

HOUSE BILL REPORT

SHB 1605

As Amended by the Senate

Title: An act relating to vessel impoundment.

Brief Description: Concerning vessel impoundment.

Sponsors: House Committee on Public Safety (originally sponsored by Representatives Pettigrew, Hayes and Klippert; by request of Parks and Recreation Commission).

Brief History:

Committee Activity:

Public Safety: 2/7/17, 2/16/17 [DPS].

Floor Activity:

Passed House: 2/28/17, 97-1.

Senate Amended.

Passed Senate: 4/7/17, 46-1.

Brief Summary of Substitute Bill

- Allows a law enforcement officer to impound a vessel when the operator is arrested for operating the vessel in a reckless manner or while under the influence of alcohol or drugs.
- Outlines procedures for vessel impoundment, redemption, and forfeiture, and provides liability protection for law enforcement and receiving facilities for actions associated with vessel impoundment.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Goodman, Chair; Pellicciotti, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Appleton, Chapman, Griffey, Holy, Orwall, Pettigrew and Van Werven.

Staff: Omeara Harrington (786-7136).

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.

Operating a Vessel in a Reckless Manner or Under the Influence.

It is unlawful to operate a vessel in a reckless manner, or while under the influence of alcohol or drugs. A person is guilty of operating a vessel while under the influence if he or she: (1) operates the vessel while under the influence of or affected by intoxicating liquor, marijuana or any drug, or a combination of such substances; or (2) has, within two hours after operating the vessel, a blood or breath alcohol concentration of 0.08 or higher or a tetrahydrocannabinol (THC) concentration of 5.00 or higher.

A "vessel" includes every description of watercraft on the water, other than a seaplane, used or capable of being used as a means of transportation on the water. However, it does not include inner tubes, air mattresses, sailboards, and small rafts or flotation devices or toys customarily used by swimmers.

Operating a vessel in a reckless manner is a misdemeanor. Operating a vessel while under the influence of alcohol or drugs is a gross misdemeanor. In addition to the statutory penalties imposed, the court may order the defendant to pay restitution for any damages or injuries resulting from the offense.

Impoundment.

When a driver of a motor vehicle is arrested for impaired driving, the arresting officer is required to initiate impoundment procedures.

When a vehicle is impounded, the towing operator must send an impound notice to the legal owner. This notice must be given in writing within 24 hours of impoundment and must inform the owner of the identity of the person or agency authorizing the impound, and the contact information for the towing firm. After being held for 120 consecutive hours, a vehicle is considered abandoned. A report must be filed with the Department of Licensing (DOL), and the owner is provided a notice of custody and sale. If the vehicle remains unclaimed, the vehicle is subject to sale at public auction.

An impounded vehicle may be redeemed by its legal owner any time before the start of the auction upon payment of towing and storage charges. However, a vehicle cannot be redeemed by the driver for at least 12 hours following the time the impounded vehicle arrives at the storage facility if the impoundment is the result of an impaired driving arrest.

No similar process exists for impoundment of vessels following an arrest for operating the vessel in a reckless manner, or while under the influence of alcohol or drugs.

Summary of Substitute Bill:

When the operator of a vessel is arrested for operating the vessel in a reckless manner, or while under the influence of alcohol or drugs, the arresting officer may impound and secure the vessel.

Alternatives to Impoundment.

Unless vessel impound is required for evidentiary purposes, an officer must seek reasonable alternatives to impound, including, but not limited to:

- working with the owner to locate a qualified operator who may take possession of the vessel within 30 minutes;
- securing the vessel in a marina, dock, or moorage facility; or
- towing the vessel to the closest boat ramp, marina, or other facility where the owner can meet the officer within 30 minutes to secure or take possession of the vessel.

Impoundment.

If a reasonable alternative is not available and the vessel is impounded, the officer may secure the vessel by storing it in a moorage facility that agrees to accept the vessel, or may place the vessel in the custody of a licensed operator to provide commercial towing assistance to a storage facility or other location designated by the vessel operator or owner. All vessels must be handled appropriately and returned in substantially the condition as they existed before being impounded, with all personal property in the vessel kept intact and returned to the owner during the storing entity's normal business hours.

