

Assembly Bill No. 166

Passed the Assembly September 9, 2009

Chief Clerk of the Assembly

Passed the Senate September 4, 2009

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend, repeal, and add Sections 525 and 526 of, and to add and repeal Section 526.1 of, the Harbors and Navigation Code, relating to vessels.

LEGISLATIVE COUNSEL'S DIGEST

AB 166, Lieu. Vessels: abandonment: abatement.

Existing law makes it an infraction with a minimum \$500 fine and maximum \$3,000 fine for a person to abandon a vessel upon a public waterway or public or private property without the express or implied consent of the owner or person in lawful possession or control of the property, except for the urgent and immediate concern for the safety of those aboard the vessel. Existing law provides that 80% of the moneys collected as fines shall be deposited in the Abandoned Watercraft Abatement Fund. Upon appropriation by the Legislature, moneys in the fund may be used for grants to be awarded by the Department of Boating and Waterways to local agencies for the abatement and removal of abandoned, wrecked, and dismantled vessels, or parts of those vessels.

This bill would increase the minimum fine to \$1,000. The bill would also allow the moneys in the fund to be used for the abatement and removal of a hulk, derelict, wreck, or parts of any ship, or other watercraft sunk, beached, or allowed to remain in an unseaworthy or dilapidated condition upon municipal or other public corporation property, and for the disposal of a surrendered vessel, as defined. This bill would prohibit the state from assuming liability for any injuries or damages to a person or entity, public or private, connected to or resulting from the processing or disposal of a surrendered vessel. These changes would be repealed as of January 1, 2014.

Existing law authorizes wrecked property that is an unseaworthy derelict or hulk, or abandoned property removed from a navigable waterway, as specified, to be sold or otherwise disposed of by the public agency that removed or caused the removal of the property, subject to specified conditions, including that the property has

been appraised by disinterested persons, and has an estimated value of less than \$2,000.

This bill would, until January 1, 2014, except from these specified conditions the removal and sale or disposition of a surrendered vessel, as defined. The bill would require the Department of Boating and Waterways to track the number of surrendered vessels accepted by a public agency that disposes of those vessels using grant funds from the Abandoned Watercraft Abatement Fund from January 1, 2010, to January 1, 2013, inclusive, and the total amount of expenditure from that fund for surrendered vessels during the same period. The bill would require the department to report that information to the Assembly Committee on Transportation and the Senate Committee on Natural Resources and Water with any recommendations for revising or continuing the use of fund moneys for those purposes.

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

SECTION 1. Section 525 of the Harbors and Navigation Code is amended to read:

525. (a) Except for the urgent and immediate concern for the safety of those aboard a vessel, a person shall not abandon a vessel upon a public waterway or public or private property without the express or implied consent of the owner or person in lawful possession or control of the property.

(b) The abandonment of a vessel in a manner as provided in subdivision (a) is prima facie evidence that the last registered owner of record, not having notified the appropriate registration or documenting agency of any relinquishment of title or interest therein, is responsible for the abandonment and is thereby liable for the cost of the removal and disposition of the vessel.

(c) A violation of this section is an infraction and shall be punished by a fine of not less than one thousand dollars (\$1,000), nor more than three thousand dollars (\$3,000). In addition, the court may order the defendant to pay to the agency that removes and disposes of the vessel the actual costs incurred by the agency for that removal and disposition.

(d) Fines imposed and collected pursuant to this section shall be allocated as follows:

(1) (A) Eighty percent of the moneys shall be deposited in the Abandoned Watercraft Abatement Fund, which is hereby created as a special fund. Moneys in the fund shall be used exclusively, upon appropriation by the Legislature, for grants to be awarded by the department to local agencies for the abatement, removal, storage, and disposal as public nuisances of any abandoned property as described in Section 522 or for the disposal of surrendered vessels as defined in Section 526.1, wrecked or dismantled vessels, or parts thereof, or any other partially submerged objects that pose a substantial hazard to navigation, from navigable waterways or adjacent public property, or private property with the landowner's consent. These grants shall not be utilized for abatement, removal, storage, or disposal of commercial vessels.

(B) In evaluating a grant request submitted by a local agency pursuant to subparagraph (A), the department shall place great weight on the following two factors:

(i) The existence of an active local enforcement program to control and prevent the abandonment of watercraft within the local agency's jurisdiction.

