

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

AB 748 (Villapudua)  
Version: March 23, 2023  
Hearing Date: July 6, 2023  
Fiscal: Yes  
Urgency: No  
AM

**SUBJECT**

California Abandoned and Derelict Commercial Vessel Program

**DIGEST**

This bill establishes the California Abandoned and Derelict Commercial Vessel Program Task Force (Task Force) to bring government agencies together to identify, prioritize, and fund the removal of abandoned and derelict commercial vessels from the waters of the state, as provided. The bill prohibits a commercial vessel that is at-risk of becoming derelict from being secured in or on waters of the state as specified, provides for a civil penalty for each violation, and authorizes a peace officer to find that a commercial vessel is at risk of becoming derelict and to remove such a vessel. Authorizes a civil action to be brought by the Attorney General (AG) upon complaint by the Task Force; or by a district attorney (DA), or city attorney in the name of the people of the State of California, as provided.

**EXECUTIVE SUMMARY**

This bill addresses a significant statewide problem of commercial abandoned and derelict vessels (ADCVs) in California waterways. ADCVs are hazardous to the environment, navigation, and public health, and are very costly to remove. This bill establishes the Task Force to provide proactive and responsive solutions to the problem, as provided. The bill prohibits any commercial vessel that is at risk of becoming derelict from being in or on waters of the state, makes a violation of this prohibition subject to civil penalties, and authorizes the AG, a DA, or city attorney to bring a civil action to enforce these provisions. The bill also authorizes a peace officer to find that a commercial vessel is at risk of becoming derelict and to remove such a vessel. This bill is a reintroduction of SB 1065 (Eggman, 2022), which was vetoed by the Governor.

The bill is sponsored by the County of Sacramento and supported by the California State Sheriffs' Association and the San Francisco Bay Conservation and Development

Commission. There is no known opposition. The bill passed out of the Senate Natural Resources and Water Committee on a vote of 9 to 0.

### PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Authorizes a peace officer to remove a vessel from a public waterway in specified circumstances, including if the vessel:
  - a) is left unattended and is moored, docked, beached, or made fast to land in a position that obstructs the normal movement of traffic or in a condition that creates a hazard to other vessels using the waterway, public safety, or property;
  - b) interferes with, or otherwise poses a danger to, navigation, public health, safety, or welfare; or
  - c) poses a threat to adjacent wetlands, levies, sensitive habitat, any protected wildlife species, or water quality. (Harb. & Nav. Code § 523.)
- 2) Provides how wrecked or abandoned vessels are to be handled and disposed of once removed or when they come into the possession of a peace officer or other government official. (Harb. & Nav. Code § 510 et. seq.)
- 3) Provides it is unlawful to deposit in, permit to pass into, or place where it can pass into the waters of this state specified pollutants, including any factory, refuse, lime, or slag. (Fish & G. Code § 5650.)
  - a) A person who violates this provision is subject to a civil penalty of not more than \$25,000 for each violation. (*Id.* at subd. (a).)
  - b) Requires a court to take into consideration all relevant circumstances, including, but not limited to, the nature, circumstance, extent, and gravity of the violation when assessing a penalty. (*Id.* at subd. (c).)
  - c) Authorizes an action brought under this section to be brought by the Attorney General upon complaint by the department, or by the district attorney or city attorney in the name of the people of the State of California. (*Id.* at subd. (d).)
  - d) Provides it is not necessary to allege or prove at any stage of the proceeding that irreparable damage will occur if the temporary restraining order, preliminary injunction, or permanent injunction is not issued, or that the remedy at law is inadequate. (*Id.* at subd. (e).)
  - e) After the party seeking the injunction has met its burden of proof, the court is required to determine whether to issue a temporary restraining order, preliminary injunction, or permanent injunction without requiring the defendant to prove that it will suffer grave or irreparable harm. (*Id.* at subd. (f).)