An impounding officer must notify the legal and registered owners of the impoundment of the vessel. Notice must be in writing and sent within one business day following the impound and may also be served on the operator at the time of impound, if the operator owns the vessel. Notice must be on a vessel impound authorization and inventory form provided by the DOL, and include: information regarding the storage facility; notice that the owner has the right to redeem the vessel and to request a hearing to contest the impoundment; and the rate that the owner is being charged for storage of the vessel.

The owner of an impounded vessel is responsible for paying all fees associated with towing and storage. A moorage facility must store the vessel in the least costly appropriate option available, but may charge up to 125 percent of normal moorage rates, and may charge a fee for securing the impounded vessel. An entity providing emergency vessel towing services that accepts a vessel for towing and storage may charge its normal fees. Costs of storage and removal constitute a lien on the vessel until paid.

Officers impounding and securing vessels, and their employing agencies, are not liable for damage to or theft of the vessel or its contents, or for damages for loss of use of the vessel. An entity acting in good faith in towing or storing an impounded vessel, or that in good faith renders assistance to an impounding officer, is not liable for resulting damages, absent gross negligence or willful or wanton misconduct.

Redemption.

The owner of an impounded and stored vessel may redeem the vessel within 15 days, or until forfeiture, by paying all towing and storage fees. An impounded vessel may not be redeemed by the operator within a 12-hour period starting at the time of the operator's arrest, however it may be redeemed by or released to an owner other than an operator before 12 hours have elapsed. The moorage facility may request that the impounding officer, or a representative of that officer's agency, is present during redemption.

Any person seeking to redeem an impounded vessel has 10 days to request an evidentiary hearing in the district or municipal court of the jurisdiction in which the vessel was impounded to contest the validity of the impoundment. At the conclusion of the hearing, the

court must determine whether the impound was proper, whether the charged fees were in compliance with authorized rates, and who is responsible for payment of the fees.

If the impoundment is deemed to be in violation of legal requirements, then the owner of the vessel bears no responsibility for fees, and instead, the agency authorizing impoundment is liable. The court must enter judgment in favor of the storage facility for storage fees, and in favor of the petitioner for filing fees. However, the impounding officer and his or her employer are not liable for damage to or theft of the vessel or its contents, or damages for loss of use of the vessel, if the officer had reasonable suspicion that the operator of the vessel was operating or in physical control of the vessel while under the influence of alcohol, marijuana, or any drug, was operating the vessel in a reckless manner, or if the officer otherwise acted reasonably under the circumstances. If any judgment is not paid within 15 days, the court must award reasonable attorneys' fees and costs against the defendant in any action to enforce the judgment.

Forfeiture.

If an impounded vessel is not redeemed within 15 days of impoundment, the entity storing the vessel may initiate forfeiture. To initiate forfeiture, the entity storing the vessel must mail notice to the owner and any lienholder of the intent to forfeit. The notice must state, at a minimum: the intent to forfeit; that, upon forfeiture, the owner forfeits all ownership interest; that the entity has the right to possess and dispose of the vessel upon forfeiture; and that the owner may avoid forfeiture by paying all towing and storage fees within 20 days.

Forfeiture is complete 20 days after notice of intent to forfeit is provided. Any personal property in the vessel not claimed prior to forfeiture must be turned over to the impounding law enforcement agency, and the forfeiting entity must dispose of the vessel through sale. The proceeds of the sale must be applied first to payment of reasonable charges incurred by the entity for towing, storage, and sale, then to the owner or lienholder. Any surplus must be remitted to the Department of Natural Resources (DNR) for deposit in the Derelict Vessel Removal Account. If the DNR receives a valid claim from the registered vessel owner of record at the time of forfeiture within one year from the date of the sale, the DNR must remit the surplus to the owner. If the sale is for a sum less than the applicable charges, the entity is entitled to assert a claim for the deficiency. Any current law requirement to obtain a vessel inspection prior to transfer must be complied with.

Within 14 days of forfeiture, the forfeiting entity must send to the DOL a forfeited vessel disposition report, along with a copy of the impound authority and inventory form and the notice of intent to forfeit for inclusion in the vessel's ownership records. The forfeited vessel disposition report relieves the previous owner from liability for the vessel and transfers liability to the party to whom the forfeiting entity transfers the vessel.