(ii) The existence of a submerged navigational hazard abatement plan at the local level that provides for the control or abatement of water hazards, including, but not limited to, abandoned watercraft, wrecked watercraft, hazardous floating debris, submerged vessels and objects, and abandoned piers and pilings.

(C) A grant awarded by the department pursuant to subparagraph (A) shall be matched by a 10-percent contribution from the local agency receiving the grant.

(D) As a condition of receiving grant funding pursuant to this paragraph, a local agency shall report to the department data, as deemed appropriate by the department, regarding abandoned and surrendered vessels removed or anticipated for removal pursuant to this article.

(2) Twenty percent shall be allocated as set forth in Section 1463.001 of the Penal Code.

(e) The state shall not assume liability for any injuries or damages to a person or entity, public or private, connected to or resulting from the processing or disposal of a surrendered vessel, as defined in Section 526.1.

(f) The department may adopt rules and regulations for the purpose of administering this section.

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

SEC. 2. Section 525 is added to the Harbors and Navigation Code, to read:

525. (a) Except for the urgent and immediate concern for the safety of those aboard a vessel, a person shall not abandon a vessel upon a public waterway or public or private property without the express or implied consent of the owner or person in lawful possession or control of the property.

(b) The abandonment of a vessel in a manner as provided in subdivision (a) is prima facie evidence that the last registered owner of record, not having notified the appropriate registration or documenting agency of any relinquishment of title or interest therein, is responsible for the abandonment and is thereby liable for the cost of the removal and disposition of the vessel.

(c) A violation of this section is an infraction and shall be punished by a fine of not less than five hundred dollars (\$500), nor more than three thousand dollars (\$3,000). In addition, the court may order the defendant to pay to the agency that removes and disposes of the vessel the actual costs incurred by the agency for that removal and disposition.

(d) Fines imposed and collected pursuant to this section shall be allocated as follows:

(1) (A) Eighty percent of the moneys shall be deposited in the Abandoned Watercraft Abatement Fund, which is hereby created as a special fund. Moneys in the fund shall be used exclusively, upon appropriation by the Legislature, for grants to be awarded by the department to local agencies for the abatement, removal, storage, and disposal as public nuisances of any abandoned, wrecked, or dismantled vessels, or parts thereof, or any other partially submerged objects that pose a substantial hazard to navigation, from navigable waterways or adjacent public property, or private property with the landowner's consent. These grants shall not be utilized for abatement, removal, storage, or disposal of commercial vessels.

(B) In evaluating a grant request submitted by a local agency pursuant to subparagraph (A), the department shall place great weight on the following two factors:

(i) The existence of an active local enforcement program to control and prevent the abandonment of watercraft within the local agency's jurisdiction.

(ii) The existence of a submerged navigational hazard abatement plan at the local level that provides for the control or abatement of water hazards, including, but not limited to, abandoned watercraft, wrecked watercraft, hazardous floating debris, submerged vessels and objects, and abandoned piers and pilings.

(C) A grant awarded by the department pursuant to subparagraph (A) shall be matched by a 10-percent contribution from the local agency receiving the grant.

(2) Twenty percent shall be allocated as set forth in Section 1463.001 of the Penal Code.

(e) This section shall become operative on January 1, 2014.

SEC. 3. Section 526 of the Harbors and Navigation Code is amended to read:

526. (a) Notwithstanding any other provision of law, any wrecked property that is an unseaworthy derelict or hulk, abandoned property as described in Section 522, or property removed from a navigable waterway pursuant to Section 523 or 524 that is an unseaworthy derelict or hulk, may be sold or otherwise disposed of by the public agency that removed or caused the removal of the property pursuant to this section, subject to the following conditions, except a surrendered vessel, as defined in Section 526.1, may be disposed of immediately upon acceptance by a public agency and is not subject to the following conditions:

(1) The property has been appraised by disinterested persons, and has an estimated value of less than two thousand dollars (\$2,000).

(2) There is no discernable registration, license, hull identification number, or other identifying insignia on the property, or the Department of Motor Vehicles is unable to produce any record of the registered or legal owners or lienholders.