- f) The court, to the maximum extent possible, is required to tailor a temporary restraining order, preliminary injunction, or permanent injunction narrowly to address the violation in a manner that will otherwise allow the defendant to continue business operations in a lawful manner. (*Id.* at subd. (g).)

This bill:

- 1) Establishes the California Abandoned and Derelict Commercial Vessel Program (Program) within the California Natural Resources Agency to, upon appropriation by the Legislature, bring federal, state, and local agencies together to identify, prioritize, and fund the removal of ADCVs from the waters of the state, as provided. Establishes the Task Force to oversee and provide policy direction for the Program, as specified.
- 2) Provides a commercial vessel is at-risk of becoming derelict, if the vessel meets any of the following:
  - a) is taking on or has taken on water without an effective means to dewater;
  - b) has spaces that are designed to be enclosed but are incapable of being sealed off or remain open to the elements for extended periods of time;
  - c) has broken loose or is in danger of breaking loose from its anchor, mooring, spuds, or ground tackle, as specified;
  - d) is left aground or is otherwise abandoned for a period of over 30 days in a state that would prevent the vessel from getting underway;
  - e) is unable to maintain buoyancy;
  - f) is powered by a propulsion system, is unable to maneuver under that system, and is unable to be repaired and underway within 30 days of initial failure;
  - g) is deteriorated and could become awash and create a pollution or navigation hazard;
  - h) poses a significant threat to public health or safety or to sensitive habitat, wildlife, or water quality, or constitutes a public nuisance;
  - i) is in a position to obstruct normal movement of traffic or in a condition to create a hazard to navigation or other vessels using a waterway; or
  - j) is marine debris, as defined.
- 3) Prohibits a commercial vessel that is at-risk of becoming derelict from occupying, anchoring, mooring, or otherwise being secured in or on waters of the state, and authorizes a peace officer to find that a commercial vessel is at risk of becoming derelict if the peace officer determines it meets one of the specified conditions.
- 4) Provides that a person who anchors, moors, or otherwise secures a commercial vessel that is at risk of becoming derelict in or on the waters of the state or allows a vessel that is at risk of becoming derelict to occupy the waters of the state may be

liable for a civil penalty of not less than \$1,000 and not more than \$5,000 per day. Each day that a violation continues is a violation of this section.

- a) Each civil penalty imposed for a separate violation pursuant to these provisions is separate and in addition to any other civil penalty imposed pursuant to these provisions or to any other civil or criminal penalty imposed pursuant to any other law.
  - b) In determining the amount of a civil penalty to impose, a court is required to take into consideration all relevant circumstances, including, but not limited to, the nature, circumstance, extent, and gravity of the violation.
- 5) Authorizes a civil action to be brought by the AG upon complaint by the Task Force; or by a DA or city attorney in the name of the people of the State of California.
- a) Provides it is not necessary to allege or prove at any stage of the proceeding that irreparable damage will occur if the temporary restraining order (TRO), preliminary injunction, or permanent injunction is not issued, or that the remedy at law is inadequate.
  - b) Requires a court, to the maximum extent possible, to tailor a TRO, preliminary injunction, or permanent injunction narrowly to address the violation in a manner that will otherwise allow a defendant to continue business operations in a lawful manner.
  - c) Specifies how the civil penalties will be apportioned.
- 6) Authorizes a peace officer to seize or order the removal of a commercial vessel that is at risk of becoming derelict, and requires the peace officer to comply with existing provisions of law related to marine debris, as specified under Section 551 of the Harbors and Navigation Code.

### COMMENTS

#### 1. Stated need for the bill

The author writes:

AB 748 is needed to coordinate the safe and efficient removal of commercial abandoned and derelict vessels in order to keep our waterways clear and clean. Through the statewide coordinating council that this bill creates it will help streamline the removal by working with local, state, and federal agencies.

