
**Agriculture & Natural Resources
Committee**

HB 2457

Brief Description: Concerning derelict and abandoned vessels.

Sponsors: Representatives Hansen, Smith, Fagan, Springer, Rodne, Reykdal, Magendanz, Fitzgibbon, Vick, Lytton, Wilcox, Pollet, Tharinger, Ryu, Van De Wege, Buys and Hayes; by request of Department of Natural Resources.

Brief Summary of Bill

- Creates new requirements on the sale of certain vessels.
- Establishes a fee on commercial moorage to fund the state's derelict and abandoned vessel program.
- Requires certain insurance to be held by moorage facilities and moored vessels and certain information to be collected from moored vessels.
- Provides an exemption from the retail sales tax for vessel deconstruction activities.
- Creates new penalties for failure to register a vessel.
- Prohibits the purchase of certain boats from individuals or companies who have previously allowed a vessel to become derelict or who has committed an environmental crime.

Hearing Date: 1/28/14

Staff: Jason Callahan (786-7117).

Background:

Removal of Derelict or Abandoned Vessels.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

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

The owner of a private marina may participate in the derelict vessel removal program by contracting with a local government APE. The contract between the marina and the APE must be approved by the DNR and require the marina to be responsible for the share of vessel removal not covered by the Derelict Vessel Removal Account (Account).

Taking Possession of Derelict Vessels.

Prior to taking action on a vessel, an APE must attempt to notify the vessel's owner of its intent to remove the vessel. All notices must include specified information, including: the procedures that must be followed to reclaim possession of the vessel; possible financial liabilities; and the rights of the APE after custody of the vessel is claimed.

Once the APE takes custody of a vessel, the APE may use or dispose of the vessel in any environmentally sound manner. However, the APE 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 APE must utilize the least costly disposal method.

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

The Derelict Vessel Removal Account.

Monies in the Derelict Vessel Removal Account (Account) are used to reimburse the APEs for 90 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 APE may contribute its 10 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 are developed informally by the DNR.

Funding Vessel Removals.

Most recreational vessel owners in the state are required to annually register their vessels. The vessel registration program requires the payment of a \$2 derelict vessel removal fee. In addition, there is a \$1 derelict vessel surcharge dedicated to removing larger boats.

The Legislature has also appropriated money from the state's Capital Budget for this purpose in recent biennia.

Vessel Owner Accountability.

Beginning on July 1, 2014, the owner or operator of a vessel that is more than 40 years old and longer than 65 feet must obtain a vessel inspection before transferring ownership of the vessel to another party. A copy of the inspection report must be provided to the transferee and the DNR. Failure to do so can result in the initial owner of the vessel being liable for some of the costs should the vessel eventually become abandoned or derelict. The DNR is in the process of working with interested parties to develop rules related to the inspection process.

Transfer of Publically-Owned Vessels.

There are pre-transfer requirements on vessels owned by state and local entities. Before the ownership of a publicly-owned vessel can be transferred, a review of the vessel's seaworthiness must be completed. Any vessel deemed to be in an advanced state of deterioration must either be repaired before sale or permanently dismantled.

If the vessel is deemed seaworthy and approved for sale, the state or local entity processing the sale must collect certain information from the buyer. This includes information as to how the buyer intends to use the vessel and intent of legal moorage. The selling entity must also remove any hazardous materials from the vessel unless the materials are consistent with the buyer's intended use of the vessel. Any vessels leaving state or local ownership must have enough fuel on board to reach the buyer's initial intended destination.

These transfer requirements affect the following entities: the DNR; State Parks; the Department of Fish and Wildlife; the Department of Transportation; cities; counties; port districts; the Department of Ecology; the Department of Enterprise Services; and the state's institutions of higher education.

Summary of Bill:

Vessel owner responsibility.

Vessel owners are prohibited from leaving a vessel in the same area on state-owned aquatic lands from more than 30 consecutive days or more than 90 days in a period of one year. The prohibition does not apply if the vessel owner has consent from the DNR or a different time period allowance has been posted by a government agency with sufficient jurisdiction. A violation of this provision is a civil natural resources infraction and may be enforced by any law enforcement officer.

Vessel owners who are required to conduct a pre-sale inspection as of July 1, 2014, are prohibited to sell an unseaworthy vessel if the inspection determines that the value of the vessel is less than the anticipated costs to repair it. If this is the case, the vessel may only be sold if it is returned to seaworthiness or sold for scrap or salvage. This provision only applies to vessels that are greater than 65 feet in length and more than 40 years old.

