

HOUSE BILL REPORT

ESHB 2376

As Amended by the Senate

Title: An act relating to abandoned and derelict vessels.

Brief Description: Concerning abandoned and derelict waterborne vessels.

Sponsors: By House Committee on Natural Resources (originally sponsored by Representatives Rockefeller, Doumit, Eickmeyer, Dickerson, Hunt, Lantz, Edwards, Romero, Haigh, McDermott and Jackley).

Brief History:

Committee Activity:

Natural Resources: 1/25/02, 2/6/02 [DPS];
Appropriations: 2/9/02, 2/12/02 [DPS(NR)].

Floor Activity:

Passed House: 2/18/02, 97-0.
Senate Amended.
Passed Senate: 3/7/02, 47-0.

Brief Summary of Engrossed Substitute Bill

- Provides authority and processes for state entities to remove and dispose of derelict and abandoned vessels.
- Requires the owner of abandoned or derelict vessels to reimburse the public entity that removes and disposes of the vessel.
- Creates the derelict vessel removal account.
- Increases the annual boater education fee and the vessel identification fee and earmarks the new revenue for the removal of derelict and abandoned vessels.
- Specifies that public auctions for boats abandoned at a marina may require a minimum bid or a letter of credit to discourage future abandonment of the vessel.

HOUSE COMMITTEE ON NATURAL RESOURCES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Doumit, Chair; Rockefeller, Vice Chair;

Sump, Ranking Minority Member; Buck, Eickmeyer, Ericksen, Jackley, McDermott, Orcutt, Pearson and Upthegrove.

Staff: Jason Callahan (786-7117).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Natural Resources be substituted therefor and the substitute bill do pass. Signed by 21 members: Representatives Sommers, Chair; Doumit, 1st Vice Chair; Fromhold, 2nd Vice Chair; Sehlin, Ranking Minority Member; Alexander, Buck, Clements, Cody, Cox, Dunshee, Grant, Kagi, Kenney, Kessler, Linville, McIntire, Pearson, Pflug, Ruderman, Schual-Berke and Tokuda.

Minority Report: Do not pass. Signed by 4 members: Representatives Boldt, Lisk, Mastin and Talcott.

Staff: Jeff Olsen (786-7157).

Background:

The Department of Natural Resources (department) is charged with the responsibility of managing the state's aquatic lands; however, Washington does not have a comprehensive mechanism for addressing the problem of derelict or abandoned vessels in its waterways. As a result, the department must rely on cooperation by the vessel owners, unproven common law approaches such as trespass and nuisance actions, and unreliable federal actions.

Both the United States Coast Guard (USCG) and the Army Corps of Engineers (Corps) have federal authority to address derelict and abandoned vessels; however, that authority is often constrained. The USCG is charged with addressing vessels that pose a substantial threat to the environment or navigation channels. These problems are usually mitigated without removing and disposing of the vessel, and the USCG does not have the authority to remove and dispose of a vessel once the immediate threat has been removed. Likewise, the Corps have the authority to remove floating or sunken debris, but only if that debris is a hazard to navigation. This authority is usually only used in federal, not state waters.

The 2001 Washington Legislature passed SHB 1349 (Chapter 27, Laws of 2001), which addressed derelict vessels. This legislation authorized the use of money in the state toxics account to be used to cleanup and dispose of hazardous substances on abandoned and derelict vessels. This legislation did not authorize expenditures from the state toxics account for the removal and disposal of the actual vessel.

Summary of Engrossed Substitute Bill:

An authorized public entity, which includes most public owners of aquatic lands and shorelines, has the discretionary authority to remove and destroy a vessel within their jurisdiction that has become abandoned or derelict. There are numerous authorized public entities in the state, but the Department of Natural Resources (department) has an oversight and rulemaking role in the removal and disposal process. The department also has the authority to remove any vessel within the jurisdiction of an authorized public entity that asks it to act in its place.

Prior to taking action on a vessel, an authorized public entity must attempt to notify the vessel's owner of its intent to remove the vessel. Notice must be mailed to the last known address of any identifiable owners, posted clearly on the vessel, and printed in a newspaper in the county in which the vessel is located. All notices must include set information, including the procedures that must be followed in order to reclaim possession of the vessel, possible financial liabilities, and the rights of the authorized public entity after custody of the vessel is claimed.

Once custody of a vessel is taken, the authorized public entity may use or dispose of the vessel in any environmentally sound manner. However, the authorized public entity must first attempt to derive some value from the vessel either in whole or scrap. If a value can be derived, then that amount will be subtracted from the financial liabilities of the owner. If the vessel has no salvageable value, then the authorized public entity must utilize the least costly disposal method.

