

# HOUSE BILL REPORT

## 2SHB 2457

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### As Amended by the Senate

**Title:** An act relating to derelict and abandoned vessels.

**Brief Description:** Concerning derelict and abandoned vessels.

**Sponsors:** House Committee on Appropriations (originally sponsored by 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 History:**

##### **Committee Activity:**

Agriculture & Natural Resources: 1/28/14, 2/4/14 [DPS];  
Appropriations: 2/10/14 [DP2S(w/o sub AGNR)].

##### **Floor Activity:**

Passed House: 2/17/14, 88-9.  
Senate Amended.  
Passed Senate: 3/7/14, 45-4.

#### **Brief Summary of Second Substitute Bill**

- Creates new requirements on the sale of certain vessels.
- Establishes a fee on commercial vessels required to be listed with the Department of Revenue 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 and use tax for vessel deconstruction activities.
- Creates new penalties for failure to register a vessel.

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### HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

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*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.*

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 15 members: Representatives Blake, Chair; Lytton, Vice Chair; Buys, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Chandler, Dunshee, Haigh, Hurst, Kretz, Orcutt, Pettigrew, Schmick, Stanford, Van De Wege and Warnick.

**Staff:** Jason Callahan (786-7117).

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Agriculture & Natural Resources. Signed by 30 members: Representatives Hunter, Chair; Ormsby, Vice Chair; Chandler, Ranking Minority Member; Ross, Assistant Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Carlyle, Christian, Cody, Dunshee, Fagan, Green, Haigh, Haler, Harris, Hudgins, G. Hunt, S. Hunt, Jinkins, Kagi, Lytton, Morrell, Parker, Pettigrew, Schmick, Seaquist, Springer, Sullivan, Taylor and Tharinger.

**Staff:** Dan Jones (786-7118).

### **Background:**

#### Removal of Derelict or Abandoned Vessels.

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 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.

#### 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 secondarily 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 Publicly-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.

#### **Summary of Second Substitute Bill:**

#### Vessel Owner Responsibility.

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 (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 of the vessel should it become derelict and coverage should the vessel cause a pollution event. The DNR may, by rule, allow for the posting of adequate security with a financial institution to substitute for the insurance requirement.

Proof of the policy must be provided to the seller, and if applicable, to 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.

#### Authorities and Requirements Applicable to Marinas.

The authority for private marinas to contract with local governments for the removal of derelict and abandoned vessels 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 and use 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 and use tax.

#### New Revenue to the Derelict Vessel Program.

A new fee is established for commercial vessels. The fee is set at \$3 per vessel foot and collected annually by the DOR at the time, and during the years, personal property taxes for the vessel are due. All collected revenues are directed to the Account.

The commercial vessel 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.

**EFFECT OF SENATE AMENDMENT(S):**

Changes the penalty for purchasers of vessels older than 40 years and longer than 65 feet who cancel marine insurance prematurely from a gross misdemeanor to a misdemeanor; adds as a misdemeanor a purchaser's failure to secure marine insurance as required, subject to certain exceptions; specifies certain conditions under which sellers may transfer ownership of unseaworthy vessels; changes a requirement that vessels "display" proof of insurance as a condition of moorage to a requirement that they "provide" a marina with proof of insurance; clarifies that marinas are not required to verify liability coverage for mooring vessels; clarifies that marinas must obtain proof of a mooring vessel's insurance at moorage agreement initiation or renewal after the effective date of the act; changes a secondary liability penalty for public marinas that fail to collect proof of insurance or maintain its own insurance to an ineligibility for cost reimbursement from the derelict vessel removal account; adds vessels taken into custody under the derelict vessel removal program to the definition of "transient vessels"; reduces the new derelict vessel removal fee for commercial vessels from \$3 to \$1 per vessel foot; defines a term and makes technical corrections.

**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 sections 301 and 302, relating to sales and use tax exemptions, which take effect on October 1, 2014, and sections 401 through 403, relating to the commercial vessel fee, which take effect on January 1, 2015.

## **Staff Summary of Public Testimony (Agriculture & Natural Resources):**

(In support) Derelict and abandoned vessels are contributing to the death by a thousand cuts currently afflicting the Puget Sound. Many of the trickier issues related to derelict and abandoned vessels went unsolved in last year's legislation on this topic, in part, because there are no easy or obvious answers. However, after an exhaustive interim process, this bill represents a gigantic step forward in increasing vessel owner responsibility, speeding up the process of getting the vessels out of the water, and reducing deconstruction costs.

Increasing vessel owner responsibility will reduce the input of new derelict and abandoned vessels into state waters by breaking the chain of old boats being handed down to a string of owners who are increasingly unable to financially care for an aging vessel. The insurance requirements help ensure that the purchasers of old boats are solvent and have some means to care for the vessel. If an insurer is unwilling to write a policy for a boat because of its condition, then perhaps that boat should not be sold for anything but scrap.