Commercial abandoned and derelict vessels (CADVs) are a significant problem in California, strewn throughout the Delta and other California waterways. A 2017 Department of Fish and Wildlife aerial survey identified 55 commercial vessels in the Delta and estimated a removal cost of about \$33 million. While the Delta has a high concentration of these vessels, it is not the only waterway plagued by the problem.

Other waterways include the San Francisco Bay, Oakland Estuary, Richardson Bay, Long Beach, San Diego, and Bodega Bay.

CADVs are or can become hazards to navigation, the environment, and public health and safety. Through deliberate action or negligence, these vessels break up, sink, or block navigation channels. CADVs that settle on the bottom can disrupt the aquatic environment, scouring or crushing sensitive habitats like eelgrass beds and kelp meadows.

Removing abandoned and derelict vessels is often complicated and expensive. Costs range from tens of thousands to several million dollars per vessel depending in part on its size, location, and condition. Some vessels are located in hard-to-reach areas, requiring large, specialized equipment for recovery and transportation. The wreckage may last for many years, breaking apart and creating widespread debris that threatens marine and coastal resources. Assessing, removing, and disposing of these vessels also requires significant financial and technical resources.

## 2. Bill seeks to address the issue of ADCVs

### *a. Establishes the California Abandoned and Derelict Commercial Vessel Program*

According to the author and sponsor, there is no centralized process to remove CADVs from California waterways, which makes removal a very complex and drawn-out process as it can require the involvement of federal, state, and local governments. The bill seeks to remedy this problem by establishing the California Abandoned and Derelict Commercial Vessel Program within the Natural Resources Agency, which will be administered by the Commission. The program is intended to bring federal, state, and local agencies together to identify, prioritize, and, upon appropriation or funding, removal of abandoned and derelict commercial vessels.

The Senate Committee on Natural Resources and Water analyzed the bill for its ability to address the issue of ADCVs and their impact on this state's environment and waterways and stated:

The bill includes proactive (prevent new ADCVs) and reactive (address existing ADCVs) components to address the problem from all sides. Regarding the former, it grants authority to peace officers to declare vessels that meet specified conditions at-risk of becoming derelict to enable jurisdictions to take action before the vessel becomes more complicated and expensive to address. The bill also directs the coordinating council to research and evaluate the efficacy of prevention measures and make recommendations to the Legislature to implement viable measures.<sup>1</sup>

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<sup>1</sup> Sen. Com. on Nat. Res. & Wat. Analysis of Asm. Bill No. 748 (2023-24 Reg. Sess.) as amended Mar. 23, 2023 at pg. 8.

That Committee also noted the bill's provisions are modeled after programs in Washington and Florida. Specifically, Florida gave law enforcement the authority in 2016 to declare a vessel at-risk of becoming abandoned or derelict, which has allowed the state to get ahead of the problem before these vessels become more costly and difficult to remove.<sup>2</sup>

- b. Authorizes peace officers to remove commercial vessels at-risk of becoming derelict, prohibits those vessels from being in or on the waterways of this state subject to civil penalties for any violation, and authorizes a civil action to be brought to enforce these provisions*

Additionally the bill provides that a person who anchors, moors, or otherwise secures a commercial vessel that is at risk of becoming derelict in or on the waters of the state or allows a vessel that is at risk of becoming derelict to occupy the waters of the state may be liable for a civil penalty of not less than \$1,000 and not more than \$5,000 per day. Under the bill, a commercial vessel is at-risk of becoming derelict if it meets various conditions, such as being left aground or is otherwise abandoned for a period of over 30 days in a state that would prevent the vessel from getting underway or poses a significant threat to public health or safety or to sensitive habitat, wildlife, or water quality, or constitutes a public nuisance. The bill authorizes a peace officer to find that a commercial vessel is at risk of becoming derelict if the peace officer determines it meets one of the specified conditions, and authorizes a peace officer to seize or order the removal of a commercial vessel that is at risk of becoming derelict.

