as
39 defined in Section ~~13181~~ of the Water Code *waters within the area*

1 *bounded by the mean high tide line to the three-mile state waters*
2 *limit, from the Oregon border to the Mexican border.*

3 (h) “Marine sanctuary” means marine waters of the state in the
4 Channel Islands National Marine Sanctuary, Cordell Bank National
5 Marine Sanctuary, Gulf of the Farallones National Marine
6 Sanctuary, or Monterey Bay National Marine Sanctuary.

7 (i) “Medical waste” means medical waste subject to regulation
8 pursuant to Part 14 (commencing with Section 117600) of Division
9 104 of the Health and Safety Code.

10 (j) “Oceangoing ship” means a private, commercial, government,
11 or military vessel of 300 gross registered tons or more calling on
12 California ports or places.

13 (k) “Oil” has the meaning set forth in Section 8750.

14 (l) “Oily bilgewater” includes bilgewater that contains used
15 lubrication oils, oil sludge and slops, fuel and oil sludge, used oil,
16 used fuel and fuel filters, and oily waste.

17 (m) “Operator” has the meaning set forth in Section 651 of the
18 Harbors and Navigation Code.

19 (n) “Other waste” means photography laboratory chemicals,
20 dry cleaning chemicals, or medical waste.

21 (o) “Owner” has the meaning set forth in Section 651 of the
22 Harbors and Navigation Code.

23 (p) “Release” means discharging or disposing of wastes into
24 the environment.

25 (q) “Sewage” has the meaning set forth in Section 775.5 of the
26 Harbors and Navigation Code, including material that has been
27 collected or treated through a marine sanitation device as that term
28 is used in Section 312 of the Clean Water Act (33 U.S.C. Sec.
29 1322) or material that is a byproduct of sewage treatment.

30 (r) “Sewage sludge” has the meaning set forth in Section 122.2
31 of Title 40 of the Code of Federal Regulations.

32 (s) “Sufficient holding tank capacity” means a holding tank of
33 sufficient capacity to contain sewage and graywater while the
34 oceangoing ship is within the marine waters of the state.

35 (t) “Waste” means hazardous waste and other waste.

36 ~~SEC. 2.~~

37 *SEC. 3.* Section 72420 of the Public Resources Code is
38 amended to read:

39 72420. (a) If the appropriate federal agencies approve an
40 application made pursuant to subdivision (a) of Section 72440, or

1 if the board determines that an application is not required, an owner
2 or operator of a large passenger vessel or oceangoing ship shall
3 not release, or permit anyone to release, any sewage sludge from
4 the vessel into the marine waters of the state or a marine sanctuary.

5 (b) If the Administrator of the United States Environmental
6 Protection Agency approves the application for sewage release
7 made pursuant to subdivision (a) of Section 72440, or if the board
8 determines that an application is not required, an owner or operator
9 of an oceangoing ship with sufficient holding tank capacity shall
10 not release, or permit anyone to release, any sewage from the vessel
11 into the marine waters of the state or a marine sanctuary.

12 (c) If the Administrator of the United States Environmental
13 Protection Agency approves the application for sewage release
14 made pursuant to subdivision (a) of Section 72440, or if the board
15 determines that an application is not required, an owner or operator
16 of a large passenger vessel shall not release, or permit anyone to
17 release, any sewage from the vessel into the marine waters of the
18 state or a marine sanctuary.

19 ~~SEC. 3.~~

20 *SEC. 4.* Section 72420.1 of the Public Resources Code is
21 repealed.

22 ~~SEC. 4.~~

23 *SEC. 5.* Section 72420.2 of the Public Resources Code is
24 amended to read:

25 72420.2. (a) An owner or operator of a large passenger vessel
26 shall not release, or permit anyone to release, from the vessel,
27 graywater into the marine waters of the state or a marine sanctuary.

28 (b) An owner or operator of a large passenger vessel or
29 oceangoing ship shall not release, or permit anyone to release,
30 from the vessel, hazardous waste, other waste, or oily bilgewater
31 into the marine waters of the state or a marine sanctuary.

32 (c) An owner or operator of an oceangoing ship with sufficient
33 holding tank capacity shall not release, or permit anyone to release,
34 from the vessel, graywater into the marine waters of the state or a
35 marine sanctuary.

