

SENATE BILL REPORT

SB 5192

As Passed Senate, February 15, 2023

Title: An act relating to authorizing administrative law judges to substitute for pollution control hearings board members in deciding derelict vessel appeals.

Brief Description: Authorizing administrative law judges to substitute for pollution control hearings board members in deciding derelict vessel appeals.

Sponsors: Senators Shewmake, Hunt, Nguyen and Wellman; by request of Environmental and Land Use Hearings Office.

Brief History:

Committee Activity: Agriculture, Water, Natural Resources & Parks: 1/19/23, 1/26/23 [DP].

Floor Activity: Passed Senate: 2/15/23, 47-0.

Brief Summary of Bill

- Clarifies that administrative law judges employed by the Pollution Control Hearings Board (PCHB) may substitute for PCHB members in hearing certain appeals brought under the Derelict Vessel Removal Program.

SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS

Majority Report: Do pass.

Signed by Senators Van De Wege, Chair; Salomon, Vice Chair; Muzzall, Ranking Member; Rolfes, Shewmake, Short, Stanford, Wagoner and Warnick.

Staff: Jeff Olsen (786-7428)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Background: Derelict Vessel Removal Program. The Derelict Vessel Removal Program (DVRP) is administered by the Department of Natural Resources (DNR). Under the DVRP, certain public entities, including DNR and most public agencies that own or manage aquatic lands, may take custody and dispose of abandoned or derelict vessels on aquatic lands within their jurisdiction. The owner of an abandoned or derelict vessel is responsible for the cost of removal and disposal of the vessel.

Any owner of a vessel that has been seized under the DVRP may request a hearing before the Pollution Control Hearings Board (PCHB) to appeal either the seizure or the amount of reimbursement owed to the agency that removed the vessel.

Pollution Control Hearings Board. The PCHB is an administrative body that hears and decides appeals from state and local governmental agencies on a wide variety of environmental permits and penalty orders. The PCHB is administered by the Environmental and Land Use Hearings Office (ELUHO), and has three members, all of whom are appointed by the Governor and confirmed by the Senate for staggered six-year terms. One of the three PCHB members must be an attorney.

An appeal brought under the DVRP, whether to challenge the seizure of a vessel or the amount of reimbursement owed to the agency that removed the vessel, may be heard by one member of the PCHB, whose decision is the final decision of the PCHB. For appeals that involve a derelict or abandoned vessel only, an administrative law judge employed by the PCHB may be substituted for a PCHB member.

Administrative Law Judges. Administrative law judges preside over administrative hearings and issue written orders affirming, modifying, or reversing agency decisions. The ELUHO employs administrative law judges to facilitate a wide range of administrative processes. The Director of ELUHO may appoint administrative law judges to serve on cases before the PCHB.

Summary of Bill: The PCHB may substitute an administrative law judge employed for a PCHB member to hear DVRP appeals to challenge the seizure of a vessel or the amount of reimbursement owed to the agency that removed the vessel.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony: PRO: This bill will reduce confusion and increase administrative efficiency for the PCHB. There is a statutory discrepancy that is confusing to

some appellants in the derelict vessel removal program. Many of these appellants don't have attorneys and are experiencing financial and other crises at the time of their appeals. The PCHB oversees many complex environmental cases, while hearings on derelict vessels tend to be less complex. Under the derelict vessel statutes, a PCHB board member is required to decide on the derelict vessels appeal. Under the PCHB statutes, an administrative law judge may hear a derelict vessel appeal. This discrepancy can leave appellants upset that the process is not more transparent. Allowing judges to hear and decide on derelict vessel appeals will free up board members time to focus on more complicated issues.

Persons Testifying: PRO: Senator Sharon Shewmake, Prime Sponsor; Dominga Soliz, Environmental & Land Use Hearings Office.

Persons Signed In To Testify But Not Testifying: No one.