
**Agriculture & Natural Resources
Committee**

ESSB 5663

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

Sponsors: Senate Committee on Natural Resources & Parks (originally sponsored by Senators Pearson, Ranker, Tom, Rolfes, Hewitt, Sheldon, Hatfield, Bailey, Parlette, Kline and Roach; by request of Department of Natural Resources).

Brief Summary of Engrossed Substitute Bill

- Creates future requirements for owners of certain vessels to conduct a marine survey prior to the sale of a vessel.
- Removes the expiration date on the \$1 vessel registration derelict vessel removal surcharge.
- Requires authorized public entities (APEs) to survey the seaworthiness of vessels prior to sale.
- Consolidates certain related appeals at the Pollution Controls Hearing Board.
- Decriminalizes the failure to register a vessel.
- Provides all APEs, and the Department of Ecology, with the authority to board a derelict vessel.
- Creates a vessel turn-in program.
- Creates a work group to study, among other things, potential financial and moorage facility responsibility options.

Hearing Date: 3/20/13

Staff: Jason Callahan (786-7117).

Background:

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.

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. Likewise, an APE may request the DNR to allow it to remove a vessel within the DNR's jurisdiction.

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.

Appeals.

A vessel owner appealing a local jurisdiction's possession of his or her vessel, or assessment of reimbursement owed, is required to appeal to the Pollution Controls Hearing Board (PCHB) if the APE assuming custody is a state agency. Appeals to local jurisdictions must follow any locally-adopted appeals procedure. If the local jurisdiction has not established their own proceedings, then local appeals follow a procedure established for public ports related to abandoned vessels.

The Derelict Vessel Removal Account.

Monies in the Account are used to reimburse the APEs, other than the State Parks and Recreation Commission (State Parks), 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 (State Parks is reimbursed up to 70 percent). 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 vessel owners in the state are required to annually register their vessel. 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. This surcharge is set to expire on January 1, 2014.

If the balance of the Account exceeds \$1 million, then the DNR must contact the Department of Licensing and request that the collection of the \$2 derelict vessel removal fee be suspended.

Summary of Bill:

Vessel Owner Accountably.

Beginning on July 1, 2014, the owners or operators of vessels that are more than 40 years old and longer than 65 feet must also 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 must work with interested parties to develop the rules around the inspection process.

Vessel Turn-in Program.

The DNR is directed to develop and administer a turn-in program for soon-to-be derelict vessels. The purpose of the program is to enable the DNR to dismantle vessels that do not yet satisfy the definition of "derelict vessel" yet still pose a threat to becoming derelict or abandoned in the near future. The DNR is responsible for developing the standards and guidelines for the program, including eligible participants. Eligible participants include private marina operators who have gained title to a vessel in an advanced state of disrepair and other Washington residents who own a vessel that is likely to soon become derelict and who does not have the needed resources to properly dispose of the vessel. Funding for the vessel turn-in program may come from the Account, but may not exceed \$200,000 per year.

Funding.

The \$1 annual derelict vessel removal surcharge applied to each vessel registration is made permanent and will not expire in 2014. The DNR is directed to reevaluate the priority system of how Account funds are spent. The reevaluation must consider how vessels located in sensitive areas, including shellfish growing areas, must be prioritized.

The \$1 million cap on the Account, beyond which vessel registration surcharges related to derelict vessels are no longer collected, is removed. Limitation on the use of the \$1 annual derelict vessel removal surcharge related to boat size is also removed.

Moorage Facility Operators.

If the moorage facility operator is the State Parks, the percentage of reimbursement from the Account is raised from 70 percent to 90 percent. If the moorage facility is a private sector venture, the scope of their access to funds in the Account is expanded from just removal costs to removal and disposal costs.

Transfer of Publically-Owned Vessels.

New pre-transfer requirements are placed on vessels owned by state and local entities. Before the ownership of a publically-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 sections affect the following entities: the DNR; State Parks; the Department of Fish and Wildlife; the Department of Transportation; cities and code cities; counties; port districts; the Department of Ecology; the Department of Enterprise Services; and the state's institutions of higher education.

Enforcement.

The current criminal enforcement mechanism for enforcing vessel registration requirements is changed to a class 2 civil infraction. The existing maximum penalty for a class 2 civil infraction of \$125 applies to these enforcement actions.

A vessel owner appealing a local jurisdiction's possession of his or her vessel, or assessment of reimbursement owed, is required to follow the default state procedure at the PCHB if the local jurisdiction has not established their own proceedings. Once at the PCHB, all appeals may be heard by a single board member who may or may not be an administrative law judge employed by the PSHB.

Boarding Authority.

All APE's are provided with the authority to board any vessel at any reasonable time for the purposes of administering the laws applicable to derelict and abandoned vessels. This authority may be expanded to the Department of Ecology if it is invited by one of the APE's. If a warrant is required for the boarding, then all of the APE's, and the Department of Ecology, are given the authority to seek a warrant in order for the boarding. Any warrant, if required, must be obtained from the Thurston County Superior Court or the court in the county where the vessel is located. A reasonable effort must be made to contact the owner of the vessel before a warrant is sought.

Legislative Report.

The DNR is directed to work with stakeholders to evaluate the derelict vessel program and potentially suggest legislative changes. The DNR must include in its focus potential financial responsibility requirements for vessel owners, the responsibilities of moorage facility operators, and the identification of roadblocks to quicker vessel decommissioning.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.