(3) Not less than 72 hours before the property was removed, the peace officer or authorized public employee securely attached to the property a distinctive notice stating that the property would be removed by the public agency.

(4) Within 48 hours after the removal, excluding weekends and holidays, the public agency that removed or caused the removal of the property sent notice of the removal to the registered and legal owners, if known or discovered subsequent to the removal, at their addresses of record with the Department of Motor Vehicles, and to any other person known to have an interest in the property. A notice sent by the public agency shall be sent by certified or first-class mail.

(5) If the public agency is unable to locate the registered and legal owners of the property or persons known to have an interest in the property as provided in paragraph (4), the public agency published, or caused to be published, the notice of removal for at least two weeks in succession in one or more daily newspapers circulated in the county.

(b) The notice of removal required by paragraphs (3) to (5), inclusive, of subdivision (a) shall state all of the following:

(1) The name, address, and telephone number of the public agency providing the notice.

(2) A description of the property removed.

(3) The location from which the property is to be or was removed.

(4) The location of the intended or actual place of storage.

(5) The authority and purpose for removal of the property.

(6) A statement that the property may be claimed and recovered within 15 days of the date the notice of removal was issued pursuant to paragraph (4) or (5) of subdivision (a), whichever is later, after payment of any costs incurred by the public agency related to salvage and storage of the property, and that following the expiration of the 15-day period, the property will be sold or otherwise disposed of by the public agency.

(7) A statement that the registered or legal owners or any other person known to have an interest in the property has the opportunity for a poststorage hearing before the public agency that removed, or caused the removal of, the property to determine the validity of the removal and storage if a request for a hearing is made in person or in writing to that public agency within 10 days from the date of notice; that if the registered or legal owners or any other person known to have an interest in the property disagree with the decision of the public agency, the decision may be reviewed pursuant to Section 11523 of the Government Code; and

that during the time of the initial hearing, or during the time the decision is being reviewed pursuant to Section 11523 of the Government Code, the vessel in question shall not be sold or otherwise disposed of.

(c) (1) Any requested hearing shall be conducted within 48 hours of the time the request for a hearing is received by the public agency, excluding weekends and holidays. The public agency that removed the vehicle may authorize its own officers or employees to conduct the hearing, but the hearing officer shall not be the same person who directed the removal and storage of the property.

(2) The failure of either the registered or legal owners or any other person known to have an interest in the property to request or attend a scheduled hearing shall not affect the validity of the hearing.

(d) 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, within 15 days of the date the notice of removal was issued pursuant to paragraph (4) or (5) of subdivision (a), whichever is later, after payment of any costs incurred by the public agency related to salvage and storage of the property.

(e) The property may be sold or otherwise disposed of by the public agency not less than 15 days from the date the notice of removal was issued pursuant to paragraph (4) or (5) of subdivision (a), whichever is later, or the date of actual removal, whichever is later.

(f) The proceeds from the sale of the property, after deducting expenses for salvage, storage, sales costs, and any property tax liens, shall be deposited in the Abandoned Watercraft Abatement Fund for grants to local agencies, as specified in paragraph (1) of subdivision (d) of Section 525.

(g) It is the intent of the Legislature that this section shall not be construed to authorize the lien sale or destruction of any seaworthy vessel, other than a surrendered vessel as defined in Section 526.1, that is currently registered and operated in accordance with local, state, and federal law.

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

SEC. 4. Section 526 is added to the Harbors and Navigation Code, to read:

526. (a) Notwithstanding any other provision of law, any wrecked property that is an unseaworthy derelict or hulk, or abandoned property as described in Section 522, property removed from a navigable waterway pursuant to Section 523 or 524 that is an unseaworthy derelict or hulk, may be sold or otherwise disposed of by the public agency that removed or caused the removal of the property pursuant to this section, subject to the following conditions:

(1) The property has been appraised by disinterested persons, and has an estimated value of less than two thousand dollars (\$2,000).

(2) There is no discernable registration, license, hull identification number, or other identifying insignia on the property, or the Department of Motor Vehicles is unable to produce any record of the registered or legal owners or lienholders.

(3) Not less than 72 hours before the property was removed, the peace officer or authorized public employee securely attached to the property a distinctive notice stating that the property would be removed by the public agency.