36 ~~SEC. 5.~~

37 *SEC. 6.* Section 72421 of the Public Resources Code is
38 amended to read:

1 72421. (a) The owner or operator shall notify the California
2 Emergency Management Agency immediately, but not longer than
3 30 minutes, after discovery of any of the following:

4 (1) A large passenger vessel release of graywater into the marine
5 waters of the state or a marine sanctuary.

6 (2) A large passenger vessel release of sewage into the marine
7 waters of the state or a marine sanctuary.

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

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

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

16 (1) Date of the release.

17 (2) Time of the release.

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

19 (4) Volume of the release.

20 (5) Source of the release.

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

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

26 ~~SEC. 6.~~

27 *SEC. 7.* Section 72430 of the Public Resources Code is
28 amended to read:

29 72430. (a) A person who violates Section 72420 or 72420.2
30 is subject to a civil penalty of not more than twenty-five thousand
31 dollars (\$25,000) for each violation.

32 (b) The civil penalty imposed for each separate violation
33 pursuant to this section is separate from, and in addition to, any
34 other civil penalty imposed for a separate violation pursuant to
35 this section or any other provision of law.

36 (c) In determining the amount of a civil penalty imposed
37 pursuant to this section, the court shall take into consideration all
38 relevant circumstances, including, but not limited to, the nature,
39 circumstance, extent, and gravity of the violation. In making this
40 determination, the court shall consider the degree of toxicity and

1 volume of the release, the extent of harm caused by the violation,
2 whether the effects of the violation may be reversed or mitigated,
3 and with respect to the defendant, the ability to pay, the effect of
4 a civil penalty on the ability to continue in business, all voluntary
5 cleanup efforts undertaken, the prior history of violations, the
6 gravity of the behavior, the economic benefit, if any, resulting
7 from the violation, and all other matters the court determines justice
8 may require.

9 (d) (1) A civil action brought under this section may only be
10 brought in accordance with this subdivision. That civil action may
11 be brought by the Attorney General upon complaint or request by
12 the Department of Fish and Game or the appropriate California
13 regional water quality control board, or by a district attorney or
14 city attorney.

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

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

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

24 ~~SEC. 7.~~

25 *SEC. 8.* Section 72440 of the Public Resources Code is
26 amended to read:

27 72440. (a) (1) The board shall determine whether it is
28 necessary to apply to the federal government for the state to
29 prohibit the release of sewage or sewage sludge from large
30 passenger vessels, sewage from oceangoing ships with sufficient
31 holding tank capacity, and sewage sludge from oceangoing ships,
32 into the marine waters of the state or to prohibit the release of
33 sewage sludge from large passenger vessels and oceangoing ships
34 into marine sanctuaries, as described in Section 72420 ~~and~~
35 ~~subdivision (a) of Section 72420.1.~~ If the board determines that
36 application is necessary for either sewage or sewage sludge, or
37 both, it shall apply to the appropriate federal agencies, as
38 determined by the board, to authorize the state to prohibit the
39 release of sewage or sewage sludge, or both, as necessary, from
40 large passenger vessels, sewage from oceangoing ships with

1 sufficient holding tank capacity, and sewage sludge from
2 oceangoing ships, into the marine waters of the state and, if
3 necessary, to authorize the state to prohibit the release of sewage
4 sludge from large passenger vessels and oceangoing ships into
5 marine sanctuaries.

6 (2) It is not the Legislature’s intent to establish for the marine
7 waters of the state a no discharge zone for sewage from all vessels,
8 but only for a class of vessels.

9 (b) The board shall request the appropriate federal agencies, as
10 determined by the board, to prohibit the release of sewage sludge
11 and oily bilgewater, except under the circumstances specified in
12 Section 72441, by large passenger vessels and oceangoing ships,
13 in all of the waters that are in the Channel Islands National Marine
14 Sanctuary, Cordell Bank National Marine Sanctuary, Gulf of the
15 Farallones National Marine Sanctuary, and Monterey Bay National
16 Marine Sanctuary, that are not in the state waters.

17 ~~SEC. 8.~~

18 *SEC. 9.* Section 72441 of the Public Resources Code is
19 amended to read:

20 72441. (a) This division does not apply to either of the
21 following:

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

24 (2) Discharges made for the purpose of securing the safety of
25 the large passenger vessel or oceangoing ship or saving life at sea,
26 if reasonable precautions are taken for the purpose of preventing
27 or minimizing the discharge.

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