Pattern Forms.

The DOL, in collaboration with the State Parks and Recreation Commission, must create forms for use in the process for impound, redemption, and forfeiture of vessels, including a vessel impound authorization and inventory form, and a forfeited vessel disposition report form.

EFFECT OF SENATE AMENDMENT(S):

All underlying provisions of the bill are retained with the following changes:

- A definition of "secure moorage" is provided, and it is specified that an impounding officer may place an impounded vessel in a secure or other type of moorage facility. In addition to not being required to accept an impounded vessel for towing or storage, a moorage facility or towing service provider is not required to accept a vessel that has been "otherwise secured."
- A moorage facility storing an impounded vessel may request only that a representative of the impounding agency be present during redemption of the vessel, rather than allowing the facility to request the presence of either the impounding officer or a representative of the agency. However, the impounding agency must provide a representative upon the moorage facility's request.
- Changes are made to the forfeiture and foreclosure process. Forfeiture of the owner's interest is differentiated from foreclosure. A moorage facility may require that the impounding officer's agency take responsibility for the foreclosure process before accepting an impounded vessel. A foreclosure cannot be completed while a hearing to contest the validity of the impoundment or an appeal is pending.
- Surplus funds resulting from the sale of a foreclosed vessel are remitted for deposit in the Derelict Vessel Removal Account only if more than \$1,000 remains after foreclosure and satisfaction of any bona fide security interests. Funds must be remitted to the Department of Licensing, rather than the Department of Natural Resources. The provision is removed that required remittance of surplus moneys to the former registered owner when a claim made within one year of the date of sale following foreclosure.
- Language is removed stating that an entity accepting an impounded vessel that, in good faith, acts to provide towing or storage of the vessel is not liable for civil damages incurred in the performance of trailering, towing, or storage, absent gross negligence or willful or wanton misconduct. However, language remains stating that any individual or entity who in good faith provides trailering, towing, or secured or other moorage of an impounded vessel is not liable for any damage to or theft of the vessel or its contents, or for damages for loss of use, resulting from any act or omission absent gross negligence or willful or wanton misconduct. Immunity is provided for individuals and entities participating in the impoundment process, and impounding agencies, for damages arising from any act or omission committed during the foreclosure process.
- Other minor wording changes are made.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) Safety on the water is incredibly important. Operating a vessel on the water is just as important as driving a vehicle. Without proper enforcement there is an opportunity for

loss of life. This change is needed to help law enforcement complete their duties when they have to make an impoundment, and to provide them with protection in doing so.

This proposal is part of a broader boating under the influence campaign. Boating under the influence is a significant contributor to fatalities. Enforcement is difficult. This will provide direction for logistically complicated situations in which an operator is arrested and there is no person available to take the vessel. These are inherently stressful situations, often involving rough waters, intoxicated persons, drowning victims, and injuries.

There is no current process applicable to these situations. The motor vehicle code has a detailed process for vehicle impound, but impound is not mentioned in the vessel code. Currently, officers do everything they can to not impound, but when there is no other option they have to use the vehicle impound forms under community caretaking principles. The legislation requires law enforcement to exhaust reasonable alternatives prior to impound, so forfeiture will be rare, and due process will be honored as is required under the federal and state constitutions. Local partnerships will be required to carry out this legislation, as officers will have to work with local marinas that have the option to decline impounded vessels. This law would increase safety.

(Opposed) None.

(Other) Providing clear statutory authority in these situations is good, as is the need for due process, but there are concerns with how complicated the proposed process is. It would be beneficial to simplify the bill.

The ports support law enforcement authority to impound, but there are problems with the processes laid out in the bill, which are too onerous and transfer the burdens of locating and verifying ownership, and associated risks, to moorage facilities. The language allowing moorage facilities to not accept vessels is appreciated, but this leaves law enforcement with few options as some jurisdictions only have one facility.

Persons Testifying: (In support) Representative Pettigrew, prime sponsor; Wade Alonzo, Washington State Parks and Recreation; and Erik Olson, Washington Department of Fish and Wildlife.

(Other) Chris Herman, Washington Public Ports Association; and James McMahan, Washington Association of Sheriffs and Police Chiefs.

Persons Signed In To Testify But Not Testifying: None.