

SENATE BILL REPORT

ESHB 1245

As of March 22, 2013

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

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

Sponsors: House Committee on Agriculture & Natural Resources (originally sponsored by Representatives Hansen, Smith, Ryu, Wilcox, Maxwell, Warnick, Blake, Upthegrove, MacEwen, Lytton, Van De Wege, Takko, Walsh, Jenkins, Fitzgibbon, Hunt, Haigh, Morrell, Seaquist, Tharinger, Hudgins, Stanford and Hayes; by request of Department of Natural Resources).

Brief History: Passed House: 3/07/13, 96-1.

Committee Activity: Natural Resources & Parks: 3/21/13.

Brief Summary of Engrossed Substitute Bill

- Makes permanent a temporary \$1 surcharge on vessel registrations set to expire on January 1, 2014.
- Authorizes a voluntary vessel turn-in program allowing the Department of Natural Resources (DNR) to work with interested vessel owners to get high-risk vessels out of the water.
- Beginning July 1, 2014, an owner must obtain a vessel inspection prior to selling a vessel that is over 65 feet long and 40 years old.
- Directs state and local agencies to review the condition of any agency-owned vessel prior to its transfer, and establishes a process for vessels identified as high risk.
- Addresses enforcement issues including decriminalizing vessel registration violations and modifying appeals processes.
- Provides vessel boarding and inspection authority to the Department of Ecology for abandoned and derelict vessels consistent with an administrative warrant processes.
- Establishes an agency and stakeholder process to evaluate additional options to promote owner responsibility and facilitate vessel removal.

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.

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), 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 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 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 by 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 a \$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 the 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 the 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 meet criteria including that they are a state resident or business and have a vessel in an advanced 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 which 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 is in a state of advanced deterioration or poses a reasonably imminent threat to health or safety, it may either rehabilitate or permanently dispose of the vessel by methods such as deconstruction or landfill. Otherwise, the entity may transfer the vessel after:

- obtaining from the person receiving the vessel its planned use and information demonstrating their intent to obtain 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.

Provides Additional Authority to a Private Moorage Facility Disposing of Vessels in Its Custody. 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.

Addresses Vessel-Related Enforcement Issues. 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.

Provides Vessel Boarding and Inspection Authority. DOE may board an abandoned or derelict vessel at reasonable times for purposes of identifying a vessel owner or mitigating potential threats to health, safety, or the environment. In order to exercise this authority, the APE must request an administrative search warrant unless a warrant is not required. An APE may invite DOE to use this boarding authority prior to or when the APE takes custody of a vessel.

Establishes a Process to Evaluate Additional Improvements to Achieve Vessel Removal. DNR must work with DOE and appropriate stakeholders to evaluate potential changes relating to owner responsibility for abandoned and derelict vessels and challenges associated with their removal. Specifically, the process must address administrative and legislative options to prevent and clean up these vessels, as well as challenges in deconstructing problem vessels for scrap metal. DNR must provide a summary of the evaluation and any proposed legislation to the Legislature by December 15, 2013.

Appropriation: None.

Fiscal Note: Available.

[OFM requested ten-year cost projection pursuant to I-960.]

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony: PRO: This bill provides a shift in approach to derelict vessels in Washington State waters from one of cleanup to prevention, while maintaining an understanding that the existing inventory of vessels presently affecting the

environment and navigable waterways must be pursued as soon as possible. There is wide support from the boating industry to maintain current funding sources through fees on recreational boating licenses, but the workgroup needs to look at the potential for additional funding such as from commercial vessels.

Persons Testifying: PRO: Representative Hansen, prime sponsor; Kristin Swenddal, DNR; Cliff Webster, NW Marine Trade Assn.; Brad Tower, Schnitzer Steel; Doug Levy, Recreational Boating Assn. of WA.