The bill models many of its provisions on Section 5605.1 of the Fish and Game Code, which authorizes a civil action to address pollutants passing into the water of this state. Some of these provisions include that it is not necessary to allege or prove at any stage of a proceeding seeking an injunction or TRO that irreparable damage will occur if the TRO, preliminary injunction, or permanent injunction is not issued, or that the remedy at law is inadequate. Additionally, the bill requires a court, to the maximum extent possible, to tailor a TRO, preliminary injunction, or permanent injunction narrowly to address the violation in a manner that will otherwise allow a defendant to continue business operations in a lawful manner.

- c. This bill is a reintroduction of SB 1065 (Eggman, 2022), which was vetoed by the Governor*

This bill is a reintroduction of SB 1065 as it passed the Legislature. SB 1065 was ultimately vetoed by the Governor because the program was “not accounted for in the budget” and “should be considered and accounted for as part of the annual budget process.” The Governor did, however, acknowledge that he supported the attempt of

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<sup>2</sup> *Id.* at 9.

the author to create “a statewide approach to address [ADCVs] in California that pose significant public health, safety, and environmental risks.”

When SB 1065 passed this Committee several amendments were taken to address various issues including:

- providing that a removal or seizure of a commercial vessel must comply with existing provisions of law in regards to wrecked vessels that are removed or seized;
- clarifying the authority of the AG to bring a cause of action upon complaint of the Commission and specified that nothing in the bill limits the authority of the AG to bring a suit to enforce state law in an independent capacity;
- streamlining provisions in the bill related to a court issuing a TRO; and
- making other technical, and nonsubstantive changes.

All of these amendments are included in the bill that is before the Committee.

### 3. Statements in support

The California State Sheriffs’ Association writes in support stating:

Assembly Bill 748, [] would create the California Abandoned and Derelict Commercial Vessel Program to bring federal, state, and local agencies together to identify, prioritize, and fund the removal of abandoned and derelict commercial vessels from the waters of the state.

Despite the growing problem of abandoned and derelict vessels on our state’s waterways, there is no specific and adequate statewide program to fund the removal and destruction of these vessels. State and local agencies are forced to rely on cooperation by vessel owners, lengthy legal processes, and limited federal actions to address this problem.

Without a program and ongoing funding, abandoned and derelict vessels will continue to cause environmental harm and damage to California’s water quality, habitat, and ecosystems.

### **SUPPORT**

County of Sacramento (sponsor)  
California State Sheriffs’ Association  
San Francisco Bay Conservation and Development Commission

**OPPOSITION**

None known

**RELATED LEGISLATION**

Pending Legislation: None known.

Prior Legislation:

SB 1065 (Eggman, 2022) *see* Comment 2, above.

AB 2441 (Frazier, Ch. 540, Stats. 2018) required the State Lands Commission to develop a plan to remove abandoned commercial vessels in the Delta, and, upon receipt of funding, implement the plan.

AB 2092 (Frazier, 2016) would have expanded the allowable uses of the Abandoned Watercraft Abatement Fund to include the abatement, removal, storage, or removal of commercial vessels. The bill died in the Assembly Appropriations Committee.

AB 1323 (Frazier, Ch. 645, Stats. 2015) authorized a public agency to remove and dispose of marine debris after 10 days if specified conditions are met.

SB 595 (Wolk, Ch. 595, Stats. 2011) authorized the State Lands Commission to take immediate action, without notice, to remove unattended vessels that obstruct traffic or create a hazard to other vessels or property.

**PRIOR VOTES**

Senate Natural Resources and Water Committee (Ayes 9, Noes 0)

Assembly Floor (Ayes 80, Noes 0)

Assembly Appropriations Committee (Ayes 15, Noes 0)

Assembly Judiciary Committee (Ayes 11, Noes 0)

Assembly Natural Resources Committee (Ayes 11, Noes 0)

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