(4) Within 48 hours after the removal, excluding weekends and holidays, the public agency that removed or caused the removal of the property sent notice of the removal to the registered and legal owners, if known or discovered subsequent to the removal, at their addresses of record with the Department of Motor Vehicles, and to any other person known to have an interest in the property. A notice sent by the public agency shall be sent by certified or first-class mail.

(5) If the public agency is unable to locate the registered and legal owners of the property or persons known to have an interest in the property as provided in paragraph (4), the public agency published, or caused to be published, the notice of removal for at least two weeks in succession in one or more daily newspapers circulated in the county.

(b) The notice of removal required by paragraphs (3) to (5), inclusive, of subdivision (a) shall state all of the following:

(1) The name, address, and telephone number of the public agency providing the notice.

(2) A description of the property removed.

(3) The location from which the property is to be or was removed.

(4) The location of the intended or actual place of storage.

(5) The authority and purpose for removal of the property.

(6) A statement that the property may be claimed and recovered within 15 days of the date the notice of removal was issued pursuant to paragraph (4) or (5) of subdivision (a), whichever is later, after payment of any costs incurred by the public agency related to salvage and storage of the property, and that following the expiration of the 15-day period, the property will be sold or otherwise disposed of by the public agency.

(7) A statement that the registered or legal owners or any other person known to have an interest in the property have the opportunity for a poststorage hearing before the public agency that removed, or caused the removal of, the property to determine the validity of the removal and storage if a request for a hearing is made in person or in writing to that public agency within 10 days from the date of notice; that if the registered or legal owners or any other person known to have an interest in the property disagree with the decision of the public agency, the decision may be reviewed pursuant to Section 11523 of the Government Code; and that during the time of the initial hearing, or during the time the decision is being reviewed pursuant to Section 11523 of the Government Code, the vessel in question shall not be sold or otherwise disposed of.

(c) (1) Any requested hearing shall be conducted within 48 hours of the time the request for a hearing is received by the public agency, excluding weekends and holidays. The public agency that removed the vehicle may authorize its own officers or employees to conduct the hearing, but the hearing officer shall not be the same person who directed the removal and storage of the property.

(2) The failure of either the registered or legal owners or any other person known to have an interest in the property to request or attend a scheduled hearing shall not affect the validity of the hearing.

(d) 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, within 15 days of the date the notice of removal was issued pursuant to paragraph (4) or (5) of subdivision (a), whichever is later, after payment of any costs incurred by the public agency related to salvage and storage of the property.

(e) The property may be sold or otherwise disposed of by the public agency not less than 15 days from the date the notice of removal was issued pursuant to paragraph (4) or (5) of subdivision (a), whichever is later, or the date of actual removal, whichever is later.

(f) The proceeds from the sale of the property, after deducting expenses for salvage, storage, sales costs, and any property tax liens, shall be deposited in the Abandoned Watercraft Abatement Fund for grants to local agencies, as specified in paragraph (1) of subdivision (d) of Section 525.

(g) It is the intent of the Legislature that this section shall not be construed to authorize the lien sale or destruction of any seaworthy vessel that is currently registered and operated in accordance with local, state, and federal law.

(h) This section shall become operative on January 1, 2014.

SEC. 5. Section 526.1 is added to the Harbors and Navigation Code, to read:

526.1. (a) For purposes of this article, “surrendered vessel” means a recreational vessel that the verified titleholder has willingly surrendered to a willing public agency under both of the following conditions:

(1) The public agency has determined, in its sole discretion, that the vessel is in danger of being abandoned, and therefore has a likelihood of causing environmental degradation or becoming a hazard to navigation.

(2) The decision to accept a vessel is based solely on the potential of the vessel to likely be abandoned and cause environmental degradation or become a hazard to navigation.

(b) The department shall track the number of surrendered vessels accepted by a public agency that disposes of surrendered vessels using grant funds from the Abandoned Watercraft Abatement Fund between January 1, 2010, and January 1, 2013. The department shall also track the total expenditure from the fund for surrendered vessel abatement during the same period. On or before July 1, 2013, the department shall report on the information gathered between January 1, 2010, and January 1, 2013, to the Assembly Committee on Transportation and the Senate Committee on Natural Resources and Water, along with any recommendations to revise or continue the use of fund moneys for these purposes.

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

Approved _____, 2009

Governor