There is an existing inequity in how the DNR's derelict and abandoned vessels program is funded. It is funded exclusively with fees paid by recreational boaters and with general tax dollar support. Although commercial and former commercial vessels account for a large share of the problem, their owners pay nothing towards the solution. The program is currently significantly underfunded.

Many counties on the Puget Sound rely on aquaculture and geoducks for a significant portion of their economic development. These counties also rely on the economic benefits that are related to recreational boating. A proliferation of derelict and abandoned vessels hampers the ability of these industries to support local economies.

Although there may still be some work to be done on how the goals of the bill are accomplished, there is no question that the goals of the bill need to be accomplished. There is a real cost associated with inaction when it comes to derelict and abandoned vessels.

(With concerns) Small ports have a very limited capacity to collect fees and process related paperwork from the DOR. The moorage fee does not generate enough money to be worth all of the government, administrative uncertainty, and potential liability associated with it. Small businesses already have a lot of paperwork to process and this would be one more thing. The responsibility for making commercial vessels pay for a share of the derelict and abandoned vessels problem should not rest with marinas. Having commercial vessels register with the state and pay a fee at that time would be a better approach.

It is not clear if the insurance required in the bill is available on the market and, if it is, what the price of that coverage will be.

(Opposed) The bill puts all of the responsibilities for addressing the derelict and abandoned vessels problem on private moorage facilities that are at no fault and that have few legal rights to do anything about the vessels. Moorage operators will not want to collect a moorage fee and assume the liability that comes with the collection. Instead, the moorage operators will simply refuse moorage to commercial vessels. This could have an impact on the leases that the marinas have with the DNR.

The Coast Guard should be responsible for cleaning up derelict and abandoned vessels and not the state. All Americans fund the pollution cleanup activities of the Coast Guard and the problem would be lessened if the Coast Guard addressed the pollution from derelict and abandoned vessels before they sunk.

Marine insurance is issued to a vessel and no law currently requires a vessel to be covered by insurance. No insurance company will issue a policy for a boat unless it is hauled out of the water and all of its systems are inspected. Even then, there is no market for a decrepit vessel so buyers will not be able to purchase coverage.

A vessel purchasing black list is likely unconstitutional.

**Staff Summary of Public Testimony (Appropriations):**

(In support) This bill went through a well-worked bipartisan process and gives the state more tools to prevent older boats from becoming a problem down the road.

The fiscal impact of this bill is minimal and the return on investment could be huge. In the past 30 to 40 years the state has made a multi-billion dollar investment in cleaning Puget Sound.

This bill asks commercial vessel owners who currently do not pay into derelict vessel prevention activities to pay. The money collected from commercial vessel owners would be put to good use preventing oil spills and habitat destruction caused by these vessels. In recent years there have been high-profile derelict vessel sinkings, and salvage costs often run into the millions of dollars for the state.

Recreational boaters currently pay into the derelict vessel removal program as part of annual registration fees. The equity contained in this bill is critical. Money previously appropriated in the capital budget for derelict vessel removal is appreciated, but the overall citizenry should not need to subsidize derelict vessel activities.

(With concerns) Coastal Fisheries supports the goal of speeding up removal of derelict vessels, but cannot support the bill at this time, specifically section 601. There are commercial vessels, and then there are commercial fishing vessels. Commercial fishing vessels are not the problem, and are already required to carry expensive hull and pollution insurance and pay an excise tax that goes into the State General Fund.

(Commented) The vessel that leaked near Whidbey Island was deliberate sabotage, and many people involved in vessel sinking events do not even know they are targets. All of these vessel crashes are orchestrated by corporations, and the 2010 Congressional elections were rigged.

(Opposed) None.

**Persons Testifying (Agriculture & Natural Resources):** (In support) Drew Hansen, prime sponsor; Megan Duffy and Melissa Ferris, Department of Natural Resources; Bruce Wishart,

Puget Sound Keeper Alliance and Washington Environmental Council; Naki Stevens, Sound Action; David Byers, Department of Ecology; Mo McBroom, The Nature Conservancy; John Austin, Jefferson County Commissioner; Gerry O'Keefe, Washington Public Ports Association; Doug Levy, Recreational Boating Association of Washington; and Cliff Webster, Northwest Marine Trade Association.

(With concerns) Kacey Baker, Washington Harvesters Association.

(Opposed) Warren Aakraviic, Ballard Oil; and John Adams, Seattle General Insurance.

**Persons Testifying** (Appropriations): (In support) Kristen Swendall and Melissa Ferris, Department of Natural Resources; Naki Stevens, Sound Action; Bruce Wishert, Puget Sound Keeper Alliance and Washington Environmental Council; and Doug Levy, Recreational Boating Association of Washington.

(With concerns) Tom Echols, Coalition of Costal Fisheries.

(Commented) Lucy Luddington.

**Persons Signed In To Testify But Not Testifying** (Agriculture & Natural Resources): None.

**Persons Signed In To Testify But Not Testifying** (Appropriations): None.