

HOUSE BILL REPORT

ESHB 1245

As Passed House:
March 7, 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:

Committee Activity:

Agriculture & Natural Resources: 1/29/13, 2/14/13 [DPS];
Appropriations Subcommittee on General Government: 2/23/13 [DPS(AGNR)].

Floor Activity:

Passed House: 3/7/13, 96-1.

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 public entities 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 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.

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.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 15 members: Representatives Blake, Chair; Lytton, Vice Chair; Chandler, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Buys, Dunshee, Haigh, Hurst, Kretz, Orcutt, Pettigrew, Schmick, Stanford, Van De Wege and Warnick.

Staff: Jason Callahan (786-7117).

HOUSE COMMITTEE ON APPROPRIATIONS SUBCOMMITTEE ON GENERAL GOVERNMENT

Majority Report: The substitute bill by Committee on Agriculture & Natural Resources be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Hudgins, Chair; Parker, Ranking Minority Member; Buys, Chandler, Dunshee, Hunt, Pedersen and Springer.

Minority Report: Do not pass. Signed by 1 member: Representative Taylor.

Staff: Michael Bennion (786-7118).

Background:

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 is 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 Engrossed Substitute 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.

The Department of Ecology is given the authority to seek a warrant in order to board upon a derelict or abandoned vessel and mitigate risk or determine ownership. Any warrant, if required, must be obtained from the Thurston County Superior Court or the court in the county where the vessel is located. Warrants must be issued on a reasonable cause standard.

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. New fiscal note requested on March 8, 2013.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 34 relating to legal appeals, which takes effect on June 30, 2019, and section 37 relating to the responsibilities of vessel owners to conduct a marine survey, which takes effect July 1, 2014.

Staff Summary of Public Testimony (Agriculture & Natural Resources):

(In support) The derelict vessel program at the DNR has proven itself to be successful and it is time to expand the program to help better protect public health, clean water, and the shellfish industry. The contents of the bill are the result of a long and inclusive stakeholder process. Despite past successes, there are still over 200 derelict vessels on the DNR's watch list that cause a risk to safety, navigation, and the environment.

The costs of removing a large vessel can be very high and it is much less expensive to prevent a vessel from becoming derelict in the first place. Vessel sellers should have some responsibility to consider who a boat is being sold to since subsequent owners of vessels tend to have less capacity to deal with eventual disposal costs. Vessel buyers should be told the long-term consequences of what they are getting into when they buy an older boat. If future derelict vessels are prevented then tax money will be saved.

Allowing the Department of Ecology to board vessels to pump off hazardous materials before a vessel sinks not only prevents pollution, but it also makes the removal of the vessel less expensive. Decriminalizing vessel registration violations will lead to more consistent enforcement.

(In support with concerns) Small boats end up funding the solutions to a problem mostly caused by big boats. This inequity needs to be addressed going forward. The elephant in the room is how the state is going to equitably pay for the large vessels that are currently derelict in state waters. Extending the surcharge on recreational vessels is supported, but there needs to be some recognition that those causing the biggest problems are not paying a dime towards the solution.

(With concerns) In the end, there needs to be money available to deal with derelict vessels. The cap in the Account should be lifted so that more money is available to address derelict vessels. Ports should be able to access 100 percent of the funding needed to remove a vessel because even 10 percent of the disposal costs of a large vessel can be too much for a small port. Moorage facilities often have objects other than boats appear on their grounds. There should be funding and flexibility for dealing with these sort of objects as well.

Ports need to be able to maintain the ability to sell a vessel for scrap so that they are not stuck with the full responsibility for a vessel but less options to deal with it. Either that, or the state needs to provide the money for disposal.

(Opposed) None.

Staff Summary of Public Testimony (Appropriations Subcommittee on General Government):

(In support) The Derelict Vessel Removal Program is funded through a \$2 surcharge on recreational vessels each year and an expiring \$1 surcharge on vessel registrations. There is significant support from stakeholders on extending the surcharge as it allows the Department of Natural Resources (DNR) to continue focusing on the removal of small recreational vessels. The bill contains preventative measures to try and stop vessels from becoming derelict, including the vessel turn-in program which is allocated \$200,000 each year in funding to assist owners without financial means to begin the disposal process. A similar program in California has found it reduces cost on overall vessel removal. The bill also requires state and local agencies to assess vessels prior to selling, and if the vessel does not pass inspection the agency is required to fix it prior to disposing or selling the vessel. This same provision would also be required of public and private marinas from selling vessels over 40 years old and longer than 65 feet without first passing inspection. The Deep Sea cost \$3 million to remove, partially paid for through the Jobs Act that passed last year, and if the policy of this bill had been in effect it would have cost \$1 million. Finally, the bill gives the Department of Ecology (DOE) the authority to board derelict vessels to assess hazardous materials on board and remove those materials prior to sinking.

The DOE responds to dozens of derelict vessels each year with the goal of removing any pollution prior to impacting our state and local economies. The DOE responds to between 20 to 30 derelict vessels each year. The pollution response costs have ranged into the tens of millions of dollars, including \$23 million for the Davy Crockett that was mostly paid for by the United States Coast Guard, but also cost the state. The Deep Sea not only had substantial costs to the state, but also the local shellfish industry, it closed down seafood production for 24 days in one instance. The bill goes a long way towards helping local governments and communities, marinas, shellfish growers, private property owners, and recreationists.

The Oil Spill Work Group (Work Group) was convened in late summer last year with a variety of stakeholders, and this bill supports many of the prevention policy recommendations made by the Work Group. Extending the surcharge will help the state keep pace with the list of derelict vessels that are added each year. Addressing the backlog of derelict vessels will take legislative commitment. Removing a vessel before it sinks is more advantageous to the state from both a cost and environmental perspective.

Derelict vessels threaten to block shipping channels in the Tacoma waterway and elsewhere that are used by industry. There are two vessels today in the Tacoma waterway that pose a threat. The vessels were purchased by a marina with the intention of scrapping the metal. Vessels above 25 tons are very costly to remove because they have to be parted before being lifted by crane and on to the dock. The bigger problem, however, comes from the environmental remediation associated with a toxic spill and the cleanup that results, which diminishes the value of the effort. Schnitzer Steel suggests adding additional authority to the DNR to provide tax credits for those companies doing the salvage work and those who can respond to emergency situations.

This bill came out of two stakeholder groups and has broad support. The bill is about prevention and not after the fact clean up. In the long-term, the focus should be on looking for new sources of funding to cover the costs.

(Opposed) None.

Persons Testifying (Agriculture & Natural Resources): (In support) Representative Hansen, prime sponsor; Jim Jesering, Pacific Coast Shellfish Growers; Bruce Wishart, People for Puget Sound and Washington Environmental Council; Daniel Fallstrom, Port of Manchester; Megan Duffy and Melissa Ferris, Department of Natural Resources; Jerry Joyce, Seattle Audubon; Todd Hass, Puget Sound Partnership; and David Byers, Department of Ecology.

(In support with concerns) Doug Levy, Recreational Boating Association of Washington.

(With concerns) Johan Hellman, Washington Public Ports Association; Cliff Webster, Northwest Marine Trade Association; and Carl Schroeder, Association of Washington Cities.

Persons Testifying (Appropriations Subcommittee on General Government): Megan Duffy and Melissa Ferris, Department of Natural Resources; Todd Hass, People for Puget Sound; Brad Tower, Schnitzer Steel; and David Byers, Department of Ecology.

Persons Signed In To Testify But Not Testifying (Agriculture & Natural Resources): None.

Persons Signed In To Testify But Not Testifying (Appropriations Subcommittee on General Government): None.