

SENATE BILL REPORT

SB 5663

As of February 20, 2013

Title: An act relating to derelict and abandoned vessels in state waters.

Brief Description: Regarding derelict and abandoned vessels in state waters.

Sponsors: Senators Pearson, Ranker, Tom, Rolfes, Hewitt, Sheldon, Hatfield, Bailey, Parlette, Kline and Roach; by request of Department of Natural Resources.

Brief History:

Committee Activity: Natural Resources & Parks: 2/14/13, 2/19/13.

SENATE COMMITTEE ON NATURAL RESOURCES & PARKS

Staff: Curt Gavigan (786-7437)

Background: Derelict Vessel Removal Program Generally. In 2002, the Legislature established what has become known as the Derelict Vessel Removal Program (DVRP), and which is administrated by the Department of Natural Resources (DNR). Under DVRP, certain state agencies and local governments, including DNR, have the authority to take custody and dispose of abandoned or derelict vessels on or above aquatic lands within their jurisdiction. These agencies are known as authorized public entities (APEs), and also include entities such as the Department of Fish and Wildlife (DFW), the State Parks and Recreation Commission (State Parks), and cities, counties, and port districts with jurisdiction over the aquatic lands.

Abandoned or Derelict Vessels. In order for an APE to take action, a vessel must be abandoned or derelict under state law. In order to be abandoned, a vessel must be impermissibly left in the same area for a period of 30 consecutive days, or 90 days in a 365 day period, where the owner is either unknown, cannot be located, or is unwilling to take control of the vessel. In order to be derelict, a vessel must have an owner who exerts control over the vessel that is impermissibly left on public waters or property, impermissibly left on private property, or is left for seven days and is in danger of sinking, obstructing a waterway, or endangering life or property.

Notice and Procedural Requirements. Before taking custody of an abandoned or derelict vessel, an APE must generally follow specified notice and procedural requirements. These include providing at least 20 days' notice of intent to take custody through the newspaper, by

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.

posting notice on the vessel, and by mail to the owner. However, an APE may take immediate custody of a vessel in certain situations such as where a vessel is in immediate danger of sinking or poses a reasonably imminent threat to human health or safety.

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.

Funding and Reimbursement for Vessel Removals. An abandoned or derelict vessel owner must reimburse an APE for reasonable removal and disposal costs. However, an APE may generally seek reimbursement of up to 90 percent of such costs from DNR if the owner is unknown or insolvent.

DVRP account funds are prioritized in statute for vessels that are in danger of sinking, breaking up, or blocking navigation channels, or that present environmental risks such as leaking fuel or other hazardous substances. Under this authority, DNR has developed more specific guidelines for prioritizing vessel removal.

DVRP reimbursement funding comes primarily from recreational vessel registration surcharges, including a permanent \$2 fee on each vessel registration and an additional temporary \$1 surcharge to address the derelict vessel backlog. The temporary surcharge is set to expire January 1, 2014. If the balance of DVRP account exceeds \$1 million, then DNR must contact the Department of Licensing and request that the collection of the \$2 derelict vessel removal fee be suspended.

Criminal Liability. It is a misdemeanor to cause a vessel to become abandoned or derelict. A misdemeanor is punishable by imprisonment in a county jail for not more than 90 days, not more than \$1,000 fine, or both.

Summary of Bill: Modifies Funding and Reimbursement for Vessel Removals. The bill makes permanent the additional \$1 surcharge that was set to expire January 1, 2014. Additionally, the \$1 million cap on the DVRP account is removed. Consistent with other reimbursement levels from the DVRP account, State Parks may be reimbursed for up to 90 percent of its costs securing and removing unauthorized or nuisance vessels.

By January 30, 2014, DNR must reevaluate the criteria for prioritization of the vessel removals to be funded from DVRP account. In doing so, DNR must consider how vessels located in the vicinity of aquaculture and other sensitive areas should be prioritized.

Authorizes a Vessel Turn-in Program. DNR may spend up to \$200,000 per biennium from DVRP account for purposes of a turn-in program. DNR must design the turn-in program to dispose of as many vessels as resources allow, particularly those at greatest risk of becoming abandoned or derelict. Participation in the turn-in program is voluntary, and applicants must demonstrate that they are a state resident or business and have a vessel in an advance state of disrepair, that has minimal or no value, or has a high likelihood of becoming abandoned or

derelict. DNR must provide a summary of the turn-in program to the Legislature by September 1, 2014.