The owner of a derelict or abandoned vessel is responsible for reimbursing the authorized public entity for all costs associated with the removal and disposal of the derelict or abandoned vessel. These costs include administrative costs and costs associated from any environmental damage caused by the vessel.

Any owner seeking to redeem a vessel that is in the custody of an authorized public entity, or wishing to contest the amount of liability owed, must bring an action within 20 days of custody of the vessel being taken. If a lawsuit is not commenced within 10 days, the right to a hearing will be deemed waived.

The derelict vessel removal account is created. Expenditures from this account may only be used to reimburse authorized public entities for 75 percent of the costs associated with removing and disposing of abandoned or derelict vessels when the owner of the vessel is unknown or unable to pay. The authorized public entity may contribute their 25 percent of removal costs through in-kind services. Priority for use of the account's funds must be given to the removal of vessels that are in danger of breaking up, sinking, presenting environmental risks, or blocking navigation channels. Prioritization guidelines must be developed informally by the department.

The identification document required for a foreign vessel or a vessel with a United States customs service cruising license is raised from \$25 to \$30. The annual vessel registration

fee is raised from \$10.50 to \$12.50. The additional revenue collected by these increases are specifically earmarked to be deposited into the derelict vessel removal account. If the balance of the derelict vessel removal account reaches \$1 million, the additional fees collected for the derelict vessel removal account will be suspended for at least one year.

Moorage facilities with abandoned vessels may still follow their existing procedures for removal. However, any profits from the sale of a vessel will lapse into the derelict vessel removal account, and the costs of removal of a vessel with an unidentified owner may be reimbursed out of the derelict vessel removal account. Also, any auctions of abandoned vessels may require a minimum bid or a letter of credit to assure that the future reabandonment of the vessel is avoided.

EFFECT OF SENATE AMENDMENT(S):

Allows the Derelict Vessel Removal Fund to be used to reimburse the Department of Licensing for its administrative expenses. Changes the date that the Department of Natural Resources (DNR) must notify the Department of Licensing if the balance in the Derelict Vessel Removal Fund reaches \$1 million from June 30th to March 1st. Permits a local government to ask the DNR if it can assume primary responsibility for a vessel abandoned on state lands. Removes the DNR's rule making authority for derelict vessel removal. Permits an authorized public entity to take temporary possession of a vessel prior to carrying out all notification requirements in order to address an emergency situation. Emergencies would not be addressable until after the DNR and Coast Guard has been contacted and consulted

Appropriation: None.

Fiscal Note: Requested on February 7, 2002.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: (Natural Resources) The costs associated with the removal and disposal of derelict and abandoned vessels are being passed onto the general taxpaying public. The current statutes are a hodgepodge of authority, and it is not clear who is responsible for what when it comes to derelict vessels. It is also unclear if the vessel owner has any liability, and if so, in what instances and how much. This situation leads to confused jurisdictions, finger-pointing, and eventual inaction. Liability concerns discourage local governments from getting involved.

It is important to address derelict vessel issues in order to protect the public. These

vessels create navigation, environmental, and aesthetic risks. This is currently a significant problem, and it is only growing. Derelict vessels often become an attractive nuisance, and people start using them to dump garbage and hazardous substances. This bill sets a direction for dealing with the problem. The tools provided by this bill will go a long way in helping to address these problems.

Testimony For: (Appropriations) Last year legislation passed that created a mechanism to dispose of hazardous chemicals on derelict vessels; however, disposal of the vessels is still a significant problem. This bill clarifies authorities to attach liens and dispose of the vessels and establishes an account to pay for disposal costs. The Department of Natural Resources would need new resources to establish the program, coordinate the process for reimbursing local entities, and monitor the use of the cleanup funds.

Testimony Against: (Natural Resources) None.

Testimony Against: (Appropriations) None.

Testified: (Natural Resources) Representative Rockefeller, prime sponsor; Representative Hunt; Bruce Wishart, People for Puget Sound; Morris Barker, Department of Fish and Wildlife; Mayor Stan Biles, city of Olympia; Tami Allen and David S. Berry, city of Bainbridge Island; Duane Fagergren, Puget Sound Water Quality Action Team; John O'Loughlin, City of Tacoma; Loren Stern, Department of Natural Resources; and Eric Johnson, Washington Public Ports Association.

Testified: (Appropriations) Eric Johnson, Washington Public Ports Association; and Loren Stern, Department of Natural Resources.