The required inspection must be conducted by a third-party marine surveyor. The DNR may also, by rule, allow other forms of vessel condition determinations to satisfy the inspection requirement. This may include certificates of inspection by the United States Coast Guard.

In addition, the purchaser of a vessel greater than 65 feet in length and more than 40 years old must secure a marine insurance policy, or policies, concurrent with completing the purchase. The insurance policy must have a term of at least 12 months, provide coverage of at least \$300,000, and provide for the removal and disposal of the vessel should it become derelict. The DNR may, by rule, allow for the posting of adequate security with a financial institution to substitute for the insurance requirement.

Proof the policy must be provided to the seller, the DNR, and if applicable, to the vessel, the Department of Licensing (DOL) or the Department of Revenue (DOR). It is a gross misdemeanor to cancel the policy before the end of its term.

A vessel owner may still choose to sell a vessel that is deemed unseaworthy in a marine survey or to a person who fails to obtain a marine insurance policy; however, in either of those cases, the seller assumed potential secondary liability should the buyer allow the vessel to become derelict or abandoned. Challenges to secondary liability may be brought directly to a county superior court.

Database of irresponsible owners.

The DOL must maintain a database of individuals and companies that have, in the previous 10 years, been found liable for allowing a vessel to become derelict or abandoned or that have been convicted of one of an enumerated list of environmental crimes. A person or a company on the list is prohibited from purchasing a vessel greater than 30 feet in length. If a person on the list purchases a forbidden vessel, then the state may seize possession of that vessel.

The DOL must notify the person before including a name on the list and the addition of a name may be appealed to the Pollution Control Hearings Board. A person may have his or her name removed from the list by fulfilling the obligation to reimburse the state for the removal and disposal of the offending derelict or abandoned vessel or by posting a form of financial assurance that is deemed adequate by the DNR.

If a public or private moorage facility, or an APE, enters into a public auction to sell a seized vessel, those entities are expressly permitted to not sell a vessel to a person on the DOL's database even if that person is the highest bidder.

Authorities and requirements applicable to marinas.

The authority for private marinas to contract with local governments for the removal of derelict and abandoned vessels removed from their premises is expanded to include the same authority to contract with the DNR. Neither local governments nor the DNR are required to enter into these contracts.

A requirement is established for all marinas, both public and private, to obtain and maintain insurance coverage for their facilities and to require all vessels moored at their facility to display

proof of insurance as a condition of moorage. Unless the DNR determines otherwise in rule, the policies covering the vessels and the marinas must offer at least \$300,000 in coverage encompassing general, legal, and pollution liability protection. If a marina fails to maintain coverage, or allows a vessel to moor at its facility without demonstrating proof of insurance, then the marina may incur potential secondary liability for a vessel at the marina that becomes derelict or abandoned.

Encouraging vessel removal and deconstruction.

Beginning October 1, 2014, the retail sales tax is not applicable to vessel deconstruction activities. The sales tax exemption applies to permitted deconstruction facilities. Although deconstruction facilities may also engage in vessel maintenance and repair, only the deconstruction activity is exempt from the retail sales tax.

New revenue to the derelict vessel program.

A new fee is established for moorage of a commercial vessel. The fee is 20 cents per foot of vessel length for each month a commercial vessel is moored in Washington. The fee must be paid by the vessel owner, collected by the moorage provider, remitted to the DOR, and transferred to the Derelict Vessel Removal Account. The fee does not apply to vessels that are moored for less than one day.

The commercial moorage fee does not take effect until January 1, 2015.

Incentivizing vessel registration.

Any moorage facility operator that provides moorage for more than 30 days must obtain certain information from a moorage tenant. This information includes contact information for the owner, any applicable hull registration numbers, and either proof of vessel registration, an affidavit that a vessel is exempt from registration, or a written statement of the owner's intent to register the vessel. The collected information must be retained for two years and shared with the DOR, DOL, or DNR upon request. The DOR, DOL, and DNR may also inspect moorage facilities for vessels that are not properly registered.

Vessels found not to be properly registered that are also required to pay the watercraft excise tax may be assessed a penalty by the DOR. The penalty is \$100 for a first violation, \$200 for a second violation, and \$400 for violations after the second violation. The existing gross misdemeanor of registering a vessel in another state to avoid Washington's watercraft excise tax is expanded to include vessel owners who fail to register the vessel in an attempt to avoid the payment of taxes.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 301, relating to marina insurance requirements, which takes effect on October 1, 2015; sections 402 through 406, relating to the commercial moorage fee, which take

effect on January 1, 2015; and section 310, relating to appeals to the Pollution Control Hearings Board, which takes effect on June 30, 2019.