Requires a Vessel Inspection Prior to the Transfer of Certain Vessels. Beginning in July 2014, a vessel owner must obtain an inspection before transferring a vessel that meets certain requirements. The vessel owner must provide copies of the vessel inspection to DNR and the person receiving the vessel. An owner who does not do so may be liable for removal and disposal costs for a vessel that is subsequently abandoned by the person receiving the vessel. The inspection requirement applies to vessels that are more than 65 feet long, 40 years old, and must be registered or listed for property tax purposes with the state. DNR must adopt procedures and standards for these inspections by December 31, 2013, in cooperation with appropriate stakeholders.

Establishes a Process for the Transfer of Vessels Owned by Certain Public Agencies. Certain state and local government entities must conduct a thorough review of a vessel's condition, operating capability, and containers and materials on the vessel prior to transferring the vessel. Applicable vessels are those owned by the Department of Enterprise Services, DNR, DFW, State Parks, the Department of Transportation, the Department of Ecology (DOE), state colleges and universities, cities, counties, and port districts. If the entity finds that the vessel meets the definition of a derelict vessel, it may either rehabilitate or dispose of the vessel. Otherwise, the entity may transfer the vessel after:

- obtaining from the person receiving the vessel its planned use and information demonstrating proof of legal moorage;
- removing any containers or materials that contain hazardous substances, except that DNR may transfer a vessel with a reasonable amount of fuel and with hazardous substances if consistent with the anticipated use of the vessel; and
- registering and titling the vessel under state law, if necessary.

Addresses the Disposal of Certain Abandoned or Derelict Vessels in the Custody of Certain Entities. A private moorage facility may, at its discretion, establish a minimum bid or letter of credit when selling a vessel abandoned at the facility. The stated purpose of this requirement is to discourage the future abandonment of the vessel.

A public moorage facility operator, including State Parks when acting in that capacity, must conduct a thorough review of a vessel under its control prior to transferring ownership. The operator may not sell or give away a vessel that meets the definition of a junk vessel. A junk vessel is a vessel that meets three of the following conditions:

- is three years or older;
- is extensively damaged, such as missing a motor, mast, or portholes;
- is apparently inoperable; or
- has an approximate fair market value less than or equal to the approximate scrap value.

An APE can generally dispose of an abandoned or derelict vessel over which it has taken custody. However, if the vessel is a junk vessel, the APE cannot sell, auction, or give away the vessel unless:

- the vessel is being sold for scrap or another use that will remove it from state waters;

- the purchaser submits a business plan indicating an intent to use the vessel in a manner that will remove it from state waters; or
- the APE conducts a background check on the purchaser and concludes that the purchaser will follow the business plan.

Addresses Vessel-Related Enforcement Issues. DOE's vessel-boarding authority is expanded to allow boarding of an abandoned or derelict vessel at any reasonable time in order to assess and mitigate threats including to health and safety.

Most vessel registration-related violations are made a class 2 civil infraction instead of a misdemeanor. A class 2 civil infraction has a maximum fine of \$125 not including statutory assessments. The bill specifies that the ticketing agency receives any funds remaining after deduction of court and administrative costs.

Appeals of derelict vessel-related actions by APEs other than state agencies that have not adopted procedures for appeals go through same process as for actions by state agencies, which utilizes the Pollution Control Hearings Board. These appeals may be heard by a single member of the Board.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: This bill provides the means to better address abandoned derelict vessels and provides further authority for the enforcement of derelict vessel cleanup and preventative measures in Washington State. The strengthening of derelict vessel management includes implementing preventative measures in which parties involved in the sale of a derelict vessel are held more accountable and are more informed about the state of the vessel. Moving this bill forward will also strengthen local shell fish growers' ability to avoid environmental impacts caused by derelict vessel pollution and will also provide better-navigable and healthier waterways for all.

CON: There is a provision in this bill that prohibits publically owned marinas from getting rid of a junk vessel for salvage purposes, requiring publically owned marinas to cover those salvage and cleanup costs. Further, this bill includes negative inferences about older vessels that may not be necessary.

Persons Testifying: PRO: Bill Anderson, Citizens for a Healthy Bay; Todd Hass, Puget Sound Partnership; Jim Jesernig, Pacific Coast Shellfish Growers; Brad Tower, Schnitzer Steel; Jerry Joyce, Seattle Audubon; David Byers, DOE; Bruce Wishart, People for Puget Sound, WA Environmental Council; Megan Duffy, Melissa Ferris, DNR.

CON: Carl Schroeder, Assn. of WACities; Johan Hellman, WA Public Ports.