

FINAL BILL REPORT

ESHB 2376

C 286 L 02

Synopsis as Enacted

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).

House Committee on Natural Resources

House Committee on Appropriations

Senate Committee on Natural Resources, Parks & Shorelines

Senate Committee on Ways & Means

Background:

The Department of Natural Resources is charged with responsibility for 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 uncertain 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; but 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 authority to remove and dispose of a vessel once the immediate threat has been removed. Likewise, the Corps has authority to remove floating or sunken debris, but only if that debris is a hazard to navigation. This authority is usually used in federal, not state, waters.

The 2001 Washington Legislature passed legislation which addressed derelict vessels. This legislation authorizes 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:

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 its

jurisdiction that has become abandoned or derelict. The Department of Natural Resources has an oversight and rulemaking role in the removal and disposal process. The department also has authority to remove any vessel within the jurisdiction of an authorized public entity that asks the department to act in its place. Likewise, an authorized public entity may request the department to allow it to remove a vessel within the department's jurisdiction.

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 specified information, including the procedures that must be followed 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 the authorized public entity takes custody of a vessel, 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 with any environmental damage caused by the vessel.

An 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 20 days, the right to a hearing will be deemed waived. If a vessel is impounded by a marina operator, the owner has 10 days to contest the impoundment.

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 its 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 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 is specifically earmarked to be deposited into the derelict vessel removal account. If the balance in 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.

Votes on Final Passage:

House 97 0

Senate 47 0 (Senate amended)

House 97 0 (House concurred)

Effective: January 1, 2003